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**THE MARITIME LABOUR CONVENTION, 2006: Will it  
help make the world's oceans safer?**

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### *Word length*

*The text of this paper (excluding table of contents, footnotes and bibliography) comprises approximately 7456 words.*

## *I Introduction*

Seafarers are regarded as some of the most disadvantaged and abused workers in the world. They are “frequently exposed to difficult working conditions and particular occupational risks. Working far from home, they are vulnerable to exploitation and abuse, non-payment of wages, non-compliance with contracts, exposure to poor diet and living conditions, and even abandonment in foreign ports.”<sup>1</sup>

Ships crewed by badly treated seafarers are often the same ships that do not comply with internationally agreed minimum requirements for safety. Such ships are referred to in the literature as “substandard ships” and those who own them as “irresponsible ship owners”. Flag States who register them are known as “Open Registries” or Flags of Convenience.”<sup>2</sup> As these ships fail to meet even minimum standards for safety they are also at an increased risk of being involved in maritime disasters.<sup>3</sup> For instance the “most damaging accidents have involved tankers flying the flags of open registry countries (eg the “*Erika*” and the “*Prestige*”)”.<sup>4</sup>

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<sup>1</sup> International Labour Organisation, *International Labour Standards on Seafarers*, available at <[www.ilo.org](http://www.ilo.org)> (last accessed on 5 June 2016).

<sup>2</sup> The term “Flags of Convenience” is used to denote flag States that allow registration of ships with no obvious links to the State of registration. Such States are also called ‘Open Registries’ although this term has a less derogatory connotation than the term ‘flags of convenience’ which is generally used in the context of States that have lax enforcement policies that allows ships flying their flags to become unsafe. Owners who take advantage of the lack of enforcement by Flags of Convenience States are called ‘irresponsible owners’. Their ships are referred to as being “substandard” as they do not comply with even the minimal standards agreed internationally. See for instance Richard Goss, “Safety in Sea Transport” (1994) 28(1) *Journal of Transport Economics and Policy* 99 for further on this topic.

<sup>3</sup> See for instance “15 Years of Shipping Accidents: A review for WWF” Nickie Butt, David Johnson, Kate Pike, Nicola Pryce-Roberts and Natalie Vigar (2012) Southampton Solent University. [www.awassets.pand.org/downloads](http://www.awassets.pand.org/downloads). At page 41 the authors state that general cargo vessels account for 42% of all vessel types lost at sea over the research timeframe (15 years) and that these vessels are “often involve older vessels of 10 years and above which can limit their registration to less reputable flags States in order to continue trading. ... Nearly 50% of all global shipping accidents fall into the foundered category, which is strongly linked to location and the type and age of vessels operating there.”

<sup>4</sup> Francisco Pinella, José María Silos and Francisca Bernal “Who will give effect to the ILO’s Maritime Labour Convention, 2006” (2013) 152(1) *Int’l Lab Rev* 59-83, at 69. The *Erika* and the *Prestige* were tanker accidents which both resulted in major oil spills off the coast of France, the *Erika* in 1999 and the *Prestige* in 2002.

The Maritime Labour Convention, 2006 (MLC), which was adopted on 23 February 2006, consolidates most of the previously adopted International Labour Organisation (ILO) maritime conventions into one overarching convention that sets minimum standards for international seafarers' conditions of employment, standards of accommodation, recreational facilities, food and catering, health and medical care and welfare and social security provisions<sup>5</sup>.

The MLC will also form:<sup>6</sup>

the fourth pillar of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organisation (IMO) such as the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW) and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL)<sup>7</sup>.

The concept of the MLC as the 'fourth pillar' is intended to give effect to the dual aims of the ILO in adopting the Convention that it "achieve decent work for seafarers and ... secure economic interests through fair competition for quality ship owners."<sup>8</sup>

'Decent Work' is the aim of the ILO for workers globally. It is described by the ILO as:<sup>9</sup>

work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

Decent work in this context is what seafarers will have by virtue of the minimum living and working standards required to be provided for them by the MLC.

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<sup>5</sup> Article II of the MLC defines 'seafarer' very broadly as "[a]ny person who is employed or engaged or works in any capacity on board a ship to which this Convention applies". "Ship" is also very broad. It "means any ship other than one which navigates exclusively in inland waters or waters within or closely adjacent to sheltered waters or areas where port regulations apply." There is however provision for ships of less than 200 gross tonnes not engaged in international voyages to be exempted by States.

<sup>6</sup> UL P&I Club "MLC 2006- Frequently Asked Questions (FAQs) –May 2013" <www. etc

<sup>7</sup> In this paper these three IMO Conventions are referred to as the "IMO Pillar Conventions".

<sup>8</sup> ILO "Basic Facts on the Maritime Labour Convention, 2006" <www. ilo.org>.

<sup>9</sup> ILO "Decent Work" <ilo.org/global/topics/>

‘Fair competition’ and ‘quality ship owners’ are less obvious aims for an organisation such as the ILO but reflect the fact noted above that poor conditions for workers accompany poor safety standards on ships. ‘Quality ship owners’ is a reference to ship owners who comply with the international safety standards and ‘fair competition’ is referring to the fact that those who comply incur higher costs than those who do not comply with such standards. Thus if all ship owners are required to comply with minimum standards, then all ship owners will compete fairly. This concept is also referred to by the ILO as ‘levelling the playing field’.<sup>10</sup>

The ‘dual aims’ of achieving decent work for seafarers and securing ship owners’ economic interests through fair competition are both intended to be achieved by having enforceable minimum standards of living and working conditions. For seafarers and ship owners, the so-called ‘social partners’ to the ILO<sup>11</sup>, enforceable standards are thus a means to a desirable end. For seafarers they mean there is a floor from which they and their representatives (unions like the International Transport Workers Federation (ITF)) can bargain and for ship owners they mean there is a standard which irresponsible ship owners must meet at a minimum.

Thus during the years it took to negotiate the MLC, the social partners had a common interest in working together to agree minimum labour standards which would apply to all seafarers employed by all ship owners, whether they were ‘responsible’ or ‘irresponsible’. This was in the interests of responsible ship owners provided those same standards would be enforced against irresponsible ship owners as this would ‘level the playing field’ in terms of labour costs<sup>12</sup>.

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<sup>10</sup> For an economic analysis of safety incentives of ship owners see Richard Goss “Safety in Sea Transport” (1994) 28(1) *Journal of Transport Economics and Policy* 99-110 at 100 where he describes safety precautions as generally raising costs while the benefits of those precautions are “externalities such as deaths and injuries, pollution, damage to the property of others” prevention of which are not benefits at all to the ship owner in a monetary sense.

<sup>11</sup> The ‘Social Partners’ is a term used to refer to the workers’ organisations and the employers organisations that together with governments have voting rights in the ILO.

<sup>12</sup> For a fulsome description of the process of negotiation of the MLC see Moira L McConnell, Dominick Devlin and Cleopatra Doumbia-Henry *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime* (Martinus Nijhoff, Leiden, 2011) especially Chapter two “The Story of the Maritime Labour Convention, 2006”.

However for both of the social partners the enforceability of the standards is critical to the success of the Convention.

## *II The Maritime Labour Convention, 2006*

### *A ILO's Maritime Role*

While this paper is mostly concerned with the MLC as an international regulatory instrument and as a part of the existing IMO regulatory framework rather than as a labour instrument per se, this section provides some background about the International Labour Organisation (ILO) and the process by which it came to adopt the MLC.

The ILO is a specialised agency of the United Nations created by the 1919 Peace Conference that followed World War I. It was created “to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice”<sup>13</sup>. The ILO’s main aims are “to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.”<sup>14</sup> From this it can be seen that the ILO is concerned with promoting workers’ rights. By contrast the International Maritime Organisation (IMO) is concerned with safety and security of ships and protection of the marine environment.<sup>15</sup>

In terms of its role in the maritime sector, the ILO has long recognised that the sector is a priority and deserving of separate treatment.<sup>16</sup>

From its first days, the Members of the ILO realised that in the world of work, seafarers and shipowners were different. Not land-based but working on the seas, they not only moved huge amounts of world trade even 90 years ago, they were the most fluid and wide-ranging workforce on the planet ... Since 1920, it has been the practice of the ILC to convene a special Maritime Session to deal exclusively with seafarers’ living and working conditions.

By 1995 the ILO had adopted 68 Maritime Conventions and Recommendations. However a review of these instruments launched by the ILO Governing Body in 1995

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<sup>13</sup> ILO “Origins and History” <http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm> (last accessed 6 June 2016).

<sup>14</sup> ILO “About the ILO” < [www.ilo.org/ilo/home/](http://www.ilo.org/ilo/home/) > (last retrieved 1 May 2016).

<sup>15</sup> International Maritime Organisation “Introduction to IMO” [www.imo.org/](http://www.imo.org/).

<sup>16</sup> McConnell above n 12 at 38.

concluded that, despite this large number of instruments, the amount of progress in labour rights was being hampered by the very low and uneven rates of ratification of these instruments. This had resulted in “fragmentation [which] can be explained by the fact that these instruments were all adopted in response to a specific problem or specific needs—over a period of almost 80 years.”<sup>17</sup>

Also in the late 1990s and while the Governing Body review process was taking place, concerns about the effect structural changes in the industry was having on seafarers’ living and working conditions also surfaced.

In January 2001 when the results of the Governing Body review were considered by the Joint Maritime Commission, a bipartite grouping of seafarers and ship owners,<sup>18</sup> there was a realisation that a broader approach was going to be necessary to address:<sup>19</sup>

structural developments in the industry including changes in ownership, the financing and management of shipping fleets, new forms of registers, dramatic shifts in the origin of labour supply, the growth of multinational and multicultural crews, and developments in turnaround time of ships coupled with reduced crewing levels.

These changes had led to “a dramatic weakening of national regulatory regimes,” a “growing avoidance of social regulations” and a “global market for seafarers”.<sup>20</sup>

The tightening market conditions experienced by the maritime industry in the last decades of the twentieth century led to sub-standard ships reappearing as an issue.<sup>21</sup> Part of the phenomenon of sub-standard shipping is the effect it has on the human element of

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<sup>17</sup> McConnell above n 12 at 43.

<sup>18</sup> The Joint Maritime Commission (JMC) is a bipartite standing body that provides advice to the Governing Body on maritime questions including standard setting for the shipping industry. It is composed as follows: Chairman of the Governing Body; two Governing Body members (one Worker, one Employer); twenty regular shipowner members; twenty regular seafarer members; four deputy shipowner members; and four deputy seafarer members. The Standing Orders of the JMC provide guidance on how to deal with the various procedural questions that may arise in the course of the Commission's work ([www.ilo.org](http://www.ilo.org)).

<sup>19</sup> McConnell above n12 at 41.

<sup>20</sup> McConnell above n12 at 42.

<sup>21</sup> See “Sub-Standard Ships and Abandoned Seafarers” in *The Global Seafarer: Living and working conditions in a globalised industry* (ILO, Geneva, 2004) at 160: “Of course, sub-standard ships had never been entirely eradicated, but it has only been since the 1980s that they have once again been seen as threatening good practice.”

shipping. As “competition between ship owners increases...there is a manifest tendency that ship owners reduce crews and increase working hours.”<sup>22</sup>

At the same time as market conditions were tightening “professional owners [were complaining] of being undercut” by sub-standard ships whose owners saved “a significant percentage of total vessel operating costs” by non-compliance.<sup>23</sup>

The economic situation and its effects on the industry meant the interests of ship owners and seafarers were aligned on the desirability of a set of minimum standards for seafarers’ living and working conditions that could be enforced against all ships.

Accordingly at the Joint Maritime Commission’s 29th Session in Geneva in 2001 ship owners and seafarers agreed that “the existing maritime instruments should be consolidated and brought up to date by means of a new single framework convention on maritime labour standards.”<sup>24</sup> This agreement set the scene for a new approach to ILO maritime Conventions which ultimately led to the adoption of the MLC.

## ***B Fourth Pillar***

The ILO’s view is that the [MLC] will be the ‘fourth pillar’ in international shipping regulation, complementing International Maritime Organisation (IMO) conventions on ship safety, security and environmental protection.<sup>25</sup> This section provides background to the IMO and the three conventions referred to as the other pillars to the MLC’s fourth.

The aim of the IMO is different to that of the ILO but, like seafarers and ship owners, these two organisations have a common interest in the conditions in which seafarers live and work.

The IMO sets regulatory standards for international shipping in order to deliver on its aim of “ensuring that lives at sea are not put at risk and that the environment is not polluted

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<sup>22</sup> Reto Durler “The Maritime Labour Convention 2006: a major step forward in maritime law” in Norman A Martínez Gutiérrez (ed) *Serving the Rule of International Maritime law: Essays in Honour of Professor David Joseph Attard* (Routledge, USA and Canada, 2010) at 299.

<sup>23</sup> Ibid also at 162.

<sup>24</sup> McConnell above n12 at 48.

<sup>25</sup> See “Maritime Labour Convention, 2006 (MLC 2006), Frequently Asked Questions (FAQ) International Labour Organisation, Online Revised Edition, 2012” [www.ilo.org/mlc](http://www.ilo.org/mlc).



by shipping operations- as summed up in its objectives: Safe, Secure and Efficient Shipping on Clean Oceans.”<sup>26</sup> While this work has traditionally focussed on the technical ship based elements of safety, “since the 1980s IMO has increasingly addressed the people in shipping in its work”<sup>27</sup> and has a Human Element, Training and Watchkeeping (HTW) Sub-Committee that deals with the human element matters, including:

- minimum international standards for training and certification of seafarers and fishing vessel personnel
- technical and operational issues related to maritime safety, security, and environmental protection
- promoting and implementing the IMO human element strategy.

Both the STCW and SOLAS (particularly through the International Safety Management (ISM) Code) address aspects of the human element side of safety and are IMO instruments.<sup>28</sup>

Through the MLC the ILO now also has an interest in the human element of maritime safety and this has given rise to some areas of overlap between IMO and ILO requirements on matters such as medical certificates, manning levels and occupational safety and health<sup>29</sup>.

In theory the difference between the two organisations is that the IMO “look[s] at the technical aspects of a ship, the ILO takes care about the social aspects of the crew.” In practice both deal with human aspects but for different reasons linked to their underlying aims. “The IMO have a strong [belief] that new codes like [the] ISM will solve this matter. The ILO follows the path of resting hours, better education, better contracts and better living circumstances. [However] both international organizations are now joining force on several factors which influence human behaviour.”<sup>30</sup>

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<sup>26</sup> World Maritime University “International Maritime Organization (IMO)” [www.imo.org/home/](http://www.imo.org/home/).

<sup>27</sup> IMO “Human Element” [imo.org/English/our work/human element](http://imo.org/English/our%20work/human%20element)

<sup>28</sup> The ISM Code which is mandatory under SOLAS establishes an international standard for the safe management and operation of ships and for the implementation of a safety management system (SMS). The requirements in this Code respond to the issues identified around poor communication and lack of safety systems in the wake of the sinking of the *Herald of Free Enterprise* which was as a result of human failure to close the door before the vessel sailed.

<sup>29</sup> See ILO, “Handbook Guidance on Implementing the MLC 2006, Model National Provisions” [www.ics\\_shipping.org](http://www.ics_shipping.org).

<sup>30</sup> Meij Design and Survey “IMO and ILO, the Different Focus on People” (January 11, 2015) [www.maritime-mea.com/](http://www.maritime-mea.com/).

It is to be hoped that despite the overlap the two organisations can coexist without causing issues for safety. There seems to have been progress in this regard given that were made by the IMO to the STCW in 2010:<sup>31</sup>

reflect a clear effort to coordinate requirements for two international organisations with overlapping interests. At the same time the clear difference between the two organisations in terms of approaches based on concerns for uniformity and the role of tripartism in flexibility is evident.

Such flexibility will be required if the overlapping requirements are not to get in the way of safety.

The next section of this paper looks more closely at the MLC enforcement provisions, particularly the inclusion of seafarer complaint procedures in order that an assessment can be made of the extent to which those provisions, assuming they are implemented, will assist in making the overall maritime regulatory regime more effective at preventing substandard ships from continuing to trade and thereby help to make the world's oceans safer.

### ***C Structure and Content***

Both the structure and content of the MLC, which developed during the negotiation process, is unique amongst ILO instruments. The structural uniqueness is largely due to the adoption of similar structural elements that had been successful in the context of IMO Pillar Conventions which have been adapted for use in the ILO context.<sup>32</sup>

The ultimately adopted structure contributes significantly to the achievement of the objective of the ILO that the Convention “be applicable globally, easy to understand, readily updatable and uniformly enforced”.<sup>33</sup> As compared to the previous attempt to consolidate the existing maritime labour conventions in the *Merchant Shipping (Minimum Standards) Convention, 1976 (No 147)* which simply annexed the ‘consolidated’ conventions the main document, the MLC takes the subject matter from the existing conventions and rearranges it into ‘Titles’. All provisions relating to the

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<sup>31</sup> McConnell, above n 12 at 315.

<sup>32</sup> McConnell above n 12 at 116 describes this as “the legal skeleton or underlying framework’ of the MLC.

<sup>33</sup> ILO “Labour Standards: Basic facts on the Maritime Labour Convention 2006” <[www.ilo.org/wcms/219665/land-en](http://www.ilo.org/wcms/219665/land-en)>

subject matter of each title then reside in the same part of the Convention. This creates a relatively easy to read set of standards.

The structure is explained to the reader of the Convention in the “Explanatory Note to the Regulations and Code of the Maritime Labour Convention” which “does not form part of the ... Convention, [but] is intended as a general guide to [it].”<sup>34</sup>

Relevantly the introductory note provides:<sup>35</sup>

- The Convention comprises three different but related parts: the Articles, the Regulations and the Code.
- The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention ...
- The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines) ...
- The Regulations and the Code are organized into general areas under five Titles:

**Title 1:** Minimum requirements for seafarers to work on a ship

**Title 2:** Conditions of employment

**Title 3:** Accommodation, recreational facilities, food and catering

**Title 4:** Health protection, medical care, welfare and social security protection

**Title 5:** Compliance and enforcement

Each Title contains groups of provisions relating to a particular right or principle (or enforcement measure in Title 5), with connected numbering. The first group in Title 1, for example, consists of Regulation 1.1, Standard A1.1 and Guideline B1.1, relating to minimum age.

As will be seen from the headings above, the first four of the five titles deal with the substantive matters relating to the living and working conditions of seafarers while the fifth is dedicated solely to provisions for enforcing those arrangements.

The titles are “vertically integrated ... with each Title comprising a number of regulations and the associated Parts A and B of the Code setting out more detailed requirements to implement the relevant regulations.”<sup>36</sup> The regulations and relevant code provisions are

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<sup>34</sup> The Explanatory Note comes after the Articles but before the Regulations, Standards and Code provisions.

<sup>35</sup> Note that some text of the paragraphs quoted has been omitted.

<sup>36</sup> McConnell above n12 at 474

numbered in a cascading fashion using the title number as the first number in the sequence. Each level in the sequence has “increasing [levels of] specificity.”<sup>37</sup>

This structure including the three tiers (of Articles, Regulations and Codes) was adopted from the IMO Pillar Conventions, in particular the STCW. The sequential numbering described above was also specifically designed to keep all relevant provisions, regardless of whether they were at the level of ‘regulations’ or the level of Part A or B of the Code, in one place for ease of reference.

Articles III and IV of the IMO comprise the ‘Seafarers’ Bill of Rights’ part of the Convention. They provide as follows:

### **FUNDAMENTAL RIGHTS AND PRINCIPLES**

#### **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 to:

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

### **SEAFARERS’ EMPLOYMENT AND SOCIAL RIGHTS**

#### **Article IV**

- 1) Every seafarer has the right to a safe and secure workplace that complies with safety standards.
- 2) Every seafarer has a right to fair terms of employment.
- 3) Every seafarer has a right to decent working and living conditions on board ship.
- 4) Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.
- 5) Each Member shall ensure, within the limits of its jurisdiction, that the seafarers’ employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.

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<sup>37</sup> McConnell above n12 at 123

This statement of rights at the principle level with detail in the Regulations and Code with varying degrees of prescription and flexibility can be compared to earlier ILO Conventions which had very little flexibility. By way of example the *Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No 180)* had simply a Preamble and then a series of Articles all of equal weight. This lack of flexibility was recognised as one of the reasons for the limited ratification of many of the earlier Conventions. To avoid this issue recurring, the Seafarers' Group proposed that the new convention:<sup>38</sup>

should constitute a real and unambiguous Seafarers' Bill of Rights, making decent work a reality on all ships ... the Seafarers were proposing a radical approach, which was a package, and which would remove a lot of the prescriptive details.

On the basis of the level of ratification of the MLC, which includes over 80% of the world's international shipping fleet, it seems that this approach is succeeding in establishing minimum standards. Whether or not that equates to effective enforcement and therefore positive changes in the safety of ships remains to be seen.

### *III International Maritime Enforcement*

#### ***D Background***

The structural elements of the MLC echo those of the IMO Pillar conventions. As previously noted though, it is in the area of enforcement that the social partners saw the benefits of having the MLC take its place as the 'fourth pillar.'

Bringing the MLC labour rights into the same inspection procedures as those used to enforce the IMO Pillar Conventions provides clarity that labour standards are to have the same priority as technical standards. This should see changes in the degree of emphasis given to purely technical requirements so that more attention is paid to crew living conditions as well. "[T]he attitude (at least up until a few years ago) towards deficiencies related to labour conditions onboard merchant vessels [that was] best described ... [as] not normally an inspection priority."<sup>39</sup>

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<sup>38</sup> Final Report, HLTWG (Second Meeting), Geneva, 14-18 October 2002, ILO Doc No TWGMLS/2002/13, [www.ilo.org/public/english/dialogue/sector/techmeet/twgmlso2/twgmls-r.pdf](http://www.ilo.org/public/english/dialogue/sector/techmeet/twgmlso2/twgmls-r.pdf).

<sup>39</sup> Officer of the Watch "MLC 2006 Enforcement Through Port State Control Inspections in Ports (MLC Regulation 5.2.1)" (May 1 2013) [www.officerofthewatch.com](http://www.officerofthewatch.com).

Strong enforcement provisions were seen as critical to getting unions (on behalf of seafarers) to agree to the MLC without which they considered that the consolidated convention would do no more than “merely legitimate the status quo.”<sup>40</sup> From their point of view that status quo involved confirming what they considered to be very low minimum standards without any way to enforce even those low standards.

Some ship owners and governments were reluctant to see “language allowing PSC inspection and detention of a ship on labour grounds” incorporated in the Convention.<sup>41</sup> This was eventually resolved when “the seafarers’ group made it clear it would not support an MLC that failed to go beyond existing conventions and precedents in terms of enforcement and compliance. Its goal and its price for supporting a level playing field for ship owners, was to move beyond existing precedents for labour rights enforcement.”<sup>42</sup>

### *E Article V and Title 5*

Title 5 is the compliance and enforcement section of the MLC. It is structured into three sections, obligations of flag States, port States and labour-supplying States in that order. This paper deals with the first two of these only as it these States who have greatest influence on whether or not substandard ships are permitted to continue to operate without meeting the minimum standards of the combination of the IMO Pillar Conventions and the MLC.

However before looking at the detail of the provisions in Title 5 it is necessary to consider the effect of Article V (as to the manner of implementation and enforcement) which in respect of Title 5 sets out the relevant:<sup>43</sup>

overarching and authorising international obligations that States accept when ratifying the Convention ... All other obligations laid out in the equally binding text, that is regulations and standards, combined with the non-mandatory guidelines, can be seen as an elaboration of these core obligations.

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<sup>40</sup> McConnell above n12 at 56

<sup>41</sup> Nathan Lillie “The ILO Maritime Labour Convention, 2006: A new paradigm for global rights implementation” in Konstantinos Papadakis (ed) *Cross-Border Social Dialogue and Agreements: An emerging global industrial relations framework?* (International Labour Office, Geneva, 2008) at 210.

<sup>42</sup> Lillie above n40 at 210.

<sup>43</sup> McConnell above n12 at 166.

The commitments set out in Article V (in summary form) are as follows:

- 1) Members shall enforce measures in their law that gives effect to the Convention;
- 2) Members shall enforce the requirements of the convention against their own ships including by undertaking regular inspections, reporting and legal proceedings;
- 3) Members shall ensure their ships carry maritime labour certificates and declarations of maritime labour compliance;
- 4) Ships of foreign States may be inspected by members for compliance with the Convention when in a port of a port State member;
- 5) Members shall exercise control over seafarer recruitment services in their territory;
- 6) Members shall prohibit violations and establish sanctions or require corrective measures ‘adequate to discourage such violations’; and
- 7) Members shall not give ‘more favourable treatment to ships of non-members.

All of these statements other than paragraph four are expressed as mandatory obligations. By comparison paragraph four, which deals with PSC inspection, is permissive. This “reflects the principle that the decision by a State to exercise control over a foreign ship in its ports is voluntary.”

Article V commitments are elaborated in Title 5 which consists of four introductory paragraphs, three regulations each with sub-regulations and four appendices. The full wording of Article V and Title 5 are set out in the Appendix.

The introductory paragraphs 1-4 of Title 5 are a feature that appears only in Title 5 and not in any other Title of the MLC. Although not numbered as such nor explained in the ‘Explanatory Note to the Regulations and Code,’ these paragraphs form ‘rules’ sitting over the top of the regulations in Title 5. This seems a necessary conclusion from the content in particular the second of the introductory paragraphs which provides that:<sup>44</sup>

paragraphs 3 and 4 of Article VI, which permit the implementation of Part A of the Code through substantially equivalent provisions, do not apply to part A of the Code in this Title.

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<sup>44</sup> No 2 of the 4 ‘introductory paragraphs’ in Title 5.

The Appendices to Title 5 are critical to giving effect to the intention expressed in the Preamble that the Convention “should lend itself to effective implementation and enforcement”. They specify the:

- particular matters that are to be inspected and certified by flag States (Appendix A5-I);
- model forms to be used as the basis for the Maritime Labour Certificate (Certificate) and Declaration of Maritime Labour Compliance (Declaration) (Appendix A5-II);
- particular matters that are to be inspected for deficiency by port States (Appendix A5-III); and
- an example of the kind of information that might be contained in a declaration of maritime labour compliance (Appendix B5-1).

#### ***F Regulation 5.1: Flag State Responsibilities***

As noted above Title 5 is in three sections. The first of these is Regulation 5.1- Flag State responsibilities. The greater majority of the text of Title 5 is directed to flag State responsibilities. This reflects the fact that, as between flag States and other States, it is the flag State that has primary responsibility for exercising jurisdiction over its ships and for taking enforcement action against those ships.<sup>45</sup>

It is the responsibility of the flag State to establish “an effective system for the inspection and certification of maritime labour conditions.”<sup>46</sup> The certificates required to be issued under the authority of the flag State are a ‘maritime labour certificate’ and a ‘declaration of maritime labour compliance’. Flag States are also required to include information about the system of inspection and certification and methods for assessing its effectiveness in their Article 22 annual report to the ILO.<sup>47</sup>

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<sup>45</sup> UNCLOS article 91 provides that the flag State is the state that has the right to grant to a ship the right to fly its flag and thereby bestow on it the nationality of that flag State. In return the flag State becomes “the principal authority responsible for ensuring that vessels flying its flag are in compliance with international laws and regulations” as set out in Article 94 which provides that “the flag State is under a duty to exercise effective jurisdiction and control over administrative, technical and social matters on their ships on the high seas.” This Article is referenced in the Preamble to the MLC and thus ‘calls up’ the references in that UNCLOS Article as authority for the flag State provisions included in the MLC.

<sup>46</sup> MLC reg 5.1.1 para 2

<sup>47</sup> MLC reg 5.1.5 para 5.



Although flag State inspection regimes had been provided for in previous ILO Conventions such as the *Labour Inspection (Seafarers) Convention 1996 (No 178)*<sup>48</sup>, those regimes did not include requirements for flag States to issue certificates of compliance. This certification regime is one of the innovative features of the MLC. It puts in place:<sup>49</sup>

[a] new system to mainstream labour standards within the international maritime regulatory system in order to achieve effective enforcement and compliance- a certification system for conditions of “decent work”.

The certificates are the fundamental instruments on which the system of enforcement is based. The flag State is to require ships that fly its flag carry and maintain:

...a maritime labour certificate certifying that the working and living conditions of seafarers on the ship ... have been inspected and meet the requirements of national laws or regulations or other measures implementing [the] Convention<sup>50</sup>; and

...a declaration of maritime labour compliance stating the national requirements implementing this Convention for the working and living conditions for seafarers and setting out the measures adopted by the Ship owner to ensure compliance with the requirements on the ship or ships concerned.<sup>51</sup>

The compliance certificates also provide an objective way of proving that the flag State has conducted an inspection and found the ship to be compliant and “constitute prima facie evidence” of compliance.<sup>52</sup> They are also the basis of port State inspections.

Certificates issued are valid for 5 years but an intermediate inspection of the same ‘scope and depth’ as the original inspection is to be carried out “between the second and third

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<sup>48</sup> It needs to be remembered that this convention like many of the ILO Conventions to be replaced by the MLC, had only received a small number of ratifications. As at the date of writing, NORMLEX recorded 15 countries who had ratified it (although as ratification of the MLC is deemed to automatically be a denunciation of this and other conventions replaced by it, it is important to note that NORMLEX also records 12 denunciations meaning it is possible that as many as 27 States had ratified prior to the MLC being adopted).

<sup>49</sup> Moira McConnell “The Maritime Labour Convention, 2006- reflections on challenges for flag State implementation” (2011) 10 WMU J Marit Affairs 127 at 129.

<sup>50</sup> Reg 5.1.3 para 3.

<sup>51</sup> Reg 5.1.3, para 4.

<sup>52</sup> MLC reg 5.1.1 para 4.

anniversary dates of the certificate.”<sup>53</sup> If the flag State fails to do the intermediate inspection, paragraph 14 of Standard A5.1.3 provides that the Certificate shall cease to be valid. Therefore if the three year period is exceeded, the Certificate is no longer prima facie evidence of compliance which as will be seen from the following section is the main advantage of having them.

### ***G Regulation 5.2- Port State responsibilities***

Traditionally flag state exclusivity was considered a fundamental principle of the law of the sea. However as a result of:<sup>54</sup>

shortcomings of flag state control, ... the port states recognised the need to ensure maritime safety and the protection of the marine environment in their own ports and coastal waters. ... To do so, they undertook to monitor foreign ships that visited their ports and, if justified, to detain them or deny them entry if they failed to comply with the provisions of applicable international conventions ... This principle of action or authority is what became known as port State control (PSC).

Port states traditionally had rights over foreign flagged vessels within their ports derived from principles of territoriality and the ability to refuse to grant consent to enter the port State’s sovereign waters but because of perceived shortcomings and because “[s]ince the early 1980s, maritime accidents and other problems [were viewed as being] created by flag State negligence ... many countries [began] to inspect vessels that call[ed] at their ports.”<sup>55</sup> Regulation 5.2 explicitly provides for port State control to be used as an enforcement tool for the MLC labour rights.

The use of PSC as a tool against substandard shipping has been further developed through regional agreements referred to as PSC MOUs<sup>56</sup>. The first of these was the Hague Memorandum on Port State Control, adopted in 1978 which was subsequently

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<sup>53</sup> Standard A5.1.3, para 2.

<sup>54</sup> Francisco Pinella, José María Silos and Francisca Bernal “Who will give effect to the ILO’s Maritime Labour Convention, 2006” (2013) 152(1) Int’l Lab Rev 59 at 63.

<sup>55</sup> Lillie above n40 at 199.

<sup>56</sup> There are now nine regional agreements on port State control - Memoranda of Understanding or MoUs - have been signed: Europe and the north Atlantic (Paris MoU); Asia and the Pacific (Tokyo MoU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MoU); West and Central Africa (Abuja MoU); the Black Sea region (Black Sea MoU); the Mediterranean (Mediterranean MoU); the Indian Ocean (Indian Ocean MoU); and the Riyadh MoU. The United States Coast Guard maintain the tenth PSC regime.

replaced by the Paris Memorandum of Understanding on Port State Control (the Paris MOU). There are now a series of these regional MOUs giving “near global coverage.”<sup>57</sup>

In general, the regimes under these MOUs call for an agreed percentage of foreign merchant ships calling at ports of the signatory States to be inspected on a “non-favoured” basis to ensure compliance with IMO and ILO conventions named in the relevant MOUs.<sup>58</sup>

The “non-favoured” basis does not mean the selection of ships for inspection is random. Flag States are ranked on the basis of the number of deficiencies and detentions their ships incur and ships are targeted accordingly. Also, findings from inspections are shared among the PSC MOU members so that a ship’s record follows it wherever it goes. This is designed to “avoid the problem of ‘port hopping’ to ‘ports of convenience’ and to enhance the uniformity and consistency of inspection and actions taken to address ‘sub-standard shipping’.”<sup>59</sup>

The MLC port state responsibility provisions are designed to put labour rights fairly and squarely on the agenda for inspections by port State authorities.<sup>60</sup>

The port State inspection regime established by Regulation 5.2 is in essence a two-tiered system. The ‘normal’ inspection is limited to an inspection of the documents of compliance, the Certificate and the Declaration. This is intended to be a simple check which should not unduly delay the ship and which can be undertaken as part of port State inspections carried out for compliance with IMO Pillar Conventions. This is indicated by the last sentence of Regulation 5.2.1 para 2:

Accordingly, the inspection in its ports shall, except in the circumstances specified in the Code, be limited to a review of the certificate and declaration.

The circumstances where a more detailed inspection is to be carried out are set out in paragraph 1 of Standard A5.2.1:

1. Where an authorised officer ... finds that:

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<sup>57</sup> Rosemary Rayfuse “The Role of Port States” in Robin Warner and Stuart Kaye (eds) *Routledge Handbook of Maritime Regulation and Enforcement* (Routledge, London and New York, 2016) at 79.

<sup>58</sup> Rayfuse above n57 at 79.

<sup>59</sup> Rayfuse above n57 at 79.

<sup>60</sup> Lillie above n40 at 199.

(a) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by this Convention or are otherwise invalid; or

(b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Convention; or

(c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Convention; or

(d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention;

a more detailed inspection may be carried out... Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorised officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention ....

The matters to be inspected where a port State authority decides to undertake a more detailed inspection are set out in Appendix A5-III and are the same matters that are required to be inspected by flag States when issuing Certificates.

Not having a Certificate or Declaration has the effect of opening a ship up to the possibility of “a more detailed inspection.” A more detailed inspection will necessarily take more time, which is of course undesirable in the context of the commercial operations of the ship and also exposes the ship to the possibility of deficiencies being found. If deficiencies are found and they are<sup>61</sup>:

considered by the authorised officer to be significant , or they relate to a complaint made [by a seafarer], the authorised officer shall bring the deficiencies to the attention of the appropriate seafarers’ and shipowners’ organisation in the Member in which the inspection is carried out and may:

- (a) notify a representative of the flag State;
- (b) provide the competent authorities of the next port of call with the relevant information.

“[R]ather than having an economic incentive not to ratify and to be regulatory havens for non-compliant ship owners, [flag States] have an incentive to ratify and to implement the MLC so that their shipping will not be singled out by PSC inspectors as problematic.”<sup>62</sup>

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<sup>61</sup> Paragraph 4 Standard A5.2.1.

<sup>62</sup> Lillie above n40 at 205.

If inspections are undertaken they are required to be carried out “by authorised officers in accordance with the provisions of the Code and other applicable international arrangements governing port State control inspections in the Member”<sup>63</sup> and “be based on an effective port State inspection and monitoring system.”<sup>64</sup> While not actually naming Port State Control MOUs, these provisions are clearly referencing them at least by the use of the term ‘international arrangements’.

Thus it can be seen how the Certificate and Declaration are the key to the enforcement regime- having them gives ships an advantage in terms of the presumption of compliance and provided no counter to that presumption is present, the inspection is a short one which should not delay the ship. The opposite applies for ships of non-ratifying States.

PSC has the potential to be a powerful tool for addressing substandard shipping. However currently the only binding PSC instrument is the Paris MOU and that has only become binding for European States by virtue of EC Directive<sup>65</sup>. While this does not necessarily mean that those States that ratify the MLC will not exercise their rights to carry out either flag or port State inspections, as there is no obligation to do so then it is probably to be expected that levels of enforcement will vary. According to Piniella et al:<sup>66</sup>

Some States undertake the formal commitment that ships flying their flag must comply with the specified conditions, but in practice they either disregard them for want of political will or fail to comply for lack of the human and physical resources needed to exercise control over ships flying their flag, particularly those that do not frequent their own ports.

It is therefore interesting to consider whether the port State inspection provisions of the MLC create any ‘obligation’ on port States. In this regard the Purpose Statement of regulation 5.2.1 provides that it is “[t]o enable each Member to implement its *responsibilities* under [the] Convention regarding international cooperation in the implementation and enforcement of the Convention standards on foreign ships.”<sup>67</sup> While this provision uses the language of obligation it is not clear what is intended by

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<sup>63</sup> Paragraph 3 Regulation 5.2.1.

<sup>64</sup> Paragraph 4 Regulation 5.2.1.

<sup>65</sup> The Port State Control Directive 2009/16/EC as amended.

<sup>66</sup> Francisco Pinella, José María Silos and Francisca Bernal “Who will give effect to the ILO’s Maritime Labour Convention, 2006” (2013) 152(1) Int’l Lab Rev 59 at 63.

<sup>67</sup> Emphasis added.

“responsibilities... regarding international cooperation”. Whether or not that equates to obligations to inspect is not clear.

As noted above the language of paragraph 4 of Article V is permissive. So too is the language of paragraph 1 of Regulation 5.2.1 which provides:

Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member *may* be the subject of inspection ...<sup>68</sup>

On this issue McConnell et al suggest that an obligation to inspect some ships may arise due to the “buttress[ing of the obligation in Article V] by the obligation on all Members under Article I, paragraph 2, to cooperate in effective implementation and enforcement.”<sup>69</sup> However this conclusion seems to the writer to unduly stretch the plain meaning of paragraph 4, Article V and paragraph 1, Regulation 5.2.1 which are both in marked contrast to the use of the language ‘each Member shall’ in other provisions. Given the previous experience of ILO Conventions where some States ratify but then fail to enforce, this could become an issue should a similar pattern develop.

#### *IV On Board and Onshore Seafarer Complaints*

A novel enforcement procedure in the MLC, at least as far as the regulatory system provided for in the IMO Pillar Conventions, is via the raising of complaints under the on board and onshore complaint procedures. Both flag States and port States have obligations under Title 5 of the MLC to establish complaint handling procedures.

Complaint procedures for the laying of seafarer complaints are not new for ILO Conventions. For instance an earlier version of the MLC complaint provisions is found in Article 4 of the *Merchant Shipping (Minimum Standards) Convention, 1976 (No 147)*. These provisions however, while allowing complaints to be received and in certain circumstances permitting action to be taken by port State Members against foreign vessels, did not create obligations to establish systems to enable seafarers to make complaints.

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<sup>68</sup> Emphasis added.

<sup>69</sup> McConnell above n12 at 212

Requirements to establish complaint procedures give<sup>70</sup>

... seafarers a rather important role in [the MLC's] enforcement. These innovative procedures ...allow for the 'direct identification' of existing deficiencies on board to enable their timely rectification and constitute an important source of information for the on-going compliance of ships.

The provisions relating to flag State responsibility for seafarer complaints are set out in Regulation 5.1.5, Standard A5.1.5 and Guideline B5.1.5. The key requirement on Member States who are flag States is to:

1. ...require that ships that fly [their] flag[s] have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers' rights);<sup>71</sup> and
2. ... prohibit and penalize any kind of victimization of a seafarer for filing a complaint<sup>72</sup>.

The on-board complaint procedures are required to:

- be of sufficient scope to allow "seafarers to lodge complaints relating to any matter that is alleged to constitute a breach of the requirements of [the] Convention (including seafarers' rights)";<sup>73</sup>
- provide for resol[ution of] complaints at the lowest level possible"<sup>74</sup>
- provide that "seafarers have a right to complain directly to the master and, where they consider it necessary, to external authorities;"<sup>75</sup>
- provide that seafarers have the right "to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimisation of seafarers for filing complaints;"<sup>76</sup>
- ensure that seafarers are "provided with a copy of the on-board complaint procedures;"<sup>77</sup>
- provide seafarers with "contact information for the competent authority in the flag State and, where different, in the seafarers' country of residence;<sup>78</sup> and

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<sup>70</sup> Jennifer Lavelle (ed) *The Maritime Labour Convention 2006: International Labour Law Redefined* (Routledge, New York, 2014) 172.

<sup>71</sup> Paragraph 1 Regulation 5.1.5.

<sup>72</sup> Paragraph 2 Regulation 5.1.5.

<sup>73</sup> Para 1 Standard A5.1.5

<sup>74</sup> Para 2 Standard A5.1.5

<sup>75</sup> Para 2 Standard A5.1.5

<sup>76</sup> Para 3, Standard A5.1.5

<sup>77</sup> Para 4 Standard A5.1.5

<sup>78</sup> Para 4 Standard A5.1.5

- provide seafarers with the name of a person or persons on board the ship who can, on a confidential basis impart advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.”<sup>79</sup>

In addition to the requirements for an on board complaints process, paragraphs 5 and 10 of Regulation 5.1.4 also contemplate complaints directly to the flag State authorities themselves as opposed to the ship owner’s representatives on board the ship.

Paragraph 5, while not specifically requiring that any complaint be made to a flag State inspector, follows directly on from paragraphs dealing with obligations of flag States to ‘maintain a system of inspection’, ‘appoint a sufficient number of inspectors’, ‘train those inspectors’ and to undertake inspections no less frequently than three yearly. Set in this context together with provisions in paragraphs 6 and 7 of the same regulation that require inspectors to be ‘independent of changes of government and of improper influences’ and to ‘not be entrusted with duties which might because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality” suggest that the intention is that the inspector be seen as the appropriate person to whom to complain.

Further support for this conclusion is found in paragraph 10 which requires inspectors (and only inspectors) to:

[t]reat as confidential the source of any grievance or complaint alleging a danger or violation of laws and regulations and give no intimation to the shipowner, the shipowner’s representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

In summary flag State provisions dealing with obligations in respect of seafarer complaints operate at two levels:

- a) First, flag States are required to ensure that ship owners flying their flag have on-board complaint procedures which include providing seafarers with access to sufficient information and support to enable them to lodge a complaint at whatever level- manager/master/onshore authority- that the seafarer believes appropriate.
- b) Second, flag States are to ensure that as part of their inspection regime they employ “independent” inspectors who will treat complaints confidentially

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<sup>79</sup> Para 4 Standard A5.1.5



and with discretion, presumably in order to ensure seafarers are not victimised as a result of complaining.

However nothing in these provisions requires that any complaint be resolved to the satisfaction of the seafarer. Therefore it seems that rights to complain directly to flag State authorities are more likely to be used for raising complaints that affect more than just the individual raising the complaint which would be more appropriately addressed via employment grievance processes. Such complaints might be a useful tool for alerting the authorities to potential safety issues.

There are also port State responsibilities in Regulation 5.2.2 to establish “onshore seafarer complaint-handling procedures”. These provisions are expressed in mandatory language and where a seafarer “alleges a breach of the requirements of [the] Convention (including seafarers’ rights)” the port State “shall undertake an initial inspection”.

The second difference between the port State and flag State complaint provisions is that paragraph 3 of Standard A5.2.2 requires port State’s to “where appropriate, seek to promote a resolution of the complaint at the ship-board level.”

If as a result of the complaint the Authorised Officer (of the port State) finds that:<sup>80</sup>

- a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
  - b) the non-conformity constitutes a serious or repeated breach of the requirements of [the] Convention (including seafarers’ rights);
- the authorised officer shall take steps to ensure that the ship shall not proceed to sea until any [such] non-conformities ... have been rectified.

Alternatively if the findings do not fall within (a) or (b) above, and they are not resolved on-board the authorised officer is required to notify the flag State and require it to provide a plan for resolution.

If the complaint remains unresolved, the port State is then required to send the officer’s report to the Director-General of the ILO. In all cases the authorised officer is to “safeguard the confidentiality of complaints made by seafarers.”<sup>81</sup>

As can be seen from these provisions the onshore complaint mechanisms are differently focused from their on-board equivalents. In the context of port State inspections, seafarer complaints are a legitimate way for port State inspectors to ‘discover’ deficiencies. By

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<sup>80</sup> Paragraph 6 Standard A5.2.1.

<sup>81</sup> Paragraph 7

comparison interactions between flag State authorities and seafarers is less likely to assist with that process and more likely to be misused for employment grievances which port States and ship owners would want to discourage.

In the writer's view this seems a sensible compromise between enforcement on safety grounds where needed versus avoiding interference in flag State and ship owner autonomy.

## *V Conclusion*

The purpose of this paper was to revisit the ILO's aim for the MLC to be the 'fourth pillar' of the maritime regulatory regime, to identify the particular features of the Convention that are designed to realise that objective and to assess their ability to prevent substandard ships operating and posing risks to the safe and cleanliness of the world's oceans seas.

The MLC has now been in force for close to three years. In "A study of the early results of implementation and enforcement of the Maritime Labour Convention, 2006" Carl Anton Meitmann<sup>82</sup> reports that the results of the study showed 'a substantial increase in labour rights deficiencies' between 2014 (when the relevant instrument was ILO 147) to 2015 (when the MLC was in force). Other reports such as the Australian Maritime Safety Authority's 2014 report also report MLC deficiencies and detainable deficiencies.

While by no means scientific the early reports give cause for hope that the requirements of the MLC will be inspected with the same degree of rigour as IMO Pillar requirements.

The MLC represents a major change in the expectations on port States to take responsibility for ensuring that seafarers' rights are enforced as well as concerning themselves with what might be considered more obviously substandard ships. Ultimately international standards set the benchmark and increasingly both the IMO and the ILO see port States as critical to taking action against foreign ships that do not comply with those standards.

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<sup>82</sup> Carl Anton Meitman "Enforcing the Maritime Labour Convention, 2006: A study of the early results of implementation and enforcement of the Maritime Labour Convention, 2006" (2016) Diploma Thesis, Linnaeus University, Kalmar Maritime Academy.

The analysis in this paper shows that the enforcement provisions and the seafarer complaint provisions are well thought out and provide options for seafarers. Given that seafarers are in the best position of anyone to know when a ship is dangerous providing obligations on port States in particular to investigate complaints is a sensible step in enhancing the regime of maritime regulation. The inclusion of such arrangements to alert authorities to serious shortcomings of vessels can only be a positive move towards making our seas safer. The open question is whether the prohibitions on victimisation and requirements for confidentiality will be enough to make seafarers act in the public interest and report serious safety issues. This could be a good topic for further research.

## BIBLIOGRAPHY

### SECONDARY SOURCES

#### **Books**

T Alderton, M Bloor, E Kahveci, T Lane, H Sampson, M Thomas, N Winchester, B Wu and M Zhao *The Global Seafarer: Living and working conditions in a globalised industry* (International Labour Office, Geneva, 2004).

Yvonne Baatz (ed) *Maritime Law* (3<sup>rd</sup> ed, Routledge, New York, 2014).

Aldo Chircop, Norman Letalik, Ted L McDorman and Susan J Rolston (eds) *The Regulation of International Shipping: International and Comparative Perspectives: Essays in Honour of Edgar Gold* (Koninklijke Brill NV, Leiden, 2012).

Iliana Christodoulou-Varotsi and Dmitry A Pentsov *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers* (Springer, Berlin, 2008).

Norman A Martínez Gutiérrez (ed) *Serving the Rule of International Maritime law: Essays in Honour of Professor David Joseph Attard* (Routledge, USA and Canada, 2010).

Jennifer Lavelle (ed) *The Maritime Labour Convention 2006: International Labour Law Redefined* (Routledge, New York, 2014).

John K Mansell *Flag State Responsibility: Historical Development and Contemporary Issues* (Springer, New York, 2009).

Bevan Marten *Port State Jurisdiction and the Regulation of International Merchant Shipping* (Springer, Switzerland, 2014).

Moira L McConnell, Dominick Devlin and Cleopatra Doumbia-Henry *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime* (Martinus Nijhoff, Leiden, 2011).

Konstantinos Papadakis (ed) *Cross-Border Social Dialogue and Agreements: An emerging global industrial relations framework?* (International Labour Office, Geneva, 2008).

Henrik Ringbom (ed) *Jurisdiction Over Ships: Post-UNCLOS Developments in the Law of the Sea* (Brill/Nijhoff, Leiden, 2015).

Robin Warner and Stuart Kaye (eds) *Routledge Handbook of Maritime Regulation and Enforcement* (Routledge, London and New York, 2016).

### ***Journal Articles and Theses***

Tony Alderton and Nik Winchester “Globalisation and De-regulation in the Maritime Industry” (2002) 26 Mar Pol’y 35.

Santiago Iglesias Baniela and Capt Juan Vinagre Rios “Maritime Safety Standards and the Seriousness of Shipping Accidents” (2011) 64 The Journal of Navigation 495.

John Isaac Blanck Jr “Reflections on the Negotiation of the Maritime Labor Convention 2006 at the International Labor Organization” (2006-2007) 31 Tul Mar LJ 35.

Iliana Christodoulou-Varotsi “Critical Review of the Consolidated Maritime Labour Convention, 2006 of the International Labour Organisation: Limitations and Perspectives” *Journal of Maritime Law and Commerce*, Vol 43, No 4, October 2012

Edgar Gold “Bloodhounds, Scapegoats and Fatcats: Criminal Action, Professional Duty and Corporate Responsibility in the Maritime Menagerie” (2005) 24(2) UQLawJl 251.

Richard Goss “Safety in Sea Transport” (1994) 28(1) *Journal of Transport Economics and Policy* 99.

Richard Goss “Social responsibility in shipping” (2008) 32(1) *Marine Policy* 142.

David Hughes “Putting in place the fourth pillar of shipping regulation: The MLC will ensure the well-being of ships’ crews” (22 June 2011) *The Business Times*, Singapore.

Moira McConnell “The Maritime Labour Convention, 2006- reflections on challenges for flag State implementation” (2011) 10 WMU J Marit Affairs 127.

Carl Anton Meitman “Enforcing the Maritime Labour Convention, 2006: A study of the early results of implementation and enforcement of the Maritime Labour Convention, 2006” (2016) Diploma Thesis, Linnaeus University, Kalmar Maritime Academy.

Erik Jaap Molenaar “Port State Jurisdiction: Toward Comprehensive, Mandatory and Global Coverage” (2007) 38(1-2) Ocean Development & International Law, 225.

Francisco Pinella, José María Silos and Francisca Bernal “Who will give effect to the ILO’s Maritime Labour Convention, 2006” (2013) 152(1) Int’l Lab Rev 59.

A H Saharuddin, A Osnin and R Balaji “Human Factors as Causes for Shipboard Oil Pollution Violations” (2012) 6(1) TransNav 93.

Nicolas Valticos “The ILO: A retrospective and future view” (1996) 135(3-4) Int’l Lab Rev 473.

Jon Whitlow and Ruwan Subasinghe “The Maritime Labour Convention, 2006: A model for other industries?” (2015) 7(1-2) Int’l J Labour Research 117.

Penfei Zhang and Edward Phillips “Safety first: Reconstructing the concept of seaworthiness under the maritime labour convention 2006” (2016) 67 Marine Policy 54.

### ***Reports***

Report to the Joint Maritime Commission, 29th Session, Geneva, 2001, *The Impact on Seafarers’ Living and Working Conditions of Changes in the Structure of the Shipping Industry*, [JMC/29/2001/3] available at [www.ilo.org/public/english/dialogue/sector/techmeet/jmco1/jmc-r3.pdf](http://www.ilo.org/public/english/dialogue/sector/techmeet/jmco1/jmc-r3.pdf).

*Final Report of the second meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006)* Geneva, 8-10 February 2016.

### ***Internet Resources***

“15 Years of Shipping Accidents: A review for WWF” Nickie Butt, David Johnson, Kate Pike, Nicola Pryce-Roberts and Natalie Vigar (2012) Southampton Solent University [www.awassets.pand.org/downloads](http://www.awassets.pand.org/downloads)

“ILO input to the chapter on maritime security and safety of the Report of the Secretary-General on Oceans and the Law of the Sea to the Sixty-third Session of the General Assembly” <[www.un.org/depts/los/consultative\\_process/mar\\_sec\\_submissions/ilo.pdf](http://www.un.org/depts/los/consultative_process/mar_sec_submissions/ilo.pdf)>

“Maritime Labour Convention, 2006 (MLC 2006), Frequently Asked Questions (FAQ) International Labour Organisation, Online Revised Edition, 2012” [www.ilo.org/mlc](http://www.ilo.org/mlc)

“Approval of Amendments to the Code of the maritime Labour Convention, 2006 and adoption of Amendments to the Annexes of the Seafarers’ Identity Documents Convention (Revised), 2003 (No 185), Provisional Record 105<sup>th</sup> Session, Geneva May/June 2016” [www.ilo.org/public/English/standards/relm/ilc94/pr-17.pdf](http://www.ilo.org/public/English/standards/relm/ilc94/pr-17.pdf).

Anita M Rothblum, “Human Error and Marine Safety”, US Coast Guard Research & Development Center [www.bowles-langley.com](http://www.bowles-langley.com).

### ***International Materials***

#### *Treaties*

United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 [UNCLOS].

International Convention on the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 relating thereto (adopted 2 November 1973 and 17 February 1978 respectively, entered into force 2 October 1983) 1340 UNTS 184 [MARPOL].

International Convention for the Safety of Life at Sea (adopted 1 November 1974, entered into force 25 May 1980) 1184 UNTS 1 [SOLAS].

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (adopted 7 July 1978, entered into force 28 April 1984) [STCW].

Convention on the International Maritime Organization (IMO) (adopted 6 March 1948, entered into force 17 March 1958).

Maritime Labour Convention (adopted 23 February 2006, entered into force 20 August 2013) [MLC].

Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MoU) (adopted 1 December 1993, entered into force 1 April 1994).

Memorandum of Understanding on Port State Control in the Black Sea Region (adopted 7 April 2000).

Memorandum of Understanding on Port State Control in the Caribbean Region (adopted 9 February 1996).

Memorandum of Understanding on Port State Control in the Mediterranean Region (adopted 11 July 1997).

Memorandum of Understanding on Port State Control for the Indian Ocean Region (adopted 22 October 1999).

Memorandum of Understanding on Port State Control for the West and Central African Region (adopted 5 June 1998).

Merchant Shipping (Minimum Standards) Convention (adopted 29 October 1976, entered into force 28 November 1981).

Paris Memorandum of Understanding on Port State Control (adopted 26 January 1982, entered into force 1 July 1982) 21 ILM 1.



## APPENDIX

### EXCERPTS FROM MARITIME LABOUR CONVENTION, 2006:

#### IMPLEMENTATION AND ENFORCEMENT RESPONSIBILITIES

##### *Article V*

1. Each Member shall implement and enforce laws or regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to ships and seafarers under its jurisdiction.

2. Each Member shall effectively exercise its jurisdiction and control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention, including regular inspections, reporting, monitoring and legal proceedings under the applicable laws.

3. Each Member shall ensure that ships that fly its flag carry a maritime labour certificate and a declaration of maritime labour compliance as required by this Convention.

4. A ship to which this Convention applies may, in accordance with international law, be inspected by a Member other than the flag State, when the ship is in one of its ports, to determine whether the ship is in compliance with the requirements of this Convention.

5. Each Member shall effectively exercise its jurisdiction and control over seafarer recruitment and placement services, if these are established in its territory.

6. Each Member shall prohibit violations of the requirements of this Convention and shall, in accordance with international law, establish sanctions or require the adoption of corrective measures under its laws which are adequate to discourage such violations.

7. Each Member shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.

#### TITLE 5. COMPLIANCE AND ENFORCEMENT

1. The Regulations in this Title specify each Member's responsibility to fully implement and enforce the principles and rights set out in the Articles of this Convention as well as the particular obligations provided for under its Titles 1, 2, 3 and 4.

2. Paragraphs 3 and 4 of Article VI, which permit the implementation of Part A of the Code through substantially equivalent provisions, do not apply to Part A of the Code in this Title.

3. In accordance with paragraph 2 of Article VI, each Member shall implement its responsibilities under the Regulations in the manner set out in the corresponding Standards of Part A of the Code, giving due consideration to the corresponding Guide-

lines in Part B of the Code.

4. The provisions of this Title shall be implemented bearing in mind that seafarers and shipowners, like all other persons, are equal before the law and are entitled to the equal protection of the law and shall not be subject to discrimination in their access to courts, tribunals or other dispute resolution mechanisms. The provisions of this Title do not determine legal jurisdiction or a legal venue.

#### **Regulation 5.1 – Flag State responsibilities**

*Purpose: To ensure that each Member implements its responsibilities under this Convention with respect to ships that fly its flag*

##### **Regulation 5.1.1 – General principles**

1. Each Member is responsible for ensuring implementation of its obligations under this Convention on ships that fly its flag.
2. Each Member shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with Regulations 5.1.3 and 5.1.4 ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention.
3. In establishing an effective system for the inspection and certification of maritime labour conditions, a Member may, where appropriate, authorize public institutions or other organizations (including those of another Member, if the latter agrees) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the Member shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag.
4. A maritime labour certificate, complemented by a declaration of maritime labour compliance, shall constitute prima facie evidence that the ship has been duly inspected by the Member whose flag it flies and that the requirements of this Convention

relating to working and living conditions of the seafarers have been met to the extent so certified.

5. Information about the system referred to in paragraph 2 of this Regulation, including the method used for assessing its effectiveness, shall be included in the Member's reports to the International Labour Office pursuant to article 22 of the Constitution.

*Standard A5.1.1 – General principles*

1. Each Member shall establish clear objectives and standards covering the administration of its inspection and certification systems, as well as adequate overall procedures for its assessment of the extent to which those objectives and standards are being attained.

2. Each Member shall require all ships that fly its flag to have a copy of this Convention available on board.

*Guideline B5.1.1 – General principles*

1. The competent authority should make appropriate arrangements to promote effective cooperation between public institutions and other organizations, referred to in Regulations 5.1.1 and 5.1.2, concerned with seafarers' shipboard working and living conditions.

2. In order to better ensure cooperation between inspectors and shipowners, seafarers and their respective organizations, and to maintain or improve seafarers' working and living conditions, the competent authority should consult the representatives of such organizations at regular intervals as to the best means of attaining these ends. The manner of such consultation should be determined by the competent authority after consulting with shipowners' and seafarers' organizations.

**Regulation 5.1.2 – Authorization of recognized organizations**

1. The public institutions or other organizations referred to in paragraph 3 of Regulation 5.1.1 ("recognized organizations") shall have been recognized by the competent authority as meeting the requirements in the Code regarding competency and independence. The inspection or certification functions which the recognized organizations may be authorized to carry out shall come within the scope of the activities that are expressly mentioned in the Code as being carried out by the competent authority or a recognized organization.

2. The reports referred to in paragraph 5 of Regulation 5.1.1 shall contain information regarding any recognized organization, the extent of authorizations given and the arrangements made by the Member to ensure that the authorized activities are carried out completely and effectively.

*Standard A5.1.2 – Authorization of recognized organizations*

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

- (a) has the necessary expertise in the relevant aspects of this Convention and an appropriate knowledge of ship operations, including the minimum requirements for seafarers to work on a ship, conditions of employment, accommodation, recreational facilities, food and catering, accident prevention, health protection, medical care, welfare and social security protection;
- (b) has the ability to maintain and update the expertise of its personnel;
- (c) has the necessary knowledge of the requirements of this Convention as well as of applicable national laws and regulations and relevant international instruments; and
- (d) is of the appropriate size, structure, experience and capability commensurate with the type and degree of authorization.

2. Any authorizations granted with respect to inspections shall, as a minimum, empower the recognized organization to require the rectification of deficiencies that it identifies in seafarers' working and living conditions and to carry out inspections in this regard at the request of a port State.

3. Each Member shall establish:

- (a) a system to ensure the adequacy of work performed by recognized organizations, which includes information on all applicable national laws and regulations and relevant international instruments; and
- (b) procedures for communication with and oversight of such organizations.

4. Each Member shall provide the International Labour Office with a current list of any recognized organizations authorized to act on its behalf and it shall keep this list up to date. The list shall specify the functions that the recognized organizations have been authorized to carry out. The Office shall make the list publicly available.

#### Guideline B5.1.2 – Authorization of recognized organizations

1. The organization seeking recognition should demonstrate the technical, administrative and managerial competence and capacity to ensure the provision of timely service of satisfactory quality.

2. In evaluating the capability of an organization, the competent authority should determine whether the organization:

- (a) has adequate technical, managerial and support staff;
- (b) has sufficient qualified professional staff to provide the required service, representing an adequate geographical coverage;
- (c) has proven ability to provide a timely service of satisfactory quality; and
- (d) is independent and accountable in its operations.

3. The competent authority should conclude a written agreement with any organization that it recognizes for purposes of an authorization. The agreement should include the following elements:

- (a) scope of application;
- (b) purpose;
- (c) general conditions;
- (d) the execution of functions under authorization;
- (e) legal basis of the functions under authorization;

- (f) reporting to the competent authority;
  - (g) specification of the authorization from the competent authority to the recognized organization; and
  - (h) the competent authority's supervision of activities delegated to the recognized organization.
4. Each Member should require the recognized organizations to develop a system for qualification of staff employed by them as inspectors to ensure the timely updating of their knowledge and expertise.
5. Each Member should require the recognized organizations to maintain records of the services performed by them such that they are able to demonstrate achievement of the required standards in the items covered by the services.
6. In establishing the oversight procedures referred to in Standard A5.1.2, paragraph 3(b), each Member should take into account the *Guidelines for the Authorization of Organizations Acting on Behalf of the Administration*, adopted in the framework of the International Maritime Organization.

**Regulation 5.1.3 – Maritime labour certificate and declaration of maritime labour compliance**

1. This Regulation applies to ships of:
- (a) 500 gross tonnage or over, engaged in international voyages; and
  - (b) 500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country.
- For the purpose of this Regulation, “international voyage” means a voyage from a country to a port outside such a country.
2. This Regulation also applies to any ship that flies the flag of a Member and is not covered by paragraph 1 of this Regulation, at the request of the shipowner to the Member concerned.
3. Each Member shall require ships that fly its flag to carry and maintain a maritime labour certificate certifying that the working and living conditions of seafarers on the ship, including measures for ongoing compliance to be included in the declaration of maritime labour compliance referred to in paragraph 4 of this Regulation, have been inspected and meet the requirements of national laws or regulations or other measures implementing this Convention.
4. Each Member shall require ships that fly its flag to carry and maintain a declaration of maritime labour compliance stating the national requirements implementing this Convention for the working and living conditions for seafarers and setting out the measures adopted by the shipowner to ensure compliance with the requirements on the ship or ships concerned.
5. The maritime labour certificate and the declaration of maritime labour compliance shall conform to the model prescribed by the Code.
6. Where the competent authority of the Member or a recognized organization duly authorized for this purpose has ascertained through inspection that a ship that flies the Member's flag meets or continues to meet the standards of this Convention, it shall issue or renew a maritime labour certificate to that effect and maintain a publicly available record of that certificate.

7. Detailed requirements for the maritime labour certificate and the declaration of maritime labour compliance, including a list of the matters that must be inspected and approved, are set out in Part A of the Code.

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

1. The maritime labour certificate shall be issued to a ship by the competent authority, or by a recognized organization duly authorized for this purpose, for a period which shall not exceed five years. A list of matters that must be inspected and found to meet national laws and regulations or other measures implementing the requirements of this Convention regarding the working and living conditions of seafarers on ships before a maritime labour certificate can be issued is found in Appendix A5-I.
2. The validity of the maritime labour certificate shall be subject to an intermediate inspection by the competent authority, or by a recognized organization duly authorized for this purpose, to ensure continuing compliance with the national requirements implementing this Convention. If only one intermediate inspection is carried out and the period of validity of the certificate is five years, it shall take place between the second and third anniversary dates of the certificate. Anniversary date means the day and month of each year which will correspond to the date of expiry of the maritime labour certificate. The scope and depth of the intermediate inspection shall be equal to an inspection for renewal of the certificate. The certificate shall be endorsed following satisfactory intermediate inspection.
3. Notwithstanding paragraph 1 of this Standard, when the renewal inspection has been completed within three months before the expiry of the existing maritime labour certificate, the new maritime labour certificate shall be valid from the date of completion of the renewal inspection for a period not exceeding five years from the date of expiry of the existing certificate.
4. When the renewal inspection is completed more than three months before the expiry date of the existing maritime labour certificate, the new maritime labour certificate shall be valid for a period not exceeding five years starting from the date of completion of the renewal inspection.
5. A maritime labour certificate may be issued on an interim basis:
  - (a) to new ships on delivery;
  - (b) when a ship changes flag; or
  - (c) when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.
6. An interim maritime labour certificate may be issued for a period not exceeding six months by the competent authority or a recognized organization duly authorized for this purpose.
7. An interim maritime labour certificate may only be issued following verification that:
  - (a) the ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5-I, taking into account verification of items under subparagraphs (b), (c) and (d) of this paragraph;
  - (b) the shipowner has demonstrated to the competent authority or recognized organization that the ship has adequate procedures to comply with this Convention;

(c) the master is familiar with the requirements of this Convention and the responsibilities for implementation; and

(d) relevant information has been submitted to the competent authority or recognized organization to produce a declaration of maritime labour compliance.

8. A full inspection in accordance with paragraph 1 of this Standard shall be carried out prior to expiry of the interim certificate to enable issue of the full-term maritime labour certificate. No further interim certificate may be issued following the initial six months referred to in paragraph 6 of this Standard. A declaration of maritime labour compliance need not be issued for the period of validity of the interim certificate.

9. The maritime labour certificate, the interim maritime labour certificate and the declaration of maritime labour compliance shall be drawn up in the form corresponding to the models given in Appendix A5-II.

10. The declaration of maritime labour compliance shall be attached to the maritime labour certificate. It shall have two parts:

(a) Part I shall be drawn up by the competent authority which shall: (i) identify the list of matters to be inspected in accordance with paragraph 1 of this Standard; (ii) identify the national requirements embodying the relevant provisions of this Convention by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements; (iii) refer to ship-type specific requirements under national legislation; (iv) record any substantially equivalent provisions adopted pursuant to paragraph 3 of Article VI; and (v) clearly indicate any exemption granted by the competent authority as provided in Title 3; and

(b) Part II shall be drawn up by the shipowner and shall identify the measures adopted to ensure ongoing compliance with the national requirements between inspections and the measures proposed to ensure that there is continuous improvement.

The competent authority or recognized organization duly authorized for this purpose shall certify Part II and shall issue the declaration of maritime labour compliance.

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

12. A current valid maritime labour certificate and declaration of maritime labour compliance, accompanied by an English-language translation where it is not in English, shall be carried on the ship and a copy shall be posted in a conspicuous place on board where it is available to the seafarers. A copy shall be made available in accordance with national laws and regulations, upon request, to seafarers, flag State inspectors, authorized officers in port States, and shipowners' and seafarers' representatives.

13. The requirement for an English-language translation in paragraphs 11 and 12 of this Standard does not apply in the case of a ship not engaged in an international voyage.

14. A certificate issued under paragraph 1 or 5 of this Standard shall cease to be valid in any of the following cases:

- (a) if the relevant inspections are not completed within the periods specified under paragraph 2 of this Standard;
- (b) if the certificate is not endorsed in accordance with paragraph 2 of this Standard;
- (c) when a ship changes flag;
- (d) when a shipowner ceases to assume the responsibility for the operation of a ship; and
- (e) when substantial changes have been made to the structure or equipment covered in Title 3.

15. In the case referred to in paragraph 14(c), (d) or (e) of this Standard, a new certificate shall only be issued when the competent authority or recognized organization issuing the new certificate is fully satisfied that the ship is in compliance with the requirements of this Standard.

16. A maritime labour certificate shall be withdrawn by the competent authority or the recognized organization duly authorized for this purpose by the flag State, if there is evidence that the ship concerned does not comply with the requirements of this Convention and any required corrective action has not been taken.

17. When considering whether a maritime labour certificate should be withdrawn in accordance with paragraph 16 of this Standard, the competent authority or the recognized organization shall take into account the seriousness or the frequency of the deficiencies.

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

1. The statement of national requirements in Part I of the declaration of maritime labour compliance should include or be accompanied by references to the legislative provisions relating to seafarers' working and living conditions in each of the matters listed in Appendix A5-1. Where national legislation precisely follows the requirements stated in this Convention, a reference may be all that is necessary. Where a provision of the Convention is implemented through substantial equivalence as provided under Article VI, paragraph 3, this provision should be identified and a concise explanation should be provided. Where an exemption is granted by the competent authority as provided in Title 3, the particular provision or provisions concerned should be clearly indicated.

2. The measures referred to in Part II of the declaration of maritime labour compliance, drawn up by the shipowner, should, in particular, indicate the occasions on which ongoing compliance with particular national requirements will be verified, the persons responsible for verification, the records to be taken, as well as the procedures to be followed where non-compliance is noted. Part II may take a number of forms. It could make reference to other more comprehensive documentation covering policies and procedures relating to other aspects of the maritime sector, for example documents required by the *International Safety Management (ISM) Code* or the information required by Regulation 5 of the SOLAS Convention, Chapter XI-1 relating to the ship's Continuous Synopsis Record.

3. The measures to ensure ongoing compliance should include general international requirements for the shipowner and master to keep themselves informed of the



latest advances in technology and scientific findings concerning workplace design, taking into account the inherent dangers of seafarers' work, and to inform the seafarers' representatives accordingly, thereby guaranteeing a better level of protection of the seafarers' working and living conditions on board.

4. The declaration of maritime labour compliance should, above all, be drafted in clear terms designed to help all persons concerned, such as flag State inspectors, authorized officers in port States and seafarers, to check that the requirements are being properly implemented.

5. An example of the kind of information that might be contained in a declaration of maritime labour compliance is given in Appendix B5-I.

6. When a ship changes flag as referred to in Standard A5.1.3, paragraph 14(c), and where both States concerned have ratified this Convention, the Member whose flag the ship was formerly entitled to fly should, as soon as possible, transmit to the competent authority of the other Member copies of the maritime labour certificate and the declaration of maritime labour compliance carried by the ship before the change of flag and, if applicable, copies of the relevant inspection reports if the competent authority so requests within three months after the change of flag has taken place.

#### **Regulation 5.1.4 – Inspection and enforcement**

1. Each Member shall verify, through an effective and coordinated system of regular inspections, monitoring and other control measures, that ships that fly its flag comply with the requirements of this Convention as implemented in national laws and regulations.

2. Detailed requirements regarding the inspection and enforcement system referred to in paragraph 1 of this Regulation are set out in Part A of the Code.

#### **Standard A5.1.4 – Inspection and enforcement**

1. Each Member shall maintain a system of inspection of the conditions for seafarers on ships that fly its flag which shall include verification that the measures relating to working and living conditions as set out in the declaration of maritime labour compliance, where applicable, are being followed, and that the requirements of this Convention are met.

2. The competent authority shall appoint a sufficient number of qualified inspectors to fulfil its responsibilities under paragraph 1 of this Standard. Where recognized organizations have been authorized to carry out inspections, the Member shall require that personnel carrying out the inspection are qualified to undertake these duties and shall provide them with the necessary legal authority to perform their duties.

3. Adequate provision shall be made to ensure that the inspectors have the training, competence, terms of reference, powers, status and independence necessary or desirable so as to enable them to carry out the verification and ensure the compliance referred to in paragraph 1 of this Standard.

4. Inspections shall take place at the intervals required by Standard A5.1.3, where applicable. The interval shall in no case exceed three years.

5. If a Member receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies its flag does not conform to the requirements of this Convention or that there are serious deficiencies in the implementation of the measures set out in the declaration of maritime labour compliance, the Member shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.
6. Adequate rules shall be provided and effectively enforced by each Member in order to guarantee that inspectors have the status and conditions of service to ensure that they are independent of changes of government and of improper external influences.
7. Inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:
  - (a) to board a ship that flies the Member's flag;
  - (b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and
  - (c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights), or represent a significant danger to seafarers' safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.
8. Any action taken pursuant to paragraph 7(c) of this Standard shall be subject to any right of appeal to a judicial or administrative authority.
9. Inspectors shall have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of this Convention that endangers the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches.
10. Inspectors shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.
11. Inspectors shall not be entrusted with duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties. In particular, inspectors shall:
  - (a) be prohibited from having any direct or indirect interest in any operation which they are called upon to inspect; and
  - (b) subject to appropriate sanctions or disciplinary measures, not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.
12. Inspectors shall submit a report of each inspection to the competent authority. One copy of the report in English or in the working language of the ship shall be furnished to the master of the ship and another copy shall be posted on the ship's notice board for the information of the seafarers and, upon request, sent to their representatives.

13. The competent authority of each Member shall maintain records of inspections of the conditions for seafarers on ships that fly its flag. It shall publish an annual report on inspection activities within a reasonable time, not exceeding six months, after the end of the year.

14. In the case of an investigation pursuant to a major incident, the report shall be submitted to the competent authority as soon as practicable, but not later than one month following the conclusion of the investigation.

15. When an inspection is conducted or when measures are taken under this Standard, all reasonable efforts shall be made to avoid a ship being unreasonably detained or delayed.

16. Compensation shall be payable in accordance with national laws and regulations for any loss or damage suffered as a result of the wrongful exercise of the inspectors' powers. The burden of proof in each case shall be on the complainant.

17. Adequate penalties and other corrective measures for breaches of the requirements of this Convention (including seafarers' rights) and for obstructing inspectors in the performance of their duties shall be provided for and effectively enforced by each Member.

#### Guideline B5.1.4 – Inspection and enforcement

1. The competent authority and any other service or authority wholly or partly concerned with the inspection of seafarers' working and living conditions should have the resources necessary to fulfil their functions. In particular:

(a) each Member should take the necessary measures so that duly qualified technical experts and specialists may be called upon, as needed, to assist in the work of inspectors; and

(b) inspectors should be provided with conveniently situated premises, equipment and means of transport adequate for the efficient performance of their duties.

2. The competent authority should develop a compliance and enforcement policy to ensure consistency and otherwise guide inspection and enforcement activities related to this Convention. Copies of this policy should be provided to all inspectors and relevant law-enforcement officials and should be made available to the public and shipowners and seafarers.

3. The competent authority should establish simple procedures to enable it to receive information in confidence concerning possible breaches of the requirements of this Convention (including seafarers' rights) presented by seafarers directly or by representatives of the seafarers, and permit inspectors to investigate such matters promptly, including:

(a) enabling masters, seafarers or representatives of the seafarers to request an inspection when they consider it necessary; and

(b) supplying technical information and advice to shipowners and seafarers and organizations concerned as to the most effective means of complying with the requirements of this Convention and of bringing about a continual improvement in seafarers' on-board conditions.

4. Inspectors should be fully trained and sufficient in numbers to secure the efficient discharge of their duties with due regard to:

- (a) the importance of the duties which the inspectors have to perform, in particular the number, nature and size of ships subject to inspection and the number and complexity of the legal provisions to be enforced;
- (b) the resources placed at the disposal of the inspectors; and
- (c) the practical conditions under which inspections must be carried out in order to be effective.

5. Subject to any conditions for recruitment to the public service which may be prescribed by national laws and regulations, inspectors should have qualifications and adequate training to perform their duties and where possible should have a maritime education or experience as a seafarer. They should have adequate knowledge of seafarers' working and living conditions and of the English language.

6. Measures should be taken to provide inspectors with appropriate further training during their employment.

7. All inspectors should have a clear understanding of the circumstances in which an inspection should be carried out, the scope of the inspection to be carried out in the various circumstances referred to and the general method of inspection.

8. Inspectors provided with proper credentials under the national law should at a minimum be empowered:

- (a) to board ships freely and without previous notice; however, when commencing the ship inspection, inspectors should provide notification of their presence to the master or person in charge and, where appropriate, to the seafarers or their representatives;
- (b) to question the master, seafarer or any other person, including the shipowner or the shipowner's representative, on any matter concerning the application of the requirements under laws and regulations, in the presence of any witness that the person may have requested;
- (c) to require the production of any books, log books, registers, certificates or other documents or information directly related to matters subject to inspection, in order to verify compliance with the national laws and regulations implementing this Convention;
- (d) to enforce the posting of notices required under the national laws and regulations implementing this Convention;
- (e) to take or remove, for the purpose of analysis, samples of products, cargo, drinking water, provisions, materials and substances used or handled;
- (f) following an inspection, to bring immediately to the attention of the shipowner, the operator of the ship or the master, deficiencies which may affect the health and safety of those on board ship;
- (g) to alert the competent authority and, if applicable, the recognized organization to any deficiency or abuse not specifically covered by existing laws or regulations and submit proposals to them for the improvement of the laws or regulations; and
- (h) to notify the competent authority of any occupational injuries or diseases affecting seafarers in such cases and in such manner as may be prescribed by laws and regulations.

9. When a sample referred to in paragraph 8(e) of this Guideline is being taken or removed, the shipowner or the shipowner's representative, and where appropriate a seafarer, should be notified or should be present at the time the sample is taken or removed. The quantity of such a sample should be properly recorded by the inspector.

10. The annual report published by the competent authority of each Member, in respect of ships that fly its flag, should contain:

- (a) a list of laws and regulations in force relevant to seafarers' working and living conditions and any amendments which have come into effect during the year;
- (b) details of the organization of the system of inspection;
- (c) statistics of ships or other premises subject to inspection and of ships and other premises actually inspected;
- (d) statistics on all seafarers subject to its national laws and regulations;
- (e) statistics and information on violations of legislation, penalties imposed and cases of detention of ships; and
- (f) statistics on reported occupational injuries and diseases affecting seafarers.

**Regulation 5.1.5 – On-board complaint procedures**

1. Each Member shall require that ships that fly its flag have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers' rights).
2. Each Member shall prohibit and penalize any kind of victimization of a seafarer for filing a complaint.
3. The provisions in this Regulation and related sections of the Code are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate.

**Standard A5.1.5 – On-board complaint procedures**

1. Without prejudice to any wider scope that may be given in national laws or regulations or collective agreements, the on-board procedures may be used by seafarers to lodge complaints relating to any matter that is alleged to constitute a breach of the requirements of this Convention (including seafarers' rights).
2. Each Member shall ensure that, in its laws or regulations, appropriate on board complaint procedures are in place to meet the requirements of Regulation 5.1.5. Such procedures shall seek to resolve complaints at the lowest level possible. However, in all cases, seafarers shall have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities.
3. The on-board complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints. The term "victimization" covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.
4. In addition to a copy of their seafarers' employment agreement, all seafarers shall be provided with a copy of the on-board complaint procedures applicable on the ship. This shall include contact information for the competent authority in the flag State and, where different, in the seafarers' country of residence, and the name of a person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.

**Guideline B5.1.5 – On-board complaint procedures**

1. Subject to any relevant provisions of an applicable collective agreement, the competent authority should, in close consultation with shipowners' and seafarers' organizations, develop a model for fair, expeditious and well-documented on-board complaint-handling procedures for all ships that fly the Member's flag. In developing these procedures the following matters should be considered:

- (a) many complaints may relate specifically to those individuals to whom the complaint is to be made or even to the master of the ship. In all cases seafarers should also be able to complain directly to the master and to make a complaint externally; and
- (b) in order to help avoid problems of victimization of seafarers making complaints about matters under this Convention, the procedures should encourage the nomination of a person on board who can advise seafarers on the procedures available to them and, if requested by the complainant seafarer, also attend any meetings or hearings into the subject matter of the complaint.

2. At a minimum the procedures discussed during the consultative process referred to in paragraph 1 of this Guideline should include the following:

- (a) complaints should be addressed to the head of the department of the seafarer lodging the complaint or to the seafarer's superior officer;
- (b) the head of department or superior officer should then attempt to resolve the matter within prescribed time limits appropriate to the seriousness of the issues involved;
- (c) if the head of department or superior officer cannot resolve the complaint to the satisfaction of the seafarer, the latter may refer it to the master, who should handle the matter personally;
- (d) seafarers should at all times have the right to be accompanied and to be represented by another seafarer of their choice on board the ship concerned;
- (e) all complaints and the decisions on them should be recorded and a copy provided to the seafarer concerned;
- (f) if a complaint cannot be resolved on board, the matter should be referred ashore to the shipowner, who should be given an appropriate time limit for resolving the matter, where appropriate, in consultation with the seafarers concerned or any person they may appoint as their representative; and
- (g) in all cases seafarers should have a right to file their complaints directly with the master and the shipowner and competent authorities.

**Regulation 5.1.6 – Marine casualties**

1. Each Member shall hold an official inquiry into any serious marine casualty, leading to injury or loss of life, that involves a ship that flies its flag. The final report of an inquiry shall normally be made public.

2. Members shall cooperate with each other to facilitate the investigation of serious marine casualties referred to in paragraph 1 of this Regulation.

**Standard A5.1.6 – Marine casualties**

(No provisions)

Guideline B5.1.6 – Marine casualties

(No provisions)

**Regulation 5.2 – Port State responsibilities**

*Purpose: To enable each Member to implement its responsibilities under this Convention regarding international cooperation in the implementation and enforcement of the Convention standards on foreign ships*

**Regulation 5.2.1 – Inspections in port**

1. Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member may be the subject of inspection in accordance with paragraph 4 of Article V for the purpose of reviewing compliance with the requirements of this Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship.
2. Each Member shall accept the maritime labour certificate and the declaration of maritime labour compliance required under Regulation 5.1.3 as prima facie evidence of compliance with the requirements of this Convention (including seafarers' rights). Accordingly, the inspection in its ports shall, except in the circumstances specified in the Code, be limited to a review of the certificate and declaration.
3. Inspections in a port shall be carried out by authorized officers in accordance with the provisions of the Code and other applicable international arrangements governing port State control inspections in the Member. Any such inspection shall be limited to verifying that the matter inspected is in conformity with the relevant requirements set out in the Articles and Regulations of this Convention and in Part A only of the Code.
4. Inspections that may be carried out in accordance with this Regulation shall be based on an effective port State inspection and monitoring system to help ensure that the working and living conditions for seafarers on ships entering a port of the Member concerned meet the requirements of this Convention (including seafarers' rights).
5. Information about the system referred to in paragraph 4 of this Regulation, including the method used for assessing its effectiveness, shall be included in the Member's reports pursuant to article 22 of the Constitution.

**Standard A5.2.1 – Inspections in port**

1. Where an authorized officer, having come on board to carry out an inspection and requested, where applicable, the maritime labour certificate and the declaration of maritime labour compliance, finds that:
  - (a) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by this Convention or are otherwise invalid; or
  - (b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of this Convention; or

- (c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Convention; or
- (d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention;

a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights).

2. Where a more detailed inspection is carried out on a foreign ship in the port of a Member by authorized officers in the circumstances set out in subparagraph (a), (b) or (c) of paragraph 1 of this Standard, it shall in principle cover the matters listed in Appendix A5-III.

3. In the case of a complaint under paragraph 1(d) of this Standard, the inspection shall generally be limited to matters within the scope of the complaint, although a complaint, or its investigation, may provide clear grounds for a detailed inspection in accordance with paragraph 1(b) of this Standard. For the purpose of paragraph 1(d) of this Standard, "complaint" means information 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 an interest in safety or health hazards to seafarers on board.

4. Where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of this Convention, the authorized officer shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the authorized officer to be significant, or if they relate to a complaint made in accordance with paragraph 3 of this Standard, the authorized officer shall bring the deficiencies to the attention of the appropriate seafarers' and ship-owners' organizations in the Member in which the inspection is carried out, and may:

- (a) notify a representative of the flag State;
- (b) provide the competent authorities of the next port of call with the relevant information.

5. The Member in which the inspection is carried out shall have the right to transmit a copy of the officer's report, which must be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline, to the Director-General of the International Labour Office with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the attention of parties which might be interested in availing themselves of relevant recourse procedures.

6. Where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of this Convention and:

- (a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
- (b) the non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers' rights);



the authorized officer shall take steps to ensure that the ship shall not proceed to sea until any non-conformities that fall within the scope of subparagraph (a) or (b) of this paragraph have been rectified, or until the authorized officer has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The authorized officer shall also inform forthwith the appropriate ship-owners' and seafarers' organizations in the port State in which the inspection was carried out.

7. Each Member shall ensure that its authorized officers are given guidance, of the kind indicated in Part B of the Code, as to the kinds of circumstances justifying detention of a ship under paragraph 6 of this Standard.

8. When implementing their responsibilities under this Standard, each Member shall make all possible efforts to avoid a ship being unduly detained or delayed. If a ship is found to be unduly detained or delayed, compensation shall be paid for any loss or damage suffered. The burden of proof in each case shall be on the complainant.

#### **Guideline B5.2.1 – Inspections in port**

1. The competent authority should develop an inspection policy for authorized officers carrying out inspections under Regulation 5.2.1. The objective of the policy should be to ensure consistency and to otherwise guide inspection and enforcement activities related to the requirements of this Convention (including seafarers' rights). Copies of this policy should be provided to all authorized officers and should be available to the public and shipowners and seafarers.

2. When developing a policy relating to the circumstances warranting a detention of the ship under Standard A5.2.1, paragraph 6, of the competent authority should consider that, with respect to the breaches referred to in Standard A5.2.1, paragraph 6(b), the seriousness could be due to the nature of the deficiency concerned. This would be particularly relevant in the case of the violation of fundamental rights and principles or seafarers' employment and social rights under Articles III and IV. For example, the employment of a person who is under age should be considered as a serious breach even if there is only one such person on board. In other cases, the number of different defects found during a particular inspection should be taken into account: for example, several instances of defects relating to accommodation or food and catering which do not threaten safety or health might be needed before they should be considered as constituting a serious breach.

3. Members should cooperate with each other to the maximum extent possible in the adoption of internationally agreed guidelines on inspection policies, especially those relating to the circumstances warranting the detention of a ship.

#### **Regulation 5.2.2 – Onshore seafarer complaint-handling procedures**

1. Each Member shall ensure that seafarers on ships calling at a port in the Member's territory who allege a breach of the requirements of this Convention (including seafarers' rights) have the right to report such a complaint in order to facilitate a prompt and practical means of redress.

*Standard A5.2.2 – Onshore seafarer complaint-handling procedures*

1. A complaint by a seafarer alleging a breach of the requirements of this Convention (including seafarers' rights) may be reported to an authorized officer in the port at which the seafarer's ship has called. In such cases, the authorized officer shall undertake an initial investigation.
2. Where appropriate, given the nature of the complaint, the initial investigation shall include consideration of whether the on-board complaint procedures provided under Regulation 5.1.5 have been explored. The authorized officer may also conduct a more detailed inspection in accordance with Standard A5.2.1.
3. The authorized officer shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.
4. In the event that the investigation or the inspection provided under this Standard reveals a non-conformity that falls within the scope of paragraph 6 of Standard A5.2.1, the provisions of that paragraph shall be applied.
5. Where the provisions of paragraph 4 of this Standard do not apply, and the complaint has not been resolved at the ship-board level, the authorized officer shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action.
6. Where the complaint has not been resolved following action taken in accordance with paragraph 5 of this Standard, the port State shall transmit a copy of the authorized officer's report to the Director-General. The report must be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State. The appropriate shipowners' and seafarers' organizations in the port State shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by the port State to the Director-General. Both such submissions are provided in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and is brought to the attention of parties, including shipowners' and seafarers' organizations, which might be interested in availing themselves of relevant recourse procedures.
7. Appropriate steps shall be taken to safeguard the confidentiality of complaints made by seafarers.

*Guideline B5.2.2 – Onshore seafarer complaint-handling procedures*

1. Where a complaint referred to in Standard A5.2.2 is dealt with by an authorized officer, the officer should first check whether the complaint is of a general nature which concerns all seafarers on the ship, or a category of them, or whether it relates only to the individual case of the seafarer concerned.
2. If the complaint is of a general nature, consideration should be given to undertaking a more detailed inspection in accordance with Standard A5.2.1.
3. If the complaint relates to an individual case, an examination of the results of any on-board complaint procedures for the resolution of the complaint concerned should be undertaken. If such procedures have not been explored, the authorized officer should suggest that the complainant take advantage of any such procedures available. There should be good reasons for considering a complaint before any on-board

complaint procedures have been explored. These would include the inadequacy of, or undue delay in, the internal procedures or the complainant's fear of reprisal for lodging a complaint.

4. In any investigation of a complaint, the authorized officer should give the master, the shipowner and any other person involved in the complaint a proper opportunity to make known their views.

5. In the event that the flag State demonstrates, in response to the notification by the port State in accordance with paragraph 5 of Standard A5.2.2, that it will handle the matter, and that it has in place effective procedures for this purpose and has submitted an acceptable plan of action, the authorized officer may refrain from any further involvement with the complaint.

### **Regulation 5.3 – Labour-supplying responsibilities**

*Purpose: To ensure that each Member implements its responsibilities under this Convention as pertaining to seafarer recruitment and placement and the social protection of its seafarers*

1. Without prejudice to the principle of each Member's responsibility for the working and living conditions of seafarers on ships that fly its flag, the Member also has a responsibility to ensure the implementation of the requirements of this Convention regarding the recruitment and placement of seafarers as well as the social security protection of seafarers that are its nationals or are resident or are otherwise domiciled in its territory, to the extent that such responsibility is provided for in this Convention.

2. Detailed requirements for the implementation of paragraph 1 of this Regulation are found in the Code.

3. Each Member shall establish an effective inspection and monitoring system for enforcing its labour-supplying responsibilities under this Convention.

4. Information about the system referred to in paragraph 3 of this Regulation, including the method used for assessing its effectiveness, shall be included in the Member's reports pursuant to article 22 of the Constitution.

### **Standard A5.3 – Labour-supplying responsibilities**

1. Each Member shall enforce the requirements of this Convention applicable to the operation and practice of seafarer recruitment and placement services established on its territory through a system of inspection and monitoring and legal proceedings for breaches of licensing and other operational requirements provided for in Standard A1.4.

### **Guideline B5.3 – Labour-supplying responsibilities**

1. Private seafarer recruitment and placement services established in the Member's territory and securing the services of a seafarer for a shipowner, wherever located, should be required to assume obligations to ensure the proper fulfilment by shipowners of the terms of their employment agreements concluded with seafarers.

