

**Tripartite Meeting of Experts to Adopt Port State
Control Guidelines for Implementation of the
Work in Fishing Convention, 2007 (No. 188)**Geneva
15–19 February 2010

Final report

Introduction

1. In accordance with a decision taken by the Governing Body at its 304th Session (March 2009) and 305th Session (June 2009), the Tripartite Meeting of Experts to Adopt Port State Control Guidelines for Implementation of the Work in Fishing Convention, 2007 (No. 188), was held in Geneva from 15 to 19 February 2010.

Composition

2. The Tripartite Meeting was attended by six Government experts (Brazil, Japan, Namibia, New Zealand, Norway, and Russian Federation), six Employer experts and six Worker experts, as well as observers from 18 other governments, a number of IGOs and NGOs (see list of participants in annex).
3. The Tripartite Meeting unanimously elected the following Officers:

Chairperson: Captain Nigel Campbell

Vice-Chairpersons: Mr Haakon Storhaug (Government, Norway)

Mr Paul Mackay (Employer, New Zealand)

Mr Johnny Hansen (Worker, Norway)

Documentation

4. The Meeting had before it a Proposal for Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188) (TMEPSCG/2010).

Opening of the Meeting

5. The Executive Director of the Social Dialogue Department, Mr George Dragnich, recalled that the Meeting was part of the ILO's Sectoral Activities Programme which sought to improve the lives of men and women who work in specific sectors of the economy, in this case fishing, and through social dialogue to discuss major concerns and find solutions to problems they face in the world of work. Fishing was a challenging industry requiring hard work and was unique. The industry called for common internationally agreed standards to govern the living and working conditions of its global workforce and to help prevent labour conditions from becoming a negative competitive factor. Mr Dragnich congratulated Bosnia and Herzegovina on becoming the first ILO member State to ratify Convention No. 188. The ILO was fortunate that with growing budgetary demands, it was able to fund the Meeting through the Norway–ILO Cooperation Agreement – a joint project on enhancing labour inspection. The ILO was most grateful to Norway for this generous and timely support. Concerning the way forward he asked the Meeting to adopt port State guidelines for the implementation of the Work in Fishing Convention using the draft Guidelines and the report provided by the ILO and the expertise of those attending the Meeting through the process of reaching a consensus.
6. The Deputy Secretary-General advised that document TMEPSCG/2010 made available to the Meeting had been prepared in a short period of time and that inputs from a small group of experts had been very useful in drafting the report. The Office had taken into account provisions taken from other fishing sector instruments that might be helpful in developing guidelines. Discussions by the informal group on specific issues had been extremely useful including what initiated an inspection, the effect of a valid document or other

documentation, the format of the guidelines (following Convention No. 147 or the guidelines adopted for port State control of the Maritime Labour Convention, 2006 (MLC), and whether or not all the requirements of the Convention should be covered or be limited. The report contained four appendices. The proposal for the Guidelines was set out in Appendix IV. It contained five chapters. In Chapters 3 and 5 alternative text was provided and presented as Alternative A and Alternative B. Alternative A had a minimalistic approach based on concepts similar to those of Convention No. 147. Alternative B was based on the MLC port State control model. The Office was well aware of the differences but it was thought that there may be benefits to be gained from these different experiences. It would be up to the Meeting to decide which alternative should be chosen.

General statements

7. The Employer Vice-Chairperson advised that the thrust of the Work in Fishing Convention, 2007 (No. 188), was simpler than that of the MLC and there were benefits for following Alternative A. A practical approach would make the Guidelines more useful in the application of the Convention. He indicated that the valid document was crucial and needed to be credible and that it would be a central issue for discussion. “Obtaining evidence was not suspecting things” and that evidence took various forms. In conclusion, the document provided by the Office was a good document.

8. The Worker Vice-Chairperson indicated that his group did not intend to re-open any of the issues raised in 2007 when the Work in Fishing Convention, 2007 (No. 188), was adopted. The Meeting should not be distracted by the provisions of other Conventions. It was now essential to follow the requirements of the Convention and learn from the experiences of the guidelines covering Convention No. 147. It was important that guidance on enforcement provisions should be understood by those who were not attending the Meeting. The level of understanding achieved between the social partners at previous meetings needed to be maintained to ensure the best results of this Meeting.

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- 9.** The Government Vice-Chairperson indicated that his group had discussed the alternatives provided in Chapters 3 and 5. At this stage, a small majority supported Alternative B. Inconclusive discussions had also taken place on the valid document and whether or not it could be used as prima facie evidence of compliance. In addition, some discussions had been started on other parts of the draft Guidelines including key concepts and the role of the port State control officer (PSCO).
 - 10.** The observer from the Government of the Republic of Korea advised that his delegation wished to see that the final port State control guidelines needed to be very concise, coherent and easy for PSCOs and fishing vessel personnel to understand. The observer was of the opinion that it was necessary to supplement and complete various gaps and ambiguities concerning PSC provisions which exist in the Convention bearing in mind Articles 43 and 44 stipulated only basic principles on port State control that were insufficient to exercise control in a uniform manner. Other issues such as the legal status of the valid document and deficiencies that result in detention, and in particular, the use of language also needed to be clarified. The observer hoped to see the Guidelines reflect recent changes to practices in the fishing sector and for there to be flexibility so that it will be readily adoptable by PSCOs.
 - 11.** The observer from the Government of Algeria stated that the resolution on port State control Guidelines was a very important reference for his Government and that the Guidelines developed needed to be practical since they were an important issue for the successful implementation of the Convention.
 - 12.** The expert from the Government of Brazil reinforced the view expressed by other Government representatives that the Guidelines should be simple, helpful and comprehensive for all countries and especially for those that did not participate in their development. The valid document was an important issue which needed to be discussed.

13. The observer from the Government of Indonesia explained that there were concerns with respect to the characteristics of fishing vessels, in particular, the use of gross tonnage due to the size of the vessels in their fleet.

14. The observer from the International Collective in Support of Fishworkers (ICIF) indicated that his organization required flexibility in the Guidelines to prevent circumvention of the Convention's requirements, in particular, regarding conditions on board fishing vessels that were clearly hazardous to safety and health.

Chapter 1. Introduction

1.1. Explanation of the objectives and content of the Guidelines

Paragraphs 4–7

15. The Government Vice-Chairperson proposed the deletion of paragraphs 4–7 inclusive on the basis that they were superfluous and did not add to the Guidelines. The Meeting agreed to delete the paragraphs.

1.2. Overview of the Work in Fishing Convention, 2007 (No.188)

1.2.3. Key concepts of the Convention

1.2.3.1. Scope

Paragraph 10

16. The Meeting agreed to retain paragraphs 10 and 11. However, the Government Vice-Chairperson, on the basis of clarifying the scope of the key concepts and the role of the PSCOs, proposed new text to this effect. The approved text: “The purpose of this section is to provide PSCOs with information and guidance on the key concepts of Convention No. 188. However, it is for the competent authority of the flag State to make any determinations it deems necessary, such as any exclusions, exemption and substantial

equivalences, as well as to provide documentation of such determinations to the PSCO” was to be placed immediately under paragraph 1.2.3 header.

17. The Worker Vice-Chairperson requested that decisions made by the flag State should be “after consultations”, and that the second sentence of the new text should include a reference to this effect.

18. The new text to include reference to “after consultations” was agreed.

1.2.3.5. Exclusions, exemptions and substantial equivalences

1.2.3.5.1. *Exclusions under Article 3*

Paragraph 15

19. The Government Vice-Chairperson stated the square brackets in the draft text should be removed.

1.2.3.5.2. *Progressive implementation of certain provisions of the Convention in accordance with Article 4*

Paragraph 16

20. The Employer Vice-Chairperson suggested the text in the sentence starting with “However” was difficult to understand. It was agreed therefore that the text and the accompanying footnote should be simplified. An alternative draft text proposed by the Office was accepted by the groups.

1.2.4.2. Vessels required to have a “valid document”

Paragraph 26

21. It was agreed by all groups that paragraph 26(o) should be deleted. Subparagraph (p) should be shortened with text to be provided by the Office and further discussed by the Workers’ group.

22. The Employer Vice-Chairperson indicated that paragraph 26(p) could be simplified and perhaps a shortened text could be provided by the Office. A simplified text defining “manifestly unfounded” was subsequently accepted.

Chapter 2. Port State control provisions of Convention No. 188 and Recommendation No. 199

2.3. “Authorized officers” for port State control

Paragraph 31

23. It was agreed by all groups that paragraph 31 should be deleted as it repeated some of the contents of paragraph 30.

2.3.1. Professional profile of authorized officers under Convention No. 188

Paragraphs 35 and 36

24. The Employer Vice-Chairperson proposed the final sentence of paragraph 35 should read “Guidance on the process of PSC inspections may be found in the *Code of good practice for port State control officers*, adopted in the framework of the IMO (MSCV-MEPC.4/Circ.2).” Paragraph 35 was agreed subject to the proposed amendment. In respect of paragraph 36, the Employer Vice-Chairperson stated that PSCO assistants had no authority. Therefore the last sentence starting with “Any person ...” should be deleted. The deletion of the sentence was agreed by consensus.

2.3.2. Qualifications of the authorized officers

Paragraph 37

25. Following discussions between all the groups, the Meeting agreed to delete the sentence in italics and to amend the text as follows: “The PSCO should ideally have been trained in labour inspection, port State control, fishing techniques and practice.” The Meeting accepted this amendment.
26. In respect of the references to the English language in the original draft text of paragraph 37, the observer from the Government of the Republic of Korea wished to place on the official record that “this language issue needs to be discussed at the earliest possible opportunity after entry into force of Convention No. 188 ...”.

Chapter 3. Alternatives A and B. Carrying out port State control inspections under Convention No. 188

27. While the Employers and Workers expressed a preference for Alternative A as a basis for discussion, the Government Vice-Chairperson indicated no clear consensus could be reached by his group but they would accept the choice of the social partners on the basis that elements of Alternative B might be introduced on a case-by-case basis as Alternative A was discussed.

28. After some references were made to the port State control regime of the Maritime Labour Convention, 2006 (MLC), the employer expert from the Netherlands noted that, according to Article II, paragraph 4, of the Convention, it did not apply to ships engaged in fishing or in similar pursuits and that from this followed that the MLC's inspection and control regimes, including that for port State control, did not apply to fishing either.

3.3. Conducting a port State control inspection under Convention No. 188

3.3.1. Procedures for carrying out an inspection where there is evidence or a complaint that a fishing vessel does not conform to the requirements of Convention No. 188

Paragraph 42

29. After some discussion, the group decided that it was not appropriate to replace “evidence” by “information”. It was agreed that the first bullet point should be amended to read “evidence is obtained, for example during a routine inspection, that such vessels do not conform to the requirements of Convention No. 188; or” and in respect of the second bullet the text should be amended to read “a complaint is received that such vessels do not conform to the requirements of Convention No. 188”.

Paragraph 43

- 30.** Upon a proposal of the Employer Vice-Chairperson, it was decided to qualify international instruments by adding “in force and applicable to”. It was decided that this paragraph would only refer to complaints and that for reasons of consistency any complaint to be “manifestly unfounded” should be recorded.

Paragraph 45

- 31.** The Worker Vice-Chairperson suggested the possibility that the text “action on the basis of such evidence” needed modification as a result of the text changes in paragraph 42.
- 32.** In addition, the Employer Vice-Chairperson indicated that there was a blurring of the differences between the two reasons for action and proposed that, in addition to starting the paragraph with the word “Before” in place of “In”, the second sentence of the paragraph should be deleted.
- 33.** The Worker Vice-Chairperson also proposed that “evidence” and “complaint” in the first sentence should be separated.
- 34.** It was further agreed that the alternative text proposed by the Office be amended following the suggestion by the Government Vice-Chairperson to delete the words “and seriousness” and a proposal by the expert from the Government of New Zealand to change text appearing after the expression “manifestly unfounded” to take into account the case records concerning complaints that were determined to be manifestly unfounded.

New paragraph 45bis

- 35.** New text was provided to the Meeting by the Office arising from the need for the skipper to be informed before taking action on the basis of evidence being obtained. The proposed text was subsequently amended following the acceptance by the Meeting of a proposal by the Employer Vice-Chairperson to add to the sentence the words “and any intention to investigate”.

Paragraph 46

- 36.** The Government Vice-Chairperson suggested that the second sentence of paragraph 46 did not make sense and that there may be problems in translating text into another language. The Government Vice-Chairperson provided the following alternative text for the final sentence “If the documents are not in a language understood by the PSCO, he/she should request appropriate assistance, for example, from the skipper or the representative of the national flag.”
- 37.** The representative of the Government of the Netherlands, supported by the Worker Vice-Chairperson, requested that “national” be changed to “flag State”.
- 38.** Finally, both the Employer and Worker Vice-Chairpersons proposed the deletion of the second sentence of the paragraph. The revisions were accepted by all groups.

Paragraph 47

- 39.** Accepted with the agreement of all groups providing a footnote is added to expand on the term “navigate” which should include fishing operations. Text proposed by the Office for the footnote “The expression ‘normally navigate’ should be understood as to also include fishing operations” was accepted by the Meeting.

Paragraph 49

- 40.** The Worker Vice-Chairperson indicated his preference for the word “may” instead of “should”. This preference was accepted by the Meeting. The Meeting also agreed to delete all the text beginning with the word “unless” and ending in “necessary” as proposed by the Worker Vice-Chairperson on the basis that this text was unnecessary.

Paragraph 50

- 41.** The Employer Vice-Chairperson suggested that “is” should replace “may be” in the first paragraph. The change was accepted by the Meeting. The Government Vice-Chairperson also suggested placing the title “Consideration of exclusions, exemptions and equivalences granted by the flag State” above paragraph 50. This was also agreed to by the Meeting.

Paragraph 51

42. The Employer and Worker Vice-Chairpersons proposed amendment of the second sentence in paragraph 51 to read “However, this should not prevent the PSCO from taking measures, including detention, as may be necessary to rectify conditions on board which are clearly hazardous to the safety or health of fishers on board the vessel.” The meeting agreed to the suggestion.

New paragraph

43. A new paragraph was added after paragraph 52 at the request of the Employer Vice-Chairperson by importing paragraph 70 concerning the principle of no more favourable treatment from Alternative B of Chapter 3. Following some discussion, an Office text was further amended by the Meeting and adopted.

Paragraph 53

44. Following a proposal of the Employers to delete the expressions “general impression and observations on board”, the Workers suggested replacing “substandard” with “not in compliance”.
45. The Government Vice-Chairperson proposed to delete the word “substandard” and insert “not in compliance with the Convention”. The Meeting accepted this change.

Paragraph 54

46. It was proposed by the Worker Vice-Chairperson that the expression “and/or” should be reduced to “and”. The Meeting accepted the paragraph subject to this change.

Paragraph 55

47. The paragraph was adopted with a change suggested by the Employers referring to the requirement to record complaints.

Paragraph 56

48. The Employer Vice-Chairperson proposed “obtained” should be inserted after the word “evidence”, that “failure to comply” should be replaced by “nonconformity”, and “deficiencies” should be replaced by “nonconformities”, so that the expressions were consistent with the language of the Convention. The Meeting accepted the amendments.

New paragraph

49. The Worker Vice-Chairperson proposed the importing of paragraph 75 from Alternative B with the additional text “area of operation” after the word “history”. The Worker Vice-Chairperson indicated that this additional text was necessary to indicate the ship’s operating area so that the type of equipment on the ship could be determined.

Chapter 4. More detailed inspections of labour conditions on board fishing vessels

4.1 General note

50. The Employer Vice-Chairperson proposed that the title of the chapter should be changed to read “Port State control inspections based on evidence obtained or a valid complaint”. The change to the title was accepted by the Meeting. Four further proposals were made by the Employer Vice-Chairperson for changes throughout Chapter 4: deleting the expression “more detailed” before the word “inspections”; replacing the word “deficiency” with “nonconformity”; inserting the word “indicative” immediately in front of the phrase “sources of information”; and inserting the word “obtained” immediately after the word “evidence”. These proposals were agreed to by the Meeting.

Paragraph 103

51. The Employer Vice-Chairperson suggested that the term “more detailed” should be replaced by the word “wider”.

52. The Worker Vice-Chairperson said that the chapter heading could be imported into the paragraph.

53. The Government Vice-Chairperson indicated that he preferred language that better described the subject matter of this chapter.

54. It was finally agreed that the text in paragraph 103 should be amended to read “This chapter is intended to provide a practical tool for guidance concerning the port State control inspection of specific requirements under Convention No. 188.”

Paragraph 104

55. The proposal by the Employer Vice-Chairperson to use “may” in preference to “should” was accepted.

56. Another proposal made by the observer from the Government of Denmark to ensure paragraph 104 referred to the inspections covered by this chapter was accepted by the Meeting.

Paragraph 105

57. Following discussions between the observers from the Governments of the Netherlands and Peru and the Worker Vice-Chairperson concerning inspections of vessels that are not required to carry a valid document, the text proposed by the Office “under Article 41 of the Convention or due to the flag State having not ratified the Convention” to be inserted after “valid document”, was accepted.

Paragraph 106

58. It was agreed by the Meeting that the text “in carrying out a more detailed inspection” at the beginning of the paragraph should be deleted on the basis of consistency with the decision to remove “more detailed” wherever it appeared in the chapter.

Paragraph 107

59. The proposal by the Employer Vice-Chairperson to delete the first set of words in italics, and a proposal by the expert from the Government of Brazil to delete the final sentence starting with “This information” on the basis that inspectors should not be limited in the scope of a complaint, were agreed to. In keeping with the decision to remove the expression “deficiencies” this word was also to be deleted from paragraph 107.

Paragraph 108

60. Following inconclusive discussions by delegates, a mutually acceptable proposal by the Chairperson consisting of the insertion of the words “Notwithstanding that” in place of the word “If” at the beginning of the paragraph; inserting the word “still” after the word “may” in the third line; and deletion of all the text after the word “scrutiny”, were agreed to by the Meeting.

4.2. Basic requirements, sources of information and examples of deficiencies or nonconformities

61. It had been agreed by the Meeting at the commencement of Chapter 4 that the word “Indicative” should be inserted in front of “source” and the word “deficiencies” be replaced by “nonconformities” wherever it appeared in this chapter. The title was therefore changed to “Basic requirements, indicative sources of information and examples of nonconformities”.

Paragraph 110 – *Responsibilities of fishing vessel owners, skippers and fishers (Article 8)*

62. The Employer Vice-Chairperson proposed a new bullet point and additional text. The new bullet point consisted of the words “Licence to fish in relation to areas of operations” would be inserted under the heading “Indicative sources of information”. The additional text that consisted of “taking into account the nature and area or operation” should be inserted after the words “fishing vessels” contained in the final bullet point of “Examples of nonconformities”.

63. While there was agreement to the proposal, the expert of the Government of Norway was concerned that deficiencies should be clearly defined and that deficiencies should be clearly identified. The observer from the Government of Peru expressed the view that the guidelines are general in their terms and that governments are at liberty to use and develop the guidelines according to their own needs. The views of the expert from the Government of Norway were supported by the expert from the Government of Namibia and the observers from the Governments of Denmark and the Republic of Korea. Eventually, the expert from the Government of Norway indicated that he would prefer not to have a listing of deficiencies but would accept it if it was agreed to by the social partners.

Paragraph 111 – *Minimum age (Article 9)*

64. The Government Vice-Chairperson proposed two amendments to the text appearing under the heading “Examples of nonconformities”. The first consisted of replacing “under” with “between” and the insertion of the text “15 and” after the word “of” in the first bullet point. The second amendment was the insertion of a new bullet point stating “Person under the age of 15 working as a fisher”.

Paragraph 112 – *Medical examination (Articles 10–12)*

65. A proposal by the Government Vice-Chairperson to delete the third bullet point was agreed to by the Meeting as “colour vision certificates” does not appear in the Convention.

Paragraph 113 – *Manning and hours of rest (Articles 13–14)*

66. The Employer Vice-Chairperson suggested inserting a footnote on the word “fatigue” used in the fourth bullet point under “Indicative sources of information” to draw attention to IMO Guidelines on this subject. It was agreed to insert the text “Further guidance on fatigue may be found in the International Maritime Organization’s publication *Guidelines on Fatigue*”.

67. The Government Vice-Chairperson suggested adding a new bullet point consisting of the text “Documentation of the qualification of fishers” under “Indicative sources of

information”. In addition, he proposed to replace “requirements” appearing in the second bullet point of “Examples of nonconformities” with the text “safe manning document issued or the minimum level of manning”. The observer from the Government of Denmark proposed to include the text “for the safe navigation of the vessel” after the words “competent authority”. These proposals were agreed to by the Meeting.

Paragraph 114 – *Crew list (Article 15)*

- 68.** The second bullet point under “Basic requirements”: “The competent authority shall determine to whom and when such information shall be provided and for what purposes” was deleted. The Government Vice-Chairperson was unclear what exactly was meant by the crew list being incomplete and suggested replacing the words “is incomplete” with “does not reflect the number and details of fishers on board the vessel”. The proposal was agreed to by the Meeting.

Paragraph 115 – *Fisher’s work agreement (Articles 16–20 and Annex II)*

- 69.** The Employer Vice-Chairperson proposed to include the text “by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement, where applicable” from the first sentence of Annex B, at the end of the second bullet point under “Examples of nonconformities”.
- 70.** The Worker Vice-Chairperson proposed the addition of another example of nonconformity, the work agreement not being complied with.
- 71.** These changes to the text were agreed by the Meeting. However, the expert from the Government of Norway reserved the right to return to the issue.
- 72.** A new bullet point regarding “Social security coverage and benefits” was transferred from the section on social security.

Paragraph 116 – *Repatriation (Article 21)*

73. The Worker Vice-Chairperson proposed to add the expression “after due process” after the word “fisher” in the second bullet point of “Basic requirements”. The representative of the Government of the Netherlands asked for a legal opinion on this proposal as it might mean that the fishing vessel owner did not have to pay for repatriation until the process came to an end. A representative of the Legal Adviser replied that he did not see any legal problems with what was proposed as the requirement for due process was an established principle under international law and its inclusion in the Guidelines would simply provide guidance that did not create a new obligation. The Government Vice-Chairperson indicated that the current text of the bullet point under “Examples of nonconformity” was not clear and suggested the words “has failed” be replaced by “refuses”. The Worker Vice-Chairperson proposed additional text from Article 21(1) of Convention No. 188 consisting of “or has been terminated for justified reasons by the fisher or by the fishing vessel owner, or the fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances” be added to the bullet point under “Examples of nonconformities”. All these proposals were accepted.

Paragraph 117 – *Recruitment and placement of fishers (Article 22, paragraphs 1–3)*

74. The Employer Vice-Chairperson proposed two additional bullets to be inserted into the examples of nonconformities. The first bullet was as follows: “A fisher has been required to pay a fee to recruitment or placement service” and the second “A blacklist is in operation”. Both changes were agreed to by the Meeting.

Paragraph 118 – *Private employment agencies (Article 22, paragraphs 4–6)*

75. The Employer Vice-Chairperson, supported by the Worker Vice-Chairperson, proposed that the text in the first indent of the first bullet point under “Basic requirements” be simplified. Following extensive discussions concerning the application of the provisions

contained in the first bullet point, it was agreed that the text proposed by the Office, and subsequently modified after a proposal by the Employer Vice-Chairperson, “the use of such agencies shall not affect the fisher’s right to a legal claim including a maritime lien (i.e. arrest the vessel)”, be inserted in place of the existing text contained in the first indent. The observer from the Government of Denmark wished to place on record the following text “The position of the Danish Government is that a State having not ratified ILO Convention No. 181 cannot conduct PSC inspections verifying ILO Convention No. 181. However, Denmark will as port State respects arrangements in accordance with ILO Convention No. 181, Article 21, paragraphs 3 to 6. Denmark will also handle as appropriate if a complaint regarding Article 21, paragraph 3 to 6, is raised by a fisher in a Danish port”.

Paragraph 120 – Accommodation
(Articles 25, 26 and 28 and Annex III)

- 76.** The Meeting agreed to the Employer Vice-Chairperson’s proposal to delete the word “construction” and add “if available” after the word “vessel” in the first bullet point of “indicative sources of information”. The Government Vice-Chairperson requested the deletion of the word “national” from the first, second and fourth bullet points under “Examples of nonconformities” on the basis that the onus was on the flag State to specify any derogations. Along with a minor deletion under bullet point seven (“in length”) already identified by the Office, the proposals were agreed to.
- 77.** Concerning the bullet points contained under the heading of “Examples of nonconformities” based on Article 26, the observer from the Government of the Netherlands suggested that the list did not sufficiently distinguish between the requirements for new and existing vessels. An alternative approach to setting out the nonconformities that included a subsequent proposal by the Worker Vice-Chairperson was accepted by the Meeting.

78. It was proposed by the Employer Vice-Chairperson, after discussion with the Workers, to introduce the following text as a new second bullet point in “Basic requirements”: “Before conducting an inspection of measures covered by Article 26 and Annex III, the PSCO should first ascertain whether the vessel is a new or existing vessel as provided in paragraph 2 of Annex III. Account should also be taken of any alterations to accommodation or changes in flag that may alter the application of the provisions of Annex III”. The proposal included the insertion of the following footnote “Regard should be had for paragraphs 9 to 11 of Annex III. The PSCO should be aware that alternative approaches adopted under paragraph 12 of Annex III cease to apply if the vessel subsequently changes its flag”. The proposal was accepted.

Paragraph 121 – *Food and water (Article 27)*

79. The Government Vice-Chairperson drew attention to a correction in the first bullet point under “Basic requirements” where the word “accommodation” should be replaced by “food and water”. The change identified was agreed.

Paragraph 122 – *Medical care (Articles 29–30)*

80. The observer from the Government of Denmark wished to record his view that some of the “Examples of nonconformities” did not reflect what the Convention said and that, while the text of the Guidelines was not binding, it appeared to have gone beyond the corresponding provisions of the Convention.

Paragraph 123 – *Occupational safety and health (Articles 31–33)*

81. Two proposals in respect of text in the “Examples of nonconformities” were presented by the Employer Vice-Chairperson consisting of changing the first bullet point to read “Conditions on board are hazardous” and in respect of the final bullet point replacing the existing text and inserting “Risk evaluations have not been conducted”.

- 82.** Considerable discussions took place between the groups concerning the content of the bullet point in “Examples of nonconformities” because of the complexities involved in PSCOs establishing whether or not social security payments had been made. It was agreed that the text contained in “Examples of nonconformities” should be replaced by “Note: Actions available to the PSCO with respect to social security are limited to responding to a complaint and examining the work agreement for compliance (see paragraph 69 above) as provided for in the Convention (Articles 34 to 37), the PSCO should only record the complaint and report it to the flag State with a copy to the Director-General of the International Labour Office”. The example of the nonconformity was moved to become an example of a nonconformity under the fisher’s work agreement.

Chapter 5. Actions that may be taken by the port State control officer when finding deficiencies or nonconformities with respect to Convention No. 188

5.1. Procedures with respect to deficiencies and nonconformities

New paragraph after paragraph 127

- 83.** The Employer Vice-Chairperson argued that an amendment to paragraph 126 could help PSCOs decide whether an inspected fishing vessel with nonconformities should be detained or allowed to sail under certain conditions. The Worker Vice-Chairperson agreed with the proposal but wished to ensure that any amendment should include considerations to fishers’ health and safety. It was agreed a new text should be inserted after paragraph 127 consisting of:

Where any nonconformities are not so clearly hazardous to safety and health as to warrant detention of the vessel, the PSCO may seek agreement from, or suggest to, the skipper of the vessel the steps necessary to address the nonconformities and the time frame with which they should be addressed. The PSCO should send a report detailing the nonconformities and the

agreed or suggested steps for rectification to the flag State and the Director-General of the International Labour Office. PSCOs should also take into consideration the possibility that any nonconformities found are likely to become clearly hazardous to safety and health after the vessel has left port and before it reaches its next port.

5.2. Examples of circumstances that may require detention of the fishing vessel

84. The Employer Vice-Chairperson proposed changes to the title of 5.2 as a consequence of a discussion concerning the need to emphasise and at the same time qualify the list of examples of deficiencies in paragraph 129. The new title “Examples of circumstances that may require further investigation and possible detention of the fishing vessel” was agreed to by the Meeting.

Paragraph 129

85. The Employer Vice-Chairperson proposed a number of amendments intended to make the examples consistent with the examples already agreed and give PSCOs improved guidance on the detention of fishing vessels. The proposals consisted of substituting the words “of the kinds of” with the words “that may indicate” and inserting the text “further investigation, possibly leading to” between the word “warrant” and “a decision”; adding the words “taking into account the nature and area of operations” at the end of the sentence contained in the first bullet point under “Responsibilities of fishing vessel owners, skippers and fishers (Article 8)”; replacing the word “under” and adding “15 and” in between the words “of” and “16” in the first bullet point of “Minimum age (Article 9)”; adding a new bullet point placed under the first bullet point within the “Minimum age” header containing the words “Person under the age of 15 working as a fisher”; under the heading of “Manning and hours of rest (Articles 13 to 14)” replace the words “Evidence of exceeding the limit of rest” with the text “Fishers are fatigued”; inserting the word “necessary” into the first bullet point under the header “Medical care (Articles 29 to 30)” between the words “for” and “medical”.

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- 86.** The Worker Vice-Chairperson proposed two additional headings: a new header and bullet point after “Manning and hours of rest (Articles 13 to 14)” consisting of the header in italics “Payment of fishers (Article 23)” with the bullet point “Fishers who are paid a wage have not received payment on a monthly or other regular basis for a prolonged period”; inserting a new final heading with a single bullet point “Protection in case of work-related sickness, injury or death (Articles 38 and 39) in italics and bullet point text “No measures are in place to provide fishers with protection for work-related sickness, injury or death”.
- 87.** The proposals of the Employer and Worker Vice-Chairperson were agreed by the Meeting although the expert from the Government of Norway indicated that he had a slight problem with fishers that stayed within the hours of rest contained in the regulations but remained fatigued.

5.4. Cooperation by the foreign fishing vessel

Paragraph 131

- 88.** The Government Vice-Chairperson proposed expanding the text to cover Article 44 that also covers denied access to vessels by PSCOs. It was agreed the text “Article 43 of the Convention” should be replaced by “Articles 43 and 44 of the Convention”.

Annex A

- 89.** Considerable discussion took place between the groups on the proposed draft text for the valid document. The Employer Vice-Chairperson indicated a preference for the current approach but that other matters would need to be included such as the gross tonnage; flag State derogations; whether or not the flag State had ratified Convention No. 181; and a list of the required elements using footnotes for explanations. The Worker Vice-Chairperson agreed with the proposal for flag State derogations and, in addition, the annex should include the flag State mechanism for reporting as well as the information contained in the valid document. The Government Vice-Chairperson was concerned about PSCOs being able to authenticate valid documents, the procedures to confirm authenticity including

contacting the flag State and not creating a model valid document for flag States as this was a flag State responsibility. The observer from the Government of Peru proposed authenticating valid documents through the flag State or the ILO's web site. In view of the comments received it was agreed that the Office would take into consideration the points raised during the discussion and prepare a revised Annex A for further consideration.

Discussion and adoption of the revised draft of the Guidelines

90. A revised draft (TMEPSCG/2010/11) containing all the changes accepted by the Meeting was prepared by the Office and submitted for discussion. In this section, the paragraph numbers refer to this revised draft.

Chapter I:

1.2.3. Key concepts of the Convention

Paragraph 6

91. The Worker Vice-Chairperson indicated that there was a repetition of the expression “is not” in the French version of the revised draft.

Chapter 4:

Paragraph 65 – *Minimum age (Article 9)*

92. The Government Vice-Chairperson expressed a preference for the first two bullet points in the subparagraph “Examples of nonconformities” to be reversed as he considered the nonconformities should be listed according to their severity. The Meeting agreed to the proposal.

Paragraph 71 – *Recruitment and placement of fishers (Article 22, paragraphs 1–3)*

93. The expert from the Government of Norway pointed out that the Convention placed a duty on the flag State, not the shipowner. Thus, the PSCO cannot require the shipowner to

rectify any nonconformities. He proposed treating this issue in the same manner as the social security issue in paragraph 78 by adding a similar note regarding actions available to the PSCO for the two examples of nonconformities listed. The representative of the Government of Norway was of the opinion that the guidelines must clearly reflect that the nonconformities were something for which the shipowner is responsible in accordance with the Convention and wished his concerns to be recorded.

Paragraph 74 – Accommodation (Articles 25, 26 and 28 and Annex III)

- 94.** It was pointed out by the Government Vice-Chairperson that the word “the” in front of the word “standards” in the first and fourth bullet points of “Examples of nonconformities” was missing. Also, that the text “as required by the Convention” appearing at the end of the sentence of the penultimate bullet point appearing under “Examples of nonconformities” should be deleted on the grounds that it was superfluous. The changes proposed were agreed by the Meeting.

Paragraph 75 – Food and water (Article 27)

- 95.** The observer from the Government of the Netherlands proposed replacing the word “drinking” in the paragraph “Examples of nonconformities” with the word “potable” in keeping with the text of the Convention. It was agreed by the Meeting that the text “(including existing vessels)” in the first bullet point of “Basic requirements” should also be removed on the basis that it was irrelevant.

Paragraph 78 – Social security (Articles 34–37)

- 96.** The observer from the Government of the Netherlands suggested and received agreement from the Meeting to replace the text “Examples of nonconformities” by repositioning this subtitle with the word “Note” from the final indented paragraph.

Chapter 5:

5.1. *Procedures with respect to nonconformities*

Paragraph 82

97. The observer from the Government of France, supported by experts from the Governments of New Zealand and Norway and the observers from the Governments of Denmark and the Netherlands expressed some difficulty accepting the text in the revised draft that appeared to allow PSCOs to suggest to skippers ways of addressing nonconformities. After considerable discussion the Meeting agreed to adopt the following replacement text:

Where any nonconformities are not so clearly hazardous to safety or health as to warrant detention of the vessel but judged serious enough. The PSCO should inform the skipper of the vessel about the nonconformities and may in discussion with the skipper agree upon the steps necessary to address the nonconformities and the time frame within which they should be addressed.

The PSCO should send a report detailing the nonconformities and the agreed steps for rectification to the flag State and the Director-General of the International Labour Office.

The PSCO should also take into consideration the possibility that any nonconformities found are likely to become clearly hazardous to safety or health after the vessel has left the port and before it reaches its next port.

98. For the record, the Worker Vice-Chairperson pointed out, during the discussions that led to the agreement on paragraph 82, it was concluded that if no decision was reached on steps for rectification or on the applicable time frame to rectify the nonconformity, then the PSCOs could exercise their professional judgement and determine that the vessel was hazardous to safety or health and could be detained.

5.2. *Examples of circumstances that may require further investigation and possible detention of the fishing vessel*

Paragraph 84

- 99.** In aligning text with a previous change proposed by the expert from the Government of Norway, it was agreed by the Meeting to reverse the first two bullet points in “Minimum age (Article 9)” to reflect the gravity of the nonconformities.
- 100.** In addition, for consistency with the Convention, the word “drinking” in the first bullet point in “Food and water (Article 27)” was replaced by the word “potable”. The Meeting agreed to the proposal.
- 101.** It was pointed out by the observer from the Government of Ecuador that the text “payment of fishers (Article 23)” in the Spanish version was missing and needed to be inserted. The Meeting agreed to ensure the omission was corrected.

Annex A – Contents of a “valid document” (Article 41)

- 102.** The revised draft of Annex A incorporating earlier discussion points was provided by the Office for the Meeting to consider. The Chairperson pointed out that the revised Annex A was not intended to be used as a model. The Employer Vice-Chairperson suggested to add at the beginning of the first opening sentence in the second paragraph, “The Convention requires that” and to add at the beginning of the sentence which appeared in the middle without a bullet point, “While not required by the Convention, it is recommended that”, in order to clearly separate the information which was required under the Convention and that which was not. He also suggested that the first bullet point, “the name of the fishing vessel” be moved under recommended information since this was not a requirement of the Convention.
- 103.** Recalling the statement made the day before by the observer from the Government of the Republic of Korea and supported by the Government Vice-Chairperson, he suggested also adding the following to the footnote after the word “Note:” “The PSCO should, in order to

prevent unnecessary delays, verify whether any public institutions or other organizations are recognized by the flag State as competent and independent to carry out inspections and issue the valid document. The PSCO may need to obtain relevant information, for example from appropriate web sites.”

104. With respect to the second indented phrase under the penultimate bullet point, the Employer Vice-Chairperson proposed adding text that would clarify statements in respect of ratification of Convention No. 188 and Convention No. 181. In response, the Office proposed amending the penultimate bullet point by merging the first indent with the text of its bullet point and creating a new bullet point containing the text “a statement indicating whether the flag State has ratified the International Labour Organization’s Private Employment Agencies Convention, 1997 (No. 181) and whether it has allocated certain responsibilities under Convention No. 188 to private employment agencies”.

105. Finally, the observer from the Government of Denmark remarked that the title of Annex A should be modified as the guidelines were non-mandatory and non-binding and may lead to nonconformities. The Employer Vice-Chairperson suggested that the words “Contents of” should be used in place of “Elements to be reflected in”.

106. All the above proposals and amendments to the revised draft were agreed by the Meeting.

***Annex C – Table of requirements for fishing vessels,
in accordance with Annex III (Fishing vessel
accommodation) ...***

107. It was agreed that Annex III, paragraph 84, concerning “variations” which had been omitted would be reinserted.

Adoption of the guidelines

108. The guidelines, as amended, were adopted by consensus. This text was made available as document TMEPSCG/2010/12.

Recommendations of the Meeting

109. The Meeting of Experts recommended that the Office should continue its follow-up of the Work in Fishing Convention, 2007 (No. 188).

110. It recalled the 96th Session of the International Labour Conference had adopted a resolution inviting the Governing Body to request the Director-General to give due consideration in the programme and budget for technical cooperation programmes to promote the ratification of the Convention and to assist Members requesting assistance in its implementation in such areas as:

- technical assistance for Members, including capacity building for national administrations as well as representative organizations of fishing vessel owners and fishers, and the drafting of national legislation to meet the requirements of the Convention;
- the development of training materials for inspectors and other staff;
- the training of inspectors;
- the development of promotional materials and advocacy tools for the Convention;
- national and regional seminars, as well as workshops on the Convention; and
- promoting the ratification and implementation of the Convention within ILO Decent Work Country Programmes.

111. It reiterated the importance of this work, and further suggested that the ILO find resources, perhaps through external donors, for the development of Guidelines for flag State control implementation of the Work in Fishing Convention.

Report of the Meeting

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

Closing of the Meeting

113. The Executive Director, Social Dialogue, Mr George Dragnich congratulated the experts for having determined the right way forward while respecting the spirit and substance of Convention No. 188. He thanked all the experts and observers who attended the Meeting and in particular Mr Haakon Storhaug, Vice-Chairperson of the Government group; Mr Paul McKay, Vice-Chairperson of the Employers' group; Mr Johnny Hansen, Vice-Chairperson of the Workers' group; and the Chairperson, Captain Nigel Campbell. He appreciated the high and remarkable level of social dialogue which led to the success of this Meeting. He assured the Meeting that the Guidelines that combined the legal with the practical would definitely be a useful tool for fishers to be treated decently, irrespective of their nationality, and for inspectors to ensure fair and consistent inspections of fishing vessels. He promised that the ILO would not only promote the widespread use of this guidance, but would move forward with the development of training materials and other tools for promoting and implementing the Convention. He expressed the hope that like Norway, which funded this meeting, and Spain, which has also made great contributions to current ILO projects in the fishing sector, other governments would also step forward to assist with the implementation of this Convention.

114. The Employer, Worker and Government Vice-Chairpersons agreed that social dialogue, which played a vital role in achieving agreement on the Guidelines, had been one of the key elements in the Meeting achieving its goals. This trust between the social partners had been built during previous meetings and, with the cooperation and participation of the Government representatives, had made the proceedings truly tripartite. The

Vice-Chairpersons thanked the members of their respective groups for their contributions and support. They also congratulated the Chairperson for his leadership and excellent attitude throughout the Meeting which ensured a successful result. All speakers commended the Office for the quality of its preparatory work and its efficiency during the Meeting.