

Final report

High-level Tripartite Working Group on
Maritime Labour Standards

Geneva, 17-21 December 2001

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Report of the discussion ¹

Introduction

1. The High-level Tripartite Working Group on Maritime Labour Standards (hereafter referred to as the “Working Group”) met in its first session at the International Labour Office from 17 to 21 December 2001, in accordance with a decision taken by the Governing Body of the International Labour Office at its 280th Session (March 2001). This decision was derived from a proposal made unanimously by the Joint Maritime Commission at its 29th Session (January 2001) calling for a single, coherent international maritime labour standard incorporating, as far as possible, the substance of all the various international maritime labour standards that are sufficiently up to date. The Governing Body established the present High-level Working Group to assist with the work of developing this new instrument.

Composition of the Working Group

2. The Working Group elected its Officers as follows:

<i>Chairperson:</i>	Mr. Jean-Marc Schindler (Government member, France)
<i>Vice-Chairpersons:</i>	Mr. Takeshi Nishikawa (Government member, Japan)
	Mr. Lachlan Payne (Shipowner member, Australia)
	Mr. Brian Orrell (Seafarer member, United Kingdom)

The Officers of the groups were as follows:

Government group:

<i>Chairperson:</i>	Mr. C.H.G. Schlettwein (Namibia)
<i>Vice-Chairperson:</i>	Mr. Jang-Hoon Lee (Republic of Korea)
<i>Secretary:</i>	Mr. Georg Smefjell (Norway)

Shipowners' group:

<i>Chairperson and spokesperson:</i>	Mr. Dierk Lindemann (Germany)
<i>Vice-Chairperson:</i>	Mr. Joe Cox (United States)
<i>Secretary:</i>	Mr. David Dearsley (International Shipping Federation)

Seafarers' group:

<i>Chairperson and spokesperson:</i>	Mr. Brian Orrell (United Kingdom)
<i>Vice-Chairperson:</i>	Mr. Thomas Tay (Singapore)
<i>Secretary:</i>	Mr. Jon Whitlow (International Transport Workers' Federation)

¹ Adopted unanimously.

Opening of the session

3. The meeting was opened by Ms. Sally Paxton, Executive Director, Social Dialogue Sector. She said that this meeting was a crucial step towards the adoption in June 2005 of the first modern-day international labour Convention.
4. The Working Group, she recalled, was derived from a proposal made unanimously by the Joint Maritime Commission (JMC) in January 2001. The Commission had called for a single, coherent instrument incorporating – as far as possible – the substance of all the various international maritime labour standards that were sufficiently up to date. The Commission’s Shipowners and the Seafarers had not called into question the legal status or substance of the existing maritime instruments but had felt that the existing standards were often inconsistent or unclear, and that the cumbersome revision procedures were incapable of enabling the rapid adaptation of standards to the special needs of the industry.
5. The Shipowners’ and Seafarers’ representatives of the Commission, she said, had considered that the protection provided by the standards was not reaching numerous seafarers. Even Convention No. 147, the best known of the ILO maritime Conventions, had been ratified by States representing about half the world shipping gross tonnage, while the IMO’s International Convention for the Safety of Life at Sea had been ratified by States covering 98 per cent of the world fleet. Thus, shipowners and governments providing decent conditions of work were bearing an unequal burden due to the absence of generally applicable labour standards or, where they existed, their lack of proper enforcement. As the JMC had said, what was required was an international regulatory response of an appropriate kind – global standards applicable to the entire industry.
6. As a result of these issues and concerns, and at the Joint Maritime Commission’s request, the Governing Body of the ILO had established the present High-level Working Group to assist with the work of developing the proposed new instrument. The achievement of that task would involve an extensive and possibly complex consolidation exercise, careful thought, considerable strength of will and a steady hand. The Seafarers and Shipowners had expressed their concerns and will to undertake the work, and now it was for Governments to express whether they shared these concerns and endorsed the Shipowners’ and Seafarers’ preferred solutions. If they did, the Office would rely on the Working Group, and its subgroup, to carry out significant work. This would include considering questions with little guiding precedents and preparing solutions which, though perhaps drawn upon the practice of other organizations, would require adaptation to the special philosophy and constitutional requirements of the ILO.
7. Success, she said, would require dedication and continuity of participation. The rewards would be considerable. As the Director-General had said to the JMC in January, the maritime industry was an example of social dialogue at its best. This meeting must now demonstrate tripartism at its best. The result would be standards which ensured protection for the vast majority of seafarers in their multinational environment.
8. The Executive Director, Social Dialogue Sector, introduced a film entitled “The vital link” which had been produced under the ILO’s Programme on Decent Work in the Maritime Industry.

General discussion

9. The Chairperson reminded the Working Group of the scope and difficulties involved in the tasks assigned to it ahead by referring to the ILO film “The vital link”. He stressed the pioneering role of the Working Group in implementing the initiatives of the Joint Maritime

Commission. While the work ahead should be based on existing standards, the Working Group should seek a balance between the industry's tradition and the need to innovate. It was necessary to build an instrument which was coherent with the ILO's current approach to standard setting and also with the contributions of other organizations working in the maritime field such as the IMO. The Working Group should be able to count on contributions from all, with consensus as a golden rule.

10. The Chairperson of the Government group (the Government member of Namibia) said that Governments were pleased to participate in the Working Group. He recalled that the promotion and realization of standards were included among the strategic objectives of the ILO, as set out in its Decent Work Agenda. A meeting to consolidate maritime labour standards was overdue, bearing in mind the importance of the maritime sector. The Working Group was taking a pioneering approach to developing a new Convention, and this meant touching upon unknown ground. The interest by Governments was considerable.
11. The Shipowners' Chairperson said that his group regarded the outcome of the last meeting of the Joint Maritime Commission as one of the most significant in memory. With few problems, the two sides had reached agreement on a novel and quite radical approach to the development of maritime labour standards, resulting in the "Geneva Accord". This was due to the considerable preliminary work by the Shipowners, Seafarers and the Office prior to that meeting.
12. The real work now lay ahead, he said. The Shipowners and Seafarers had reached conclusions on what needed to be done, but it was now important to gain the support of the Government members of the Working Group. It would also be necessary to keep informed those Governments not present in the Working Group so that they too would understand and support this initiative. Wholehearted support and commitment from governments was needed. This included both support for the principles which underpin the new approach and a commitment to the work to produce a Convention which governments would ratify and enforce. The debate, he said, should then progress to a discussion of the challenge of determining how 50 existing maritime labour instruments might be consolidated. His group hoped that sufficient time would be available to allow for the exploration of this issue in depth, as a formidable amount of work would need to be undertaken in order to be ready for a preparatory conference in 2004.
13. The Chairperson of the Seafarers' group strongly supported the fundamental revision of the ILO's maritime instruments. He referred to several statements of the Director-General of the ILO concerning decent work deficits and the status of maritime labour standards as a complement to safety and environmental standards. Securing a bill of rights for seafarers must be part of the objectives for a widely ratified instrument, along with the elimination of sub-standard shipping. The new instrument should be so widely ratified and enforced that it becomes a benchmark for entry into the maritime industry.
14. While the problems of the industry had been graphically illustrated by the ILO report on "Impact on seafarers' living conditions of changes in the shipping industry" which had been submitted to the 29th Session of the JMC, he commended the Shipowners for their positive response as reflected in the resolutions adopted at that meeting. He also referred to the report of the International Commission on Shipping (ICONS) entitled "Ships, slaves and competition", which, inter alia, identified the underlying causes of sub-standard shipping and suggested that commercial and regulatory mechanisms be used to eliminate the fiscal advantages which arise from avoiding international standards, labour in particular. ICONS had also stated that thousands of seafarers worked under modern slavery and on slave ships. For shipowners, who had the responsibility to provide safe and decent

working conditions at sea, the revision of the ILO maritime standards provided the opportunity to establish a level playing field.

15. He noted that the industry needed to attract suitably qualified seafarers and to improve its public image. An institutional mechanism, in the form of a novel amendment process, needed to be put in place to cope with the rapid changes in shipping. New areas which were not foreseen at present might need to be covered. Flag state and port state control provisions were necessary, but the role of labour-supplying States should also be included. The Seafarers' group was committed to this revision process and hoped that history would look favourably on the response to the challenge and opportunity given to the ILO and its constituents.

Documents submitted to the Working Group

16. The Working Group had before it three documents:

- a briefing for discussion at the High-level Tripartite Working Group on Maritime Labour Standards (first meeting), document TWGMLS/2001/1, prepared by the ILO secretariat, hereafter referred to as the “briefing document”;
- a working paper for discussion at the High-level Tripartite Working Group on Maritime Labour Standards (first meeting), document TWGMLS/2001/2, prepared by the ILO secretariat, hereafter referred to as the “working paper”; and
- an *ISF submission to the ILO High-level Tripartite Working Group on Maritime Labour Standards (first meeting)*, prepared by the International Shipping Federation, hereafter referred to as “the ISF submission”.

Presentation of the ILO briefing document

17. The Deputy Secretary-General introduced the “briefing document”, which was designed to provide an historical overview of the developments which had led to the establishment of the Working Group. The document provided information on decisions taken by the Governing Body based upon the recommendations of its Working Party on Policy regarding the Revision of Standards. It also discussed the linkages between the ILO's Decent Work Agenda, its maritime labour standards and the integrated approach to standards-related activities. As concerned the integrated approach, it indicated that the consolidation of maritime labour standards would result in better coordination with other institutions, in particular the IMO.
18. She added that the briefing document also explained the origin and rationale for the proposals contained therein. It stated the concerns expressed by the Shipowners and Seafarers and the solutions they had recommended. Their intention was to bring the system of protection contained in the existing standards closer to the workers concerned and put them in a form consistent with a rapidly globalizing sector. This would improve the applicability of the system to avoid unequal burdens for those in the industry working to provide decent work. They called for existing maritime labour instruments to be consolidated and updated by means of a single “framework instrument” with a number of parts containing key principles, and annexes incorporating detailed requirements in each part. An accelerated amendment procedure for updating these annexes would ensure prompt entry into force of the amendments. She said that the Seafarers and Shipowners now wished to hear the views of Governments on these concerns and proposed solutions.

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19. She further stated that the issues raised in the “working paper” would only be relevant if the views of governments on the first document were ascertained and there was a consensus to go forward. That paper raised the type of issues which would need to be addressed were the Working Group to begin more substantive discussions.

Presentation of the ISF submission (first part)

20. The Shipowner Vice-Chairperson introduced the ISF submission, noting that it was comprised of two parts. The first part set out the background of the policy adopted at the JMC meeting and explained the reasons why the Shipowners believed that they needed a novel and radical approach to future maritime labour standards. The second part raised questions in connection with the proposed new instrument.
21. He drew attention to what his group had said at the JMC: that the shipowners that his group represented were no different from other employers so far as their concept of how they wished to run their businesses was concerned. They were not pleased with the idea of yet more regulations, controls or penalties. However, they were pragmatists and they wanted to make sure that sensible labour standards were in place and that they were applied impartially to all competitors. This would allow for a level playing field in which standards of service dictated customer preference and not the ability to drive labour conditions down below an acceptable minimum standard. However, such a level playing field for maritime labour standards did not now exist. The industry did not have an up-to-date, effective and properly enforced core of key labour standards impartially applied to all. This created the risk of the fragmentation of regulation.
22. As an aid to understanding, at the JMC his group had tabled a diagrammatic representation of a possible structure for the proposed new instrument. This was attached to the ISF submission as an annex. While the Shipowners hoped it would assist the Working Group to appreciate how a new instrument might be organized, it should be seen as only *one* example of a possible structure and did not represent a commitment to a precise number of parts or precise grouping of standards.
23. Finally, he said, the Shipowners hoped the Government members would express full and wholehearted support for the principles contained in the ILO briefing paper and in the ISF submission and would commit to participate with enthusiasm in the work in the ensuing years.

Discussion of the proposals of the Joint Maritime Commission

24. The Seafarers’ spokesperson, referring to the unacceptable sub-standard conditions depicted in the film “The vital link”, asked why these conditions existed and why ILO Conventions were not ratified. Governments ought to give their views on the questions contained in the Office briefing note. They should ensure that they were represented at a high level in order to be able to commit themselves to agreed provisions. These Governments should also commit themselves to ratification and to the eradication of sub-standard shipping. He wished to listen to the views of Governments as to the terms of reference of the subgroup and on what was expected from the Office in preparation of the future work of the Working Group.
25. The Government member of France stressed the importance of the task awaiting the High-level Tripartite Working Group, and its direct link to the Decent Work Agenda of the ILO. This daunting task must seek to preserve the gains from the past whilst, at the same time,

promoting the necessary adaptation of the regulations. This new role for the ILO, as well as for its member States, should be seen in the light of the new normative approach, as well as in the context of maritime safety. The new instrument will have to respond adequately to the expectations of the social partners, and constitute a corpus of readily identifiable, applicable, and universally respected standards. It should also be coherent with the rest of the ILO instruments. In this respect, the group would have to collaborate closely, for instance, with the Working Party on Policy regarding the Revision of Standards set up by the Governing Body. The future instrument would have to be as widely ratifiable as possible, whilst being, at the same time, of practical use at regional level. France was proud that one of its representatives had been chosen to chair this group and wished that the coming four years would constitute a time of important social progress. It pledged to contribute concretely to the success of the group. It was planning to invite the group to its next meeting, in Nantes next year. However, the proposal would need to be adapted in the light of the programme and in consultation with the secretariat. Details of the practical arrangements would be provided at a later date.

- 26.** The Government member of the United Kingdom endorsed the process that this Working Group was about to undertake. More particularly, he supported the eight solutions proposed on page 18 of the Office briefing document. The United Kingdom was however conscious that the results would finally be measured by the actions undertaken: how quickly the new instrument would be ratified, implemented in the national legislation, and enforced. The delegation of the United Kingdom was looking forward to substantive progress in the course of this week, but was particularly drawing attention to the importance of intersessional work, and would be particularly attentive to the terms of reference of the future subgroup.
- 27.** The Government member of Denmark, recalling her experience as Chairperson of the 29th Session of the JMC, said that the basic idea today was to improve, renew and strengthen the standard-setting process at the ILO. Her country was supportive of the future Convention, and would seek new ways to ensure that decent working conditions would apply in the future to all seafarers, irrespective of flag. At the same time, it would seek to establish a social level playing field for quality shipping or in other words for shipowners who wished to maintain decent working and living conditions for seafarers. Denmark's intention was to devote time and energy to the advent of a single and widely ratifiable ILO maritime instrument.
- 28.** The Government member of Namibia expressed the view that the Office's briefing document constituted a good basis for discussion, without being itself cast in stone. He indicated support in principle for the eight points mentioned in the document. He was of the opinion that there was no time to discuss the reasons for the failures encountered until now, since the Working Group's time should be devoted to solve the current problem. Decent work was central to the present discussions. Referring to the ISF submission, he found that a reference to social dialogue was missing. Commenting on the example given at the end of the paper, he added that the future instrument should be composed of two sections, a binding part, and another one, of a recommendatory nature, adding that flexibility should thus be ensured. He also indicated that it was not enough to set standards, but that appropriate structures should also be established to ensure their proper implementation. He reiterated the full commitment of his Government to the development of the new instrument.
- 29.** The Government member of the Bahamas positively supported the meeting and looked for practical and pragmatic solutions. He explained that the Bahamas already had comprehensive legislation in place and enforced that legislation. He stressed that the Convention should hold provisions that applied to all seafarers on board a vessel whatever their nationality and wherever the ship might be. He pointed out that the human element

included all parts of the industry, particularly those who established standards for future generations of seafarers.

- 30.** The Government member of Norway acknowledged that the “Geneva Accord” was truly groundbreaking as it underlined the importance of decent work in safety at sea. His Government was strongly committed to the process of preparing a consolidated Convention. Sound working and living conditions were the third pillar in maritime safety, since the human element was the major element of safety at sea. He suggested that this was the opportunity for the ILO to reassert itself as the leading organization concerned with seafarers’ working and living conditions, and praised the Director-General and his staff for their swift action with regard to this process. He emphasized the need for a strong Convention which was as inflexible as possible and which primarily focused on shipboard employment and living conditions. He confirmed that the instrument should have universal acceptance and should respond to the changing needs of the industry. In addition, he recommended a tripartite maritime body that met once a year, in which all member States could participate.
- 31.** The Government member of the Philippines strongly supported the solutions as proposed by the Seafarers and Shipowners. The new instrument, he suggested, should be readily understandable to all and not written in language only understood by lawyers. He appealed to everyone involved to remember that it was seafarers who were the primary beneficiaries of this instrument. They must be able to comprehend it and benefit from it for the years to come.
- 32.** The Government member of Greece stated that his Government was committed to working on this instrument and he supported the approach by the Seafarers and Shipowners as reflected in the Office briefing document. He noted that a spirit of a consensus already existed and that Greece had much to contribute due to its recognized maritime traditions, large fleet, significant number of seafarers and experience working on “human element” issues. In the end, participants would be proud to see an instrument which was globally accepted, uniformly controlled and widely enforced.
- 33.** The Government member of Nigeria, whilst recognizing the usefulness of the papers prepared by the Office, cited the importance of the maritime industry to every nation’s economy and to the process of globalization. Supporting the integrated approach for the improvement of the conditions of work and life of seafarers, he said that this would result in achieving the strategic objectives of the ILO in the maritime industry. He endorsed the need for rationalization of the maritime Conventions, some of which were old and outdated. He was confident that the present revision of standards would result in a new Convention that would be coherent and enforceable. Finally, he expressed the commitment of his country to participate effectively at all levels of the meeting in achieving the objectives of universally acceptable maritime labour standards.
- 34.** The Government member of the United States expressed his country’s commitment to play an active and constructive role in the deliberations which would lead to improving the effectiveness and usefulness of the ILO maritime labour standards. The briefing document prepared by the Office represented a challenge and an opportunity. He appreciated the efforts of the Seafarers’ and Shipowners’ groups, and felt that their proposals for the revision of the maritime labour standards were sound.
- 35.** The Government member of Italy said that many of the ILO maritime instruments did not reflect modern standards and practices. He gave his country’s full support to the process of revising these instruments in conformity with the new integrated approach in the ILO’s standard-setting process. He recollected the ILO Director-General’s statement to the JMC, and said that this ambitious task was more necessary now than ever before. The revised

instruments should be in a form that could be easily applied to overcome obstacles in national legislation and procedures. This would contribute to the increased effectiveness of maritime standards.

- 36.** The Government member of Egypt gave full support to the Working Group. A new unified single instrument was important. It should be simple and be flexible to allow for amendment procedures.
- 37.** The Government member of Malta recognized the good work done in the past as well as the need for change. Malta would commit itself to the work of the Working Group and would go further in addressing the issues of enforcement and implementation. Supporting the views expressed by the United Kingdom delegate, he further reiterated that the maritime community would be judged at every step of this process. In principle, Malta agreed with the concerns of the shipowners and seafarers regarding ILO maritime standards and with the identified solutions as set out in pages 13 and 18, respectively, of document TWGMLS/2001/1. Noting that the preparation of a new instrument, its ratification and enforcement would take some time, he said that it was equally important to continue to ratify and enforce existing maritime standards. He underlined the importance of dialogue between governments, shipowners and seafarers, and suggested that there should be some flexibility in the rules of procedure. He called upon the IMO and ILO to cooperate and coordinate to ensure their work was complementary. The possibility should for example be explored of linking certain provisions concerning labour standards contained in the new ILO instrument being developed with the International Safety Management (ISM) Code. Malta would do its utmost to sensitize shipowners flying the Maltese flag to enforce existing standards. It was also important for the countries in the Mediterranean Port State Control Memorandum of Understanding to be involved so that they could promote and enforce these standards.
- 38.** The Government member of Cyprus strongly supported the development of a new instrument and, when finalized, its implementation. He noted the commitment by his Government to giving “flesh and bones” to a number of international conventions aiming to improve living and working conditions on ships and to enhance the motivation of seafarers. Although he agreed with the views of previous speakers, he assigned great importance to the statement made by the Government member of the United Kingdom.
- 39.** The Government member of Japan shared the sentiments of the previous delegates to secure safety at sea. He also noted there must be fair and substantial rules for seafarers’ conditions in this epoch-making project. He encouraged the meeting by adding that the more challenging the efforts were, the more worthwhile they would be.
- 40.** The Government member of Turkey stated that the elaboration of the future instrument is of particular importance for his country, which had seen a continuous increase in the number of national seafarers during the last few years. The new Convention should, in his opinion, really regroup all existing maritime labour instruments in a single one. Turkey agreed to all eight points proposed by the social partners in the briefing document. It foresaw an enthusiastic but difficult task for the Working Group, and hoped that the result would enable maritime transport to eliminate sub-standard shipping. Turkey also suggested a closer cooperation between the ILO and the IMO in the preparatory work for the future Convention.
- 41.** The Government member of Algeria expressed his satisfaction regarding the proposals evoked during the JMC in favour of a coherent and flexible framework Convention, which would take recent developments in the shipping industry into account. Such an instrument, with improved ratification, implementation and control procedures, would respond to the aspirations of the maritime community at large. In this respect, Algeria would spare no

effort, within the limits of its possibilities, to bring its full contribution to the achievement of this objective.

42. The Government member of the People's Republic of China informed the meeting of the willingness of his country to participate and contribute to the necessary efforts towards the preparation of a future comprehensive maritime labour standard. He deliberately refrained from over-optimistic statements at this early stage of the task, given the considerable amount of difficulties which awaited the Working Group. He drew the attention of the meeting towards specific difficulties which were encountered by various governments in the implementation of some instruments. He nevertheless expressed the hope that all these issues could be overcome during this coming period of five years.
43. The Government member of Sweden insisted on the fact that there was no time to waste since, in his opinion, seafarers have an urgent and basic right to protection, both social and physical. The details of all this should be placed in what amounts to a real seafarers' bill of rights. Sweden affirmed its readiness to fully contribute to the proposed standard-setting process.
44. The Government member of Nigeria expressed the appreciation of his Government for its nomination as a member of the Working Group, and assured the meeting of its commitment, as an important maritime nation in Africa, to the improvement of social conditions for seafarers. This had already been realized in Nigeria for dockworkers, and the country was also willing to participate in any system that would work towards the improvement of the conditions of work and life of seafarers.
45. The observer from the International Christian Maritime Association (ICMA) congratulated the Joint Maritime Commission for the historic "Geneva Accord" and the Governments for entering into this new process towards a "seafarers' bill of rights". He called for practical, effective and enforceable standards that were capable of ratification and would not erode existing rights of seafarers. The success of the meeting depended on the efforts and commitments of everyone. The ICMA was prepared to help in any way it could.
46. The observer from the International Standards Organization (ISO) appreciated the invitation to participate in the meeting, citing the ISO's official relationship with the ILO. He welcomed the delegates' participation in ISO's own work, which was primarily done electronically. He noted that the ISO had several initiatives under way on maritime security and standards which were relevant to the living conditions and accommodation of seafarers.
47. The Chairperson of the Working Group delivered a brief résumé of what had been said in the preceding sittings of the meeting. The social partners had reaffirmed their original positions, as developed in January 2001, and as contained in the briefing document. Seeking the support of governments for this task, the partners had invited member States to state their feelings on this issue. The Chairperson recalled that 15 governments had expressed their approval in principle on this subject. Some representatives pledged their continuous cooperation for the coming four years, others explicitly supported the point of view expressed within the eight points proposed by the social partners in the briefing document. This support did not only translate in terms of devotion of time and resources, but also of adoption, ratification and uniform and strict implementation of the future instrument, in the interest of the setting up of a real level playing field. These developments had been seen by some as a challenge and an example of the ILO integrated approach to standards, whilst others found it to be a balancing act between tradition and modernization. The necessity to include various provisions regarding social dialogue and control procedures, as well as protection against hazards, was also mentioned by some participants. The importance and urgency of preparing a coherent, simple and clearly

drafted instrument was emphasized by many. It was also stated that some member States could encounter some difficulties at the implementation stage of the instrument.

- 48.** The Chairperson, from the above considerations, identified a number of points on which the Government members agreed:
- (i) Governments were committed to participating in the action of the Working Group throughout its work;
 - (ii) Governments fully supported the eight points set out, as the Shipowners' and Seafarers' preferred solutions, in paragraph 3.23 of document TWGMLS/2000/1;
 - (iii) the proposed new instrument should be consistent with the ILO's Decent Work Agenda and with action undertaken in the ILO and in other organizations, particularly the IMO;
 - (iv) the instrument should be simple, clear and easy to apply;
 - (v) the Governments of all Members and the maritime constituents and other stakeholders will be kept informed of the progress of the preparatory work.

Presentation of the working paper

- 49.** The Deputy Secretary-General introduced the working paper prepared by the Office. She explained that it was divided into two parts. Part I described in general terms the structure of the proposed instrument. It suggested that the proposed instrument would comprise a number of parts incorporating basic principles of existing Conventions whose general applicability was required in order to ensure that parties providing decent conditions of work were not placed at a disadvantage. Based on the JMC discussions, it provided broadly for five levels: Part I, she said, contained fundamental principles and rights at work and responsibilities of the parties; Part II onwards would be devoted to families of principles and rights. Further, each part would have an annex which would contain detailed requirements for the implementation of the principles and rights. The annexes would be amended through a simplified amendment procedure. The final clauses would provide for conserving the capital of ratifications and for resolving any duplication or inconsistencies with existing obligations. A non-binding component of the instrument would contain recommendations, codes of practice and guidelines as appropriate.
- 50.** She noted that Part II suggested the kinds of questions that would need to be considered when the content of the proposed new instrument was being developed. These questions related to the content of the provisions which should be included, the criteria for the distribution of the various provisions between the parts and the annexes, and the innovations being considered. Several innovations were offered. The first was the simplified amendment procedure and a regime of monitoring and enforcement which would buttress those provisions; the second would provide for an extension of the enforcement mechanism provided for in Convention No. 147 at present, giving to ratifying States the right to ensure decent conditions of work are present not only on board ships registered in their territory but also on ships calling in their ports even where they are registered in countries which have not ratified the instrument. Another possible innovation would be a new type of monitoring system. She explained that the working paper's objective was to draw attention to the need for a kind of "checklist" of issues and questions. It sought to identify some, but there were many more, including those offered in the ISF submission.

Presentation of the ISF submission (second part)

51. The Shipowners' spokesperson introduced the second part of the ISF submission. Before doing so, he observed that the overwhelming majority of the Government members of the Working Group had agreed in principle with the recommendations of the Joint Maritime Commission on the need to update and consolidate the existing maritime instruments. This represented a clear mandate for the work being undertaken.
52. He pointed to a number of key issues to be considered. The first concerned the degree of flexibility which might be provided within the new instrument as to the means by which the standards were satisfied. A number of different measures existed in ILO maritime labour standards which allowed for such flexibility, including the "substantial equivalence" concept in Convention No. 147 and the mechanisms for agreeing higher or lower social security standards, from an agreed list, provided for in Convention No. 165.
53. He proposed that the second issue concerned enforcement and verification. This was a key issue for the Shipowners, who wanted not only a clear and easily understood text but also standards which would be capable of enforcement through objective measurement – through both flag and port state verification. The third concerned the updating of existing provisions during the consolidation process. It was clear that there were conflicts between some of the older and some of the more recent instruments, and this needed to be addressed. However, it would not be possible within the time limits provided to revise all existing instruments. A middle way must therefore be found so that outdated standards are eliminated, duplication is avoided and excessive detail is removed without straying into contentious areas or inventing new standards.
54. A fourth issue was to develop an amendment procedure which would allow the new instrument to be kept up to date, possibly drawing on the example of the IMO tacit amendment procedure. A fifth was to find some way of incorporating the provisions of Convention No. 147 into the new instrument.

Preliminary ideas on the contents of the future Convention

55. The Chairperson explained that, at this stage, he wished to hear the views of the Working Group on the issues raised in the working paper prepared by the Office and on the second half of the ISF submission. In particular, he wished to hear from the Government members on the questions set out in the working paper and in the second part of the ISF submission. The purpose of this open discussion would be to obtain *preliminary* views on difficulties experienced by States with the ratification and implementation of existing standards and ideas for the possible content and structure of a single framework Convention. He emphasized that, as agreed with the Officers of the Working Group, the session should be seen as an opportunity to raise issues for further exploration, and unless they otherwise indicated, the views expressed by individual Government members would not be seen as a commitment to any firm position.
56. The Seafarers' spokesperson stated that the shipowners' and seafarers' organizations had been working on the issues involved in this consolidation process for some time and had come to a measure of agreement on the broad issues. The Office paper was good, and there were many alternatives in it as well as in the ISF paper. These papers constituted therefore a good basis for participants to express their views. The Seafarers' spokesperson did not want to prejudge the Governments' positions, but it was important to know their initial views. He would not hold the Governments to those views as expressed in this meeting as they could change their positions after more careful consideration of the debate. The

Seafarers themselves would keep an open mind on many points and would listen carefully to the arguments presented. Such views were needed to flesh out the proposed framework instrument. The ISF submission was balanced, but perhaps overemphasized the issue of flexibility. Some flexibility was necessary to ensure widespread ratification, but too much could result in a meaningless instrument. What was truly needed was a true “bill of rights for seafarers”. He wanted to know from the start if the Governments supported the inclusion of an enforcement mechanism. If the Governments did not support strong enforcement provisions from the start, the Seafarers would see the drafting exercise as a waste of time. They also expected Government delegations to express their views on how this new Convention could be enforced.

- 57.** The Government member of Canada opened his statement with a concern for proper enforcement. He recommended that the ILO should confront governments on how they intended to apply the instrument prior to accepting their ratification as the IMO did with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 95) Convention. He commented that the objectives of the instrument should be primary and the details secondary. Seafarers needed protection from, for example, abandonment. This should be linked to the registry of a ship. Lessons might be learned from mechanisms contained in the International Oil Pollution Civil Liability Convention. He reiterated the need for clear and concise provisions.
- 58.** The Government member of Norway supported the structure proposed for the new Convention, but needed to monitor the process to determine its feasibility. He reiterated the need for clear standards which were as inflexible as possible to allow for effective implementation and control by both flag States and port States. The new document should clearly address the responsibilities of all stakeholders and not impair port state control. He supported Convention No. 147 principles of ensuring port state control but also saw the need for a monitoring mechanism in relation to a new framework Convention. Again, a simplified amendment procedure utilizing the tripartite structure to meet preferably annually, or if that was not possible once every two years, was desirable. He suggested a comprehensive approach regarding sound working and living conditions as the third pillar of maritime safety.
- 59.** The Government member of the Netherlands noted that IMO Conventions often covered 90 per cent of the world’s fleet and if a country was not in compliance with them, they faced severe penalties and financial costs. He drew attention to the high number of ILO Conventions that had not been ratified since many elements could not be accepted, possibly for financial reasons. He recommended that a mechanism should be established that allowed port state control to penalize flag States if they were not in compliance with the seafarers’ bill of rights, even if they had not ratified the Convention. He also seconded Norway’s proposal to establish a standing body to consider amendments to the annexes of the Convention for a simplified amendment process and to review the enforcement of the instrument.
- 60.** The Government member of Panama pointed out that the ILO has taken a fundamental step forward. Some countries had ratified past Conventions, but had difficulty implementing them. Therefore, ratification had led to difficulties for some of those countries as regards implementation creating, therefore, some problems. The ILO should develop an assistance plan for the ratifying Members of the new instrument, as it did in other areas such as child labour. He pointed out that through technical cooperation, the new Convention would be widely ratified and implemented, as long as it was flexible enough.
- 61.** The Government member of Malta cautioned the Working Group about the Government member of Canada’s proposed ideas for a review process by “competent persons” as for the IMO STCW 95 Convention. Labour-supply organizations should be properly

regulated. The Office should undertake a study to determine where the provisions of existing Conventions were contradictory or overlapping. He noted the time needed to develop a new instrument and encouraged the ILO to continue to promote the ratification of existing Conventions. The opinions of new emerging maritime nations should be sought and the problems faced by small ports should be borne in mind when discussing enforcement. He supported the recommendation from Panama on the need for technical cooperation.

62. The Government member of the Philippines agreed to the points enumerated by the Chairperson. The new instrument should be clear, simple and easy to understand. Part I of the proposed structure should contain the definition of terms to guide everyone who might need to read the consolidated instrument. This was essential for the proper understanding of the provisions of the subsequent Convention. He agreed that the four points referred to by the Shipowners' spokesperson were important. The instrument should be flexible and should allow equivalent compliance, which in the Philippines is referred to as "colorable compliance". Proper enforcement was necessary as a toothless law was no law at all. Amendment procedures as suggested by the Seafarers' group were necessary to facilitate the updating of the instrument.
63. The Government member of France said that the main objective should be decent work for seafarers and in that respect the "*acquis*" of the ILO Conventions needed to be preserved. France did not wish its standards to be lowered. The need for the widest ratification of the new instrument was recognized, and it should be clear, simple, coherent and complete. It was important to understand why the existing instruments had not been ratified by some member States. Referring to the second document prepared by the Office, he said that the preliminary part that contained the fundamental principles and rights was necessary. Enforcement meant that it should contain the principles of port state control. The procedure for reporting to the flag States under Convention No. 147 might on its own appear inadequate. France would therefore make a proposal for developing a database on the enforcement of the Convention that could be accessed by all.
64. The Government member of Cyprus referred to the example quoted by the Government member of Canada, i.e. the IMO's appointment of competent persons to review the application of the STCW 95 Convention. This example had flaws which could be avoided. The mechanism for enforcing the instrument was very important and could be achieved by linking certain provisions concerning labour standards contained in the ILO instruments with the ISM Code. His Government was one of the first flag States to suspend the Document of Compliance (DOC) of a large shipping company and to give an ultimatum to another shipping company for non-compliance relating to the payment of wages to seafarers. If seafarers did not receive wages on time, they became demotivated and that amounted to non-compliance with the ISM Code. In his view, this was the first time that Shipowners, Seafarers and Governments were at the same table and talking the same language. He was confident that solutions could be found with the cooperation of the social partners.
65. The Government member of Greece endorsed the view expressed by the Seafarers, Shipowners and others on the need to secure the enforcement of the new instrument and that the IMO's STCW 95 Convention could be a model for this mechanism. It might include provisions on port state control and a "no more favourable treatment" clause. This will eliminate discrimination in the relevant inspections. Mandatory provisions should be in this part and recommendatory ones in the annexes. However, at this early stage he could not accept the concept of a white list and black list. The tacit amendment procedure is acceptable. The example cited by the Government member of Canada on abandonment of ships and seafarers was important. The issue of abandonment of seafarers was now being addressed by the "Joint IMO/ILO Ad Hoc Expert Working Group on Liability and

Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers” and the Working Group should not address this issue at this stage.

- 66.** The Government member of Denmark indicated her support for the Shipowners’ and Seafarers’ statements. She also pointed out that the Office document was to be seriously considered, though it was difficult to comment in detail on the enforcement-related questions before there had been a discussion on the whole idea of a framework Convention. However, in any respect, port state control measures would be needed, but they should not replace flag state control. Responding to suggestions made by other members of the Group, she reflected that if the structure of the STCW 95 Convention could be of some use when drafting the future instrument, one should also bear in mind that there are important differences between IMO and ILO procedures. For instance, the ILO required communication of relevant national legislation when a member State had ratified an ILO Convention, whereas the situation is different in the IMO.
- 67.** She said that the division of the future instrument between a mandatory part and a non-mandatory one, the latter essentially composed of technical annexes and guidelines, would be a good approach. When it comes to the notion of flexibility, one could have in mind Parts A and B contained in the Supplementary Appendix to the 1996 Protocol to Convention No 147. The tacit amendment procedure was an excellent idea, which should be further studied. More generally, all possibilities should be carefully explored at that early stage, without preconceived opinion. The present meeting should be followed by tripartite consultations at the national level.
- 68.** The Chairperson reacted to a few points made during the discussion. He agreed that one should not enter into too many details during the present meeting, but rather get a clear idea of the structure of the instrument and of its guiding principles, before the end of the week. He also assured the meeting that the Office was currently working on the identification of as many of these fundamental issues as possible.
- 69.** The Government member of Liberia, as the representative of a large maritime State, expressed his surprise that, until this afternoon, open registers had been insufficiently taken into account. However, the agreement reached today on the composition of the subgroup should ensure that every member State would be given an opportunity to participate in the future proceedings. Commenting on the film shown the day before, the Government member of Liberia declared that his country would not tolerate such blatant violations of seafarers’ rights, or so many substandard vessels. Liberia was fully ready to cooperate with everybody in the current exercise, provided that the new instrument will not upset the role of flag States, as defined in international instruments such as the United Nations Convention on the Law of the Sea (UNCLOS). Neither should it endanger the economy of open registries and the employment of so many seafarers, in particular those coming from developing countries. Liberia was pleased to see the harmonious atmosphere currently prevailing in the Group, and wished for its continuation.
- 70.** The Government member of the United Kingdom thought that flexibility might not necessarily be what should be primarily addressed, as it did not ensure a real level playing field. What was needed was a set of mandatory requirements, at an appropriate level, like those contained in ILO Convention No. 147. He also declared that too technical instruments are difficult to ratify. A simplified amendment procedure would be welcome, as would a “no more favourable treatment” clause. The proposed format contained in the annex to the ISF submission seemed appropriate and he commended it to the Working Group as one possible model for further consideration.
- 71.** The Government member of Egypt proposed that the new instrument should contain the highest standards whilst maintaining the right of those member States, which currently

implement lower standards, not to accept some of the annexes at the time of ratification. It could also provide for a transitional period of several years, enabling those same member States to adjust their legislation to the higher standards. The substantive part of the instrument should contain general principles and the objectives to be achieved. It should not enter into details which would be developed into annexes. The future amendments should be approved by the International Labour Conference as well as by national parliaments. Egypt suggested that cases of non-compliance should be reported to the flag State, with a copy to the ILO. Notification should also be given in due time to the next port of call. The master would be required to sign a promissory note to take all necessary corrective actions as soon as feasible. New thinking was needed to ensure that all seafarers on board a ship received protection. The new Convention must recognize the modern reality of a multinational crew.

- 72.** The Government member of the Bahamas identified three areas which could cause difficulties to the ratification of the future instrument. The new Convention should not create any duplication with already existing texts, such as the STCW 95 Convention. When member States had existing legislation covering all workers, including seafarers, they should not be compelled to draft more specific regulations on the same issue. Whereas member States can easily promulgate legislation applicable to their nationals, they may have difficulties in applying these rules to non-domiciled workers. The case of social security was given as an example. New thinking was needed to ensure that all seafarers received protection, regardless of ship.
- 73.** The Government member of the United States said that his delegation agreed with the eight recommended solutions of the briefing document and the nearly identical points raised in the ISF submission. He recalled that the goal was a meaningful instrument which could be ratified by as many governments as possible. To that end, he emphasized the importance of retaining the concept of “substantial equivalence”, as provided for in Convention No. 147.
- 74.** The Government member of Benin said that the instrument should be flexible enough to meet the needs of both governments and the social partners. One part should contain mandatory provisions while another part should include provisions which are optional. It would be useful to carry out a review of existing standards to determine which ones had obtained widespread application, even without formal ratification by member States. A number of those standards were reflected in national legislation; for example, standards relating to health, hygiene, accommodation, safety and social protection of seafarers were essential and could be retained as mandatory. The instrument should provide for monitoring measures for mandatory standards based, for example, on the systems of control established in the SOLAS and STCW 95 Conventions. The principle of amendment by tacit acceptance should be envisaged for mandatory standards. Lastly, the instrument should take a realistic view in order to promote effective jurisdiction of the State responsible for monitoring compliance.
- 75.** The Government member of Japan expressed his country’s commitment to the development of the single framework Convention. It has already initiated a comprehensive analysis of the reasons why Japan had not been able to ratify some existing ILO Conventions, and this yielded some tentative ideas on how the Working Group might proceed. The first reason was that many Conventions were either obsolete or duplicated provisions found in other instruments, including, for example, the STCW 95 Convention. A second reason was that some maritime labour Conventions stipulated details which were nearly at the same level as national standards. In such situations, it was not possible to propose a new Convention to the National Diet simply to adjust nominal differences. A third reason, particularly as concerns social welfare and social security provisions, was that, while Japan provided social security protection equivalent to that of European

countries, laws and regulations had a different historical and cultural basis. This meant certain concepts in ILO standards were not compatible with his country's national approach. In addition, due to budgetary procedures, binding requirements of financial arrangements usually were not acceptable to his Government. This said, it was important for the Working Group to "boil down" the essential elements of decent working conditions for seafarers in order to reach a common understanding of the principles needed for achieving its objectives. Simultaneously, it was important to consider retention of the concept of "substantial equivalence" without creating standards which were vague or ambiguous. To be enforceable, he noted, the Convention should be widely accepted and should provide clear standards which are easily verified, in particular by port state control.

- 76.** The Government member of Algeria envisaged adopting an instrument that was clear, coherent, and easy to ratify and implement. He was concerned about the length of the process of developing the Convention. Bearing in mind that the majority of the problems had already been pinpointed, he suggested that the work should be completed even before the envisaged 2005 date of adoption. He suggested that a mechanism, such as the inclusion of a "no more favourable treatment clause", might be included as a means of encouraging enforcement. He supported the concept of a "third pillar" to complement the maritime safety and environmental pillars of the IMO, and suggested that the new instrument might include a reporting and monitoring system similar to that contained in the STCW 95 Convention. He supported Malta's proposal of introducing maritime labour issues into the ISM Code. Referring again to the STCW 95 Convention, he said the instrument should also clarify the roles of administrations, flag States, port States, shipowners and seafarers.
- 77.** The Government member of the Republic of Korea agreed with the notion of having one comprehensive consolidated framework Convention as proposed by the JMC, as this approach provided the possibility of not only removing obsolete and outdated provisions but also avoiding duplication. He could therefore support the general structure set out in the Office working paper. The new, single instrument should contain those standards which apply only to the maritime sector and not those intended for every sector, as this created complexities which might discourage ratification. As an example, he referred to the inclusion of two non-maritime Conventions in the appendix of Convention No. 147. Secondly, he recommended that an appropriate effort should be made to eliminate provisions in existing Conventions which created obstacles to ratification. He strongly suggested that the concept of "performance standards" for physical standards should be used in establishing mandatory requirements.
- 78.** The Government member of Italy agreed with the proposed structure for a new Convention set out in the ISF submission, but also shared the concerns expressed by the Seafarers' group on the application of the instrument. It was obvious that having standards was not enough but that these had to be ratified and applied. Italy had ratified almost all ILO maritime labour standards, including Convention No. 147, demonstrating its commitment to the concept of decent work for seafarers. A new Convention must be widely accepted. Flexibility should be provided as long as it did not reduce the efficiency of the instrument. Regarding the simplified process of amendment, the Italian Government expressed its agreement, noting that the structure must be compatible with national legislations. Finally, he wished to underline the importance of Convention No. 147 for the ratification of the new consolidated instrument. Therefore, it was necessary to encourage and promote the ratification of that Convention during the process of development of the new instrument.
- 79.** The Government member of Sweden, responding to views expressed by several other Government members, said he did not think the Working Group should rely on the participation of the IMO in the development of the new instrument. After all, there were boundaries between the safety issues to be handled by the IMO and the social issues to be dealt with by the ILO. He observed that references had been made to the possibility of

placing the envisaged new ILO Convention under the ISM Code. He did not believe that the IMO would accept this, though individual States might choose to make such a link. He did agree, however, that the Working Group might take account of the structure of certain IMO instruments, such as the STCW 95 Convention, and their provisions concerning such issues as control procedures and the “no more favourable treatment” clause.

- 80.** The Government member of Namibia drew attention to several points of a more general nature. Firstly, he explained that, as regards the “level playing field”, developing countries had a limited capacity to develop and implement legislation. Thus, the process needed to consider ways to ensure that developing countries could fully participate and would receive assistance in both the pre-ratification and post-ratification processes. Secondly, he cautioned the Working Group on linking labour standards relating to seafarers to trade, citing a similar debate during the development of the ILO Declaration on Fundamental Principles and Rights at Work. Finally, he drew attention to the need to ensure that there were no gaps in protection for workers, such as those employed in international waters.
- 81.** The Government member of the Russian Federation expressed support for the idea of a new framework Convention and supported the eight solutions included in the Office briefing document. An objective should be to prepare an instrument that would be interesting and useful for the international community and for individual governments. He supported the idea of drawing on the experiences of the IMO. The capital of Convention No. 147 should be retained. The use of tacit acceptance of amendments would streamline the process of keeping the new instrument up to date. He urged that flag and port state control mechanisms should be well reflected in the new instrument, as this would ensure that it was universally and effectively applied.
- 82.** The Government member of the Netherlands reiterated his support for the eight solutions in the briefing paper. His country supported a “bill of rights” for seafarers that would contain all elements affecting the level playing field for shipping operations. Flexibility should mean not going into excessive detail and allowing for “substantial equivalence”. All the instruments relating to seafarers contained in the volume of “Maritime labour Conventions and Recommendations” should be taken into consideration. He noted several individual Conventions dealing in various ways with the issue of seafarers’ employment contracts and addressing the parties concerned (flag States, shipowners, manning agencies, etc.). The new Convention should focus on the protection provided to the seafarer.
- 83.** The Government member of Nigeria commented that his country was committed to a decent working environment for the seafarer. He asked the ILO to provide technical assistance for developing countries to raise their standards. In addition, he suggested the standards should be sufficiently flexible to take account of local peculiarities within the broad uniform standards, as he said was suggested in the ISF submission.
- 84.** The Government member of Turkey supported the eight solutions offered in the briefing paper. He said that high standards should be set and controlled. Consideration should be given to the experiences gained from the development of IMO instruments, such as the STCW 95 Convention.
- 85.** The Government member of Panama praised the ILO for the clear, concise and comprehensive documents. He stressed the importance of having a final instrument ratified by the maximum number of members, but one which must be flexible for a country to be able to adapt it to its own legislation. He suggested that an example of an effective Convention which allowed sufficient flexibility was Convention No. 138, which concerned the minimum age for work. He noted that one phrase in the existing Convention might be contrary to the Constitution or the law. The new instrument should avoid inflexibility and must contain a concept of equivalence.

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86. The Government member of Brazil expressed her concern about the discussion of seafarers' rights. There should be no flexibility as regards *rights*: the flexibility should be in the means of ensuring those rights.
87. The Shipowners' spokesperson said that they had listened to the views of the Government members with keen interest since his group had already achieved a unanimous agreement with the Seafarers at the JMC. He added that the impressions conveyed were extremely positive. In principle, all the Governments which spoke were in agreement with the principles put forward. This was unprecedented in the history of ILO maritime meetings. He expressed his gratitude to the Governments for their contribution.
88. The Seafarers' spokesperson declared that the Governments' views were welcome and that, even if the Seafarers had some fundamental concerns about some of the opinions expressed, they would adopt a tolerant attitude at that stage, expecting identical behaviour from the Government group regarding their own positions in the future. He also expressed his pleasure at having heard mentioned several times the notion of a seafarers' bill of rights, since it corroborated the opinion of his group that those rights were not flexible. Commenting positively on the Chairperson's summary, Mr. Orrell insisted on the notions of speedy amendment procedures and enforceability. He also commented that, in his opinion, the Seafarers did not want to see their acquired rights reduced in any way, but would not oppose their updating and modernization.
89. The Chairperson of the Working Group presented a summary of the various declarations submitted by Government representatives during the first two-and-a-half days of the meeting. He expressed the opinion that a consensus existed on the general structure of the future instrument, as well as on the need for a reasoned approach that would ensure a large level of ratification. This consensus was also found on the necessity to produce an easy to implement Convention, which would contain provisions for a simple amendment procedure, to take into account the rapid evolution of the sector. The notion of flexibility was evoked in many declarations, but it was generally agreed that it should neither be applied to the detriment of the seafarers' rights, nor to the destruction of the level playing field.

Terms of reference, composition of the tripartite subgroup, and dates of future meetings

90. Concerning the composition of the subgroup, the Chairperson of the Government group explained that a feeling had emerged in his group that the representation needed to be sufficiently wide so as to cover the various, very different geographical conditions and national positions. It had not been possible to accommodate all these differences within the framework of the composition appearing in the Governing Body's decision. After long discussions in all three groups, a compromise proposal was submitted to the Working Group as an agreed "package". It provided as follows: eight Government members, eight Shipowner members, eight Seafarer members, the secretaries of the three groups, the Chairperson and Vice-Chairperson of the Working Group and the subgroup itself, a total of 31. This was accepted by the Working Group, subject to confirmation by the Governing Body. The subgroup was, subject to the Governing Body's approval, also open to other Governments which could participate as observers.
91. The Government member of Malta said that he would not oppose the agreed composition of the subgroup, but felt that it would have been better if the subgroup had been open to all, with no distinguishing between members, officers and observers. He reiterated that the agreed composition was a "package".

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- 92.** Draft terms of reference for the subgroup were prepared on the basis of discussions within the Government, Shipowners' and Seafarers' groups as well as informal consultations among the Officers of the meeting. These terms of reference included, inter alia, instructions on the documents to be submitted to the subgroup and future meetings of the Working Group, some elements on the contents of the new instrument to facilitate initial drafting, and relevant reporting. These draft terms of reference were adopted unanimously by the Working Group.
- 93.** The groups submitted the relevant nominations for membership of the subgroup. These were accepted by the Working Group. It then suggested that the dates for its next meeting would be from 14 to 18 October 2002 and that the subgroup should meet from 24 to 28 June 2002.
- 94.** The Working Group agreed that the composition of the subgroup, the draft terms of reference and the proposed dates of future meetings should be part of the Chairperson's summary which is appended to this report.

Consideration and adoption of the draft report

- 95.** The Chairperson's summary of the whole debate was noted with approval and has been reproduced in the appendix to this report.
- 96.** At the eighth sitting, the Working Group adopted the present report.

Geneva, 21 December 2001.

(Signed) Mr. Schindler,
Chairperson.

Closing statements

The spokesperson of the Shipowners' group then expressed his appreciation for the work done and for the success of the Meeting. He saw the results obtained as a clear mandate to pursue the work undertaken earlier. He thanked the Government representatives for their very active role, and formulated the wish that the results of the Meeting would be communicated to the governments which had not been able to attend it, and in particular to the ministries in charge of maritime transport. He also thanked the staff of the Office for their work.

The Chairperson of the Seafarers' group also expressed the satisfaction of his group, but preferred to wait until the adoption, ratification and enforcement of the future instrument before celebrating. More hard work will be required before the transformation of the Geneva Accord into a proper Seafarers' Bill of Rights. He thanked the Government representatives, as well as the Chairperson of the Working Group and the Office staff.

The Chairperson of the Government group referred to the friendly atmosphere that had prevailed during the Meeting. He saw this period as the beginning of a long process that would only be successful if the high level of social dialogue displayed this week was maintained all along. He also thanked the social partners, as well as the Office and the Chairperson of the Working Group.

The representatives of the Governments of Egypt, Panama, Algeria and the United Kingdom expressed their satisfaction for the work done during the week. The Minister of Labour of Liberia informed the Meeting that his country was committed to play a greater role in the formulation and adoption of maritime labour standards in the future. He thanked all participants for this fruitful Meeting.

Ms. S. Paxton, Executive Director of the Social Dialogue Sector, on behalf of the Office, expressed her thanks to all participants for their hard work and patience. She stated that, thanks to the participation of the various Governments, the whole Working Group had been able to move forward with the drafting of a new instrument, based on the Shipowners' and Seafarers' proposals. She informed the Meeting that the Governing Body would consider the present report and the recommendations it contained, in particular regarding the terms of reference for the establishment of a subgroup. She finally assured the Working Group of the appreciation of the ILO for their contribution to the present work, and its commitment to the future work to be undertaken.

The Chairperson praised the Working Group for the spirit of consensus which had prevailed during the whole week. Comparing the Group to a vessel, he did not exclude that vicissitudes could be encountered in the future. He however expressed his confidence, given the importance the future instrument would have for the seafarers around the world. He officially closed the Meeting.

Appendix

Chairperson's summary

Government members and observers and Shipowner and Seafarer members and advisers, attending the first High-level Tripartite Working Group on Maritime Labour Standards, considered two reports prepared by the International Labour Office and one submission from the International Shipping Federation. Since the Shipowners and Seafarers had already held long discussions on the subject, particularly in the framework of the Joint Maritime Commission, their representatives indicated that their main interest was to hear the views of Government members and observers on the concerns that had been expressed by the Shipowners and Seafarers and in particular on the eight preferred solutions set out in paragraph 3.23 of the briefing document prepared by the Office.

Basic discussions of principle led to full agreement *inter alia* on the eight points referred to and contributed a wealth of ideas concerning some of the basic issues raised in the working paper prepared by the Office and the second part of the ISF submission. The specific general points on which tripartite agreement has now been reached are set out in paragraph 48 of this report. In addition, the following points were noted with approval.

I. Preliminary thoughts on the various issues

The wide-ranging discussion indicated the following points to be taken into account in elaborating the proposed new instrument:

- there was overall support for the proposed general structure of the new instrument:
 - the structure is reflected in paragraph 15 of the Office working paper and an example of one possible model is illustrated in the annex to the ISF submission;
 - the importance of a definition chapter was emphasized;
- the new instrument should be clearly based on the existing body of ILO standards:
 - the capital consisting of existing rights, updated where necessary, should be faithfully preserved without prejudice to the need for innovation;
 - the provisions of existing ILO instruments should be taken as a starting point;
 - consistency with other ILO standards as well as those of other organizations, in particular the IMO, was considered essential;
 - IMO Conventions should be closely reviewed as a source of inspiration;
 - modifications of IMO solutions may be suggested where appropriate;
- the instrument should set out standards that are clear, simple, easy to ratify and easy to implement:
 - the respective roles and responsibilities of flag States, port States and labour-supplying States should be clearly defined;
 - due account should be taken of the special features of the maritime sector, in particular the different existing registers, the multinational character of crews and the difficulties of implementation that small countries and small ports may face;
 - duplication should be avoided;
 - linking respect for the instrument with registration should be studied;
- many observations were made stressing the importance of effective enforcement mechanisms:
 - both flag States and port States should be responsible for enforcement;
 - the principle of “no more favourable treatment” was supported;
 - consideration should be given to the appropriateness of the following enforcement mechanisms, *inter alia*:

- extension of port state control as provided for in Convention No. 147 and strengthening of related remedial measures;
- the IMO “panel of competent persons” (there were however drawbacks that would need to be studied);
- obligation on Members to submit their enforcement procedures for review at the time of ratification;
- integration into IMO instruments such as the ISM Code or creation of similar mechanisms could be explored;
- creation of a database for violation of social rights;
- the availability of assistance from the International Labour Office, when needed, was considered essential;
- there was full agreement on the need for simplified amendment procedures:
 - several speakers favoured a tacit acceptance procedure;
 - there should be a specific maritime tripartite body charged with continuously reviewing the operation of the instrument to ensure rapid updating;
- the instrument should be:
 - inflexible with respect to rights;
 - flexible with respect to implementation;
 - the principal consideration should be the achievement and maintenance of a level playing field;
 - a balance sheet should be drawn up of the advantages and disadvantages of the following flexibility devices:
 - options concerning the provisions to be accepted – particularly the detailed annexes;
 - a period of transition for Members which are not immediately in a position to accept the highest standards;
 - “substantial equivalence”.

II. Composition of the tripartite subgroup

The High-level Tripartite Working Group noted that the Governing Body, at its session in March 2001, had enlarged the composition of the Working Group over and above that recommended by the Joint Maritime Commission (JMC) in January 2001. This decision had been taken in order to accommodate the great interest in the Working Group that had been shown by a large number of Governments. Similar adjustments had not however been decided for the composition that the JMC had recommended for the tripartite subgroup to be established by the Working Group (12 members, four appointed by each of the tripartite groups, together with the secretaries of the Shipowners’ and the Seafarers’ groups). In order to ensure an equitable geographical distribution, in which all the major special interests in the shipping industry were represented, the Working Group considered that it would be in line with the discussions in the Governing Body to provide for an appropriate enlargement of the composition of the subgroup, bearing in mind also the instruction given by the Governing Body concerning consensus, as well as the fact that additional participation in the subgroup involved no extra expense for the Office.

The Working Group therefore decided that, subject to confirmation by the ILO Governing Body, the members of the subgroup would be:

Chairperson of the High-level Tripartite Working Group:	Mr. Schindler (France)
Vice-Chairperson of the High-level Tripartite Working Group:	Mr. Nishikawa (Japan)
Chairperson of the subgroup:	Ms. Solling-Olsen (Denmark)
Vice-Chairperson of the subgroup:	Mr. Sommer (United States)

Government members:

Algeria

Brazil

China

Greece

Nigeria

Panama

Philippines

Russian Federation

Secretary: Norway

Shipowner members:

Mr. Akatsuka

Mr. Cox

Mr. Koltsidopoulos

Mr. Lindemann

Mr. Lusted

Ms. Midelfart

Mr. Payne

Mr. Salinas

Secretary: Mr. Dearsley

Seafarer members:

Mr. Chande

Mr. Crumlin

Mr. Filho

Mr. Iijima

Mr. Lamug

Mr. Orrell

Mr. Tselentis

Mr. Verhoef

Secretary: Mr. Whitlow

The subgroup shall, subject to the approval of the Governing Body, be open to other Governments who may attend as observers.

The workings of the subgroup should be reviewed at the next meeting of the High-level Tripartite Working Group.

III. Terms of reference of the subgroup

These terms of reference contain two parts: (1) procedural and (2) substantive.

A. Procedural matters: Methods of work of the subgroup

1. Purpose of the subgroup

In accordance with the decision of the Governing Body, the subgroup will consider papers to be prepared for its meetings and will guide the Office in the preparation of papers and draft texts for consideration of the High-level Tripartite Working Group.

The subgroup will not be a decision-making body and will follow all directions received from the High-level Tripartite Working Group. The subgroup may make proposals to the High-level Tripartite Working Group. Any divergences in the subgroup or conflicts in the draft consolidated texts should be referred to the High-level Tripartite Working Group for direction.

2. Meetings of the subgroup

The subgroup will meet at least once a year. It may hold other meetings as considered appropriate. The International Labour Office will convene meetings of the subgroup and will extend an invitation to all member States of the International Labour Organization who may attend as observers.

3. Documents for consideration by the subgroup

The International Labour Office will prepare documents for consideration at the meetings of the subgroup. In addition, documents for consideration by the subgroup may be submitted to the International Labour Office by any member State, or the secretaries of the Shipowners' or Seafarers' groups of the Joint Maritime Commission. These documents should be submitted in English and if submitted in any other language should preferably be accompanied by an English translation to reduce translation costs for the International Labour Office. These documents will, where possible, also be submitted in electronic form to permit their immediate distribution. All documents should be submitted to the International Labour Office at least one month prior to the meetings of the subgroup.

4. Reports for and of the subgroup

The subgroup will forward to the High-level Tripartite Working Group a report on its proceedings, including minority views. All reports and papers prepared for the consideration of the subgroup and all reports prepared by it on its proceedings will be communicated by the International Labour Office to all participants in the High-level Tripartite Working Group and to all constituents of the International Labour Organization and other relevant institutions.

B. Substantive matters for initial consideration

1. The development of a draft programme of work

This should contain a tentative detailed programme of work with projected target completion dates for identified elements and stages.

2. Recommendations on the content of a draft framework instrument

In making these recommendations, the subgroup will:

- (a) give proper consideration to the following solutions that have been agreed on a tripartite basis:
 1. The provisions of the corpus of international maritime labour standards that are sufficiently up to date should be consolidated as a matter of priority and in so far as this proves possible to achieve.

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2. Their substance should be incorporated in a single, coherent instrument, seen as part of the general body of standards adopted by the ILO, and fitting in with other international maritime instruments.
 3. The consolidated instrument should consist of a number of Parts setting out the key principles of international maritime labour standards.
 4. The Parts should be complemented by annexes setting out detailed requirements for each of the Parts.
 5. A simplified amendment procedure should be provided for updating the annexes and ensuring prompt entry into effect.
 6. The instrument should also contain the substance of recommendations and other non-mandatory texts.
 7. The instrument should be drafted in such a way as to secure the widest possible acceptability among governments, shipowners and seafarers committed to the principles of Decent Work.
 8. The instrument should contain provisions giving responsibility to all States to ensure that decent conditions of work apply on all ships that are placed under their jurisdiction or that come within their jurisdiction.
- (b) give proper consideration in a maritime context to the essential aspects of Decent Work, the components of which are:
1. Human rights at work.
 2. Employment and incomes.
 3. Social protection and social security.
 4. Social dialogue.
- (c) give proper consideration to the contents of this summary;
- (d) perform the following tasks:
1. Preparation of preliminary draft provisions relating to:
 - (i) enforcement mechanisms; and
 - (ii) simplified procedures for rapid amendment of the annexes to the instrument.
 2. For the purposes of consolidation, the identification of “families” for the Parts and the selection of instruments on which work should begin;
 3. Development of the main elements of the instrument, including:
 - (i) identifying where existing provisions overlap or conflict and making appropriate recommendations; and
 - (ii) recommending the allocation of provisions as between mandatory and non-binding components;
 4. Arrangements for gathering information and ideas for these and other questions.

IV. Second Meeting of the High-level Tripartite Working Group and the first meeting of the subgroup

The second meeting of the High-level Tripartite Working Group will take place from 14 to 18 October 2002.

Subject to the confirmation of the Governing Body, the first meeting of the subgroup will take place from 24 to 28 June 2002.

List of participants
Liste des participants
Lista de participantes

Members representing governments
Membres représentant les gouvernements
Miembros representantes de los gobiernos

ALGERIA ALGÉRIE ARGELIA

M. Abdelkrim REZAL, Sous-directeur de la navigation maritime, ministère des Transports, Alger
Adviser/Conseiller technique/Consejero técnico

M. Abdellah HAFSI, Administrateur principal des affaires maritimes, ministère de la Défense nationale, Alger

ANGOLA

M. David N'GOVE LUSSOKE, Director do Gabinete de Relações Internacionais, Ministério da Administração Pública, Emprego e Segurança Social, Luanda
Adviser/Conseiller technique/Consejero técnico

M. Vita NSUNGO, ministère des Transports, Direction nationale de la marine marchande et des ports, Luanda

BAHAMAS

Captain Douglas BELL, Deputy Director (Maritime Affairs), Bahamas Maritime Authority, London

BELGIUM BELGIQUE BÉLGICA

M. Leo HUYLEBROECK, Conseiller, Administration des affaires maritimes et de la navigation, ministère des Communications, Bruxelles

BENIN BÉNIN

M. Hemianon KAKPO, directeur de Cabinet, ministère des Travaux publics et des Transports, Cotonou
Advisers/Conseillers techniques/Consejeros técnicos

M. Anatole NOUNAWON, directeur de la marine marchande, Direction de la marine marchande, Cotonou

M^{me} Rahanatou ANKI DOSSO, directrice adjointe, Direction de la marine marchande, Cotonou

M^{me} Gertrude GAZARD, administrateur du travail, ministère du Travail, Cotonou

BRAZIL * BRÉSIL BRASIL

Mr. Clovis Félix CURADO, Assessor do Vice-Ministro, Ministério do Trabalho e Emprego, Brasília
Advisers/Conseillers techniques/Consejeros técnicos

Mr. José Luis LINHARES, Auditor Fiscal do Trabalho, Ministerio do Trabalho e Emprego, Rio de Janeiro

Ms. Vera ALBUQUERQUE, Auditora Fiscal do Trabalho, Ministério do Trabalho e Emprego, Rio de Janeiro

CANADA CANADÁ

Mr. Donald ROUSSEL, Manager, Marine Occupational Safety and Health, Transport Canada, Marine Safety, Ottawa, Ontario

CHINA * CHINE

Mr. ZHANG Xiaojie, Deputy Director, Department of International Cooperation, Ministry of Communications, Beijing

CYPRUS CHYPRE CHIPRE

Captain Andreas CONSTANTINO, Senior Marine Surveyor, Department of Merchant Shipping, Ministry of Communications and Works, Limassol

Adviser/Conseiller technique/Consejera técnica

Ms. Chryso DEMETRIOU, Merchant Shipping Officer A, Department of Merchant Shipping, Ministry of Communications and Works, Limassol

DENMARK DANEMARK DINAMARCA

Ms. Birgit S. OLSEN, Head of Centre, Centre for Shipping Policy and Legal Services, Danish Maritime Authority, Copenhagen

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Frantz MILLER, Head of Centre, Centre for Seafarers and Fishermen, Education and Register of Shipping, Danish Maritime Authority, Copenhagen

Mr. Philippe BAUCHY, Centre for Seafarers and Fishermen, Education and Register of Shipping, Danish Maritime Authority, Copenhagen

EGYPT * EGYPTE EGIPTO

Ms. Fatma Abdel Hamid EL SAIED, General Manager of Maritime Transport, Ministry of Maritime Transport, Alexandria

Adviser/Conseiller technique/Consejera técnica

Ms. Nadia EL GAZZAR, Conseiller des affaires du travail, Mission permanente d’Egypte à Genève

ESTONIA ESTONIE

Ms. Gerli KOPPEL, Senior Officer of Maritime Department, Ministry of Transport and Communications, Tallinn

FRANCE FRANCIA

M. Jean-Marc SCHINDLER, administrateur en chef des affaires maritimes, chargé de mission au ministère des Affaires étrangères, Direction des affaires économiques et financières, Paris

Advisers/Conseillers techniques/Consejeros técnicos

M. Christian SERRADJI, directeur des affaires maritimes et des gens de mer, ministère de l’Equipement, des Transports et du Logement, Paris

M. Alain MOUSSAT, chef du Bureau de l’inspection du travail maritime, Direction des affaires maritimes et des gens de mer, ministère de l’Equipement, des Transports et du Logement, Paris

M. Xavier MARILL, Adjoint au chef du bureau de l’inspection du travail maritime, Direction des affaires maritimes et des gens de mer, ministère de l’Equipement, des Transports et du Logement, Paris

M. Didier GARNIER, Directeur adjoint du travail, Chargé de mission, délégation aux affaires européennes et internationales, ministère de l’Emploi et de la Solidarité, Paris

M^{me} France AUER, conseiller, Mission permanente de la France, Villa Les Ormeaux, Chambesy

GREECE * GRÈCE GRECIA

Mr. George BOUMPOPOULOS, Lieutenant Commander H.C.G., Head of the Maritime Labour Relations Section, Ministry of Mercantile Marine, Seamen's Labour Division, Piraeus

ITALY ITALIE ITALIA

M. Luigi TRENTO, Direzione Generale della Tutela delle Condizioni di Lavoro, Divisione Iia, Affari Internazionali, Ministero del Lavoro e delle Politiche Sociali, Roma

JAPAN * JAPON JAPÓN

Mr. Takeshi NISHIKAWA, Director, Labour Standards Division, Seafarers Department, Maritime Bureau, Ministry of Land, Infrastructure and Transport, Tokyo

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Jun ONO, Official, Administration Division, Seafarers Department, Maritime Bureau, Ministry of Land, Infrastructure and Transport, Tokyo

Mr. Hidehiro NANAŌ, First Secretary, Permanent Mission of Japan in Geneva

REPUBLIC OF KOREA RÉPUBLIQUE DE CORÉE REPÚBLICA DE COREA

Mr. LEE, Jang-Hoon, Director, Seafarers and Labour Policy Division, Ministry of Maritime Affairs and Fisheries, Seoul

Adviser/Conseiller technique/Consejero técnico

Mr. JEON Yeong-Woo, Professor, Korea Institute of Maritime and Fisheries Technology, Busan

LIBERIA LIBÉRIA

Mr. Christian G. HERBERT, Minister of Labour, Ministry of Labour, Monrovia

Adviser/Conseiller technique/Consejero técnico

Mr. Joseph P. KELLER, Adviser, LISCR Bank, Monrovia

MALTA MALTE

Mr. L.C. VASSALLO, Executive Director Merchant Shipping, Malta Maritime Authority, Valletta

Adviser/Conseiller technique/Consejero técnico

Mr. Jonathan PACE, Deputy Executive Director, Malta Maritime Authority, Valletta

NAMIBIA * NAMIBIE

Mr. Calle SCHLETTWEIN, Permanent Secretary, Ministry of Labour, Windhoek

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Cornelius BUNDJE, Marine Superintendent, Ministry of Fisheries, Walvis Bay

Mr. David MATENGU, Chief Control Officer, Government of Namibia, Windhoek

Mr. Bro-Matthew SHINGUADJA, Labour Commissioner, Government of Namibia, Windhoek

NETHERLANDS PAYS-BAS PAÍSES BAJOS

Mr. R. DE BRUIJN, Senior Policy Adviser, Public Works and Water Management, Ministry of Transport and Waterworks, Ex Den Haag

Adviser/Conseiller technique/Consejera técnica

Ms. Ingeborg VAN GASTEREN, Senior Policy Advisor, Ministry of Transport, Public Works and Water Management, Ex Den Haag

NIGERIA * NIGÉRIA

Mr. Wali KURAWA, Director, Maritime Services, Federal Ministry of Transport, Abuja

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Ahmed Tijjani RAMALAN, Executive Chairman, Joint Dock Labour Industrial Council, Lagos

Mr. O.C. ILLOH, Chief Labour Officer, Inspectorate Department, Federal Ministry of Labour and Productivity, Abuja

Mr. Abdullah AHMAD, Deputy Director of Labour, Permanent Mission of Nigeria in Geneva

Mr. Emmanuel BELLO, Consultant, Federal Ministry of Transport, Abuja

Mr. Isah Ali SUWAID, Head, Information and Public Affairs, Joint Dock Labour Industrial Council, Lagos

NORWAY * NORVÈGE NORUEGA

Mr. Georg T. SMEFJELL, Assistant Director-General, The Norwegian Maritime Directorate, Oslo

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Haakon STORHAUG, Adviser, Norwegian Maritime Directorate, Oslo

Mr. Odd H. HEGGEMSNES, Senior Executive Officer, Norwegian Maritime Directorate, Oslo

PANAMA * PANAMÁ

Sr. Juan Antonio LEDEZMA, Secretario General, Ministerio de Trabajo y Desarrollo Laboral, Panama

PHILIPPINES * FILIPINAS

Mr. Roy SEÑERES, Chairman, National Labor Relations Commission (NLRC), Quezón City

RUSSIAN FEDERATION * FÉDÉRATION DE RUSSIE FEDERACIÓN DE RUSIA

Mr. Alexander FROLOV, Deputy Head, Department for Navigation Policy and Regulation, Marine Fleet's Production Activities, Ministry of Transport, Moscow

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Iouri CHTCHERBAKOV, Counsellor, Permanent Mission of the Russian Federation in Geneva

Mr. Maxim MUSIKHIN, Third Secretary, Permanent Mission of the Russian Federation in Geneva

SWEDEN SUÈDE SUECIA

Mr. Rolf GOTARE, Head of Division, Swedish Maritime Administration, Norrköping

TURKEY TURQUIE TURQUÍA

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Okay KILIC, Maritime Expert, Undersecretariat for Maritime Affairs, Ankara

Mr. Bahtiyar GENEL, Director of Section, Undersecretariat for Maritime Affairs, Ankara

UNITED KINGDOM ROYAUME-UNI REINO UNIDO

Mr. Paul SADLER, Marine Surveyor, Maritime and Coastguard Agency, Southampton

Advisers/Conseillers techniques/Consejeros técnicos

Ms. Mary MARTYN, Head of Seafarer Health and Safety Branch, UK Maritime and Coastguard Agency, Southampton

Mr. Chris ELLIS, Policy Adviser, Department for Transport, Local Government and the Regions, London

UNITED STATES * ETATS-UNIS ESTADOS UNIDOS

Mr. Edmund T. SOMMER, Chief, Division of General and International Law, US Maritime Administration, Washington, DC

Advisers/Conseillers techniques/Consejeros técnicos

Mr. Christopher KRUSA, Maritime Training Specialist, Office of Maritime Labor Training and Safety, US Maritime Administration, Washington, DC

Mr. Joseph ANGELO, Director, Standards Directorate, US Coast Guard, Washington, DC

Mr. Robert S. HAGEN, Labor Attaché, United States Permanent Mission in Geneva

- * Governments included among the 12 selected by the Governing Body
- * Gouvernements figurant parmi les 12 sélectionnés par le Conseil d'administration
- * Gobiernos incluidos entre los 12 seleccionados por el Consejo de Administración

Members representing the Shipowners Membres représentant des armateurs Miembros representantes de los armadores

Mr. Joseph COX, President, Chamber of Shipping of America, Washington, DC

Mr. Thomas KAZAKOS, General Secretary, Cyprus Shipping Council, Limassol

Mr. George KOLTSIDOPOULOS, Adviser, Union of Greek Shipowners, Piraeus

Mr. Dierk LINDEMANN, Managing Director, Verband Deutscher Reeder, Hamburg

Mr. John LUSTED, Deputy Director-General, United Kingdom Chamber of Shipping, London

Ms. Edith MIDELFART, Norwegian Shipowners' Association, Oslo

Sr. Hernan MORALES VILLAMOR, Asesor Laboral, Asociación nacional de armadores, Valparaiso

Mr. N. E. PARDIWALA, Indian National Shipowners' Association, Mumbai 400 003

Mr. Lachlan PAYNE, Chief Executive, Australian Shipowners' Association, Port Melbourne

Mr. Carlos SALINAS, Chairman and President, Filipino Shipowners' Association, Manila

Mr. Akihiro SUZUKI, Managing Director, Japanese Shipowners' Association, Tokyo
Captain Duncan TELFER, General Manager Fleet, The China Navigation Co. Ltd., Swire Group, Hong Kong

Shipowners' advisers

Conseillers techniques armateurs

Consejeros técnicos de los armadores

Mr. Roberto AGLIETA, Executive for Labour Affairs, Confitarma, Rome
Mr. David DEARSLEY, Deputy Secretary General, International Shipping Federation, London
Mr. Richard GUY, Executive Assistant, International Shipping Federation, London
Mr. Guido HOLLAAR, Secretary, KVNR, Rotterdam
Mr. Chris HORROCKS, Secretary-General, International Shipping Federation, London
Mr. Tim MARKING, Deputy Secretary-General, ECSA, Brussels
Captain P. McKNIGHT, Manager, Japanese Shipowners' Association, London
Mr. Aliyu Jabu MOHAMMED, President, Nigerian Shipping Companies Association Secretariat, Lagos
Mr. PARK, Chan-Jae, Secretary-General, Korea Shipowners' Association, Seoul
Ms. Angela PLOTT, Vice-President, International Council of Cruise Lines, Arlington, VA
Captain Victor SALAS LEWIS, Adviser, Asociación nacional de armadores, Valparaiso
Mr. Akira SATO, Manager, Japanese Shipowners' Association, Tokyo
Mr. Michael WENGEL NIELSEN, Secretariat Director, Danish Shipowners' Association, Copenhagen

Members representing the Seafarers

Membres représentant des gens de mer

Miembros representantes de la gente de mar

Mr. Jacek CEGIELSKI, Vice-President, National Maritime Section "Solidarnosc", Gdynia
Mr. Abdulrahman CHANDE, General Secretary, Tanzania Seamen's Union (TASU), Zanzibar
Mr. Padraig CRUMLIN, National Secretary, Maritime Union of Australia (MUA), Sydney
Mr. Thulani C. DLAMINI, South African Transport and Allied Workers' Union (SATAWU), Johannesburg
Mr. John FAY, Vice-President, Seafarers' International Union of North America (SIU), Camp Springs, Maryland
Mr. Severino A. FILHO, President, Confederação Nacional dos Trabalhadores em Transportes Marítimos, Aéreos e Fluviais (CONTTMAF), Rio de Janeiro
Mr. Sakae IDEMOTO, President, All-Japan Seamen's Union (JSU), Tokyo
Captain Gregorio S. OCA, President, Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), Seamen's Center, Manila
Mr. Brian ORRELL, General Secretary, NUMAST, London
Ms. Anne-Beth SKREDE, Norsk Sjomannsforbund, Sjomennenes Hus, Oslo
Mr. Thomas TAY, General Secretary, Singapore Maritime Officers' Union (SMOU), Singapore
Mr. Agapios TSELENTIS, Director, International Department, Pan-Hellenic Seamen's Federation (PNO), Piraeus

Seafarers advisers

Conseillers techniques gens de mer

Consejeros técnicos de la gente de mar

Mr. Tomas ABRAHAMSSON, The Swedish Union for Service, Communication and Employees, Goteborg

Mr. Selim ATAERGIN, Türkiye Denizciler Sendikası (TDS), Rihtim Cad., Denizciler Ishani, 7/5 Tophane, Istanbul

Mr. H. BERLAU, Head of Maritime Section, Specialarbejderforbund i Danmark (SiD), Copenhagen

Mr. Poon CHI-KWOK, Executive Secretary, Hong Kong Seamen's Union, Hong Kong

Mr. B. DEGERUD, General Secretary, Det Norske Maskinistforbund, Majorstua

Mr. M. DICKINSON, Executive Officer, NUMAST, London

Mr. Leif DOLLERIS, President, Maskinmestrenes Forening, Copenhagen

Mr. J. EPSOM, Chairman, NUMAST, London

Mr. D. FITZPATRICK, Legal Officer, International Transport Workers' Federation (ITF), London

Mr. Göran HANSSON, The Sweden Union for Service, Communication and Employees, Goteborg

Mr. Niels-Forgen HILSTROM, Formand Union, Copenhagen

Mr. Yuji IJIMA, Director of International Affairs Department, All-Japan Seamen's Union (JSU), Tokyo

Mr. KIM, Su-Jo, Director General, Head of Planning Headquarters, Federation of Korean Seafarers' Unions, Seoul

Ms. Ayako KOEN, All Japan Seamen's Union (JSU), c/o ITF, London

Mr. Hideo KON, Assistant Director, All Japan Seamen's Union (JSU), c/o ITF, London

Mr. Jose Raul V. LAMUG, Assistant to the President, Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), Manila

Ms. Mary LIEW, Executive Secretary, Singapore Maritime Officers' Union (SMOU), Singapore

Mr. Peter McEWEN, Deputy General Secretary, NUMAST, London

Mr. Katsuji TAKI, All Japan Seamen's Union (JSU), c/o ITF, London

Mr. T. UZUN, President, Türkiye Denizciler Sendikası (TDS), Istanbul

Mr. Arie Leendert VERHOEF, Consultant, Federatie van Werknemers in de Zeevaart (FWZ), Goreinchem

Mr. Jon WHITLOW, Secretary, Seafarers Section, International Transport Workers' Federation (ITF), London

Mr. Y. C. YU, Administrator, Merchant Navy Officers' Guild, Hong Kong

Others Autres Otros

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

International Christian Maritime Association

Association maritime chrétienne internationale

Asociación Marítima Cristiana Internacional

Mr. Douglas STEVENSON, Director, SCI/CSR, New York, NY

R.P. Gérard TRONCHE, secrétaire général, Apostolatus Maris, Conseil pontifical des migrants, Rome

International Confederation of Free Trade Unions (ICFTU)

Confédération internationale des syndicats libres

Confederación Internacional de Organizaciones Sindicales Libres

Mr. Dan CUNNIAH, Director, Geneva Office, Geneva

Ms. Anna BIONDI, Assistant Director, Geneva Office, Geneva

International Organization for Standardization

Organisation internationale de normalisation

Organización Internacional de Normalización

Captain Charles PIERSALL Jr., Chairman of ISO/TC8, Ships and Marine Technology, Charlotte Hall MD

M. François ABRAM, Secrétariat central, Genève