International Labour Organization
Sectoral Activities Programme

JMC/29/2001/14

Final report

Joint Maritime Commission
(29th Session)

Geneva, 22-26 January 2001

International Labour Office Geneva

International Labour Organization
Sectoral Activities Programme

JMC/29/2001/14

Final report

Joint Maritime Commission
(29th Session)

Geneva, 22-26 January 2001

International Labour Office Geneva

ISBN 92-2-112442-8

First published 2001

Cover photographs: ILO - Jacques Maillard

Printed by the International Labour Office, Geneva, Switzerland

Contents

Introduction

1. The Joint Maritime Commission met in its 29th Session at the International Labour Office from 22 to 26 January 2001, in accordance with a decision of the Officers of the Governing Body of the International Labour Office taken at its 276th Session (November 1999).

2. Ms. Birgit Solling Olsen, representing the Chairperson of the Governing Body, and ex-officio Chairperson of the Joint Maritime Commission, presided over the session. The representatives of the Employers' and Workers' groups of the Governing Body were Mr. Toshio A. Suzuki and Mr. Jerry Zellhoeffer.

3. The respective groups elected the following as Officers of the Commission: Mr. Lachlan Payne (Shipowners' group) and Mr. Brian D. Orrell (Seafarers' group). Mr. Orrell also acted as spokesperson for the Seafarer members and Mr. Dierk Lindemann acted as spokesperson for the Shipowner members).

4. The session was attended by 20 regular members and four deputy members, accompanied by six advisers on the Shipowners' side and 20 regular members and four deputy members, accompanied by 30 advisers on the Seafarers' side. A list of those attending the session is given in Appendix 1 to the present report. The International Maritime Organization was represented at the session.

5. The Secretary-General was Mr. O. de Vries Reilingh, Officer-in-Charge of the Social Dialogue Sector and Director of the Sectoral Activities Department of the ILO, and the Deputy Secretary-General was Ms. C. Doumbia-Henry, Deputy Director of the Sectoral Activities Department and responsible for the maritime sector.

Agenda

6. The agenda of the session, as established by the Governing Body at its 274th Session (March 1999), comprised the following items:

   1. Review of relevant ILO maritime instruments.

   2. Updating of the ILO's minimum basic wage of able seamen.

   3. The impact on seafarers' living and working conditions of changes in the structure of the shipping industry.

   4. Joint IMO/ILO ad hoc expert working group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers.

Opening of the session

7. In her opening address to the 29th Session of the Joint Maritime Commission the Chairperson, Ms. Solling Olsen, welcomed the delegates to the 29th Session of the Joint Maritime Commission. She emphasized the importance of the central task of

the Commission to consider the best way forward concerning the ILO's maritime labour standards. Noting the Office report for this agenda item she said that the existing standards had served the industry well. Yet both groups recognized and expressed the need for modernization of these instruments to ensure their continued relevance to the needs of the industry and for all seafarers. The challenge she said was in the restructuring of standards into a new and innovative format which could be better understood, implemented and monitored and which would ensure that the structural, procedural and legal obstacles were overcome. This was in line with the ILO's new approach to standard setting. She concluded by requesting all Members and their advisers to join together in a collective effort to sort out their differences, identify shared interests and put in place the means to achieve the goal to ensure safe, humane and economically sustainable shipping.

8. At the opening sitting, Mr. Juan Somavia, Director-General of the International Labour Office, welcomed all participants. He recalled the important role played by the Joint Maritime Commission which had celebrated its 80th birthday. It was the oldest of the ILO's industrial committees and its only sectoral standing body. Its longevity, experience and dynamism had enabled it to respond to developments in the industry and remained the influential "consultative committee" which had steered the ILO in addressing technical maritime questions. He stressed the international character of the shipping industry, with ships being extremely mobile assets, free to trade almost anywhere and seafarers increasingly working on ships owned and registered in countries other than their own. Seafarers and shipping were almost everywhere covered by a different set of laws as compared to land-based industry. The maritime workforce was also increasingly international with about 49 per cent of seafarers coming from Asia, 33 per cent from Europe and 18 per cent from Africa and Latin America. Referring to the Office report under agenda item 3, the Director-General stated that it was important to understand what was happening in the sector, if the ILO's action was to be relevant, and its standard-setting activities were to be well targeted and effective.

9. The Director-General then explained the ILO's focus on decent work and its four strategic objectives. He said that social dialogue in the maritime industry was an excellent example and commended the social partners for some of the initiatives they had taken both inside and outside the ILO. He encouraged them to intensify their dialogue on all issues of common interest. He referred particularly to the agreement between the International Maritime Employers Committee (IMEC) and the International Transport Workers' Federation (ITF) on the conditions of work of seafarers and the International Shipping Federation's (ISF) "Guidelines on good employment practice". The Director-General mentioned the historical role of the JMC in the shaping of successive key maritime instruments, of which the 25-year old, Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), ratified by 41 member States representing more than 50 per cent of the world's merchant fleet.

10. He then turned to the work before this session of the Commission, making comments on the agenda items and their relevance to the decent work agenda of the ILO. The idea of decent work, according to the Director-General, captured the fact that people needed work, but work of acceptable quality – work in which basic rights were respected, where health and safety were protected and where they were afforded shelter from contingency and vulnerability. It should be work which

afforded them and their families a decent standard of living, including access to education for their children and health for the family. In this vision, voice, partnership and advocacy were key. He also pointed out, in this respect, that any new instruments should take into consideration the need for seafarers to exercise their calling under decent conditions, especially as their place of work was where they spent their periods of rest and leisure as well. In this respect, decent work should take on a much broader meaning than for other workers, including safety and security. For instance, recent recurring incidents of piracy had brought into focus the need for improved security in some of the world's shipping lanes.

11. Concerning the proposals for the consolidation of maritime instruments, the Director-General acknowledged that the task was ambitious, yet one which was more than ever necessary to meet the challenges facing a truly global industry. The achievements in the maritime sector could bring a new dynamic to the standard-setting activities of the ILO in general.

12. In his final remarks, the Director-General launched the International Programme for the Promotion of Decent Work in the Maritime Industry which had been designed by the Office to sensitize all the major players of the maritime industry to the need to implement decent conditions of work aboard ships. The programme would be executed in close collaboration with the International Transport Workers' Federation and the International Shipping Federation as well as other ILO constituents. He thanked the ITF for the initial endowment of US$1,300,000 and both the ISF and the ITF for their historical support for the work of the ILO in the maritime sector.

13. Mr. David Cockcroft, General Secretary of the ITF, stressed the importance and complexity of the work of this session of the Commission. He stated that the global economy could not work without fair treatment of workers, decent work, social dialogue and free democratic trade unions representing the workforce, including in shipping which was the most global of industrial sectors. The 50-year old ITF campaign against flags of convenience remained relevant, and the system was evidence of the lack of responsibility of certain governments in renting out their flags as part of a commercial exercise. Shipping was unique in that its labour market had become totally global. Badly trained and badly treated seafarers did not run safe and clean ships. The ILO was the forum for social dialogue and the forum where agreements could be reached on decent work in shipping. The maritime industry could be a model for other sectors which were becoming more global and where decent work and fair trade were interlinked.

14. Mr. Cockcroft recalled the objectives of the industry as part of the quality shipping campaign. He urged for agreement of the shipowners and seafarers represented in the Commission on which should constitute decent conditions of work and life for seafarers. Unfortunately, there were some shipowners who were only interested in making money quickly and they represented unfair competition. Equally, unfortunately, the fragmentation of certain institutions such as banks, P&I clubs and classification societies made it easy to evade responsibility. Ship registration had become a cash-raising exercise for some States which did not have maritime safety at heart. National sovereignty should have some limits and countries should accept standards for a safe industry where crews were properly treated.

15. The General Secretary of the ITF then commented on the agenda of the session. He hoped that the Commission would fairly and reasonably update the ILO minimum basic wage figure and endorse the work of the Joint IMO/ILO ad hoc expert working group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers. As for standards, he stated that having good ones was not enough, and the industry needed them to be ratified, applied and enforced. Labour standards should be on the same level as other standards on safety and pollution. All governments who wished to participate in maritime trade should ratify the comprehensive framework convention which would represent a consensus on how seafarers should be treated. Port States should take whatever steps to ensure that the instrument was translated into action. This meeting should therefore provide the ILO with the opportunity to play an important role in securing a model for other sectors. Time and resources would be required to prepare for a preparatory meeting and a Maritime Session of the International Labour Conference no later than the 2004-05 biennium.

16. Mr. Lachlan Payne, representing the ISF, recalled the fact that the ILO had already recognized the specificity of the maritime industry, some 80 years ago. This early recognition had enabled the maritime sector to produce a set of social standards which was more comprehensive and effective than any other industrial sector in the ILO. Shipping – though being a traditional industry – was far from declining, since more than 90 per cent of world trade was carried by ship. The representative of the ISF recalled that globalization, far from being a new concept, had been part of the industry since its inception. This, in itself, fully justified the existence and use of an international set of labour standards, since the mere existence of widely varied national standards hampered the smooth flow of shipping operations. Shipowners, being pragmatists, did not foresee the imposition of yet more regulations with more relish than any other employer. However, they wanted sensible and impartially applied labour standards, so that a level playing field could be created, where standards of service instead of poor labour conditions would dictate customer preference.

17. Mr. Payne then reiterated their group's firm and clear determination to preserve their ability to deal with the regulation of maritime labour standards within the ILO machinery. He also emphasized a number of points: international regulation of labour standards, rather than national or regional regulation was essential; the regulations must be up to date, relevant, widely accepted and properly enforced, irrespective of the flag of the ship, the nationality of the crew, or the ports which the ship visited. These standards should be developed within the ILO which should continue to accommodate a separate and distinct maritime machinery with adequate resources. If the ILO could not satisfy the needs of the sector another forum would have to be found. He concluded with wishes for a fruitful meeting, with consequences going far beyond the maritime sector as such, and encompassing the overall future of the ILO.

Introduction of the reports

18. Ms. Cleopatra Doumbia-Henry, Deputy-Director, Sectoral Activities Department and responsible for the maritime sector, introduced the reports prepared by the Office on each of the items of the agenda. Introducing the report on "The impact on

seafarers' living and working conditions of changes in the structure of the shipping industry", she highlighted a series of structural changes which had transformed the world's shipping industry in the course of the last 25 years. A slump in world trade and a glut of ships increased competition and the inevitable accompanying drive to cut costs. Taken together, these changes had resulted in a significant transformation of the shipping industry and the emergence of the world's first genuinely global industry. Changes in ownership, financing and the rise of ship management companies had resulted in shifts in the labour market for seafarers. It had also removed nationality restrictions resulting in consciously composed mixed nationality crews in a highly organized global network linking shipowners, ship managers, crew managers, labour-supplying agencies and training institutions. With regard to the internationalization of shipping registration there had been a phenomenal increase in the proportion of the international fleet under open and second registers. The reasons for this increase included a desire to minimize costs, factors such as the quality of available labour, management costs, fiscal considerations and questions of effective control. This reflected an increased level of deregulation within second registers, the relaxation of crewing requirements and an increased amount of national shipping being attracted to these registers. Although there had been substantial reduction in crew size, crew costs remained the only substantially variable element in the voyage-cost equation. The absence of social dialogue at the national level in many of the major flag States and the fact that seafarers now came from other countries, suggested that social dialogue ought to be strengthened at the international level to ensure progress in the application of minimum international standards. She stressed the need for attention to the gender issue: women accounting for only 7.6 per cent of the total seafaring labour force in the European Union. Even where they were present, occupational segregation was a consistent feature with women being primarily employed in the service and catering sectors. She further pointed to the need for addressing social and human rights issues associated with crew composition and size, wage levels, continuity of employment, health and safety, the quality of shipboard life and, above all and quite fundamentally, an unfailing recognition of the seafarer's need for dignity and respect. While the role of international regulation was fully recognized as regards technical issues relating to the ship and its operation, the need for global regulation of conditions of work and life were not so fully appreciated. It has been brought to the attention of the Office that certain technical details in this report have been incorrectly reflected and a corrigendum will be issued by the Office.

19. She then introduced the report on "Updating of the ILO's minimum basic wage of able seamen". Explaining that a mechanism for setting the international wage benchmark for the able seaman is provided for by ILO Recommendation No. 187, she elaborated on the report and described the methodology for updating the ILO's recommended minimum wage for an able seaman of US$435 as agreed by the JMC in 1996.

20. Presenting the document on "Review of relevant ILO maritime instruments" she explained that the importance of the respect for fundamental workers' rights was critically important to address sub-standard shipping and to ensure that a minimum social floor was applicable to the entire industry. The first part of the report contained a summary of the decisions of the ILO Governing Body on all the maritime instruments which had been reviewed in the framework of the Working Party regarding the Revision of Standards. Six of the maritime Conventions

examined were considered up to date and should be promoted. The status quo was to be maintained for three, while seven of them were considered obsolete and identified for revision. Similar decisions were taken in respect of maritime Recommendations. Eight social security maritime instruments had not yet been reviewed by the Governing Body and the JMC might wish to confirm the views expressed previously by the Shipowner and Seafarer members. The third part took a comprehensive view of the entire body of maritime labour standards. It proposed an approach which was consistent with the consensus arrived at in November 2000 by the Governing Body concerning an integrated approach to standard setting. Two of the three options proposed were intended to provide an effective response to a truly global industry, to provide for a level playing field which would hopefully address sub-standard shipping and provide the assurance that seafarers would enjoy decent working conditions on all ships irrespective of the flag they fly. She also informed the Commission of recent ratifications of ILO maritime instruments since the finalization of the reports.

21. With regard to the two reports pertaining to the two meetings of the "Joint IMO/ILO ad hoc expert working group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers", she informed the Commission of the agreement reached on a two-step approach. The first step was the development of one or more IMO/ILO resolutions to which would be annexed codes or guidelines concerning the provision of financial security in cases of death, personal injury and abandonment, and the second step which could include the possible development of a mandatory instrument on both subjects.

General discussion

22. The Seafarer members said that the Commission had an opportunity to change the face of international labour rights – but only if it engaged in meaningful and cooperative social dialogue anchored in reality. They cited problems of exploitation, discrimination and social deprivation. Though much had been made of the intellectual argument of freedom of individual choice, seafarers themselves were often recruited from socio-economic backgrounds which in practice allowed little choice. The myriad of legal regimes offered no effective protection to seafarers and no effective control of shipowners. The Office reports reflected the reality of shipping. It was important to acknowledge this reality, given the failure of past efforts to produce improvements. The positive aspects of the industry were overshadowed and diminished by the negative aspects. Masters and officers were sometimes treated as criminals following maritime accidents, particularly where the chain of ownership or responsibility was either confused or deliberately concealed, yet there was no comparable punishment for shipowners. The "human factor" was involved in 80 per cent of maritime accidents, yet the globalization of the industry, and increased use of multinational crews, had led to the effective disenfranchisement of many seafarers in terms of social and welfare protection. Seafarers were comparatively excluded in regard to important pieces of national legislation covering employment, safety and welfare. Re-flagging to countries without the will or means to enforce international regulations had made matters even worse.

23. The Seafarer members felt that, when beginning the review of ILO standards, the Commission must bear in mind the extensive evidence of systematic abuse and exploitation and its effect on morale and motivation. This influenced recruitment and caused wastage. Truly global standards, enforced through port state control, were needed. Specifically, the Seafarer members proposed that:

- seafarers needed regulatory protection from being unnecessarily detained in wider disputes over liability and damages;

- seafarers should be given greater protection against victimization and commercial pressures in the discharge of their responsibilities;

- new regulatory mechanisms were essential to protect basic social, welfare and employment rights of those seafarers employed under globalized conditions;

  there should be a revision of the principles used to assess safe manning of ships, accompanied by concerted efforts to enforce adequate crew conditions and to prevent unfair competition.

24. The Shipowner members noted that this was the first time that the JMC had considered a new cycle of ILO maritime activities without having before it resolutions adopted at the previous session of the Maritime Session of the International Labour Conference aimed at guiding future priorities. The absence of such resolutions was useful, as it had allowed the Commission to step back from specific issues and consider wider, more fundamental concerns about the system of regulation of labour standards in the maritime sector. For this reason, they felt, while the report concerning structural changes in shipping was very interesting, the greater part of the debate should focus on the first agenda item concerning the review of relevant ILO maritime instruments.

25. The Shipowner members raised concerns over the frequency of full sessions of the Commission. They noted that the last was held nearly ten years ago – too long a gap for the maritime sector, where the pace of change was accelerating and new challenges and opportunities faced shipowners and seafarers alike. They firmly believed that maritime labour affairs should be discussed in, and regulated by, the ILO. However, if the ILO's maritime machinery could not provide the means for timely debate of issues, it was inevitable that other international forums would fill the vacuum.

26. The Shipowner members said that the Governing Body should be urged to convene a Maritime Session of the Conference for the purpose of developing new standards; such work should be regarded as the Commission's priority. The Office should avoid other distractions. In the longer term, the unique role of the JMC as the principal forum for social dialogue on a wide range of issues had to be preserved.

27. The Shipowner members drew attention to the need for sufficient resources to undertake the envisaged work as effectively as possible. Somewhat ironically, they noted, when they had offered to hold meetings at no cost to the ILO, which they had often done, this had at times been resented due to the implications for other economic sectors. But in the maritime industry international meetings were vital and they reiterated that a failure to obtain sufficient resources from the ILO would

lead to the social partners taking social dialogue and standard setting in the industry elsewhere.

28. In reply to questions raised by the Seafarer members and Shipowner members, the Deputy Secretary-General noted that the adoption of a new framework Convention had raised issues linked to the possible disincentive for governments to ratify the new framework Convention and to the fate of ratifications of existing Conventions like Convention No. 147. She reiterated that the move towards a single consolidated instrument was based on the premise that the capital of present and any future ratifications would remain and would create an incentive for the ratification of the new framework Convention. A Member would remain bound by the Conventions it had ratified until it had assumed all of the equivalent obligations under the new framework Convention. In accordance with the standard final provisions in ILO Conventions, the ratification of the new framework Convention would provide for the automatic denunciation at the time of entry into force for the Member concerned of the existing Convention. If the required conditions were not met, the ILO Convention concerned would remain in force for that Member.

29. She noted that it was important to first understand that ILO Conventions were not extinguished by the adoption and entry into force of a new Convention as would happen in the case of Conventions adopted in the framework of the IMO. Even if the Member did not ratify the new framework Convention, it would remain bound by Convention No. 147 which it had ratified. Abrogation of ILO Conventions had only recently been provided for with the adoption of the constitutional amendment of 1997 (Constitution of the International Labour Organization Instrument of Amendment, 1997). That amendment had however not yet entered into force to allow for abrogation under conditions specifically provided for. The new consolidated instrument should contain substantive provisions of existing Conventions. Accordingly, to take account of the point made concerning national legislation, care would need to be taken to ensure that at least the main provisions of the existing Conventions would be identical in substance to those in the new Convention.

30. She added that, as far as Convention No. 147 was concerned, in particular, two possibilities presented themselves. The first would be the case of a member State which had ratified Convention No. 147 and had national legislation giving effect to its obligations under that Convention. The new framework Convention would incorporate the obligations contained in Convention No. 147. Such a State would not have to change its legislation to be able to ratify the new framework Convention. It might however decide not to ratify the framework Convention. This would not be because it would need to change its legislation to give effect to the provisions of the new framework Convention regarding the incorporation of the provisions of Convention No. 147, but because it might need to do so if the new framework Convention contained other obligations concerning standards not included in Convention No. 147 for which it did not have compliant laws and regulations. The second case was that of the member State which had not ratified Convention No. 147 but had ratified the new framework Convention. That Member must, in accordance with article 19(5)(d) of the ILO Constitution, take such action as may be necessary to make effective the provisions of the Convention.

31. The Shipowner members and Seafarer members reiterated the need to ensure that the proposed framework Convention approach would not discourage countries from ratifying Convention No. 147 and would not discourage countries which had only recently ratified Convention No. 147 from ratifying the possible new instrument. They further noted that Convention No. 147 was included as a relevant instrument in seven regional Memoranda of Understanding on Port State Control. It must therefore not be undermined, yet the proposed consolidated instrument should eventually replace it as the primary port state control instrument concerning labour conditions of seafarers.

32. The Deputy Secretary-General said it was important that all States understood that ratification of Convention No. 147 would in fact make it easier to ratify the new consolidated instrument. Thus, continued ratification of Convention No. 147 should be encouraged.

Informal working groups

33. The Commission set up two informal working groups respectively on wages and resolutions composed as follows:

Informal Working Group on Wages:

Shipowners

Mr. R. Aglieta (Italy)

Ms. E. Midelfart (Norway)

Mr. N.E. Pardiwala (India)

Mr. G. Koltsidopoulos (Greece)

Mr. H. Hosaka (Japan)

Mr. C. Salinas (Philippines)

Seafarers

Mr. H. Berlau (Denmark)

Mr. D. Benze (Germany)

Mr. G.S. Oca (Philippines)

Mr. T.C. Dlamini (South Africa)

Mr. T. Tay (Singapore)

Mr. P. Crumlin (Australia)

Informal Working Group on Resolutions:

Shipowners

Mr. J. Cox (United States)

Mr. A. Bowring (Hong Kong, China)

Mr. B. Fransson (Sweden)

Mr. J. Lusted (United Kingdom)

Seafarers

Mr. D. Heindel (United States)

Mr. R. Di Fiore (Italy)

Mr. S. Filho (Brazil)

Mr. C. Narelli (France)

Item 1: Review of relevant ILO maritime instruments

34. The Shipowner members felt that this item was of the most long-term significance to the industry, and had stemmed from a discussion of the status of existing maritime labour standards which had begun three years ago. Their group stated that many ILO instruments were outdated, deficient and not reflective of modern practice; many contained technical detail which discouraged ratification and were thus ineffective. However, many issues which had become relevant were not covered by existing instruments. Consequently, the ILO should take action to maintain its role as the pre-eminent body in matters relating to international maritime labour standards. In addition, governments were suffering from regulatory overload so the traditional approach of developing specific standards to address specific problems was not workable. Governments preferred international instruments which covered all major issues and were consistent with the existing regulations of major powers yet included a mechanism which caused minor powers to accept them. The Shipowner members then produced a document giving an example of a possible new framework approach to the consolidation of ILO maritime Conventions and Recommendations, which provided an outline of a possible future framework Convention (Appendix 15).

35. The Seafarer members concurred with much of what had been said by the Shipowner members and drew attention to the considerable joint preparatory work which had already taken place. Citing the three options (revision of seven existing standards, a single framework instrument, or several framework instruments) provided in the Office report, they too agreed that the boldest way forward, a single instrument, was also the best approach.

36. The Shipowner and Seafarer members resolved that the emergence of the global labour market for seafarers has effectively transformed the shipping industry into the world's first genuinely global industry, which requires a global response with a body of global standards. They agreed that the existing ILO maritime instruments should be consolidated and brought up to date by means of a new single "framework Convention" on maritime labour standards. Their agreement, designed to improve safety, social and working conditions in the maritime industry, could be known as the "Geneva Accord".

37. The Shipowner members and the Seafarer members, having agreed to the idea of such an innovative approach, wished to clarify a number of important points. Their questions concerned the possible structure of a framework instrument, how to ensure tripartism without undermining the future of the Commission and whether the Office could provide the resources needed to carry out the work.

38. Referring to the Office report and the Shipowner members' document, the Deputy Secretary-General noted that the parts and appendices would be an integral part of the framework instrument and could have distinct amendment procedures. The appendices, which would contain detailed provisions, would have a simplified amendment procedure. As concerns tripartite involvement, she pointed out the importance of a government role in the preliminary work, but that the Office was not wedded to the idea of a tripartite subcommittee of the Commission. If the Shipowner members and the Seafarer members had other ideas, these could be brought to the attention of the Governing Body in a resolution. With regard to resources, she confirmed that, while the Office was positive, it was also operating under a zero growth budget. She further recalled that the Director-General had said that it would require not simply a decision by the Office but also by the social partners to accomplish this work. This said, she indicated that, subject to Governing Body approval, the Office would propose convening a small tripartite meeting each year in 2001, 2002 and 2003, possibly followed by a tripartite maritime meeting and a Maritime Session of the International Labour Conference.

39. Commenting on the composition of such an ad hoc tripartite group, the Shipowner members and the Seafarer members further expressed a need for a regional balance within all the Government, Shipowner and Seafarer groups. From a maritime sector perspective, it was also important that the Government representatives would be drawn from not only flag States but also port States and labour-supplying States, that they would be knowledgeable and active in the enforcement of the standards to be adopted, and that they would be able to commit the necessary time to lend continuity to the process.

40. The representative of the International Maritime Organization, responding to questions on the IMO "tacit acceptance" procedures found in most of its recent instruments, recalled the historical reasons for introducing that procedure in the IMO Conventions and, by way of an example, he illustrated how the procedure works for amending the technical appendices of the 1974 International Convention for the Safety of Life at Sea (SOLAS 74). The tacit amendment procedure was generally limited to the technical provision of IMO treaties and had several advantages: it was not necessary to convene a special conference, but all States parties were invited to attend the Maritime Safety Committee for the consideration and adoption of the amendments, including non-IMO members; the date of the

entry into force of the amendment was known to all concerned as soon as it was adopted; the tacit acceptance procedure enabled amendments to enter into force so quickly that urgent matters could be satisfactorily dealt with at international level. By contrast, the explicit acceptance procedure could slow down the determination of governments to make unilateral changes, therefore departing from the international forum; and amendments adopted with the tacit acceptance procedure were recent enough to be still valid when they entered into force, while the ones adopted with the explicit acceptance procedure might be out of date, if they ever entered into force. He concluded by stressing that the tacit acceptance procedure had proved to be very effective in speeding up the amendment of the IMO Conventions. Although States parties had the right to reject amendments, in practice this had hardly ever happened. They all had the right to attend the meetings where decisions were taken and, because of the consensus approach, even those States which chose not to attend the meeting could not – and in practice did not – complain that decisions were forced upon them.

41. In response to a request by the Commission for an example of how the provisions of an existing maritime labour Convention might be reflected in a new consolidated maritime labour instrument, the Deputy Secretary-General provided a rough illustration, drawing upon the provisions of existing ILO standards concerning crew accommodation. The example, which made reference to the Shipowners' graphic illustration of the possible framework of a consolidated Convention, was selective and aimed at showing possible links between Part I, containing general principles and general provisions, Parts II-V, and the corresponding appendices. Provisions on inspection and port state control would for instance be included in Part I. Parts II-V would contain basic provisions and the appendices would contain detailed provisions. She offered that there should be no major substantive obligation in an appendix which did not have a firm basis in the corresponding part of the Convention. This said, the appendices would contain details that would implement the obligations – the basic provisions – contained in the corresponding part. In sample final provisions, which would be in Part I, she attempted to demonstrate a mechanism for automatic denunciation of crew accommodation instruments which had already been ratified by an ILO member State which now wished to ratify the consolidated Convention. She also offered possible modalities for subsequent revisions of the parts and appendices, thus, for example, allowing crew accommodation standards for seafarers to be kept current with technological and social developments.

42. The Shipowner members and the Seafarer members expressed their appreciation for this rough illustration, as it indicated that the aim was to consolidate the provisions of existing instruments and not to abandon their contents. They agreed that the term "consolidation" best described what they sought to achieve.

Draft resolution concerning the review of relevant ILO maritime instruments

43. The Shipowner and Seafarer members jointly submitted a draft resolution concerning the review of relevant ILO instruments. This resolution was adopted by the Commission with minor amendments and is set out in Appendix 2.

44. The Commission endorsed the proposals of the Office concerning the instruments on social security for seafarers contained in Part II of the Office report that were consistent with the letter sent jointly to the Office by the ISF and the ITF on 26 August 1999, following the meeting of the Joint Working Group of shipowners' and seafarers' representative organizations, held in Geneva on 20-21 May 1999. Accordingly, as the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), has revised the Sickness Insurance (Sea) Convention, 1936 (No. 56), and the Social Security (Seafarers) Convention, 1946 (No. 70), the States parties to Conventions Nos. 56 and 70 would be invited to contemplate ratifying Convention No. 165, which would *ipso jure* entail the immediate denunciation of Conventions Nos. 56 and 70. In addition, as Convention No. 70 had not entered into force, its status could be re-examined in due course, including the possibility of its withdrawal.

45. The Commission proposed the revision of the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8), the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), and the Seafarers' Pensions Convention, 1946 (No. 71). It also proposed the revision of the Unemployment Insurance (Seamen) Recommendation, 1920 (No. 10), the Seafarers' Social Security (Agreements) Recommendation, 1946 (No. 75), and the Seafarers' (Medical Care for Dependants) Recommendation, 1946 (No. 76).

46. The Commission considered that the revision of these six instruments should be considered along with the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), and the other maritime instruments in the context of the elaboration of a draft framework instrument on seafarers.

Item 2: Updating the ILO's minimum basic wage figure for able seamen

47. The Seafarer members, citing a passage from the Office report on the subject, said that the ILO's minimum basic wage figure for able seamen was fundamentally important as it served as a universally accepted minimum benchmark. In recent times, the profitability of the shipping industry and the productivity of seafarers had increased. Manning levels had continued to decrease and port stays were shorter. They insisted that this must lead to an increase in the minimum wage figure. Positive effects of such an increase would include an improved image of seagoing employment and increased recruitment of qualified entrants. Their group believed that the periods between reviews of the minimum wage figure were too long and irregular and consideration should be given to establishing a small, bipartite wage committee, to meet every other year, for the purpose of updating the wage figure in accordance with a prescribed formula.

Draft resolution concerning the ILO minimum wage for able seamen

48. The Informal Working Group on Wages, following an exchange of proposals as to a wage level acceptable for both sides, agreed on a resolution concerning the ILO minimum wage for able seamen, bringing up the minimum wage to US$450 as of 1 January 2002 and to US$465 as of 1 January 2003. The Working Group also

agreed that it was essential that the basic pay or wages of able seamen be updated every two years. The full text of the resolution as adopted by the Commission concerning the ILO minimum wage for able seamen is given in Appendix 3.

Draft resolution concerning the interpretation of the ILO minimum wage for able seamen

49. On the recommendation of the Informal Working Group on Wages, the Commission also adopted a resolution concerning the interpretation of the ILO minimum wage for able seamen. The full text of this resolution is given in Appendix 4.

Item 3: The impact on seafarers' living and working conditions of changes in the structure of the shipping industry

50. The Shipowner members found the Office report to be very comprehensive. The issues mentioned in the report were important and would need to be discussed. However, they stressed that item 1 of the agenda was more important with particular reference to the objectives of both shipowners and seafarers for action in improving the general labour and social standards in the industry. It would be difficult, in any case, to address all 19 questions highlighted in the "points for discussion". He did not expect the report to support the Shipowner or the Seafarer members' points of view. However, he expected that such a report would present the facts objectively in order to debate issues and identify potential problems. He said that Chapters I to III of the report had made a reasonably objective analysis of key issues. However, he had some reservations about the conclusions which have been drawn from these chapters as set out in Chapter IV of the report.

51. Despite the obvious problems that existed in the very worst part of the shipping industry, the employment conditions in the maritime sector globally exceeded those in other sectors and were relatively close to the international standards set by the ILO as compared to other sectors. It was this belief that encouraged the ISF to produce the "Guidelines on good employment practice", which was a unique publication in the way it drew together best practices from a comprehensive range of ILO instruments and promoted these to an entire industry. Despite the introduction of these Guidelines, they said that they were not complacent and recognized that the problems which existed had to be dealt with.

52. The Shipowner members noted that, while the report provided by the Office was detailed and comprehensive, its tone was rather pessimistic, causing some concern over its impact on the industry's image. Many of the recent trends reported (e.g. containerization, shifts in ownership and availability of finance) had been well advanced in 1991, when the JMC had called for this report. Whilst they had continued, the era of radical change was over. They pointed to a number of positive developments in recent years which had not been mentioned. These included the revision of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (the "STCW Convention"), the growth of the cruise line sector which had vastly improved employment

opportunities for seafarers, the adoption of ILO Convention No. 180 and the Protocol to Convention No. 147 and other instruments adopted by the ILO Maritime Conference in 1996, which addressed real issues faced by seafarers. Whilst the Shipowner members accepted that changes had been difficult for many seafarers, many others, particularly from developing countries, had been able to obtain better, more well-paid, jobs than were available at home and ashore. This was reflected in the quality of many of today's seafarers. Seafaring had become more demanding, but this was true of most other occupations. Indeed, shipping could hardly have served the vastly expanded world economy if it had not become much more productive. Advances in communications, including the advent of the global maritime distress and safety system (GMDSS), had certainly resulted in the redeployment of radio officers; but they had also had the potential for less expensive communications between seafarers and their families, distance-learning opportunities and improved entertainment on board.

53. The report, the Shipowner members observed, had discussed at length the increased use of ship management companies, the internationalization of the industry and the growth of second and other international registers. They felt, however, that it was not how a ship was managed or controlled – not the label on the operation – that was important but whether or not it met international standards. This said, they agreed that a register that failed to enforce safety and environmental standards was also likely to fail to enforce social standards. The Shipowner members agreed entirely that sub-standard operators using under-qualified crews must be eliminated. They pointed out that the enforcement of the revised STCW 95 Convention should substantially improve the competency of crews, and suggested that the JMC might contribute to this positive change by calling on all shipowners to train seafarers. As concerned wages, the Shipowner members said it was important to keep an international perspective and to recognize that the majority of seafarers enjoyed excellent wages by the standards of the countries in which they lived. This was the important issue – the ILO minimum wage was rightly only a Recommendation and they did not accept that ITF attempts to impose a uniform standard were justified.

54. Many of the other issues raised in the report were important, but it was likely that they would be taken up in the consolidated instrument, although they could not prejudge the contents of such a new standard. Overall, they found the report interesting and useful and an excellent basis for the debate on the consolidated instrument.

55. In his response to the Shipowner members' intervention, the spokesperson for the Seafarer members stated that they considered the Office report as objective. Indeed, they did not agree with the Shipowner members when they declared that a majority of seafarers enjoyed good conditions of work. The Seafarer members, on the contrary, agreed with the conclusions of the report, and wanted to address some of the items for debate. The issue of non-compliance with social standards was real and some flag States did not monitor social standards. The Seafarer members believed that the Governing Body of the ILO should convene a further meeting of the JMC so that the results of the questionnaire regarding international registers could be discussed with a view to identifying appropriate measures to ensure the application of social conditions and social dialogue for seafarers. They further believed that the Director-General should re-establish a distinct and adequately

serviced and staffed maritime unit within the ILO. The Seafarer spokesperson was highly critical of the recently published ISF employment guidelines and commented that they would have benefited from proper social dialogue with the ITF. The ITF had on a number of occasions offered to assist in developing good guidelines but were denied this by the ISF.

56. The Seafarer spokesperson gave a number of examples to illustrate that, contrary to the views of the Shipowner members, seafarers were better off than their counterparts where, in employment terms, there were widespread negative employment practices in the industry, including widespread under-crewing, fatigue, discrimination, exploitation and social deprivation.

57. The Seafarer members said that some of the issues raised in the report would underpin the work of the ILO in future years. They felt that the large-scale exodus of ships to flags of convenience and second registers had a dramatic impact on the conditions of work and life of seafarers. The emergence of an unregulated global labour market for seafarers had destabilized the tripartite and democratic regulation of the market in traditional maritime countries without development of similar systems in the newer maritime nations. The flag of convenience system represented an unfair form of competition and, in the absence of regulation, gave too much discretion to the shipowner. The system provided a financial incentive for sub-standard operations including conditions of work.

58. A global shipping industry needed global standards enforced equally on all. The ILO should redress the damage which had been done. It should, through social dialogue at the international level, lead the way to improved global governance in the industry. A new approach was required, setting a universal regulation of working and living conditions of seafarers, accompanied by enforcement mechanisms so that seafarers would be treated decently without discrimination.

59. The Seafarer members expressed concern about the present status of some seafarers who have no access to legal processes normally enjoyed by land-based workers. The absence of both flag state supervision and a collective bargaining process left seafarers without protection. One-ship companies allowed shipowners to avoid liability and responsibility. Any new ILO standards would need to be enforced globally if the situation was to change.

60. The Seafarer members recognized that many shipowners were responsible and provided fairly good conditions for the seafarers they employed. However, too much was left to the good will of the individual owner with grave consequences for many seafarers. They quoted from ILO reports from the 1950s to show that the absence of national maritime labour legislation was not new and was largely attributable to the emergence of flags of convenience.

61. The Seafarer members then made a number of proposals for action by the Commission. They stressed that all those who participate in the global shipping industry should abide by some basic rules including decent international standards on conditions of work. Such standards should be derived from best practice rather than the lowest common denominator. Social dialogue should be enhanced at the international level, through the JMC, the role of which should be expanded. The social partners were best placed to work together to respond to the needs of the

industry. Consequently, standards should be updated more rapidly. Port state control should pay more attention to social standards with detentions and fines applied where necessary. The ILO and IMO should cooperate more closely to provide a more holistic approach to the human element in shipping. The Seafarer members would submit a range of resolutions to cover all these issues.

62. A Seafarer member expressed concern with the contents of the Shipowner members' "Guidelines on good employment practice". He pointed, in particular, to what he felt were disturbing provisions under the section entitled "Union membership and affiliation" which were not in keeping with ILO standards concerning freedom of association and the protection of the right to organize and to collective bargaining. Furthermore, the document contained nothing on wages, training or gender issues. The title was nice but the substance was unacceptable, and the document was produced unilaterally and was not the product of negotiation.

63. Another Seafarer member commented on the position of the Shipowner members with regard to flags of convenience (FOCs). He said that the ILO had been reporting on FOCs regularly in the last 50 years. The Shipowner members had maintained throughout that the kind of flag or the register was not important but that it was the standards and actual conditions that mattered. The truth was that conditions on board and flag were closely linked as many ships were under a flag of convenience in order to cut costs and avoid standards especially those relating to crewing.

64. The Seafarer members recognized the report as reflecting the current situation accurately. It was not meant to assign blame but to provide a basis for discussion and for the Commission to move forward. It was suggested that the report could be translated in other languages to get maximum dissemination. They expressed their concerns regarding second registers, which have led to an eclipse of many national regulations and brought the level down to unacceptable international minima. Losses of jobs had not been compensated by new opportunities. Foreign and non-domiciled seafarers who had replaced nationals were often not protected by legislation. They could not easily claim protection under jurisdictions which were far from their domicile. In a way they were disenfranchised by the new structures of second registers. In some cases, unions had managed to come to some agreement with shipowners but these were fragile and they were not protected by legislation. It was time for the ILO to establish an international regime acceptable to everyone in the industry which would provide for appropriate levels of protection for seafarers and their unions.

65. Taking the example of Africa, the Seafarer members reminded the Commission that seafarers' employment in this part of the world had decreased from 20 per cent of the world's seafarers to less than 4 per cent over a few years. Moreover, most of those seafarers were living under difficult conditions on board FOC vessels. Many FOC shipowners had not bothered training their employees and poached from competitors. This all-important task was instead performed by traditional maritime institutions, at the taxpayer's expense or by a few shipowners. This situation undermined existing training institutions in developed countries which had considerable unused capacity.

66. The Seafarer members drew the attention of the Commission to the importance of gender issues. A lack of education of most actors in the industry hampered the employment of women seafarers. However, it was necessary to educate all those involved in the industry on the need to eradicate discriminatory conditions like the absence of maternity benefits. There was a clear need for any new ILO instrument to cover this issue adequately. The Seafarer members would submit a resolution on this question. They noted the increased number of women graduating from maritime training institutions who sought a career at sea, and called on shipowners to be more supportive of women seafarers. They suggested that gender issues might be specifically addressed in future maritime labour standards.

67. The Seafarer members considered that the concept of the genuine link was important for maritime employment. They recalled that this had been brought to the attention of the Commission since 1958, where, amongst others, a Standing Committee on FOCs had been set up. All this could be revisited in the light of today's problems. He expressed the opinion that some regulation should be adopted to force all flag States to shoulder their responsibilities fully.

68. The Seafarer members drew attention to work by other United Nations agencies which were relevant to the conditions of seafarers. For example, the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, provided that a seafarer was a migrant worker employed on board a vessel registered in a State of which he or she was not a national. They noted that, since the last full JMC in 1991, the United Nations Convention on the Law of the Sea (UNCLOS) which, inter alia, provided that "Every State shall effectively exercise jurisdiction and control in administrative, technical and social matters over ships flying their flags" had entered into force. UNCLOS, in article 91, also called for a "genuine link" between a vessel and flag State. Recently, a United Nations General Assembly resolution had called upon two other United Nations agencies, the FAO and IMO, to define "genuine link" in the fisheries context, and a similar effort was needed in the shipping context. This was essential as certain major registers provided no effective legal systems in the event of disputes and that, disturbingly, some had gone as far as to allow registration via the Internet, without sufficient vetting of ships. Port state control forced attention by these registers on IMO safety and environmental standards but had not dealt sufficiently with social matters.

69. While they felt voluntary initiatives to improve conditions at sea might do much good, the Seafarer members said that these must be meaningful, monitored and subject to verification. Turning to the issue of sustainable development, the Seafarer members noted that the shipping industry should be sustainable environmentally, economically and socially, a concept endorsed by the International Chamber of Commerce within the United Nations Commission on Sustainable Development process.

70. A Seafarer member from the United Kingdom noted that UNCLOS and Convention No. 147 called for States to exercise effective jurisdiction over vessels. Governments also had a responsibility to ensure seafarers were covered by collective agreements, and cited relevant passages from *Labour standards on merchant ships*, the General Survey by the Committee of Experts on the Application of Conventions and Recommendations. The ISF guidelines were not

consistent with ILO Conventions Nos. 87 and 98 and were not a product of social dialogue.

71. However, the Office report had not, in some ways, gone far enough as in some cases the situation was worse. They referred to the drastic fall in the wages of seafarers, while overall crewing costs had fallen. Two seafarers were doing the job of three and this was clearly affecting safety standards. The avoidance of standards gave up to 30 per cent savings on operational costs. In Latin America, more than 40 per cent of visiting vessels did not respect standards and those that respected some standards were those coming from regions where port state control was effective. Otherwise, 80 per cent of vessels trading within Latin America were not abiding by international standards. National legislation in many countries favoured employers.

72. Referring to the question of abandonment, the Seafarer members stated that in some cases seafarers were repatriated at the cost of the union. As for wages, the Seafarer members felt that wages should be based on global circumstances for a global industry. Ships were owned in one country, registered in another, and possibly many other countries were involved in the administration of the same ship. The wage which applied was an international wage, in US dollars, since in addition freight was payable in that currency.

73. As for the duration of the tours of duty, a Seafarer member felt that the duration should be reduced to a maximum of six months. They referred to technological progress, the increase in size and carrying capacity of vessels, crew size reductions, and the inability to get proper shore leave which caused increased stress and led to lower safety levels and risks of accidents for persons and the environment.

74. The Seafarer members also argued for better stability in employment and job security. This should not be linked with the willingness to serve long tours of duty. Moreover, it was necessary for the industry to retain skilled officers and ratings. It was also necessary to improve conditions of life on board concerning accommodation, noise and vibration levels as well as general welfare. The Seafarer members stressed that the revision process was an opportunity to modernize the ILO instruments on shipboard accommodation following the entry into force of the Convention on the tonnage measurement of ships. In conclusion, it was important to find answers to the problems raised in the report and to have a constructive action plan for the future of standards.

75. The Seafarer members also stressed the importance of social standards and recalled that this has been repeatedly demonstrated in maritime incidents in which lives had been lost or the marine environment damaged. They therefore considered that social standards are just as important as technical standards in the promotion of safer seas and cleaner oceans.

76. Replying to the Seafarer members, the spokesperson for the Shipowner members expressed his appreciation for the various comments made on this agenda item. He felt that they should be taken into account when considering the way forward on the ILO's maritime labour standards. The Shipowner members also recognized gaps and they wished to address these gaps. The Shipowner members stated that they had not wished to be negative on the report nor challenge its accuracy.

However, they had wished the report had covered more adequately the advantages of change and the positive developments of the shipping industry during the past decade. They believed that many of these had actually benefited some seafarers. However, he said that there were clear policy differences with the Seafarer members on the issue of wages which there was little point in pursuing further.

77. Commenting on the ISF Guidelines, the spokesperson for the Shipowner members said that no other sector had produced such a document on ILO issues. He said that the Guidelines were produced to be brief and selective. Indeed, it was meant to explain to shipowners the essentials of instruments with which they were not entirely conversant. As concerns social dialogue in the development of the Guidelines, he recalled that the ITF had started its work on its Seafarers' Charter earlier without accepting cooperation with the ISF. The Shipowner members had more detailed views, but had restrained to move forward. This said, the ability to express comments like those of the Seafarer members was the strength of the JMC.

78. The Seafarer members, after listening to the views of the Shipowner members, concluded that this debate had been necessary and would discuss their position further. However, they understood that there were clearly differing views on wages but there was now an equally clear sense of understanding of the Shipowner members' position on the crucial issues which were relevant to the contents of any new ILO maritime labour instrument. They felt that some of the greater reservations of their group for a single instrument had been dispelled. They suggested that the two groups should consider submitting comments to the Office on their views on each of the points of discussion listed in the document for inclusion in the report and distribution to members of the Commission. The Seafarers' comments are to be found in Appendix 16.

Draft resolution concerning the internationalization of shipping, including the use of flags of convenience

79. This draft resolution was submitted by the Seafarer members and was referred by the Commission to the Informal Working Group on Resolutions. When the draft resolution, as amended by the Informal Working Group, was considered by the Commission, the Seafarer members expressed disappointment with the Shipowner members' attitude. The Shipowners, they said, had changed the original title, i.e. "Sub-standard vessels particularly those under flags of convenience", as submitted by the Seafarer members, although this was exactly the title of the agenda item discussed at the 1975 Preparatory Technical Maritime Conference and the 1976 Maritime Session of the International Labour Conference which resulted in the adoption of Convention No. 147. They had also deleted the paragraphs from the original draft resolution referring to relevant texts adopted by the Maritime Sessions of the International Labour Conference held in 1970 and 1976, and by the Commission in 1991. The Seafarer members added that the Shipowner members endeavoured to sanitize the industry by removing all references to sub-standard ships.

80. The Shipowner spokesperson expressed surprise at the Seafarer members' intervention. While acknowledging the title of the agenda item discussed in 1975 and 1976, the Shipowner members reminded the Seafarer members that, after thorough and in-depth debate during both Conferences, the title of the resulting

Convention that was adopted was the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

81. The resolution, as amended, was adopted. The text is set out in Appendix 5.

Draft resolution concerning the structural changes within the industry which have caused unemployment amongst seafarers

82. The draft resolution was submitted by the Seafarer members and was referred by the Commission to the Informal Working Group on Resolutions. The draft resolution, as amended by the Working Group, was considered by the Commission. It decided that the responses to the questionnaire referred to in the operative paragraphs of the resolution should be submitted in a report to its next session, and adopted the resolution, as amended. The text is set out in Appendix 6.

Draft resolution concerning sub-standard shipping
(Appendix 7)

Draft resolution concerning the ILO maritime identity
(Appendix 8)

Draft resolution concerning addressing the human element through international cooperation between United Nations specialized agencies
(Appendix 9)

Draft resolution concerning the enhancement of the role of the Joint Maritime Commission (JMC)
(Appendix 10)

Draft resolution concerning tonnage measurement and the accommodation of crews
(Appendix 11)

Draft resolution concerning women seafarers
(Appendix 12)

Draft resolution concerning seafarers' welfare
(Appendix 13)

83. The abovementioned draft resolutions were submitted by the Seafarer members and were referred by the Commission to the Informal Working Group on Resolutions. The draft resolutions, as amended by the Working Group, were considered by the Commission. The resolutions, as amended, were adopted, and the texts are set out in Appendices 7-13.

Draft resolution concerning action taken against seafarers in the event of maritime accidents

84. This resolution was submitted jointly by the Shipowner members and the Seafarer members and was referred to the Informal Working Group on Resolutions. It was adopted by the Commission and is set out in Appendix 14.

Item 4: Joint IMO/ILO ad hoc expert working group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers

85. The Chairperson invited the representative from the International Maritime Organization (IMO) to make a statement on the work of the Joint IMO/ILO ad hoc expert working group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers.

86. The IMO representative referred to the report of the first and second sessions of the Joint IMO/ILO ad hoc expert working group as contained in the report JMC/29/2001/4 and JMC/29/2001/4(bis). Sufficient progress had been made in the two meetings and the group developed two draft resolutions and associated guidelines on provision for financial security in cases of abandoned seafarers and on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers. The draft resolutions and guidelines intended to address in the short term the fact that none of the existing international instruments adequately addressed and comprehensively dealt with the problems relating to personal injury death and abandonment of seafarers. They needed finalization before submission to the IMO and the ILO governing bodies for approval and adoption. In the IMO this would be submitted to the Legal Committee in October 2001, and for adoption to the 22nd session of the IMO Assembly, in November 2001. The working group would hold its next session from 30 April to 4 May 2001 at the IMO headquarters in London.

87. The Seafarer members stressed that this was a serious issue. They referred to the conclusions of the Joint IMO/ILO ad hoc expert working group and the significant progress made by the group. This demonstrated how such cooperation between the two United Nations agencies, IMO and ILO, could be successful. They argued that, based on this successful cooperation, it was possible to propose a number of resolutions.

88. The Shipowner members endorsed the findings of the Joint IMO/ILO ad hoc expert working group. In the absence of specific international standards, the IMO and the ILO had made a good start to deal with these issues. Many of these had not been previously covered by IMO or other United Nations Conventions. They looked forward to the next session of the ad hoc working group, which should make further proposals on these questions.

89. The Seafarer members stressed that it was important for the Joint Maritime Commission in its work to recognize and consider the broader area of work of the ILO on important human issues, including those reflected in the ILO Declaration

on Fundamental Principles and Rights at Work and the decent work agenda. Furthermore, it was important for the ILO to draw upon the work of other United Nations agencies which were of relevance to the maritime sector.

Discussion and adoption of the report

90. The Commission considered the draft report on its proceedings at its ninth sitting, and unanimously approved the report in its present form including the resolutions set out in Appendices 2-14.

Geneva, 26 January 2001.

(Signed) Ms. B. Solling Olsen,
Chairperson.

Appendix 1

Composition of the 29th Session of the Joint Maritime Commission

Chairperson

Ms. B. SOLLING OLSEN

Governing Body delegation

Mr. T.A. SUZUKI (Employers' group)
Mr. J. ZELLHOEFER (Workers' group)

Shipowner members

Regular members

Mr. R. AGLIETA (Italy)
Mr. M. ALIYU JABU (Nigeria)
Mr. J.J. COX (United States)
Mr. A.M.H. EL KADY (Egypt)
Mr. M. AL FAUZAN (Kuwait)
Mr. G. HOLLAAR (Netherlands)
Mr. H. HOSAKA (Japan) (substitute for Mr. K. WADA (Japan))
Mr. G. KOLTSIDOPOULOS (Greece)
Mr. D. LINDEMANN (Germany)
Mr. J. LUSTED (United Kingdom)
Ms. E. MIDELFART (Norway) (substitute for Mr. J. VATNE (Norway))
Mr. H. MORALES VILLAMOR (Chile)
Mr. J. PERZYNSKI (Poland) (substitute for Mr. R. NIEMIEC (Poland))
Mr. N.E. PARDIWALA (India)
Mr. C.J. PARK (Republic of Korea) (substitute for Mr. C.H. PARK (Republic of Korea))
Mr. L. PAYNE (Australia)
Mr. C. SALINAS (Philippines)
Mr. G. SULPICE (France)
Ms. P.E. VOSS (Denmark)
Mr. G. CABRAL (Argentina) (replacing Mr. V. ZAMARIANOV (Russian Federation))

Deputy members

Mr. A. BOWRING (Hong Kong) (replacing Mr. G. CABRAL (Argentina))
Mr. R. DEELY (United States)
Mr. B. FRANSSON (Sweden)
Mr. T. KAZAKOS (Cyprus) (replacing Mr. SCHIVON (Mexico))

Advisers

Mr. A.S. AHMAD
Mr. K. AKATSUKA
Mr. D. DEARSLEY (Secretary of the Shipowners' group)
Mr. R. GUY
Mr. T. MARKING
Mr. M. MIKAMI

Representative of Shipowners present at the Commission

Mr. J.C.S. HORROCKS (United Kingdom)

Seafarer members

Regular members

Mr. L. BARNES (India)
Mr. D. BENZE (Germany)
Mr. B. BERLAN (Croatia)
Mr. H. BERLAU (Denmark)
Mr. R. DI FIORE (Italy)
Mr. T.C. DLAMINI (South Africa)
Mr. N. EREMENKO (Russian Federation)
Mr. S.A. FILHO (Brazil)
Mr. T. GJESTRUM (Norway)
Mr. J. HALAS (Greece) (substitute: Mr. A. TSELENTIS (Greece) as of 24.1)
Mr. G. HANSSON (Sweden) (substitute for Mr. T. ABRAHAMSSON (Sweden)
Mr. D. HEINDEL (United States)
Mr. S. IDEMOTO (Japan)
Mr. P. MUÑOZ PECERO (Spain)
Mr. C. NARELLI (France)
Mr. G.S. OCA (Philippines)
Mr. B.D. ORRELL (United Kingdom)
Mr. F. ROSS (Australia)
Mr. J.E. VRIESEN (Netherlands)
Mr. ZHANG SHIHUI (China)

Deputy members

Mr. M.R. CASTRO (Argentina)
Mr. R. DIELIS (Belgium)
Mr. A. EL SOBEIY (Egypt)
Mr. R. GRALEWICZ (Canada)

Advisers

Mr. S. ATAERGIN
Ms. B.L. BARNES
Mr. A. CHERNYAKOVSKIY
Mr. G. CHRISTENSEN
Mr. P. CRUMLIN
Mr. M. DESJARDINS
Mr. M. DICKINSON
Mr. J. EPSOM
Mr. J. FAY
Mr. N.J. HILSTROM
Mr. M.H. KHALIFA
Mr. H. KITAYAMA
Ms. T. KURODA
Mr. J.R.V. LAMUG
Ms. M. LIEW
Mr. Y. IIJIMA
Mr. R. MARUYAMA

Mr. P. McEWEN
Ms. A.B. SKREDE
Ms. T. SOSA PASCUAL
Mr. W. STEINWORTH
Mr. N. SUKHANOV
Mr. T. TAY
Mr. A. TSELENTIS
Mr. T. UZUN
Mr. A.L. VERHOEF
Mr. I. VICTOR
Ms. WANG XUEMEI
Mr. G. WAXMAN
Mr. J. WHITLOW (Secretary of the Seafarers' group)
Mr. S. ZUTTING

Representative of Seafarers present at the Commission

Mr. D. COCKROFT (United Kingdom)

Secretariat

Mr. LIBRANDO (International Maritime Organization)

Appendix 2

Resolution concerning the review of relevant ILO maritime instruments

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Having considered the report prepared by the International Labour Office on the review of relevant ILO maritime instruments (document JMC/29/2001/1),

Noting the description in report JMC/29/2001/1 of the shipping industry as "the world's first genuinely global industry", which "requires an international regulatory response of an appropriate kind – global standards applicable to the entire industry",

Recognizing the unique needs of the shipping industry, as regards international labour standards, and its historical status in the ILO,

Noting also that the Governing Body of the ILO has approved the conclusions of the Working Party on Policy regarding the Revision of Standards which, inter alia, identified seven Conventions for revision,

Having regard to the changes which have occurred in the shipping industry, which are identified in report JMC/29/2001/3,

Considering that the development of an instrument which brings together into a consolidated text as much of the existing body of ILO instruments as it proves possible to achieve should be a priority for the maritime sector in order to improve the relevance of these standards to the needs of all the stakeholders of the maritime sector,

Considering also that the consolidated instrument should comprise a number of parts concerning the key principles of such labour standards as may be determined, together with annexes which incorporate detailed requirements for each of the parts. The instrument should also provide for an amendment procedure which would ensure that the annexes might be revised through an accelerated amendment procedure,

Recommends:

- that the Governing Body should establish a high-level tripartite working group on maritime labour standards to assist with the work of developing the proposed new instrument and that membership should comprise ten representatives of each group;

- that the first meeting of the high-level tripartite working group should take place in 2001 and that further meetings should be held in 2002 and 2003 with the expenses of the members from each group paid by the Office;

- that the Shipowners' and Seafarers' groups of the Joint Maritime Commission should be requested to nominate respectively the Shipowner and Seafarer members and advisers of the working group, and that the Governing Body should nominate the Government members in such a manner as to ensure that the membership properly reflects geographic regions and is representative of major flag States, port States and labour supply countries;

- that the meetings of the working group can be attended by observers in line with the Standing Orders relating to Sectoral Meetings;

Recommends also:

- that a tripartite subgroup should be established to prepare and consider the working papers in advance of meetings of the high-level tripartite working group;
- that the meetings of the subgroup should be private;
- that membership of the subgroup should comprise 12 members of the working group, four members each from the Government, Shipowners' and Seafarers' groups respectively, selected at the first meeting of the working group, together with the secretaries of the Shipowners' and the Seafarers' groups of the JMC and the Office;
- that participation in the subgroup should be arranged at no cost to the Office;

Urges the Governing Body: (a) to convene a preparatory meeting in 2004 for first discussion of the proposed new instrument; and (b) to convene a Maritime Session of the Conference in 2005 to adopt the instrument with the following agenda:

1. Consolidation of ILO maritime instruments;

2. General discussion on the developments in the industry;

and having a Resolutions Committee in accordance with article 17 of the Standing Orders of the International Labour Conference.

Appendix 3

Resolution concerning the ILO minimum wage for able seamen

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Having considered the report prepared by the International Labour Office on the Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109): Updating of the minimum basic wage of able seamen,

Having noted that the Joint Maritime Commission, at its 28th Session in 1996, considered the wage figure of US$435 as of January 1998,

Having noted the adoption, at the 84th (Maritime) Session of the International Labour Conference, of the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187), referred to below as "the Recommendation", which revised Recommendation No. 109,

The Joint Maritime Commission of the International Labour Organization:

1. Considers the list of 48 countries and areas contained in the Office report as currently representative of major maritime nations or major suppliers of seafarers.

2. Considers also that the formula used to revise the amount of the basic pay or wages for a calendar month of service for an able seaman should otherwise be maintained as it pertains to currency exchange rates, consumer prices and weighting, and that productivity should also be addressed when the Joint Maritime Commission finds this fact relevant.

3. Decides, regarding paragraph 10 of the Recommendation, to update the current ILO minimum wage for an AB of US$435 to US$450 as of 1 January 2002 and to US$465 as of 1 January 2003.

4. Agrees that the amount of US$465 should be used as the base for recalculation purposes and that the formula should measure changes in consumer prices, currency exchange rates and weighting to cover the period of adjustment time which will start from 1 January 2001 up to the most current month for which data are available, when the amount of the basic pay or wages for able seamen is considered for revision by Joint Maritime Commission sessions in future.

5. Recognizes that the figure of US$402 as determined by the formula in the ILO Office report of January 2001 should be considered when determining any future increase.

6. Agrees that when updated data covering the period from 1 January 2001 through the next full period of adjustment are not available from the Office, a preliminary adjustment of the amount set by this resolution should initially be performed using the most current data available, and then the monthly average amount of change in the result should be extended to cover the full period of adjustment.

7. Suggests that the next Office report continues to provide preliminary data on all factors measured in the calculation, but the Office should not propose a revised amount until all updated data are made available to the Joint Maritime Commission.

8. Notes that the periodicity of the revision of the ILO minimum wage for able seamen has in recent years varied between one and five years,

9. Notes also that the Office document (JMC/29/2001/2) demonstrates the impact currency fluctuations have on the purchasing power of the recommended minimum basic wage of able seamen and that changes in the financial system have resulted in greater degrees of currency volatility,

10. Notes further the four strategic objectives of the Decent Work Programme and a decent livelihood is fundamental to decent work,

11. Recalls the previous resolutions of the Joint Maritime Commission proposing the establishment of a small bipartite wage committee composed of six Shipowner representatives and six Seafarer representatives be convened every alternate year, between sessions of the Joint Maritime Commission, for the purpose of updating the amount of the basic pay or wages of able seamen in accordance with the prescribed formula,

12. Considers that it is essential that the basic pay or wages of able seamen be updated every two years,

13. Invites the Governing Body to agree to the establishment of a subcommittee of the Joint Maritime Commission which shall meet every two years, even if there is no budgetary allocation, for the purpose of updating the basic pay or wages of able seamen between sessions of the Joint Maritime Commission and which should be composed of six Shipowner and six Seafarer representatives,

14. Invites also the Governing Body to authorize the subcommittee of the Joint Maritime Commission to set the basic pay or wages of able seamen and, where appropriate, to report back directly to the Governing Body,

15. Further invites the Governing Body to convene a meeting of the subcommittee in September 2003 with a view to implementing the revised figure as of 1 January 2004.

Appendix 4

Resolution concerning the interpretation of the ILO minimum wage of able seamen

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Recalls that the International Labour Organization has adopted a recommended minimum wage for able seamen and a mechanism for periodically updating it,

Recalls also that ILO maritime instruments provide guidance on how the recommended basic minimum wage of an able seaman can be applied in order to calculate a total recommended monthly package through, inter alia, the establishment of a normal working week, minimum leave entitlements and a formula for the calculation of overtime,

Noting that the recommended minimum wage for an able seaman has proved to be beneficial for the shipping industry,

Considers it would be advantageous if the Governing Body invited the Director-General to convene a meeting of a joint working group of Shipowner and Seafarer members of the JMC together with ILO Office experts to provide guidance to Shipowner and Seafarer representatives and port and flag state authorities on how this wage should be interpreted so as to provide a recommended total minimum salary.

Appendix 5

Resolution concerning the internationalization of shipping, including the use of flags of convenience

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Recalling the discussions which took place at the 26th Session of the JMC (Geneva, October 1991) in relation to changes in the shipboard environment and the characteristics of seafarers' employment,

Noting that the subject of flags of convenience has been on the agenda of Conferences of the International Labour Organization since 1933 and, although there have been several inquiries, reports, Conventions, Recommendations and resolutions which have a bearing on this issue, it remains one of deep concern to seafarers,

Appreciating the actions of the International Labour Office in producing the discussion document on "The impact on seafarers' living and working conditions of changes in the structure of the shipping industry" (JMC/29/2001/3) and in issuing the comprehensive questionnaire on international registers: Living and working conditions of seafarers,

Noting also the four strategic objectives of the decent work programme,

Holds the firm view that the increased internationalization of shipping makes the work of the ILO in establishing minimum social standards for seafarers of greater relevance than ever,

Requests the Governing Body of the International Labour Organization to convene a further meeting of the Joint Maritime Commission, and/or to hold a special meeting of experts to consider the results of the questionnaire on international registers, with a view to identifying whether additional action to ensure the application of minimum social standards to seafarers is now needed.

Appendix 6

Resolution concerning the structural changes within the industry which have caused unemployment amongst seafarers

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Having considered the document prepared by the ILO on "The impact on seafarers' living and working conditions of changes in the structure of the shipping industry" (JMC/29/2001/3),

Noting that the report states that there have been considerable structural changes within the industry which have resulted in seafarers becoming unemployed,

Noting also that employment promotion is a central objective of the Decent Work programme initiated by the Director-General of the ILO, and that the primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive working conditions of freedom, equity, security and human dignity,

Considering that the emergence of a global labour market within the shipping industry has had profound implications on the employment opportunities for some seafarers,

Recognizing that the effects of such unemployment are strongly felt by some seafarers,

Invites the Governing Body to request the Director-General to bring to the attention of member States the provisions of the ILO Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139),

Invites further the Governing Body to request the Director-General to produce and circulate a questionnaire which, in addition to identifying the extent of the problem, should also include a section on identifying any remedial measures that may have been taken.

Appendix 7

Resolution concerning sub-standard shipping

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Noting with concern that a sub-standard shipping or operation has been defined in terms of being substantially below the requirements established by the International Maritime Organization, without also giving due regard to compliance with other applicable international requirements,

Noting also that the United Nations Convention on the Law of the Sea requires flag States to exercise effective jurisdiction in relation to social and labour conditions over vessels which fly their flags,

Noting further the discussion document on "the impact on seafarers' living and working conditions of changes in the structure of the shipping industry" (JMC/29/2001/3),

Requests that the Governing Body invite the Director-General to take all necessary measures to ensure that applicable social and labour standards of the ILO are given due consideration in determining whether a ship or operation is sub-standard.

Appendix 8

Resolution concerning the ILO maritime identity

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Noting that since its inception the International Labour Organization has recognized the unique character of the maritime industry, which is also recognized in many countries through special maritime legislation,

Noting also that structural changes within the maritime industry have underlined the need for international minimum social standards and labour conditions within the industry,

Noting further that Article 94 of the United Nations Convention on the Law of the Sea expressly requires flag States to exercise jurisdiction over the social aspects and labour conditions on vessels which fly their flag and, in doing so, to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance,

Considering that the International Labour Office is recognized as the competent United Nations organization under the United Nations Convention on the Law of the Sea with regard to the establishment of appropriate international minimum labour conditions,

Being aware that the 1990 United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families expressly refers to seafarers,

Being aware also of the importance and impact the maritime labour standards of the International Labour Organization have on the day-to-day living and working conditions of seafarers employed or engaged on board ships,

Expressing appreciation for the production of the discussion document on "the impact on seafarers' living and working conditions of changes in the structure of the shipping industry" (JMC/29/2001/3) prepared by the International Labour Office,

Considering that the unique character of the maritime industry should be recognized within the International Labour Office through, inter alia, the maintenance of a separate maritime branch which should be provided with the necessary resources,

Considering further that the maritime activities of the Organization will be well served in their purpose and establish a visible position vis-à-vis other intergovernmental organizations by having a dedicated ILO maritime programme and machinery,

Invites the Governing Body to request the Director-General to ensure that a distinct maritime unit is established and maintained with adequate staff and resources.

Appendix 9

Resolution concerning addressing the human element through international cooperation between United Nations specialized agencies

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Noting the importance the international community gives to addressing the human element and to shifting the emphasis onto people,

Noting also that the 21st Session of the Assembly of the International Maritime Organization adopted resolution A.879 (20) on the long-term work programme of the Organization up to 2006, and that it includes giving a greater role to the human element and the promotion and maintenance of a safety culture,

Considering that the human element can only be addressed in a holistic manner and that such an endeavour would come within the core competencies of both the International Labour Office and the International Maritime Organization,

Considering also that the information provided in the discussion document on "the impact on seafarers' living and working conditions of changes in the structure of the shipping industry" (JMC/29/2001/3) suggests clear grounds for urgent and integrated action by the competent international organizations,

Being aware of the cooperation agreement between the two United Nations organizations, how well it has functioned over time and the beneficial results which have resulted from the establishment of joint bodies,

Being aware also of the moves within the United Nations system to build on existing arrangements, for an integrated approach to all legal, economic, social, environmental and other relevant aspects of oceans and seas and the need to improve coordination and cooperation at both the intergovernmental and inter-agency levels,

Believing that the Joint Maritime Commission is the appropriate body within the International Labour Organization to be tasked with forming a joint working party, together with Government representatives from the International Maritime Organization, which could be tasked with a comprehensive evaluation of the human element, that could draw on the synergies and competencies of the respective organizations,

Invites the Governing Body to concur and to request the Director-General to consult with the Secretary-General of the International Maritime Organization with a view to establishing such a joint body. Further, to request the Director-General to agree, in consultation with the secretaries of the Shipowners' and Seafarers' groups of the Joint Maritime Commission, appropriate terms of reference for the ILO approach to the human element in international shipping.

Appendix 10

Resolution concerning the enhancement of the role of the Joint Maritime Commission (JMC)

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Expressing appreciation for the production of the discussion document on "the impact on seafarers' living and working conditions of changes in the structure of the shipping industry" (JMC/29/2001/3) prepared by the International Labour Office,

Noting that under the decent work programme initiated by the Director-General the primary goal of the ILO is "to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity".

Considering that the report states that the emergence of the global labour market for seafarers has effectively transformed the shipping industry into the world's first genuinely global industry which requires a global response with a body of global standards applicable to the whole industry which must ensure decent standards for all seafarers,

Considering also that the Office report indicates that there is a need for a forum where effective social dialogue on, for example, the extensive range of issues highlighted in the report can be conducted,

Believing that effective social dialogue within the shipping industry is greatly facilitated by the provision of information and technical assistance by the International Labour Office,

Invites the Governing Body to authorize regular meetings of the Joint Maritime Commission so as to establish a forum for meaningful and ongoing social dialogue at the international level on a more permanent and structured basis and, in doing so, to provide the industry with a structure able to deal quickly with issues of relevance to the constantly changing global shipping industry.

Invites also the Governing Body to reiterate the role of the JMC as the body capable of advising member governments and the ILO on all aspects of the Organization's work within the shipping industry and in particular the decent work programme.

Appendix 11

Resolution concerning tonnage measurement and the accommodation of crews

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Noting that the International Convention on Tonnage Measurement of Ships (1969) has entered into force,

Recognizing the impact that this Convention may have had on the design of ships, including their crew accommodation,

Recognizing also that there have been significant technological and other changes in the shipping industry since the existing ILO instruments concerning the accommodation of crews were adopted,

Being aware that some design changes in ships may have implications for the occupational health and safety of seafarers and dockworkers;

Requests the Governing Body to:

- agree that these issues should be fully considered during the revision of the Organization's maritime instruments; and
- invite the Director-General to communicate these matters to the Secretary-General of the International Maritime Organization, with a view to mitigating any adverse effects of the International Convention on Tonnage Measurement of Ships (1969).

Appendix 12

Resolution concerning women seafarers

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Having considered the document prepared by the ILO on "The impact on seafarers' living and working conditions of changes in the structure of the shipping industry" (JMC/29/2001/3),

Noting with concern that the specific problems of women seafarers, particularly relating to maternity rights and discrimination, act as major obstacles for women wishing to embark on, or maintain, a career at sea,

Urges the shipping industry to take positive steps to act against any aspect of discrimination based on gender;

Requests the Governing Body of the ILO to invite the Director-General to undertake a study on women seafarers, maternity and employment rights before and after childbirth and present this for discussion at a future meeting of the Joint Maritime Commission (JMC) with a view to establishing appropriate standards and guidance for the industry to enable women seafarers a realistic opportunity to maintain a career at sea.

Appendix 13

Resolution concerning seafarers' welfare

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Having considered the report prepared by the International Labour Office on "The impact on seafarers' living and working conditions of changes in the structure of the shipping industry" (document JMC/29/2001/3),

Recalling that the International Labour Organization has adopted:

- the Seafarers' Welfare Convention, 1987 (No. 163);
- the Seamen's Welfare in Ports Recommendation, 1936 (No. 48);
- the Seafarers' Welfare Recommendation, 1970 (No. 138); and
- the Seafarers' Welfare Recommendation, 1987 (No. 173).

Recalling further the resolution concerning the international coordination of welfare activities for seafarers and welfare services for seafarers' families adopted by the Joint Maritime Commission at its 26th Session (Geneva, 17-25 October 1991), which expressed, inter alia, the firm belief that priority should be given to securing the widespread ratification and implementation of Convention No. 163 and implementation of Recommendation No. 173,

Noting that because of the structural changes in the industry seafarers have fewer opportunities to go ashore and as a consequence welfare facilities and services for seafarers, including hotels or hostels suitable for seafarers and means of prompt transportation to and from them, are needed more than at any time,

Noting also that a number of governments, even those who ratified Convention No. 163 on seafarers' welfare, seem to be unprepared to meet their responsibilities as outlined in the relevant Conventions and Recommendations adopted by the ILO,

Noting further that many governments rely solely on voluntary or charitable organizations and in many cases transfer their responsibilities to regional/local governmental bodies in order to maintain such welfare facilities and services for seafarers,

Mindful that such a transfer of responsibility is neither in line nor in keeping with the provisions laid down in Convention No. 163 and its accompanying Recommendation No. 173 since it may result in some instances in downgrading or even disappearance of the facilities and services concerned in both quantitative and qualitative terms,

Holding the firm view that governments have the ultimate responsibility to ensure the establishment and maintenance of adequate and sufficient welfare facilities and services inclusive of the means of prompt transportation specifically for seafarers and their families:

Requests the Governing Body of the International Labour Organization to invite the Director-General to take all necessary measures to strongly encourage the member States to ratify and enforce ILO Convention No. 163 and as a consequence adequately respond to their responsibilities to provide welfare to seafarers and their families.

Appendix 14

Resolution concerning action taken against seafarers in the event of maritime accidents

The 29th Session of the Joint Maritime Commission,

Having met in Geneva from 22 to 26 January 2001,

Noting with deep concern that, in the event of maritime accidents, some administrations have placed seafarers, in particular the master, under arrest, in some cases for more than a year without trial,

Noting also that such action has been taken immediately after the accident, before any investigation has taken place and while the seafarers concerned are in a state of deep distress,

Noting further that such action has been taken despite, in many instances, the action taken by the master and seafarers to save lives and mitigate damage,

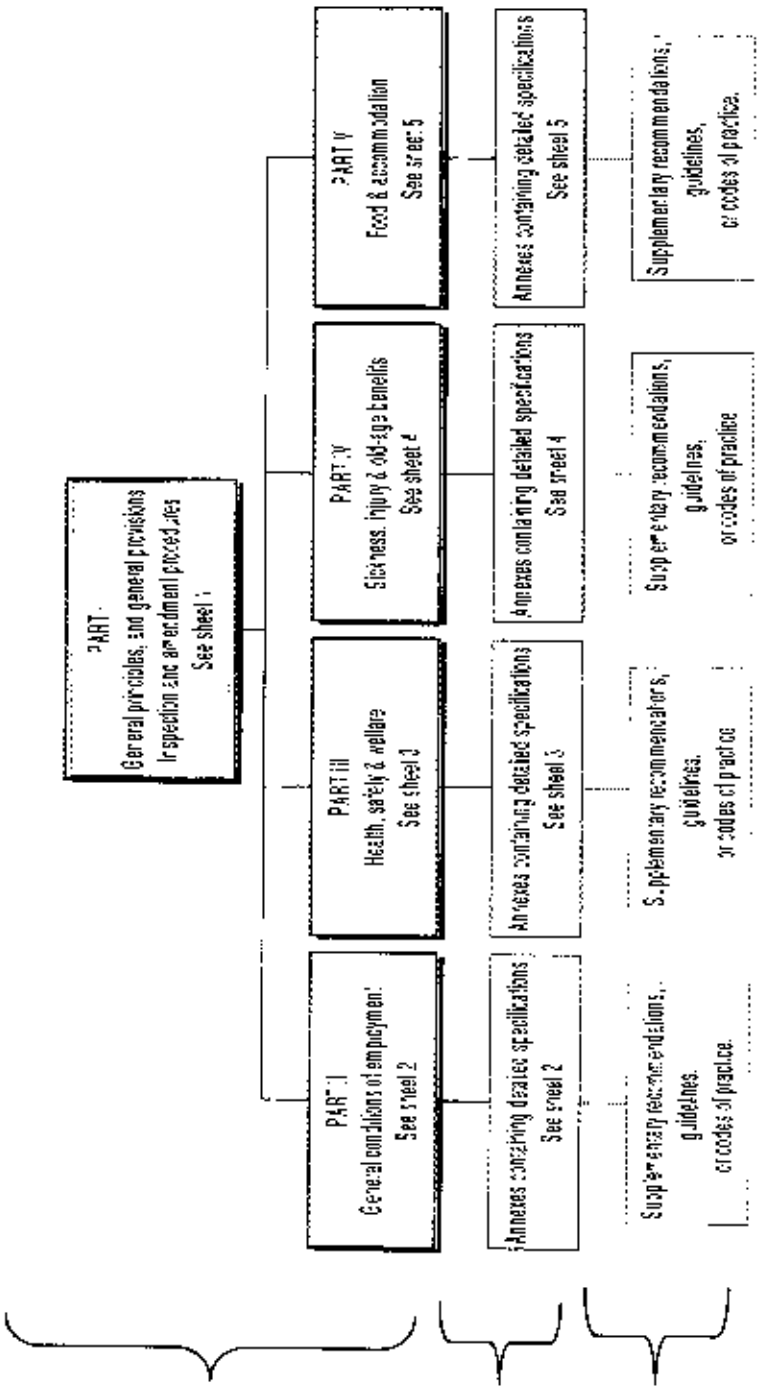
Recognizing that all seafarers are highly trained individuals and should be treated with dignity and respect,

Registering concern that the threat of arrest or potential arrest could in some instances unduly influence seafarers from taking the necessary mitigating action to protect human life and the environment;

Requests that the Director-General bring these concerns to the attention of member States and advise the Secretary-General of the International Maritime Organization of the action taken.

Appendix 15

Example put forward by the Shipowner members for a possible new framework approach to the consolidation of ILO maritime Conventions and Recommendations



Sheet 1

Relevant provisions

National laws, regulations or collective agreements covering issues contained in Parts II to V.

Substantial equivalence with detail in annexes.

Any one or more of the annexes may be accepted.

Flag and port state inspection procedures.

Amendment procedures for:

- Parts.
- Annexes.
- Recommendations, guidelines or codes of practice.

Relevant instruments

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

Social Conditions and Safety (Seafarers) Recommendation, 1958 (No. 108).

Labour Inspection (Seafarers) Convention, 1996 (No. 178), and Recommendation No. 185

Potentially relevant ILO Instruments[1]

Sheet 2

General conditions of employment

Seamen's Articles of Agreement Convention, 1926 (No. 22).

Repatriation of Seafarers Convention (Revised), 1987 (No. 166), and Recommendation No. 174.

Continuity of Employment (Seafarers) Convention, 1976 (No. 145), and Recommendation No. 154.

Recruitment and Placement of Seafarers Convention, 1996 (No. 179), and Recommendation No. 186.

Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), and Recommendation No. 187.

Seafarers' Annual Leave with Pay Convention, 1976 (No. 146).

Seafarers' Identity Documents Convention, 1958 (No. 108).

Vocational Training (Seafarers) Recommendation, 1970 (No. 137).

Minimum Age (Sea) Convention (Revised), 1936 (No. 58).

Minimum Age Convention, 1973 (No. 138).

Officers' Competency Certificates Convention, 1936 (No. 53).

Certification of Able Seamen Convention, 1946 (No. 74).

National Seamen's Codes Recommendation, 1920 (No. 9).

Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139).

Merchant Shipping (Improvement of Standards) Recommendation, 1976 (No. 155).

[1] The Conventions included on these sheets are considered as having the following status by the ILO:

Promote/up to date

– Maintain status quo

– Revise

The Conventions excluded from these sheets have the following ILO status:

- Withdraw/out of date

Denounce

Shelve

- Abrogate

Protection of Young Seafarers Recommendation, 1976 (No. 153).

Seafarers' Engagement (Foreign Vessels) Recommendation, 1958 (No. 107).

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Potentially relevant ILO instruments

Sheet 3

Health, safety and welfare

Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16).

Medical Examination (Seafarers) Convention, 1946 (No. 73).

Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), and Recommendation No. 142.

Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164).

Seafarers' Welfare Convention, 1987 (No. 163), and Recommendation No. 173.

Potentially relevant ILO Instruments

Sheet 4

Sickness, injury and old-age benefits

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55).

Seafarers' Pensions Convention, 1946 (No. 71).

Social Security (Seafarers) Convention (Revised), 1987 (No. 165).

Medical Care and Sickness Benefits Convention, 1969 (No. 130).

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8).

Potentially relevant ILO instruments

Sheet 5

Food and accommodation

Certification of Ships' Cooks Convention, 1946 (No. 69).

Food and Catering (Ships' Crews) Convention, 1946 (No. 68).

Accommodation of Crews Convention (Revised), 1949 (No. 92).

Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133).

Bedding, Mess Utensils and Miscellaneous Provisions (Ships' Crews) Recommendation, 1946 (No. 78).

Crew Accommodation (Air Conditioning) Recommendation, 1970 (No. 140).

Crew Accommodation (Noise Control) Recommendation, 1970 (No. 141).

The sources for these sheets are:

Maritime Labour Conventions and Recommendations – Fourth (revised) edition, International Labour Office, Geneva, 1998.

ILO report for the JMC, *Review of relevant ILO maritime instruments*, JMC/29/2001/1.

Appendix 16

The impact on seafarers' living and working conditions of changes in the structure of the shipping industry

Comments by the Seafarers' group
(Points for discussion)

Point 1

There is an urgent need for positive action by concerned governments at the ILO which will require the support of shipowners who believe in decent social standards. There is also a need for a holistic approach to the human element which requires cooperation between the ILO and the IMO. If this is coupled with recognition of the need for greater global governance on the basis of global standards including respect for ILO Conventions Nos. 87 and 98 then a significant step will have been taken in the shipping industry to fulfil the objectives set out by the ILO in the Declaration on Fundamental Principles and Rights at Work and further expanded on in the Director-General's Report on *Decent work*. International standards must be developed in a global shipping industry based on the adoption of "best practice" and NOT, on the lowest common denominator.

The specific problems of women seafarers particularly relating to maternity rights and discrimination act as major obstacles for women wishing to embark on, or maintain, a career at sea. This significantly decreases the available pool from which seafarers are first recruited. The shipping industry needs to take positive steps to improve the attractiveness of the industry for women and in particular against acts of discrimination based on gender. The ILO should prioritize work in this area including a study on maternity and employment rights before and after childbirth with a view to facilitating a discussion at the Joint Maritime Commission (JMC) and if appropriate establishing standards and guidance for the industry to enable women seafarers a realistic opportunity to maintain a career at sea before and after becoming mothers.

Point 2

It is absolutely essential that social/human aspects of shipping be put on an equal footing with safety of life at sea and the protection of the maritime environment. The adoption of a "bill of rights" for seafarers is considered by the Seafarers' group to be of paramount importance to achieve a level playing field. When a level playing field exists then the cycle of destructive competition will be broken and competition will be on the basis of quality of service not the cheapest labour costs and avoidance of safety and environmental standards.

In this regard the genuine link is a fundamental issue for the Seafarers' group. UNCLOS specifically provides for such a link and also that flag States must exercise control over the safety, environmental AND social conditions on board vessels registered in a flag State. If the "genuine link" does not exist there is no mechanism for a flag State to exercise effective control on any of these three principles.

Furthermore, UNCLOS provides that the flag a vessel flies determines its nationality and as a consequence establishes the legal rights and remedies available to the seafarers.

The significance of the genuine link has recently been recognized in the fishing industry following a UN General Assembly resolution calling on the IMO and FAO to

clarify and define more precisely what constitutes a genuine link. It therefore remains a topical and relevant issue for seafarers.

Flag States have ultimate responsibility and every effort must be made by the ILO and IMO to encourage flag States to carry out their responsibilities with a view to enforcing local, regional and international standards.

Point 3

Support for action to encourage tripartism and social dialogue at the national *and* international level is essential to developing pragmatic solutions to regulate social conditions in the shipping industry. It is profoundly depressing that many of the governments and shipowner organizations pay lip service to this principle at international level but do not support tripartism and social dialogue at the national level.

In respect of international social dialogue the Seafarers' group believes that the Office report demonstrates unequivocally that changes in the structure of the industry require an enhancement of existing structures for global industrial relations and we have proposed that one way to do this is to enhance the role of the Joint Maritime Commission.

Points 4, 5, 11 (port state control) and 12 (the various actors in the industry)

The enforcement of the agreed global standards rests with flag States. However, since it is recognized that many flag States do not have the political will and/or the resources to enforce international minimum standards, this task has now fallen upon the port States via port state control. This is now therefore recognized as a fundamental part of the process towards a universally accepted and applied "bill of rights" for seafarers.

Only ratification and implementation by governments of the new and existing standards will ensure that decent standards will prevail in the shipping industry.

If the industry in its widest sense, i.e. including charterers, classifications societies, banks and insurers *all* recognize that a quality ship is one that is registered in a country which pays attention to all of its international, regional and national obligations to safety of life at sea, the marine environment *and* social conditions on board, then the shipping industry would take a significant step forward towards sustaining an industry we can all be proud of.

Port state control authorities must therefore recognize that they have an obligation to pay more attention to the social element during port state inspections. The Seafarers' group believes that they have the possibility to detain but are afraid of making "subjective" assessments about social aspects of shipboard life. The ILO has produced training materials and guidance for port state control inspectors which should be promoted and distributed as a way of encouraging governments to treat deficiencies in social conditions on vessels as cause for detention.

It is the Seafarers' group position that those who avoid the rules – be they social, safety or in respect of the marine environment – must face detention and the imposition of appropriate punitive fines. To do otherwise is to provide a financial incentive to avoid standards as was clearly outlined in the OECD Study on Competitive Advantages obtained by some shipowners as a result of non-observance of applicable international rules and standards.

Point 6

Sub-standard ships are those that are deficient in one or all of the requirements outlined in UNCLOS. If the social conditions are unregulated (either by lack of flag state laws or the absence of bona fide collective agreements) then the Seafarers' group believes such vessels are sub-standard.

Many flag States pay lip service to ILO standards not just FOCs and Second Registers but regrettably some national flags too. They provide little if any support particularly for migrant workers from Third World countries. As such this must be of a pressing concern to the ILO.

Social dialogue and partnership should be encouraged by the ILO at the national level and supported and enhanced at the international level.

Point 7

The Decent Work in the maritime sector programme is a welcome and significant step towards raising the profile of the ILO's maritime activities and its related standards.

It is however important to remember that ratification of ILO standards is not the only measure by which we should judge the success or otherwise of the ILO's work in the shipping sector.

The ILO however should not be complacent. Visibility is the key to ensuring that the Organization's work remains relevant to seafarers. The Seafarers' group is unhappy at the loss of a distinct ILO maritime branch. It is essential that the ILO be seen to be progressive and proactive in respect of cooperating with other UN specialized agencies when the human element is being discussed.

Point 8

It would seem logical to the Seafarers' group that at some point in the future, particularly with regard to the possible development of a framework Convention consolidating existing standards, that some form of documentary proof of compliance with ILO social standards might need to be developed. We would therefore support such an approach.

However, port state control inspectors must never simply take certificates at face value. The *Estonia* disaster is one example where a ship passed a port state inspection, which apparently revealed that all the vessel's certificates were in order, just hours before the bow door fell off.

Points 9 and 10

The Seafarers' group supports the development of codes and voluntary guidelines but they cannot replace mandatory instruments. The OECD has recently concluded that such voluntary approaches to standard setting have failed.

However, in the context of a framework Convention we believe that appropriately developed guidelines and codes (i.e. jointly agreed) have a place in providing valuable assistance to governments and the social partners regarding the obligations that flow from agreed international standards. As such the ILO should encourage the development of codes and guidelines but, and this has to be stressed, they must be developed together if they are to have any meaning or validity at all.

Point 13

Until such time as the industry is governed by a set of rules that are based on decent standards and best practice and until such time as the industry returns to a situation where there is a democratic and tripartite system of governance in place the industry will always have a problem convincing young people and women in particular that a career at sea is an exciting, challenging and fulfilling career.

Employers need to convince young people that there are lifetime career prospects in the maritime industry and ashore within the maritime infrastructure.

Shipboard living conditions must also be improved and the accommodation of crews and recreational standards need revising.

Point 14

The Seafarers' group is particularly concerned about the well-documented abuses of seafarers' rights on cruise ships. Some additional issues are highlighted in the Office report. We are also concerned about social conditions in the offshore oil and gas industry.

The Seafarers' group therefore believes that the Office should undertake studies of the social conditions on board cruise ships and maritime mobile offshore units (MMOUs) with a view to advising the JMC on what action should be undertaken.

Point 15

The Seafarers' group believes port authorities have a role to play in ensuring that welfare is provided to ships and their crews. The International Committee on Seafarers' Welfare has made efforts to encourage closer working relations with the International Association of Ports and Harbours and the ILO should play a role in encouraging stronger links and for the IAPH to take an interest in the provision of welfare to seafarers particularly with regard to providing transportation to and from vessels and communication facilities in port terminals.

The ICSW recently produced guidelines on the implementation of ILO Convention No. 163 which might usefully be used to encourage relevant authorities to play a more direct role in welfare provision.

Point 16

The change in the structure of the industry with the evolution of ship management companies and the development of manning agencies has resulted in a lack of continuity of employment which may cause lack of familiarity with the vessel in question, leads to lower degrees of commitment between the seafarer and the shipowner, less interest in the performance of shipboard maintenance and few, if any, company-sponsored training opportunities.

The development of the manning agency system and the emergence of an international labour supply industry has had many negative consequences. Shipowners are encouraged to hire crews from wherever they are cheapest. Seafarers are obliged to accept a system where they have few rights. The manning agency system has also led to a casualization of employment relations, driven down standards and training, encouraged the systematic cheating of seafarers and destroyed long-term manpower or career planning. It has also facilitated the establishment of formal and informal systems for "blacklisting" seafarers, weakened trade union organization and prevented the development of a safety

culture on board ship. As a consequence many devoted, highly qualified seafarers are turning their backs on the shipping industry.

The Seafarers' group believes that the provision of continuous employment for qualified seafarers is of paramount importance in respect of ensuring quality shipping and in the establishment of a safety culture on board ships. If the industry would adhere to the principles established in ILO Convention No. 145 and Recommendation No. 139 we believe there would, for example, be greater levels of safety and better long-term manpower and career planning.

Point 17

The Seafarers' group shares the views put forward by the Office in the document JMC/29/2001/1 regarding the Review of relevant ILO maritime instruments (page 23) which succinctly explains the conclusions and recommendations contained in the Office report to which this note is related (JMC/29/2001/3). In all the fields of social conditions highlighted, e.g. wages, holidays, living conditions, etc., international minimum standards must reflect decent standards not the lowest common denominator to which unfortunately many current ILO maritime instruments refer.

Point 18

The Seafarers' group believes that multinational crewing is an issue where there has been very little study undertaken. What research has been undertaken has revealed that where there is a common working language there may not be major problems. Nevertheless even in this situation there may be significant cultural and social differences which may cause social isolation with serious consequences to the well-being of the seafarers and thus of the ship. In addition, such differences should be taken into account when designing the accommodation of the crews and likewise in the recreational facilities. Further work in this area by the ILO would therefore be recommended by the Seafarers' group.

Clearly where different nationalities do not share a common working language particularly with regard to passenger ships there will be communication difficulties especially in emergency situations as evidenced by the *Scandinavian Star* and many other similar disasters.

Point 19

The Seafarers' group is concerned about the increasing trend to penalize seafarers in the wake of ship casualties. Whilst not condoning negligence, incompetence or illegal acts, measures need to be taken to protect seafarers from unwarranted detention, excessive or unrealistic financial penalties and periods of imprisonment and to firmly establish the responsibilities of the shipowners/operators.

The ILO Office should therefore examine the need for international mechanisms to protect seafarers when taking decisions in which they have exercised their professional judgement with a view to advising the JMC about any appropriate measures that might be deemed necessary, thereby taking into account that many casualties take place following the negligent or oppressive actions of (often invisible) shipowners that fail to provide their vessels with the necessary resources.

Price: 15 Swiss francs
ISBN 92-2-111442-8

P. P.
1211 GENÈVE 22

INTERNATIONAL LABOUR OFFICE
BUREAU INTERNATIONAL DU TRAVAIL
OFICINA INTERNACIONAL DEL TRABAJO
CH-1211 GENÈVE 22

If this address is wrong, please return this sheet to the sender or, at least, the part bearing the address

Pour tout changement d'adresse, prière de renvoyer à l'expéditeur cette feuille ou, du moins, la partie comportant l'adresse

Sírvase indicar el cambio de dirección del destinatario y enviar esta hoja al remitente, o al menos la parte en que está escrita la dirección

RETOUR / RETURN / DEVOLUCIÓN

☐ Refusé / Refused / Rehusado

☐ Non réclamé / Unclaimed / No reclamado

☐ Parti / Gone away / Ausente

☐ Inconnu / Unknown / Desconocido

☐ Décédé / Deceased / Fallecido

☐ Adresse inexacte / Incorrect address / Dirección inexacta