

**Meeting of Experts on Working and Living
Conditions of Seafarers on board Ships in
International Registers**Geneva
6-8 May 2002

Final report

1. The Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers met in Geneva from 6 to 8 May 2002. It elected its Officers as follows:

Chairperson: Mr. Edmund T. Sommer (Government, United States)

*Vice-Chairpersons
and spokespersons:*

Mr. Roberto Aglieta (Shipowner, Italy)

Mr. Brian Orrell (Seafarer, United Kingdom)

Mr. Rob de Bruijn (Government, Netherlands)

2. Opening remarks were made by Mrs. Cleopatra Doumbia-Henry, Secretary-General of the Meeting. The Office reports were introduced by Professor McConville and Dr. Leggate.
3. The Shipowner spokesperson made some clarifications on the resolutions of previous ILO meetings, particularly the 1991 resolution of the Joint Maritime Commission, which had requested the Office to look into the issue of conditions of work in international registers. He pointed out that seafarers and shipowners had later agreed that the JMC debate should focus on changes in working and living conditions in the whole industry. As well, he said that the Office reports do not properly address the issues which led to the adoption of the 1991 resolution and seems to lead the debate in a different direction. He noted that there are a number of flaws evident in the report. One example he pointed out is that the definitions of "international registers" and of other related terms are not satisfactory. The Global Report examines a limited number of ITF listed flags of convenience referring to them as "open registers" while excluding other international registers which had also replied to the questionnaire. The ISF had, he said, already raised concerns as to the complexity of the questionnaire on which the reports are based. He noted that the reports do not permit a comparison between the conditions of seafarers serving on international registers with those serving on national flags but rather compares conditions under ITF-designated flags of convenience with national and with those under other flags. However, he said, the proposals contained in paper MEWLCS/2002/6 provide an acceptable structure to enable a discussion of the issues posed by international registers.
4. The Seafarer spokesperson declared that this Meeting was 11 years overdue. In 2001, at the JMC, the Shipowners had not wished to discuss these matters. He hoped that this time the Shipowners would condemn the atrocious conditions existing on board some ships, and especially in certain registers. It was unfortunate that some basic principles expressed in

the ILO's Declaration of Philadelphia in 1944, such as "labour is not a commodity", were not yet implemented by some shipowners in the twenty-first century. The report of the International Commission on Shipping had referred to slavery at sea, and this was too often a reality in today's shipping. All this should be seen in the light of the ILO's Decent Work Agenda, and of its core Conventions, e.g. Conventions Nos. 87 and 98. He hoped that the current deficits in decent work in the industry would be identified and addressed during this Meeting. The Office reports were not satisfactory as they tended to present things in an excessively positive manner. He felt that governmental responses to the questionnaire should not have taken precedence over those of the social partners in the report, as the ILO is a tripartite body. He also questioned the inclusion of responses from non-ILO Members (Marshall Islands and Vanuatu) who were flags of convenience, and the absence of appropriate weighting for the more significant States, either in terms of tonnage or labour supply.

5. He however expressed the hope that a fruitful discussion could take place. He specifically drew the attention of the Meeting to the negative effects of Panama Law No. 8 and asked the Office to provide information on relevant freedom of association complaints. He also advised the Meeting that the ITF had prepared a room document which contained real case studies which was available to all participants and on which he asked for comments. He also hoped that the Shipowners would demonstrate some leadership and condemn the unacceptable practices which were documented.
6. The Seafarer spokesperson indicated that his group did not have time to properly comment on the policy suggested by the Office paper MEWLCS/2002/6, which had been presented on the day of the Meeting. His group will come back on this point later and reserved its position.
7. The Government expert from the Netherlands, expressing himself on behalf of the Government group, first stated that he would not now discuss the report, even though he had noticed a few discrepancies. He suggested that countries should forward their corrections to the Office. He then noticed that the OECD's latest report had remarked that recourse to non-national seafarers would continue to increase in the near future. He concluded that this could be one more reason not to qualify registers with different names, but rather to define criteria for the management of a quality register. He also informed the Meeting that the Government group accepted the Office proposals on orientations and structure of the discussions of this Meeting.
8. The Government expert from the Philippines disagreed with significant parts of the contents of the case study of the Philippines, particularly the critical statements concerning the maritime administration, training, as well as the incidence of corrupt practices and litigation initiated by Filipino seafarers. He also did not agree with statements on wages and the competitive situation of Filipinos in the maritime labour market. He recalled that minimum wages for Filipino seafarers were based on the ILO minimum wage figure for able seamen. He asked that all the baseless statements in the report be rectified. He concluded by stating that new legislation due to be adopted in the Philippines would incorporate ILO maritime standards which currently remained to be fully included in legislation.
9. The Government expert from Denmark expressed satisfaction at the holding of the Meeting and with the studies, even if they contained some flaws. She stressed that the essential issues were to achieve balance between flag quality and the ability to compete, to maintain social protection and decent work regardless of nationality of seafarers. She reported that since 1 per cent of employment in Denmark was maritime related, ships were important to Denmark in order to sustain employment in its maritime industrial cluster. She noted that Denmark had been able to retain its fleet in spite of other registers providing

flexible and attractive conditions and the Danish register was not, in effect, an open register since more than 96 per cent of tonnage was Danish-owned. She added that shipping was a global industry and therefore working conditions should be approached from a global perspective. She also noted that it had been necessary to allow shipowners to reduce costs by engaging non-domiciled seafarers on local agreements while keeping the obligation to have quality shipping operations under Danish law. Tax advantages were granted and flag State social coverage by law applied regardless of nationality. She stressed that regardless of the use of foreign seafarers, the total number of Danish seafarers had increased since the establishment of the new register. She stressed that it was necessary to concentrate discussions on quality shipping, enforcement, complaints procedures and sanctions for non-compliance. She closed by suggesting that the Meeting should provide appropriate inputs into the revision process of the ILO maritime standards.

- 10.** The Government expert from the Bahamas supported the improvement of the conditions of work and life of seafarers. He reported that his country's legal framework was suitable for international crews and that conditions exceeded the minimum. He further stated that the inspection system complied with both international and Bahamian law. Commenting on the Office reports, he cited several examples to show that the authors had made some value judgements as to minimum living conditions from the point of view that developed countries were good and developing countries were poor. As well, he said, double standards were used in comparing "open" with "traditional" registries. He suggested that this Meeting should seek to improve the life of the modern seafarer whatever his nationality, or that of his ship.
- 11.** The Government expert from India referred to the maritime importance of his country as he agreed that flag States should ensure the maintenance of training standards. He urged that the unambiguous responsibility should be on shipowners for conditions of work and life but that collective bargaining was more appropriate in the labour-supplying country. As well, he stated that manning agents should be liable for the payment of wages, but that these should reflect the situation in the seafarers' country since wages vary from one country to another.
- 12.** The Government expert from China hoped for a substantial result in a discussion which is an important concern for China. He felt that the primary issue was that the current international standards were difficult to enforce. He noted that the emphasis should be on practical issues and on the improvement of the legal system. Although the inspection of ships should be concentrated on practical issues, he stressed the focus should be to provide equal protection to all seafarers whether national or foreign.
- 13.** The Government expert from Norway expects its shipping industry to provide decent working and living conditions. He supported the conclusion of the Office on the need for national aspirations of States to maintain successful registers to be combined with enforceable international conventions which are supported by the worldwide ship-owning community. This benchmark, he said, should be the standard for quality shipping with responsibilities of flag, port and labour-supplying States. He supported the Office proposals for the structure of the discussion.
- 14.** The Government expert from Cyprus endorsed the statements made by the experts of the Bahamas and India. He referred to his country's efforts in favour of the protection of seafarers, when deeds are more important than words. He favoured an international solution to the issue of working and living conditions for seafarers.
- 15.** The Government expert from Greece stated that the Office reports did not reflect the joint views expressed by government, shipowners and seafarers in the Greek response. He supported the policy orientations provided by the Office and believed that the current

standards revision process would provide the opportunity to solve many of the issues raised.

16. The Government expert from Malta welcomed the opportunity to discuss these issues and believed that monitoring, control and enforcement were essential to the success of future standards.
17. The Government expert from the Netherlands corrected some inaccurate remarks made in the Office reports about his country. He stressed his attachment to the quality shipping concept. This, he noted, included decent or minimum conditions of work and life for officers and ratings as well as adequate social security for all seafarers and their families.
18. The Government expert from Egypt declared that her country had a responsible administration regarding maritime safety, social security, decent living and working conditions, payment of wages, inspections and regulation of the employment contract, as well as the appropriate mechanisms for enforcements.
19. The Government expert from Nigeria supported adequate standards of living conditions for all seafarers. He hoped that the Meeting would produce useful guidance for the HLTWG and its subgroup. The future instrument should be acceptable, with flexibility clauses in the interest of developing countries. He pledged his Government's commitment to the enforcement of the future instrument.
20. The Government expert from the United Kingdom gave high priority to the implementation and enforcement of decent living and working conditions on board vessels. He informed the Meeting that his country was in the process of ratifying Convention No. 178. He supported the proposals of the Office in its orientation paper and would work for a consensus in this respect.
21. The Government expert from Italy indicated the support of his Government for the task of the HLTWG and considered the guidelines developed by the Office in its orientation paper as very valid.
22. The Seafarer spokesperson recognized his demand that the shipowners condemn the nefarious practices which had been documented was incomplete, and that the same should apply to governments also. In his opinion, some governments should be embarrassed at the appalling conditions existing on board ships flying their flag. He also remarked that the report often referred to discrimination in writing, whilst this important point had not been mentioned once during the oral presentation. The fact that discrimination exists on board the ships of many flag States made it difficult to dispense with the positive comments made about such flag States. There was no doubt that the globalization process had profoundly negative implications for seafarers' working and living conditions. He did not see this Meeting solely as being linked to the HLTWG, but was also linked to the ILO Decent Work Programme and the discussion on quality shipping.
23. The Shipowner spokesperson expressed his understanding for the difficulty of research on this subject. He believed that the terrible conditions described by the Seafarers were more of an exceptional nature in the industry. A careful analysis should be performed, and the emphasis should be placed on enforcement, and wide ratification of the future instrument. He remarked that globalization was a fact, but that it was important to regulate to avoid excesses. He appealed for good cooperation between all partners during this Meeting.
24. The Seafarer expert from India drew attention to certain inaccuracies contained in the Office report regarding his country. He first indicated that, in 1953 just as now, the prevalent issue in Indian shipping was unemployment. The Government had started to let

the industry to recruit seafarers more freely. He criticized the continued employment of passport holders on foreign flag vessels, as opposed to professionals in possession of Continuous Discharge Certificates (CDCs). This created additional risks of employment for bona fide seafarers. He also appealed for a registration of manning agents, and hoped for the prompt ratification of Convention No. 179. Finally, he suggested the exemption of income tax for all Indian seafarers.

- 25.** The Seafarer expert from Denmark pointed out that the case study on Denmark noted that only shipowners' issues had been taken into account when the DIS Act was adopted and recalled the struggle of his union against infringements of freedom of association, and in particular their complaints to the ILO in this respect. The report omitted much of what had been discussed with the authors in Copenhagen. It was not acceptable to have discrimination between persons performing the same job, on the same ship, on the basis of nationality or domicile. He was critical of the theoretical possibilities given to non-domiciled seafarers (social security coverage, hospitalization, Ombudsman system, labour court, etc.), whereas, in reality, these persons were not physically in a position to enjoy these benefits. The impossibility of pursuing entitlements arose as a result of the considerable geographical distance between Denmark and their country of domicile. He strongly advocated that the human dimension within the industry should be given as much importance as commercial interests.
- 26.** The Government expert from Denmark in replying referred to the case study of Denmark and the answer on the questionnaire which gave substantial information on the Danish International Register of Shipping. The remarks from one of the Danish unions present at the Meeting however called for some further clarification from the Government side although it was not her intention to go into details with all the comments made.
- 27.** First, she informed that the legislation on the Danish International Register first was just into force when new collective agreements between the unions and the employers had been concluded. One of the reasons for this was the special taxation scheme which in fact exempted seafarers from normal taxation.
- 28.** As for ILO minimum wages, the Danish system was that the Government did not interfere on wages, but this was left to the social partners. There was no statutory minimum wage in Denmark and the shipping sector was here in equal terms with the rest of the Danish labour force. With a reference to the Danish case study, she stressed that the average wages, for example, Philippine ratings was two to two-and-a-half times the local Philippine wages is equal or above ITF standards.
- 29.** She underlined that it was possible for a non-domiciled seafarer to join a Danish union, but Danish collective agreements could only cover domiciled seafarers. The resident criteria was chosen as an objective criteria. In doing so, she emphasized that there were relevant issues, was that the CBAs for non-domiciled seafarers may be concluded by unions from the seafarer's country of residence who had the knowledge of the seafarer and the local conditions.
- 30.** As for the social protection of the seafarer, she informed that all seafarers, regardless of nationality or residence, by law had a right to free hospital care, not only in the situation of occupational illnesses but also for more ordinary situations with no relation to the job. There were also means to ensure the seafarer cash benefits to ensure his income during his period of illness. All this was free of charge as it basically was government financed. If the seafarer was repatriated to his country of residence, the Danish legislation left the obligation of ensuring care to the country of residence except when the seafarer had been ill due to an occupational accident. In this case, the Danish Government provided for further hospital care and a wage substitute. The wage substitute would be given until there

was a decision by the relevant Danish authority on the grade of invalidity and the compensation for this.

31. She also referred to the information given to the seafarers on their rights under Danish legislation.
32. As for the complaint procedures and the use of the labour court system in Denmark, she stressed that the necessary legal framework and procedures were in place and it was up to the unions and seafarers to use it depending on the need to do so.
33. Finally, Government expert from Denmark declared the willingness to provide further information on the Danish International Register to any delegate or representative who had any further questions on the Danish system.
34. The Seafarer expert from the United Kingdom noted that the Isle of Man had begun updating its Crew Agreement Regulations moving away from United Kingdom regulations which did not offer much social and employment protection for non-domiciled seafarers. However, he added that flag States needed to exercise effective jurisdiction and that seafarers should be able to have their claims examined by the flag State. He stressed that ways and means had to be found to accommodate this requirement. He noted that the case study of the Isle of Man did not sufficiently emphasize the loss of employment opportunities for United Kingdom seafarers, from 65 per cent in 1990 to 29 per cent in 1999 and around 21 per cent today. He also added that the same situation existed in the United Kingdom fleet where growth in tonnage had not resulted in growth in jobs for UK seafarers. As well he said, training efforts had not been matched by places for trainees aboard ship. He pointed out that the seafarers' organizations would like to work with the administration and the shipowners to ensure both a quality register and sustainable employment. He welcomed proposals to encourage social dialogue through formal tripartite discussion. Hopefully he said, these would lead to the extension of collective agreements with secure decent working conditions for all seafarers employed under the Isle of Man flag.
35. The Shipowner expert from the Philippines regretted the comments made by a Seafarer expert on the lack of attention given to Filipino seafarers and also the conclusion made in the case study that Filipino seafarers increasingly relied on international organizations. She gave details of the ways in which Filipino authorities protected seafarers, such as through the Standard Employment Contract which incorporated the minimum provisions of ILO instruments. Any collective bargaining agreements (CBAs) which are negotiated with superior benefits she said, would be beneficial to the seafarer. She added that the Philippines Overseas Employment Administration (POEA) supervised manning agencies and they were reviewed every two years. Complaints she said, could be made by seafarers and any violations were sanctioned. She reported that a recent agreement between the Government, the unions and the private sector enabled a voluntary arbitration system for seafarers' complaints. Through this she said, the grievances had to be presented to the union first and that any employer found guilty of violating the terms of a CBA or the provisions of the POEA could be sentenced by the POEA. It was, in her opinion, unjustified to say that a Filipino seafarer employed on a Danish vessel would be "dumped" after his return in the Philippines. On the contrary she noted, under the provisions of the POEA contract, the worker would be given all necessary medical attention or, as the case may be, granted necessary disability compensation. The Shipowner expert from the Philippines concluded that the necessary mechanisms to protect the conditions of employment of the Filipino seafarers, and the assessment that the shipowners did not consider the welfare of their employees, was unjustified and baseless.

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- 36.** The Shipowner expert from Denmark noted that it was important to stress that the creation of the Danish International Shipping Register (DIS) had led to an increase in employment of Danish seafarers. She reported an increase of more than 6,000 seafarers since 1998 and that of the 14,000 serving on Danish ships, 70 per cent are Danish. The remaining 4,000 she added, are mainly Filipino seafarers covered under collective bargaining agreements with Filipino unions that meet the standards and conditions laid down in a framework with Danish unions. She then went on to say that collective bargaining agreements which existed in 1988 did not apply to DIS ships, since DIS is a net wage system. However she said, the Danish shipowners and unions agreed on new collective bargaining agreements applying to DIS ships under the DIS Act that came into force in 1988. The third comment by the expert was about employment conditions for non-nationals. She reported that in 1997, a collective agreement was negotiated to stipulate the procedures for negotiations with foreign unions. Further to this is an agreement that was adopted in 1999 on mutual information, coordination and cooperation concerning DIS ships. The agreement she added, dealt with the conclusion of collective agreements with foreign unions, and a framework agreement existed with specific terms and conditions for foreign seafarers. She stated that the agreement made shipowners responsible for notifying the Danish unions before they took up negotiations with foreign unions. Furthermore she said, it stated that the Danish unions might participate in the negotiations between Danish shipowners and foreign unions if they so desired. She then addressed a statement in the report noting that this 1999 agreement was fragile. She said that it was fragile since it would have expired if there was no renewal. However, she reported that a new agreement was signed in March 2002 by all of the traditional maritime unions with the exception of one.
- 37.** The Government expert from the United Kingdom referred to the issues raised concerning the Isle of Man and stressed the need for an international approach to standards in the shipping industry. He looked forward to constructive progress on the issues raised in the reports.
- 38.** The Seafarer expert from the Philippines agreed with his governmental counterpart that there were many inaccuracies in the report concerning his country as the complete Philippine maritime industry picture has not been accurately captured and properly documented. He underlined that the Philippines had been among the first countries to ratify Convention No. 179, with beneficial effects on recruitment practices, though the current systems in place are not perfect. Employment and recruitment rules and regulations, he said, were being revised by the Philippine Overseas Employment Administration (POEA) and this is a very positive development. He reported that the International Transport Workers' Federation (ITF) and the POEA have initiated a dialogue with the objective of decent conditions for all. He then went on to say that the level of unionization among Filipino seafarers was not so low since the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP-PTGWO-ITF) alone was organizing more seafarers than quoted in the case study. The case study he said, did not mention the "yellow" unions, which did not effectively protect seafarers. He added that the suggestion by the Philippines Seafarers' Promotion Council (PSPC) concerning the Creation of an Asian seafarers' union should be taken with utmost care, since this council was dominated by shipowners. He added that PSPC's one-stop shop programme for seafarers is now a priority project of the Philippine Labor Department. The Seafarer expert from the Philippines also noted that, in spite of the fact that the Philippines is the world's largest provider of seafarers, its overseas seafarers' labour policy and legislation needs to be improved. He stated that this situation is now being remedied with the development of an Overseas Seafarers Act, now a bill in the Philippine legislature. He added that the situation should improve considerably since the President of the Republic of the Philippines has taken a personal interest in the passage into law of this legislation. While the report highlighted several negative points, he stressed that most of these have been overtaken by concrete and positive developments which he hoped will really address the issues at hand.

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39. The Government expert from India gave some clarifications on the issue of continuous discharge certificates (CDCs). He said that the Government only issued these documents to those who were entitled to them, e.g. to those who held STCW95 qualifications. He reported that the Government did not want to restrict seafaring to an exclusive club. As well he said, cases of fraud in the issue of “no objection certificates” had been brought to the attention of the maritime authorities. He also felt that restriction of recruitment to members of a particular union could well be violating freedom of association.
 40. The Secretary of the Seafarers’ group stated that the principle of the “genuine link” remained relevant and was fundamental to decent work at sea. He recalled that Panama has an atrocious record, for example, on abandonment of seafarers as had been demonstrated to an IMO/ILO Ad Hoc Working Group, and that its Law No. 8 is fundamentally flawed and subject to freedom of association complaint. He stated that Panama and others fail to live up to their obligations under the United Nations Convention on the Law of the Sea (UNCLOS). Such States, he said, cannot meet the requirements of decent work, in particular the requirements concerning social dialogue as the reports indicated that there were neither shipowners nor representative seafarers’ trade unions in the country. He noted that the absence of a genuine link, as required by Article 91 of UNCLOS, and the absence of social partners in the flag State meant that FOCs were in negation of decent work and that they resulted in a substantial decent work deficit.
 41. The Government expert from Panama addressed some of the issues in the reports. He corrected the statement regarding complaint procedures by saying that Panama has a complaint process that required an investigation into any complaint and that final results were produced from this investigation. He also added that the minimum wage law was adhered to. He reported that the responsibility was placed on the shipowners and the seafarers to agree on the wage and that the minimum wage for a seafarer in Panama was higher than that of non-seafarers and probably the highest minimum wage of any job in Latin America. Speaking on responsibility, he went on to say that the shipowner is responsible to repatriate the seafarer to the location where the seafarer determines. He further stated that seafarer trade unions in Panama were legally recognized and that there had been collective bargaining between shipowners and seafarers.
 42. The Government expert from France noted that although he understood the desire to correct some of the mistakes in the reports, he urged the participants to use the time available to find solutions to pass on to the High-level Working Group. He stressed that it was important to deal with solutions.
 43. The Chairperson intervened to agree with the Government expert from France to proceed beyond the report and move forward into further developments on the rights of seafarers. He stressed that this international industry is extremely complex and the report of this Meeting should be a meaningful one that addresses the complex issues involved.
 44. The Seafarer expert from India went on to address the comments made by the Government expert from India. He stated that although the CDCs are issued to technically trained people, they often end up on ships as trainees (lower ranks) and not in positions they had been certified for. As well, he added that there was a bipartite agreement between shipowners and unions addressing benefits.
 45. The Seafarer expert from Denmark noted that he might have been misunderstood. He added that Danish shipowners should be commended for having entered into agreements with the unions despite the law and therefore cooperated to address the lacunae of Danish legislation. To the Filipino shipowners, he clarified that there should not be any discrimination due to nationality but, unfortunately, Filipino seafarers were not benefiting from the same treatment as Danish seafarers after they return home.

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46. The Government expert from Greece stressed that it was essential to utilize the time to address issues where additional action is called for. He added that he would provide his comments on the report in writing to the secretariat. Commenting in writing, he added that the Ministry of Mercantile Marine responded to the questionnaire with the Union of Greek Shipowners and the Panhellenic Seamen's Federation. He noted that since the shipping industry has always been considered as a special sector, special additional legislation has been adopted to cover seafarers. He also pointed out that although it appears that collective agreements only apply to national seafarers, non-nationals may be covered by separate collective agreements. In addition, he clarified that Greece has established a separate national social security system reserved for seafarers. The final point he made addressed the fact that Greece is included in the reports as a labour-supplying country. He made known that they did not respond to the part of the questionnaire regarding this and should not be considered as a labour-supplying country.
47. The Government expert from India replied to the comments made by the Seafarer representative from India. He stated that he had taken note of his comments and then quoted a collective agreement which stated that all ratings had to be members of the National Union of Seafarers of India (NUSI). He pointed out that the regulation required the union to provide a certificate of clearance for any seafarer who desired to work for an international employer. He reported that seafarers have had to pay upwards of US\$2,000 to obtain that certificate.
48. The Government expert from Angola recalled that his country had ratified 33 ILO Conventions, including nine maritime labour Conventions. Angola ensured that ship inspections were performed through the intervention of inspectors of the Ministry of Public Administration, Labour and Social Security. However, these inspectors were not sufficiently trained in maritime matters, which limited their efficiency. Angola, as a consequence, would request the ILO to envisage the possibility to organize appropriate seminars in this respect. The minimum age for work was 14 and he assumed that it applied to seafarers as well. Angola has ratified the appropriate ILO Conventions in this respect, including Convention No. 182. He added that it was possible for foreigners to be members of Angolan trade unions. However, there was no minimum wage in Angola. The creation of an inter-ministerial commission dealing with the revision of the Angolan maritime legislation was being currently considered.
49. The Government expert from France made two observations with respect to the contents of the report. Firstly, CBAs, whenever they exist, do apply to all seafarers, of any nationality. In certain cases, however, when the seafarer is paid by a manning agent, the CBA may not be applied. Secondly, non-nationals employed on board French-flagged vessels may freely be organized by French trade unions.
50. The Government expert from Italy pointed out that Italy was wrongly included among countries that require the crew to be composed only of national citizens. He noted that article 318 of the Navigation Code amended by the 2001 Act states that seafarers on national ships could be comprised of seafarers of different nationalities than Italian or European through collective bargaining agreements.
51. The Seafarer spokesperson declared that it was time to move on to issues of substance. He expressed his disappointment with the direction in which the Meeting was heading. Apart from the inaccuracies in the report, he pointed out that the Seafarers had not been consulted in a timely manner as to the organization of the Meeting. Although he understood that the Chairperson was interested in speeding up the proceedings, he nevertheless was of the opinion that some issues were of too much concern to address them only briefly.

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- 52.** He felt that his group was somewhat separated from the other groups, since neither the Shipowners nor the Governments had been able to condemn the atrocious practices that he had referred to. The Shipowners found his submission too emotional, whilst the Governments, towards whom the Seafarers justifiably turned in order to get legislative protection against the worst practices, kept silent. He felt it was just as if some of them wanted to justify the flag of convenience system and to consider registers as a commercial activity rather than as providing the nationality of the vessel as provided for under international law.
- 53.** He was of the opinion that the Office should reflect on his words, since he felt the Office itself was leaning towards the other groups. Contrarily to what he had announced yesterday, he now was of the opinion that no fruitful dialogue would be possible during the Meeting, since the Seafarers would never accept the attempts to legitimate flags of convenience. He also stated that he did not see the orientation document proposed by the Office as positive.
- 54.** The Seafarer spokesperson then made a statement stating his group's views which he hoped would provide a basis for possible future discussion. His group had come to the conclusion that this Meeting of Experts was an exercise that appeared to have as its sole objective the rehabilitation of flags of convenience and the pacification of all those who had highlighted the decent work deficit clearly evident in many flag States. In the introductory remarks from the ILO Office it had been explained that the Meeting had been called in response to a resolution adopted by the JMC in 1991. That resolution had also resulted in the publication of an ILO report on The impact of seafarers' living conditions of changes in the structure of the shipping industry which had been discussed at the 29th Session of the JMC. The report of that Meeting (JMC/29/2001/14) should therefore have been referred to in the conclusions of this Meeting as it contained a great deal of useful comment and information of relevance to the subject of this Meeting. In particular, the Meeting was asked to take due cognizance of the resolutions adopted by the JMC which had been endorsed by the Governing Body and the comments submitted by the Seafarers' group contained in Appendix 16.
- 55.** The Seafarers' group also thought that it was appropriate to recall the Chairperson's summary of the discussions of the High-level Tripartite Working Group in respect of the essential aspects of decent work in the maritime context which were as follows:
- human rights at work;
 - employment and incomes;
 - social protection and social security;
 - social dialogue.
- 56.** The Seafarers' group could not accept that flag of convenience States demonstrate a commitment to social dialogue and tripartism and therefore to the concept of decent work. As the Danish delegation had stated the very existence of the FOC system had had negative implications for all national flag States. This needed to be recognized by the Meeting.
- 57.** Turning now to the reports prepared by the Office for this Meeting, the Seafarers' group had some specific points that it wished to place on record:
- The finding that 65 per cent of the countries responding operated some kind of discriminatory policy was significant and suggested that there was a substantial

decent work deficit within the industry. This had profound economic implications in terms of unfair competition. The reports indicated that there were serious problems of discrimination of foreign crew members on the vessels of most flag States and there was little done by the flag States to combat this. The ILO should investigate the matter taking into account the Declaration on Fundamental Principles and Rights at Work and in terms of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

- The fact that many seafarers were not covered by national legislation, both nationals and non-domiciled seafarers, was an important finding. The lack of coverage by national legislation was particularly important in the case of non-domiciled seafarers as those flag States were not discharging their obligations under the United Nations Convention on the Law of the Sea, which required them to effectively exercise jurisdiction and control over administrative, technical, social and labour matters over ships flying their flag (Article 94).
- It was clear that there was a substantial decent work deficit within the maritime industry and that the ILO needs to take urgent measures to address this. Flags of convenience (FOCs) were fundamentally incompatible with decent work as there were no seafarers and no employers in the flag State and therefore no social partners with whom to promote social dialogue and tripartism.
- The use of the term “registers” was regrettable as it suggested that they were somehow distinct from the State, which they were not. Seafarers live and work on the ships and international law established that a ship had the nationality of the flag it flew. This had important ramifications for the crew with regard to both civil and criminal jurisdiction and in their ability to exercise their human and trade union rights.

58. The Seafarers’ group proposed that the group of experts should agree:

- that there was a substantial decent work deficit within the maritime industry and that the ILO needed to take urgent measures to address it. Only through genuine and meaningful social dialogue between governments, seafarers and shipowners could this deficit be overcome;
- that flags of convenience were fundamentally incompatible with decent work;
- that the “genuine link” continued to be of fundamental importance;
- to invite the Governing Body to request the Office to compile an inventory of the failings of flags of convenience (FOCs) to exercise effective control over vessels flying their flag on social and labour issues and to communicate it to a future meeting of the State parties on the United Nations Convention on the Law of the Sea;
- that failings of the system would only be addressed through international regulations and the imposition of an enforcement mechanism which would ensure that flag States meet their international obligations. To this end the Meeting should invite the Governing Body to request the ILO Director-General to write to the IMO Secretary-General to implement the decision of UN Commission on Sustainable Development (CSD 7) to develop measures, in binding form where IMO members consider it appropriate, to ensure that ships of all flag States meet international rules and standards so as to give full and complete effect to UNCLOS, especially Article 91 (Nationality of ships), as well as provisions of other relevant conventions and, in co-operation with the FAO, to define the concept of the genuine link, as per the United Nations General Assembly resolution. The Director should also advise the IMO of the

interest of the ILO in this work and its willingness to be actively involved, as per the formal cooperation agreement between the two organizations;

- that shipowners have a responsibility to provide safe and decent working conditions for the seafarers they employ or engage and that this factor should be taken into account when determining which flag a vessel should fly;
- to invite the Governing Body to request the United Nations, through its Department on Ocean Affairs and the Law of the Sea, and in cooperation with the ILO, to revise the United Nations Convention on Conditions for Registration of Ships;
- to note the recommendations of the ILO Committee on Freedom of Association in respect of Denmark and the Government's interference in the seafarers right to voluntary collective bargaining in the DIS Act and invite the Government of Denmark to implement such recommendations forthwith and invite the Office to take note of the issue in the context of its overall Decent Work Programme;
- that quality shipping meant more than compliance with international instruments and the minimum standards they represent. Fundamental to quality shipping is a continuous improvement and the effective implementation of all a flag States obligations, which requires a functioning State;
- that the Meeting condemn such practices as "watchlisting" and "blacklisting" of seafarers and invite the ILO to design policies and programmes in order to eradicate such practices;
- the ILO should promote the implementation of the core Conventions embodied in the ILO Declaration on Fundamental Principles and Rights at Work in the maritime sector;
- the Meeting should request the ILO to consider the Panama case study, especially the fact that there are no maritime social partners in the State, in the context of its overall Decent Work Programme and raise the highlighted issues with the Administration;
- that the suggestion highlighted in the case study on the Philippines that the Philippines Seafarers' Promotion Council should seek to establish an Asian seafarers' union would be against the provisions of the ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and request the ILO to consider the case study on the Philippines in the context of its overall Decent Work Programme and, using the proper channels to immediately raise the highlighted issues with the Administration.

59. The Shipowner spokesperson stated that his group was unable to accept the proposals made by the Seafarers and then expressed some views, which he offered as a compromise position in response to the statement made by the Seafarers:

1. Despite the concerns expressed by the Shipowners' group with regard to the content of the reports produced by the Office, and the questionnaire on which the reports were based, the Shipowners considered that the reports contained much information which was directly relevant to the subject of working and living conditions on ships on international registers.
2. The group noted that the reports revealed a number of problems and deficiencies in the administration of certain ship registers, with regard to inadequate provision of legislation in particular areas and, in particular, the lack of adequate enforcement of national and international regulation. The group considered that national legislation

which applies to all of the key areas of maritime labour conditions, based on international standards and fully and completely enforced are the tests of an effective ship register.

3. Reports were submitted by the Seafarers' group concerning abuses of seafarers employment rights and conditions. The Shipowners' group acknowledged that abuses do occur and reaffirmed their desire to find the means to eradicate such abuses whenever possible. The group considered that the development, adoption and enforcement of the new consolidated Convention would make a material contribution to achieving this objective.
 4. The group noted from the reports that arrangements for inspection to ensure compliance with legislation, and the adoption of mechanisms to ensure that seafarers were able to bring complaints about breaches of national legislation and of contractual employment benefits to official attention were important parts of the means by which administrations can ensure that requirements are observed.
 5. The Shipowners' group considered that the reports also highlighted the difficulties faced when one administration sought to introduce legislation intended to protect its national seafarers who serve predominantly on ships registered in the territory of another administration and, conversely, the difficulties faced when one flag state administration sought to protect the seafarers on its ships who were predominantly nationals of another administration. The group considered that potential conflicts of jurisdiction, or the complete absence of cover, were issues which needed to be addressed.
 6. In developing standards covering working and living conditions, the Shipowners' group considered that administrations must aim to ensure that they were based on the highest achievable international minimum standards, supplemented as necessary by provisions which reflect the national law and practice. The legislation should be written clearly and unambiguously, so that they could be easily understood and enforced, and seafarers should be able to obtain information on the means by which complaints about the implementation of the standards should be raised.
 7. The Shipowners' group considered that the reports highlight the crucial role of monitoring and enforcement in the maintenance of effective standards by ship registers. In this respect, clearly written provisions, adequate inspection arrangements by flag and port States as appropriate, proper training for inspectors, records of the number of inspections and of deficiencies and sanctions to be applied to those who fail to comply with the prescribed standards are key elements. Consideration should also be given to some possible mechanism by which a performance measurement for registers might be introduced.
- 60.** The Government experts, having considered the Office reports and the views of the Seafarer and Shipowner experts, concluded that the shipping business is not perfect and had noted a number of decent work deficits. They acknowledged and recognized that action must be taken towards remedying these deficits in order to improve working and living conditions of seafarers. The Government experts unanimously expressed the need to come forward with a Government group statement, declaring their views towards the future of decent working and living conditions for all seafarers regardless of their nationality, domicile or flag of the ship on which they work. They unanimously concluded that it would be of no use, neither for the purpose of the Meeting nor in the interest of the Seafarers to look back. It was considered essential to look ahead in order to improve working and living conditions and to prevent deficits from appearing on board ships while at the same time combating deficits that actually exist on some ships.

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- 61.** The Government experts unanimously agreed that every flag State and port States need to have strong means and mechanisms in order to enforce rights to decent living and working conditions. Every State with a manning agency within its jurisdiction should also ensure that these agencies are controlled and assume their responsibilities towards seafarers. The Government experts also stressed the importance of improving the living and working conditions of seafarers in order to make the maritime industry attractive for youngsters to choose a seagoing career.
- 62.** The Government experts hoped that the proposals which follow would be acceptable to the social partners and that they would give it the tripartite character which is at the very foundation of the ILO:
- The Government experts considered this tripartite Meeting of Experts to be an opportunity to continue the drive of Governments, Seafarers and Shipowners already under way to improve the living and working conditions for all seafarers regardless of nationality or domicile.
 - The Government experts stressed the need for the strongest possible national and international measures to be taken against the unlawful interference with the right to work and the undermining of decent living and working conditions.
 - The Government experts also considered that it was urgent to effectively address the decent work deficits in the shipping industry. It was recognized that social protection, social security and social dialogue, including collective bargaining, are matters that would require particular attention.
 - The Government experts recognized that consideration should be given to a possible mechanism by which a performance measurement for flag States might be introduced.
 - The Government experts considered that, in the context of enforcement, due consideration should be given to relevant provisions of the ISM Code.
 - The Government experts stressed the importance of the following principles:
 1. In order to effectively exercise its jurisdiction in social matters, every State should have a sound maritime administration with a firm legislative framework complying with international labour standards and a strong enforcement mechanism.
 2. The flag State should have the overall responsibility for ensuring that the rights of seafarers were respected in relation to service on board its ships.
 3. Every flag State should have in place means to enforce decent living and working conditions on its ships wherever they may be in the world.
 4. Every State should ensure that manning agencies for seafarers operating within its jurisdiction were subject to government control and should ensure that seafarers' rights were respected.
 5. Every State should have in place the necessary mechanism for monitoring living and working conditions on ships visiting its ports in accordance with international instruments in force.
 6. All inspectors responsible for the control of living and working conditions should be properly qualified and trained and should have clear terms of reference.

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7. Every flag State should ensure that Shipowners were responsible for making available to the seafarers the applicable laws, regulations and collective agreements applicable to their living and working conditions.
 8. Every State should provide easy access to simple and inexpensive procedures enabling all seafarers regardless of nationality and domicile to make complaints alleging a breach of national legislation on living and working conditions or employment contracts and/or articles of agreement.
 9. Every Shipowner should provide and be responsible for safe and decent working conditions for seafarers they employ or engage.
 10. Manning agencies should be made jointly and severally liable with Shipowners, regardless of their domicile, for breach of the contract of employment and/or articles of agreement.
- 63.** The Chairperson, taking consideration of the various views expressed by the experts, synthesized them in a text which is to be found in the appendix and which he suggested should be a joint statement of the experts.
- 64.** The Seafarer and Shipowner experts agreed to the content of the joint statement.
- 65.** The Government experts unanimously agreed to the document as a whole, but made the following comments which they wanted included in the record:
- On paragraph 2 of the consensual statement, the Government experts expressed the view that the reference in the paragraph to violation of freedom of association and the right to organize and collective bargaining was not intended to pinpoint any particular government.
 - On paragraph 5 of the consensual statement, the Government experts expressed the view that the reference to UNCLOS in this paragraph related to the enforcement of working and living conditions on board ship that is within the remit of the ILO.
- 66.** The Seafarer expert noted that the UN General Assembly had reaffirmed, most recently in A/Res/56/12, the unified character of UNCLOS and emphasized its universal nature, and hoped that nothing in the comments of the Government experts could be taken as repudiating their agreement to the UN General Assembly resolutions.
- 67.** The experts agreed that the report would be approved by the Officers of the Meeting on behalf of the experts. Once translated and printed, the report would be sent to all participants.
- 68.** The spokesperson of the Shipowners' group added that they were not entirely satisfied with all aspects of the Meeting, including the reports which had been prepared, the proposals submitted by the Seafarers' group and certain of the contents of the joint statement. Nevertheless, they were satisfied with its conclusion and he thanked all participants to the Meeting for the work produced during those three days.
- 69.** The spokesperson of the Seafarers' group expressed his views that it had been three very difficult days, with a lot of disappointment, particularly at the beginning of the Meeting. The Seafarers had been encouraged by receiving a government paper to be considered as a basis to go forward as this was not normally the case. However, he commented that a satisfactory compromise had been reached at the end, and he thanked all participants for this result.

70. The Chairperson closed the Meeting by thanking all participants for their contributions to the Meeting and remarked that the spirit of cooperation and good will that had prevailed during those three days gave him hope for the future.

Appendix

Consensual statement of the Meeting of Experts

The experts consider this tripartite Meeting to be an opportunity to continue the multifaceted drive of governments, seafarers and shipowners already under way to improve the living and working conditions for all seafarers regardless of nationality or domicile.

The experts stress the need for the strongest possible national and international measures to be taken against breaches of international labour standards, including violations of freedom of association and right to organize and collective bargaining, which undermine decent living and working conditions for seafarers.

The experts consider that it is urgent to effectively address the decent work deficits in the shipping industry. It is recognized that conditions of employment, social protection, social security and social dialogue, including collective bargaining, are matters that will require particular attention. To this end, the experts recognize the importance of the decent work at sea programme and invite the Governing Body to instruct the Office to secure further action, in consultation with the constituents.

The experts recognize that consideration should be given to a possible mechanism by which a performance measurement for flag States in respect of ILO instruments might be introduced.

The experts consider that in the context of enforcement, due consideration should be given to the relevant provisions of UNCLOS and the relevant provisions of the ISM Code.

The experts stress the importance of the following principles and rights.

1. In order to effectively exercise its jurisdiction in social matters, every State shall have a sound maritime administration with a firm legislative framework complying with, as a minimum, international labour standards, and a strong enforcement mechanism.
2. The flag State has the overall responsibility for ensuring that the rights of seafarers are respected in relation to service on board ships flying its flag.
3. Every flag State shall have in place means to enforce decent living and working conditions on ships flying its flag wherever they may be in the world.
4. Every State shall ensure that manning agencies for seafarers legally established within its jurisdiction are subject to government control and shall ensure that seafarers' rights are respected.
5. All States shall have in place the necessary mechanism for monitoring living and working conditions on ships visiting their ports, in accordance with international instruments in force.
6. All inspectors responsible for the control of living and working conditions shall be properly qualified, trained and shall have clear terms of reference.
7. Every flag State should ensure that shipowners are responsible for making available to the seafarers the applicable laws, regulations and collective agreements addressing their living and working conditions and should, in accordance with national law and practice, ensure that they are enforced.
8. All States shall provide easy access to simple and inexpensive procedures enabling all seafarers, regardless of nationality and domicile, to make complaints alleging a breach of national legislation on living and working conditions or employment contracts and/or articles of agreement.
9. All shipowners shall provide and be responsible for safe and decent working conditions for seafarers they employ or engage.
10. In States where manning agencies are legally established, the manning agencies shall be made jointly and severally liable with shipowners, regardless of their domicile, for breach of the contract of employment and/or articles of agreement.

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