



FACILITATION COMMITTEE
35th session
Agenda item 17

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REPORT OF THE FACILITATION COMMITTEE ON ITS THIRTY-FIFTH SESSION

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1 GENERAL – ADOPTION OF THE AGENDA

Introduction

1.1 The Secretary-General opened, on 12 January 2009, the first session of the Facilitation Committee following its institutionalization under the Convention on the International Maritime Organization. The session was held from 12 to 16 January 2009 under the chairmanship of Mr. Charles Abela (Malta), who was unanimously elected to the post of Chairman for 2009 at the opening of the session. This was the thirty-fifth session of the Committee since the first meeting of the *Ad Hoc* Working Group on Facilitation which took place from 27 to 29 September 1967 as a consultative and advisory body to the Secretary-General. The Committee held its seventh session from 9 to 13 April 1973, its first meeting after the Council, on 24 May 1972, decided to constitute a Facilitation Committee as a subsidiary body of the Council to assume, *inter alia*, also the functions of the *Ad Hoc* Working Group on Facilitation.

1.2 The session was attended by delegations from the following Member States:

ALGERIA	MALAYSIA
ANGOLA	MALTA
ARGENTINA	MARSHALL ISLANDS
AUSTRALIA	MEXICO
BAHAMAS	MOROCCO
BAHRAIN	NETHERLANDS
BELGIUM	NIGERIA
BELIZE	NORWAY
BRAZIL	PANAMA
CANADA	PERU
CHILE	PHILIPPINES
CHINA	POLAND
COLOMBIA	PORTUGAL
CUBA	REPUBLIC OF KOREA
CYPRUS	RUSSIAN FEDERATION
DENMARK	SAINT KITTS AND NEVIS
DOMINICAN REPUBLIC	SAUDI ARABIA
ECUADOR	SINGAPORE
EGYPT	SOUTH AFRICA
ESTONIA	SPAIN
FINLAND	SWEDEN
FRANCE	THAILAND
GERMANY	TONGA
GHANA	TURKEY
GREECE	TUVALU
INDIA	UKRAINE
INDONESIA	UNITED KINGDOM
IRAN (ISLAMIC REPUBLIC OF)	UNITED STATES
ITALY	URUGUAY
JAPAN	VANUATU
LIBERIA	VENEZUELA
LITHUANIA	YEMEN

and the following Associate Member of IMO:

HONG KONG, CHINA

1.3 The session was also attended by representatives from the following United Nations specialized agency:

INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA)

1.4 The session was also attended by observers from the following intergovernmental organizations:

WORLD CUSTOMS ORGANIZATION (WCO)
EUROPEAN COMMISSION (EC)
MARITIME ORGANIZATION FOR WEST AND CENTRAL AFRICA (MOWCA)
LEAGUE OF ARAB STATES

and by observers from the following non-governmental organizations in consultative status:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL SHIPPING FEDERATION (ISF)
INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)
INTERNATIONAL RADIO-MARITIME COMMITTEE (CIRM)
BIMCO
INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETIES (IACS)
ICHCA INTERNATIONAL (ICHCA)
OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)
INTERNATIONAL MARITIME PILOTS' ASSOCIATION (IMPA)
INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS (IFSMA)
INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
(INTERTANKO)
CRUISE LINES INTERNATIONAL ASSOCIATION (CLIA)
INTERNATIONAL ASSOCIATION OF DRY CARGO SHIPOWNERS
(INTERCARGO)
WORLD NUCLEAR TRANSPORT INSTITUTE (WNTI)
INTERNATIONAL HARBOUR MASTERS' ASSOCIATION (IHMA)
INTERNATIONAL CHRISTIAN MARITIME ASSOCIATION (ICMA)
INTERNATIONAL ASSOCIATION OF MARITIME UNIVERSITIES (IAMU)

1.5 The session was also attended by Mr. Neil F. Ferrer (Philippines), Chairman of the Maritime Safety Committee.

Opening address

1.6 In welcoming the participants, the Secretary-General congratulated the Committee on the entry into force of the **1991 amendments to the IMO Convention**, which sought to formalize the institutionalization of the Committee. He stated that, for the record, on 7 December 2007, the Government of the Republic of Yemen deposited, with the Secretary-General of the United Nations, the instrument of acceptance of the 1991 amendments to the IMO Convention, thus bringing the total number of **explicit acceptances** up to the required two thirds of the

IMO Members needed to fulfil the conditions for their entry into force. This happened 12 months later, on 7 December 2008, for all IMO Member States.

He stressed that the Committee had a pivotal role to play and an important task to perform in today's globalized world, which is, more than ever before, characterized by a freer movement of people and goods and a previously unknown wider provision of services and exchange of information. With the recent expansion of commerce all over the globe, shipping has taken on a much greater importance as the major **carrier** and **facilitator** of world trade. Furthermore, globalization has made the world smaller and, therefore, more interdependent and interconnected – actions taken in any one place have implications elsewhere, regionally or, even, globally. Like any other sector, shipping cannot isolate itself from the effects, positive or negative, of this kind of **interconnectivity**. The financial crisis we have been experiencing since the northern summer of last year is already impacting economic activity, leaving no sector unscathed and triggering fears of a global recession, which, if it were to materialize, would have severe repercussions for certain segments of the shipping industry as well. A global economic downturn could also affect the efficiency of international maritime traffic, especially if it were to lead to the revival of national protectionist practices putting barriers in the way of free trade.

The Secretary-General also referred to the proposed adoption of amendments to the FAL Convention and to items of the Committee's agenda that were to be considered in detail by working groups including electronic means for the clearance of ships and the Explanatory Manual to the FAL Convention, as well as to developments concerning the single window concept and the other topics under the Committee's purview.

The full text of the Secretary-General's opening address is reproduced in document FAL 35/INF.8.

Chairman's remarks

1.7 The Chairman, in thanking the Secretary-General, welcomed the information regarding the entry into force of the 1991 amendments to the IMO Convention and stated that the Secretary-General's words of encouragement as well as his advice and requests would be given every consideration in the deliberations of the Committee and its working and drafting groups.

Adoption of the agenda

1.8 The Committee adopted the provisional agenda, set out in document FAL 35/1/Rev.1, as the agenda for the session and noted the provisional timetable (FAL 35/J/3) for guidance during the session.

Adoption of the Rules of Procedure

1.9 The Committee noted with great pleasure that the conditions for entry into force of the 1991 amendments to the IMO Convention (the 1991 amendments), concerning the institutionalization of the Facilitation Committee, were finally met on 7 December 2007 and that, as a consequence, the amendments entered into force for all Members of the Organization on 7 December 2008. This meant that the Committee was now fully institutionalized and was on a par with the other Committees. The Committee expressed its deep appreciation to all those who had contributed to the final attainment of the required number of acceptances of the 1991 amendments.

1.10 The Committee recalled that Article 50 of the IMO Convention provides that it “shall adopt its own Rules of Procedure” and agreed that it was necessary to adopt its Rules of Procedure before proceeding with the conduct of the business before it. In this respect the Committee considered the draft Rules of Procedure set out in the annex to document FAL 35/1/3 (Secretariat) which had been prepared by the Secretariat using as a basis the draft Rules of Procedure which the Committee had been using on a temporary basis. The Committee noted that the draft Rules of Procedure before it were to a large extent the same as the Rules of Procedure of the other Committees and differ only on issues which were specific to the functions and needs of the Committee.

1.11 The Committee also recalled that the draft Rules of Procedure were considered for the first time by FAL 21, in April 1992, following the earlier adoption, in November 1991, by the Assembly, at its seventeenth regular session, of the 1991 amendments by resolution A.724(17). FAL 22, in April 1993, had agreed in principle with the draft Rules of Procedure as contained in the report of that session (FAL 22/19, annex 6). These were then circulated to all Members under FAL.3/Circ.164 for consideration at the national level and submission, if necessary, of proposals for amendment to FAL 23.

1.12 The Committee recalled that FAL 23, in November 1994, had approved its draft Rules of Procedure and agreed that it would apply them on a temporary basis for its future meetings until the amendments to the 1991 amendments entered into force and this was noted by C 73, in November 1994.

1.13 The Committee also recalled that FAL 31, in July 2004, noted the decision of C 92 in relation to the issue of attendance by news media of meetings of organs of the Organization and adopted amendments to the rule on Publicity in order to bring the draft Rules of Procedure in use in line with the decisions of C 92 and this was noted by C 93, in November 2004.

1.14 The Committee recalled further that FAL 32, in July 2005, noted that the Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC), when adopting amendments to their Rules of Procedure in relation to the attendance of media, had adopted a slightly different approach to the issue and decided to align and harmonize the respective provision with the approach taken by MSC and MEPC.

1.15 In addition, FAL 32 had noted that MSC 80, having agreed that experts could participate in the MSC and sub-committee sessions on condition that they provided written advice or expertise only through the Secretariat, participated only in sessions, or parts thereof, to which they had been specifically invited and did so without taking part in debates and without a vote, had adopted a new rule, in its draft Rules of Procedure, on Invitation to experts, and decided to follow a similar approach. As a result FAL 32 adopted amendments to the rule on Publicity and introduced in the draft Rules of Procedure a new rule on Invitation to experts. This was noted by C/ES.24, in November 2005.

1.16 The Committee, having noted that none of the Members of the Organization had proposed or were proposing amendments to the Draft Rules of Procedure of the Facilitation Committee set out in the annex to document FAL 35/1/3 (Secretariat) adopted, pursuant to the provisions of Article 50 of the IMO Convention, these as the Rules of Procedure of the Facilitation Committee and these are set out in annex 1.

1.17 The Secretariat advised that it would be publishing, during 2009, a new edition of the publication Basic Document – Volume I which, *inter alia*, would include a consolidated version of the IMO Convention, incorporating the 1991 amendments and, in line with the practice followed for publication of the Rules of Procedure of the other bodies of the Organization, the Rules of Procedure of the Facilitation Committee.

Election of Vice-Chairman for 2009

1.18 The Committee decided, at the opening of the session, to defer the election of the Vice-Chairman for 2009 and to carry out the election together with the elections to the post of Chairman and Vice-Chairman for 2010.

Credentials

1.19 The Committee was informed that the credentials of delegations attending the session were in due and proper form.

2 DECISIONS OF OTHER IMO BODIES

2.1 The Committee noted the information provided in documents FAL 35/2, (Secretariat) FAL 35/2/1 (Secretariat), FAL 35/2/2 (Secretariat), FAL 35/2/3 (Secretariat) and FAL 35/2/4 (Secretariat) in relation to the outcomes of the work of A 25, C 98, C/ES.24, C 100 and C 101; MSC 83 and MSC 84; MEPC 56 and MEPC 57; and TC 58 and MSC 84 on matters of relevance to the work of the Committee and decided to consider the various issues which warrant action by the Committee under the respective agenda items.

3 CONSIDERATION AND ADOPTION OF PROPOSED AMENDMENTS TO THE CONVENTION

Consideration of proposed amendments to the Annex to the Convention

3.1 The Committee recalled that FAL 34 approved proposed amendments to the Annex to the Convention¹ with a view to adoption at its present session (FAL 34/19, paragraphs 4.2 to 4.21). The Committee also recalled the extensive discussions that it had on these proposals at FAL 33 and FAL 34.

3.2 The Committee further recalled that the proposed amendments were circulated to all IMO Members and Contracting Governments² under cover of Circular letter No.2871, dated 28 April 2008.

3.3 The Committee considered the proposed amendments to the Annex to the Convention set out in the annex to document FAL 35/3 (Secretariat) and noted a number of editorial corrections. As none of the Contracting Governments raised any issues affecting the substance of the proposed amendments, the Committee decided to proceed with their adoption.

¹ *Convention* means the Convention on Facilitation of Maritime Traffic, 1965, as amended.

² *Contracting Governments* means Contracting Governments to the Convention.

Establishment of a drafting group

3.4 The Committee established a drafting group on amendments to the Convention under the chairmanship of Dr. C. Atalianis (Cyprus), and instructed it, taking into account the relevant discussion and decisions in plenary, to:

- .1 prepare the final text of the amendments to the Annex to the Convention and the associated FAL resolution for consideration and adoption by the Committee; and
- .2 submit its report by Thursday, 15 January 2009.

Adoption of amendments to the Annex to the Convention

3.5 Having received the report of the drafting group (FAL 35/WP.4), without further debate, the Committee, on 16 January 2009, unanimously adopted, by resolution FAL.10(35), and in accordance with article³ VII(2)(a), amendments to the Annex to the Convention. The text of resolution FAL.10(35), with the text of the adopted amendments annexed thereto is set out in annex 2.

Date of entry into force of the amendments

3.6 The Committee also unanimously decided that the said amendments should enter into force, in accordance with article VII.2(b) on 15 May 2010, unless, prior to 15 February 2010, at least one-third of the Contracting Governments have notified the Secretary-General in writing that they do not accept the amendments.

Instructions to the Secretariat

3.7 The Committee authorized the Secretariat, when preparing the authentic and certified texts of the amendments in the official languages and in the official translations, to effect any corrections that may be identified, and to bring to the attention of the Committee any errors or omissions which require action by the Contracting Governments. The Committee also authorized the Secretariat to improve the presentation and layout of the IMO FAL Forms.

3.8 When adopting the aforesaid amendments the Committee noted that, as part of the comprehensive review of the Convention, the issues identified by the drafting group (FAL 35/WP.4, paragraphs 6 to 9) would need to be considered by the Committee. In this respect the Committee instructed the Secretariat to prepare and circulate for FAL 36, a list consolidating the aforesaid issues with those identified by the Working Group on the development of an Explanatory Manual to the Convention (agenda item 4) and the Working Group on Electronic means for the clearance of ships (agenda item 5).

Comments by the Chairman

3.9 The Chairman, in congratulating the Committee for adopting the amendments, emphasized the valuable contribution which the amendments would make to the Contracting Governments' efforts to facilitate international maritime traffic.

³ *Article* means an article of the Convention.

4 GENERAL REVIEW AND IMPLEMENTATION OF THE CONVENTION

Status of the Convention

Accession to the Convention

4.1 The Committee noted the information provided in document FAL 35/INF.3[§] (Secretariat) and in particular that, since FAL 34, Nicaragua, Sierra Leone, the United Republic of Tanzania and Panama had acceded to the Convention on 4 July 2007, 10 March 2008, 23 July 2008 and 1 September 2008, respectively. As a result, the number of Contracting Governments was 114 which was an increase of four since FAL 34. The Committee further noted that a list of Contracting Governments is also displayed on the Organization's website (www.imo.org).

4.2 The Committee expressed its appreciation to those Member States which had acceded or succeeded to the Convention. The Committee again urged those Member States which had not yet acceded to it, to consider doing so as soon as possible, particularly in view of the recent institutionalization of the Committee, in order to assist the Organization's efforts to promote wider acceptance of the Convention and adoption of measures contained therein, and to assist the Committee's efforts and work towards the universal implementation of measures to facilitate international maritime traffic.

Implementation of the Convention

4.3 The Committee noted information submitted by Venezuela (FAL 35/4/2) which reported on progress in the implementation of the Convention, in the legal context and at the operational level, in the national ports system within Venezuela.

4.4 The Committee invited Venezuela to keep the Committee informed of developments and urged all Contracting Governments to provide to the Committee, with a view to sharing with all Contracting Governments, information on the implementation of the Convention, including on any difficulties which they might encounter in this respect.

Review of Standards⁴ and Recommended Practices⁵

4.5 The Committee recalled that FAL 29 agreed to review those Standards and Recommended Practices to which differences have been registered by Contracting Governments thereto, with a view to determining whether they were outdated or could be amended to make them more universally acceptable; and to provide a mechanism through which parties would be encouraged to review those differences they have registered and other measures taken to align their national requirements and procedures with those of the Convention; and agreed that it would be desirable to reduce the number of differences and in order to reach this objective recognized that it was necessary in the first instance to obtain up-to-date information from Contracting Governments concerning differences to the Standards and the implementation of Recommended Practices. This could be achieved by sending a questionnaire to all Contracting Governments requesting them to update the differences they have registered and the implementation of Recommended Practices.

[§] Re-issued as FAL 35/INF.3/Rev.1.

⁴ *Standards* means Standards contained in the Annex to the Convention.

⁵ *Recommended Practices* means Recommended Practices contained in the Annex to the Convention.

4.6 The Committee also recalled that FAL 30, after confirming the need for the development of such a questionnaire and agreeing that the questionnaire should be sent to all Member States not only to address the differences registered by Contracting Governments but also to find out what impediments were being faced by Member States in acceding to the Convention, approved FAL.3/Circ.184 on Review of Standards and Recommended Practices in the Annex to the FAL Convention which annexed the aforesaid questionnaire.

4.7 Following the circulation of FAL.3/Circ.184, the Committee recalled that FAL 31 had noted that only 14 Member States and one Associate Member responded to the questionnaire.

4.8 The Committee further recalled that FAL 34 reaffirmed its intention to review the Standards to which differences have been registered by Contracting Governments to the Convention and the Recommended Practices which Contracting Governments opted not to implement, with a view to determining whether they are outdated or could be amended to make them more universally acceptable.

4.9 The Committee also recalled that article VIII(1) requires any Contracting Government that finds it impracticable to comply with any Standard by bringing its own formalities, documentary requirements or procedures into full accord with it or which deems it necessary for special reasons to adopt formalities, documentary requirements or procedures differing from that Standard, shall so inform the Secretary-General and notify him of the differences between its own practice and such Standard.

4.10 The Committee also recalled that article VIII(3) urges Contracting Governments to bring their formalities, documentary requirements and procedures into accord with the Recommended Practices in so far as practicable and, as soon as any Contracting Government brings its own formalities, documentary requirements and procedures into accord with any Recommended Practice, it is invited to notify the Secretary-General thereof.

4.11 The Committee recalled further that FAL 34 recognized that it was necessary in the first instance to obtain up-to-date information from Contracting Governments concerning any differences to the Standards they have adopted and on the implementation of the Recommended Practices by them, agreed to request Contracting Governments, which have not already replied to the questionnaire as set out in the annex to FAL.3/Circ.184, to complete and return to the Secretariat the questionnaire set out in FAL.3/Circ.187 on Review of Standards and Recommended Practices. The Committee also recalled that FAL 34 invited the Member States which are not Contracting Governments to complete and return the questionnaire set out in FAL.3/Circ.187 in order to find out what obstacles were being faced by them in acceding to the Convention and to encourage them to prepare the national legislation required and, if need be, request assistance from the Organization to enable them to effectively implement the provisions of the Convention.

4.12 The Committee was advised that, in addition to the information provided to the Committee at its last session in FAL 34/INF.2, since FAL 34, only three completed replies had been received to the questionnaire as issued in FAL.3/Circ.187; these replies were from Japan, New Zealand and Hong Kong, China.

4.13 In addition, since FAL 34 there had been four notifications of differences under article VIII. These were from:

- .1 Australia, in relation to the differences between Australian practices relating to crew lists and the present Standards 2.6.1 and 3.45. This was circulated as FAL.3/Circ.189; and
- .2 Romania, Denmark and the Netherlands in relation to differences between the provisions of certain Standards and the European Community legislation. These were circulated as FAL.3/Circ.190, 191 and 193 respectively.

4.14 The Chairman suggested and the Committee agreed that, with the lack of submissions and the overall lack of responses to the questionnaire, it appeared that the time had come to review the whole Convention, particularly in view of recent developments including, for example, the amendments to SOLAS, in relation to the ISPS Code and the problems of disembarkation of persons rescued at sea, illegal migrants, etc. In addition, bearing in mind the Assembly's view in relation to the achievement of the balance between security and facilitation, the question arose as to whether the Convention should be expanded to address contemporary problems such as shore leave and other issues that had arisen in the ship-to-shore interface.

4.15 A number of delegations indicated that by making the provisions of the Annex to the Convention more binding, the Convention could make a positive contribution towards enhancing the facilitation of maritime traffic and travel. One delegation suggested that the provisions of articles VIII(1) and VIII(3) in relation to notifications might need to be revised and modernized. Two observer delegations suggested that the provisions of the Annex to the Convention could be reviewed and updated with a view to ensuring reduction of the burden and harmonization with the work done by other bodies of the Organization on matters which fall within the scope of the Convention.

4.16 The Committee agreed to initiate a comprehensive revision of the Convention with a view to ensuring that it adequately addresses the present and emerging needs of the shipping industry as well as for modernization of its provisions taking into account for example and, *inter alia*, developments in the field of the transmission of information and data by electronic means and the Single Window concept. The Committee also agreed that the related work should be carried out under the agenda item on General review and implementation of the Convention and, at least, for the time being, there was no need to introduce a new specific agenda item in this respect.

4.17 The Committee invited Contracting Governments and Member States, especially the ones which encounter difficulties in acceding to the Convention, to submit relevant proposals together with associated justification, in terms of the philosophy to be followed when conducting such a review; new issues which might need to be addressed in the Convention; and existing provisions which might warrant amendment.

Development of an Explanatory Manual to the Convention

Background

4.18 The Committee recalled that FAL 30 discussed the development of an Explanatory Manual to the Convention and FAL 31 agreed that such a manual could help in interpreting the legal text of the provisions of the Convention that could be complex and at times difficult to understand. An explanation of the provisions and best practices, which should be in the form of

a practical handbook, could contribute to a better understanding and thus an enhanced implementation of the Convention. FAL 31, noting that as the proposed manual would be a general document, which would provide interpretations of Standards and Recommended Practices, agreed that the manual could serve as a useful link between the Convention and the preparation of the relevant national legislation. FAL 31 also decided to keep the proposed manual simple and agreed that it need not follow the usual amendment procedure of the Convention. FAL 31 had also agreed that the development of such a manual should take into consideration the following guiding principles, to:

- .1 encourage and improve the implementation of the Convention;
- .2 include explanations of Standards and Recommended Practices with the view to facilitating their possible implementation by providing technical advice and highlighting best practices;
- .3 lead to a better understanding of the underlying principles of the Convention and thus promote its implementation;
- .4 help Contracting Governments in the preparation of their national legislation and other regulatory instruments; and
- .5 be non-binding to Contracting Governments and entail no legal obligations.

4.19 The Committee recalled that the development of the manual had continued during each session since FAL 31 and FAL 34 progressed the issue through the work done by the Working Group on General review and implementation of the Convention which, *inter alia*, continued the development of the manual and prepared a working document (FAL 35/4 (Secretariat)) which consolidated the work done up to the end of FAL 34.

Consideration of the report of the Correspondence Group

4.20 The Committee recalled that FAL 34 re-established the Correspondence Group on the development of the Explanatory Manual to the Convention; noted the work done intersessionally; and approved the report of the Correspondence Group (FAL 35/4/1 (The Netherlands on behalf of the Correspondence Group)) in general.

4.21 The Islamic Republic of Iran (FAL 35/4/3) provided information of statistics collected from seafarers concerning complicated formalities conducted by port officials in many countries, especially in tanker terminals. The Islamic Republic of Iran commented on enforcement actions taken by some States and on the establishing of a centralized agency in Member States which could handle and conduct formalities on behalf of local authorities as well as on the introduction of a legal body carrying out scheduled inspections to ensure compliance with terms of the Convention in addition to dealing with non-conformities by vessels/local authorities.

Establishment of a Working Group

4.22 The Committee re-established the Working Group on the development of an Explanatory Manual to the Convention, under the chairmanship of Mr. E. Broekema (The Netherlands), and instructed it, taking into account the discussions and decisions in plenary, to:

- .1 continue the development of an Explanatory Manual to the Convention using documents FAL 35/4 and FAL 35/4/1 as basic documents and considering the comments in FAL 35/4/3;
- .2 identify the pending issues for the completion of the development of version 1 of an Explanatory Manual to the Convention and develop terms of reference for a correspondence group to work intersessionally with a view to completing the work by FAL 36; and
- .3 submit its report by Thursday, 15 January 2009.

Consideration of the report of the Working Group

4.23 Having received the report of the Working Group (FAL 35/WP.2), the Committee approved it in general and took action as indicated hereunder:

- .1 noted the progress made in relation to the development of the Explanatory Manual to the Convention and the status in relation to the drafting of the various sections (FAL 35/WP.2, paragraph 4);
- .2 noted the proposed arrangements for progressing the work intersessionally and, in this respect re-established the Correspondence Group on the development of the Explanatory Manual to the Convention under the coordination of the Netherlands* and with terms of reference those set out in paragraph 4.24;
- .3 noted the Group's view on the apparent out of date provisions of Standards 2.20, 3.20 and 3.23 (FAL 35/WP.2, paragraphs 6 and 7) ;
- .4 invited proposals from Contracting Governments on other apparent outdated provisions, in the context of the proposed comprehensive review of the Convention (FAL 35/WP.2, paragraph 6);
- .5 agreed with the Group's recommendation that the footnote to Recommended Practice 3.11.2 should be replaced (FAL 35/WP.2, paragraph 5);
- .6 noted the view of the Group that the Notes in the Annex to the Convention should be moved to the Explanatory Manual of the Convention, in the context of the proposed comprehensive review of the Convention (FAL 35/WP.2, paragraph 9);
- .7 noted the comments of the Group in relation to control measures by national authorities (FAL 35/WP.2, paragraph 10);

*

Coordinator:

Mr. Ed Broekema
Policy Adviser, Customs & Consumer Taxes Directorate
P.O. Box 20201
NL – 2500 EE The Hague
The Netherlands
Tel: + 31 70 342 8129
Fax: + 31 70 342 7938
E-mail: e.broekema@minfin.nl

- .8 noted the Group's comments on definitions (FAL 35/WP.2, paragraph 11);
- .9 noted the Group's views on the publication of the Explanatory Manual of the Convention in an electronic format which would combine the Convention and the manual (FAL 35/WP.2, paragraph 12); and
- .10 noted the Group's view that certain Standards and Recommended Practices are not requiring explanation (FAL 35/WP.2, paragraph 15).

Terms of reference of the Correspondence Group on the development of the Explanatory Manual to the Convention

4.24 The Correspondence Group on the development of the Explanatory Manual to the Convention should, on the basis of the work done thus far and taking into account the need to coordinate the work with the work of the Correspondence Group on Electronic means for the clearance of ships⁶ should:

- .1 continue and finalize the development of an Explanatory Manual to the Convention, taking into account that the manual should be based on the Standards and Recommended Practices and the IMO FAL forms which would be in effect when the 2009 amendments to the Annex to the Convention would enter into force⁷ and should:
 - .1 encourage and improve the implementation of the Convention;
 - .2 include explanations of Standards and Recommended Practices with the view to facilitating their possible implementation by providing technical advice and highlighting best practices;
 - .3 lead to a better understanding of the underlying principles of the Convention and promote its implementation;
 - .4 assist Contracting Governments in the preparation of their national legislation and other regulatory instruments;
 - .5 be non-binding to Contracting Governments and entail no legal obligations;
 - .6 take into consideration the relevant provisions of Annex 9 on Facilitation to the Convention on International Civil Aviation (Chicago, 1944), the Revised Kyoto Convention on Customs procedures, and other relevant UN/ECE Recommendations; and

⁶ The Correspondence Group on Electronic means for the clearance of ships has been instructed to prepare definitions of the data elements for each of the IMO FAL Forms 1 to 7, including the related format of the associated entries, on the understanding that a similar work is to be undertaken by the Correspondence Group on the development of the Explanatory Manual to the Convention.

⁷ The 2009 amendments to the Annex to the Convention are expected to enter into force on 15 May 2010 and FAL 36 has been tentatively scheduled to take place from 26 to 30 April 2010.

- .2 submit a report on the work of the Correspondence Group together with the final version of the Explanatory Manual to the Convention for consideration by FAL 36.

5 ELECTRONIC MEANS FOR THE CLEARANCE OF SHIPS

Revision of the IMO Compendium on facilitation and electronic business and development of EDI messages for transmission of security-related information

Consideration of the report of the Correspondence Group

5.1 The Committee recalled that FAL 34 re-established a Correspondence Group on Electronic means for the clearance of ships (Correspondence Group) and instructed it to:

- .1 monitor the submission of the electronic data elements needed to accommodate the security-related information in MSC/Circ.1130 on Guidance to masters, Companies and duly authorized officers on the requirements relating to the submission of security-related information prior to the entry of a ship into port to the appropriate UN/CEFACT approving bodies and advise the Committee accordingly; and
- .2 review and finalize the draft revised IMO Compendium on Facilitation and Electronic Business (the Compendium) for consideration with a view to adoption during this session, taking into account the list identifying the issues which require attention and the outcome of MSC and other organizations such as WCO and UN/CEFACT (TBGs 3 and 4).

5.2 The Correspondence Group in its report (FAL 35/5 (United States on behalf of the Correspondence Group)) described the work done. Annex 1 of the document explained proposed amendments to the Compendium. Annex 2 showed the proposed amendments to the Convention to ensure continued consistency with the Compendium. Annex 3 showed the revised Compendium with proposed changes incorporated, including steps to develop an electronic data interchange (EDI) message for transmission of security-related information in accordance with MSC/Circ.1130. Annex 4 showed the DMRs submitted by the United States for security-related information and a table of results from WCO and UN/CEFACT review.

5.3 ICS (FAL 35/5/3) provided comments on the report of the Correspondence Group on Electronic Means for the Clearance of Ships; reiterated the need for facilitation measures; and suggested some minor adjustments to fine-tune the Correspondence Group's proposals to amend the Convention and the Compendium.

5.4 The Committee recalled that FAL 31 agreed not to prescribe a form for transmitting the security-related information that a ship may be requested by a SOLAS Contracting Government to submit pursuant to SOLAS regulation XI-2/9.2.1 and, instead, agreed to develop a standard minimum data set that ships could expect to be required to transmit prior to entry into port. The Committee also recalled that this approach had been endorsed by MSC 79 which developed and agreed the standard data set and promulgated it under cover of MSC/Circ.1130.

5.5 The Committee further recalled that MSC 79 advised FAL 32 that, even though the standard data set contained in MSC/Circ.1130 was subject to review and amendment by MSC, the Committee should consider commencing the development of an electronic data interchange

message (EDI message for security-related information), for joint adoption by MSC and the Committee, and for inclusion in the Compendium, through which the standard data set could be transmitted electronically.

5.6 The Committee recalled that its original intention appeared to be that the work on the revision of the Compendium should be completed during this session. However, the inclusion of the EDI message on security-related information requires: (1) the allocation of data codes under the UN/CEFACT electronic message scheme; and (2) the joint adoption of the EDI message on security-related information by the MSC. As a result, it was obvious that the completion of the revision of the compendium during this session was not practically possible and this would need to be referred to MSC 86 for concurrence as far as the EDI message on security-related information and then considered during the next session of the Committee. In addition, any changes to the IMO FAL forms, which are summarized in annex 2 to document FAL 35/5 would need to be reflected in the IMO FAL forms set out in appendix 1 to the Annex of the Convention and this would require the adoption of relevant amendments. This must be proposed by a Contracting Government in good time well before the next session so as to be considered for adoption at FAL 36. Furthermore, in order to ensure consistency, the revised Compendium would need to enter into use on the date the related amendments to the Annex of the Convention would enter into force.

5.7 The Committee, in view of the fact that it is envisaged that the amendments which the Committee would be invited to adopt under agenda item 3 would enter into force on 15 May 2010, reaffirmed its previous decision that the use of the revised Compendium should commence as from the same date and the content of the Compendium would need to correspond to the provisions of the Annex to the Convention as they would be in force as from 15 May 2010.

5.8 The Committee, noting that five States which are Contracting Governments are not Contracting Governments to the 1974 SOLAS Convention and 49 States which are Contracting Governments to the 1974 SOLAS Convention are not Contracting Governments, agreed that introducing into the Annex to the Convention provisions aimed at transposing the provision of SOLAS regulation XI-2/9.2.1 and of ISPS Code, paragraphs B/4.37 to B/4.40, into provisions of the Convention, in line with the related proposals of the Correspondence Group for the adoption of amendments to the Annex of the Convention in relation to the requirements for the submission of security-related information, was creating complications and thus should not be pursued.

5.9 The Committee, noting that the proposal of the Correspondence Group for the inclusion in the IMO FAL Form 1 on General Declaration of an optional page 2 to enable the submission of security-related information in paper form was in conflict with previous decisions of the Committee and of MSC 79 not to prescribe a form for transmitting security-related information but instead a data set, agreed that it should not be pursued.

5.10 The Committee concluded that this approach was limiting the number of consequential amendments to the Convention which need to be adopted at this stage with a view to ensuring consistency and alignment between the Convention and the revised Compendium. In this respect the Committee agreed that nothing prevented the development of a paper form, at a later stage, if a compelling need arises and the MSC, which is the competent body for matters relating to the 1974 SOLAS Convention, decides so, and an understanding is reached between the Committee and the MSC on how matters should be handled as it is presently being done between MSC and MEPC for matters which are regulated, for example, under the 1974 SOLAS Convention and MARPOL 73/78.

5.11 The Committee noted that some of the terminology used in the report of the Correspondence Group, in relation to the EDI message on security-related information, did not appear to be consistent with SOLAS regulation XI-2/9; ISPS Code, paragraphs B/4.37 to B/4.40; and MSC/Circ.1130 and agreed that this needed to be addressed.

Establishment of a Working Group

5.12 The Committee re-established the Working Group on Electronic means for the clearance of ships, under the chairmanship of Mr. K. Itoh (Japan), and instructed it (refer also to paragraph 5.26), taking into account the discussions and decisions in plenary, to:

- .1 prepare a final draft of proposed revised Compendium using as a basis annex 3 of document FAL 35/5 for approval by the Committee and submission by the Organization to WCO, UN/CEFACT (TBG) and other organizations for comments and in this respect ensure that:
 - .1 the Standards and Recommended Practices which may be cited in the Compendium and the IMO FAL forms to be referred to or used should be those which would be in effect when the amendments to the Convention which were discussed by the Committee with a view to adoption under agenda item 3 enter into force; and
 - .2 the terminology used in relation to the EDI message on security-related information is consistent with the provisions of SOLAS regulation XI-2/9, ISPS Code, paragraphs B/4.37 to B/4.40, and MSC/Circ.1130;
- .2 identify issues relating to the electronic means for the clearance of ships on which progress needs to be made with a view to achieving the Role, Mission, Strategic direction and work of the Committee and, if necessary, prepare terms of reference for a correspondence group to commence the needed work intersessionally; and
- .3 report to plenary on Thursday, 15 January 2009.

Consideration of the report of the Working Group

5.13 Having received the report of the Working Group (FAL 35/WP.3[§]), the Committee approved it in general and took action as indicated hereunder:

- .1 concurred that the security-related information might be transmitted via the UN/EDIFACT Customs Conveyance Report Message (CUSREP) or the Berth Management Message (BERMAN Version 2) and in this respect noted that the General Declaration might be transmitted to Customs, Coast Guard and other authorities and a second optional CUSREP message including security-related information might be transmitted separately to the duly authorized officers referred to in SOLAS regulation XI-2/9 (FAL 35/WP.3, paragraph 14.1);

[§] Re-issued as FAL 35/WP.3/Rev.1.

- .2 decided not to inform the MSC in relation to the choice between CUSREP and BERMAN as the related work was still in progress and the choice did not bear upon the related decisions of MSC which had invited the Committee to develop a message for the transmission of security-related information electronically (FAL 35/WP.3, paragraph 14.1);
- .3 noted the recommendation related to the IMO Company identification number as a part of the security-related information; agreed, in view of the fact that the related amendments to the 1974 SOLAS Convention had entered into force and notwithstanding that MSC would need to amend the data set provided in MSC/Circ.1130, that the IMO Company identification number should be included in electronic message for the transmission of security-related information which was being developed. In this respect the Committee agreed to invite MSC to adopt the necessary amendments to MSC/Circ.1130 (FAL 35/WP.3, paragraph 14.2);
- .4 approved, subject to editorial revisions by the Secretariat and on the understanding that it was necessary to incorporate therein the 2009 amendments to the Annex of the Convention, Part I of the draft of proposed revised IMO Compendium on Facilitation and Electronic Business and agreed that it should be forwarded to WCO, UN/CEFACT (TBG) and other organizations for comments (FAL 35/WP.3, paragraph 14.3 and annex);
- .5 agreed that, at this stage, Part II on Electronic transmission of security-related information of the draft of proposed revised IMO Compendium on Facilitation and Electronic Business represented, as set out in the annex to document FAL 35/WP.3, as a concept and work in progress (FAL 35/WP.3, paragraph 14.3 and annex);
- .6 noted the comments made by the working group regarding the use of the terms “Port of loading” and “Port of discharge” on some of the IMO FAL Forms (FAL 35/WP.3, paragraphs 12 and 14.6); and
- .7 re-established the Correspondence Group on Electronic means for the clearance of ships, under the coordination of the United States* and with terms of reference those set out in paragraph 5.14 (FAL 35/WP.3, paragraph 14.7).

Terms of reference for the Correspondence Group on Electronic means for the clearance of ships

5.14 The Correspondence Group on Electronic means for the clearance of ships should, on the basis of the work done thus far and taking into account the need to coordinate the work with the work of the Correspondence Group on the development of the Explanatory Manual to the Convention⁸:

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Coordinator:

Mr. Roger Butturini, United States Coast Guard, United States Department of Homeland Security
E-mail: roger.k.butturini@uscg.mil

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The Correspondence Group on the development of the Explanatory Manual to the Convention has been instructed to prepare related definitions, where necessary, of the data elements for each of the IMO FAL Forms 1 to 7, including the related format of the associated entries, on the understanding that a similar work is to be undertaken by the Correspondence Group on Electronic means for the clearance of ships.

- .1 review the IMO Compendium on Facilitation and Electronic Business (the Compendium), as approved by the Committee (refer to paragraphs 5.13.4 and 5.13.5) and identify any issues which may warrant correction and prepare related proposals, taking into account, *inter alia*, the need to align the provisions of the Compendium with the corresponding provisions of the Convention including the 2009 amendments to the Annex of the Convention and the need to ensure consistency in the terminology used in the electronic message for the transmission of security-related information with the terms used in SOLAS chapter XI-2, the ISPS Code and MSC/Circ.1130;
- .2 if necessary, as a result of the work done under subparagraph .1, prepare and submit the necessary DMRs (e.g., Message Structure Change, New Code Requests, and New Segment Requests) to UN/CEFACT Forum in consultation with WCO and TBG4 regarding customs-related messages;
- .3 review the layout and arrangement of the Compendium and identify any related changes which may make it be more user-friendly;
- .4 prepare definitions of the data elements for each of the IMO FAL Forms 1 to 7, including the related format of the associated entries; and
- .5 submit a report to FAL 36.

E-business possibilities for the facilitation of maritime traffic and cooperation amongst Member States

5.15 The Committee noted with interest information submitted by Brazil (FAL 35/INF.5) on a project being undertaken in Brazilian ports with the intention of creating a Paper-free port. The Paper-free port project aims to integrate all the information systems involved and to promote the exchange of electronic data, the standardization of documents and procedures with a view to reduction in costs and bureaucracy.

5.16 The Committee requested Brazil to keep the Committee advised of progress and urged all Member States to share their experience with the Committee in relation to similar projects.

The use of Single Window concept

Activities of Member States

5.17 The Committee recalled that, during FAL 32, the Republic of Korea in an effort to simplify, standardize and make effective use of the information on arrival/departure through electronic means presented an XML-based Single Window System framework which was making it possible to automate and simplify clearance formalities by means of the reusability of information and the Committee invited the Republic of Korea to submit further information to FAL 33.

5.18 The Committee also recalled that FAL 33 discussed a submission by the Republic of Korea which proposed an ebXML collaboration model for an XML-based Single Window System for simplifying clearance formalities and invited Member States and organizations to consider benefiting from the ebXML collaboration model and the Republic of Korea to keep the Committee informed of the relevant updates and new developments in this area.

5.19 The Committee recalled further that FAL 34 discussed a submission by the Republic of Korea which proposed a Single Window UNeDocs Support System which integrates the concept of UN/CEFACT UNeDocs to the ebXML Collaboration Model of Single Window for Marine Transport presented by the Republic of Korea during FAL 33 and invited the Republic of Korea to continue to keep it informed of the relevant updates and new developments in this area.

5.20 The Committee noted with interest the information provided by the Republic of Korea (FAL 35/5/1) which updated previous information provided to FAL 34 in regard to UNeDOCs practices. The document utilized UNeDocs Data Model through one example using General Declaration message, IMO FAL Form 1, and showed how to translate a transmitted electronic document into a UNeDocs formatted file. Using the proposed system, the Republic of Korea was of the view that it is possible to declare to multiple organizations or country with only one single electronic data submission using the Single Window and UNeDocs concept due to users being able to generate various format data using the proposed system.

Proposed development of guidelines for setting up the Single Window system in maritime transport

5.21 The Republic of Korea (FAL 35/5/2) advised that Single Window allows for a declaration by submitting related documents or data only one time through designated single entry. The Republic of Korea pointed out that, although the UN/CEFACT defined and released Recommendation No.33 on Establishing a Single Window and some countries and regional organizations have started considering building Single Window, there were still no international standardized guidelines for setting up the Single Window system in maritime transport, especially for the clearance of the ship. As a result the Republic of Korea proposed the development of guidelines as to how to set up and operate the Single Window system in each country's maritime organizations/authorities based on its previous submissions (FAL 31/INF.3, FAL 32/5/3, FAL 33/5/2 and Corr.1 and FAL 34/5/1), with a view to improving and contributing the effective management of vessel arrival/departure and cargo handlings, in particular, in countries which have not built such a system yet.

5.22 The Committee recalled that the Role, Mission, Strategic direction and work of the Committee, *inter alia*, provided that the Committee should encourage the use of information and communication technology to drive continuous improvement and innovation in the facilitation of maritime traffic and, in particular, to promote the wider use of the single window concept for pre-arrival information, to allow all the information required by public authorities to be provided by a visiting ship to a port through one point of entry but which is secure and reliable; consider the most appropriate way to facilitate the process of clearing the ship, its cargo, passengers and crew, by using information technology solutions; and to identify possible technical assistance measures to expand information technology and e-business in the area of maritime traffic, particularly in developing countries.

5.23 The Chairman suggested that the proposal of the Republic of Korea on the development of guidelines for setting up the Single Window system in maritime transport appeared to be, in the context of the Role, mission, strategic direction and work of the Committee, promoting the achievement of the aims of the Committee, as long as such guidelines take into account and build upon existing standards and recommendations developed by, for example, UN/CEFACT, WCO and ISO and are intended for use primarily by those who would embark on the establishment of a Single Window system henceforth.

5.24 The Committee discussed various aspects of the proposed guidelines and agreed that the Organization should not duplicate the work being done in other organizations, such as UN/CEFACT, WCO, ISO or APEC, in relation to the Single Window but should develop guidelines solely for the maritime area building upon existing international standards, recommendations and guidelines.

5.25 The Committee invited the Republic of Korea to continue to keep the Committee informed of the relevant updates and new developments in this area.

Establishment of a Working Group

5.26 The Committee instructed the Working Group for Electronic means for the clearance of ships (refer to paragraph 5.12) to develop terms of reference for a Correspondence Group on the development of guidelines for setting up the Single Window system in maritime transport and, if it is practically possible, a list of issues which such guidelines should address and to report to plenary on Thursday, 15 January 2009.

Consideration of the report of the Working Group

5.27 Having received the report of the Working Group (FAL 35/WP.3[§]), the Committee approved it in general and took action as indicated hereunder:

- .1 approved the establishment of a Correspondence Group on the Development of guidelines for setting up a Single Window system in maritime transport, under the coordination of Brazil* and with terms of reference those set out in paragraph 5.28 (FAL 35/WP.3, paragraph 14.4); and
- .2 invited Member States which had already established or were in the process of establishing a Single Window to share their knowledge and experience with the Correspondence Group (FAL 35/WP.3, paragraph 14.4).

Terms of reference for a Correspondence Group on the development of guidelines for setting up the Single Window system in maritime transport

5.28 The Correspondence Group on the development of guidelines for setting up the Single Window system in maritime transport should:

- .1 prepare a first draft of Guidelines for setting up the Single Window system in maritime transport, taking into account and building upon existing standards, guidelines and recommendations adopted, for example, by UN/CEFACT, WCO and ISO on the understanding that the guidelines are intended for use primarily by those who will embark on the establishment of a Single Window system

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Coordinator:

Luis Fernando Resano
Coordination of the Maritime National Policy, Brazilian Naval Staff
Esplanada dos Ministérios Bloco no. 5 Andar
Brazil 70710 500
Tel: +5561 34113738
Mobile: +5561 81327815
E-mail: luis.resano@planalto.gov.br

henceforth and ensure compatibility and harmonization with other modes of transport;

- .2 prepare an index listing the related standards, guidelines and recommendations on the Single Window concept adopted by UN/CEFACT, WCO and ISO, as well as other international bodies and regional organizations and current developments which are in hand in this respect;
- .3 prepare a summary of the lessons learned from Member States who have established or are intending to establish Single Window; and
- .4 submit a report for consideration by FAL 36.

6 FORMALITIES CONNECTED WITH THE ARRIVAL, STAY AND DEPARTURE OF PERSONS

Formalities connected with the arrival, stay and departure of persons: shipboard personnel

6.1 The Committee noted that no documents were submitted for consideration and no issues were raised or discussed under this subitem.

Formalities connected with the arrival, stay and departure of persons: stowaways

Stowaway incidents

6.2 The Committee noted that since FAL 34, the Secretariat has issued FAL.2/Circ.103, FAL.2/Circ.105, FAL.2/Circ.106 and FAL.2/Circ.107 which are quarterly reports setting out the information reported to the Organization in relation to stowaway incidents. The annual statistics for 2007 are set out in FAL.2/Circ.108.

6.3 The Committee noted the following summary of information reported to the Organization in relation to stowaway incidents during the period 2002 to 2007:

Stowaway cases and stowaways

Year	2002	2003	2004	2005	2006	2007
Stowaway cases	265	185	98	96	244	252
Stowaways	574	481	210	209	657	889

Reporting sources

Year	2002	2003	2004	2005	2006	2007
Member States	7	8	10	8	13	7
Associate Members	1	1	0	0	1	1
NGOs	2	1	0	0	1	0

6.4 The Committee noted also that the need for submitting reports had been repeatedly stressed and that the situation was not satisfactory and the low number of reporting sources did not provide any confidence on the objectivity of the statistical information. The Committee noted further that in a significant number of cases the reports submitted continue to be incomplete and this prohibits the analysis of the information and the drawing of conclusions. The Committee again reiterated the need to submit reports which should be complete and accurate.

6.5 The Committee was of the view that, setting aside issues related to inconsistent reporting, the figures, once more, point out that ships, port facilities and Governments need to seriously reflect on the adequacy and effectiveness of the implementation of the preventive security measures included, as standard and recommended practices, in the 2002 Amendments to the Annex to the Convention in an effort to bring matters related to stowaways under control, which entered into force on 1 May 2003, and on the implementation of SOLAS chapter XI-2 and of the ISPS Code.

FAL.2/Circ.50/Rev.1 on Reports on stowaway incidents

6.6 The Committee recalled that FAL 34 agreed that FAL.2/Circ.50/Rev.1 on Reports on stowaway incidents, which was approved by FAL 27, should be reviewed and updated during this session and invited submissions to this end.

6.7 The Committee recalled also that, when FAL 34 decided that FAL.2/Circ.50/Rev.1 needed to be reviewed and updated, it was noted that this is also necessary in relation to the Performance indicators which are to be used to monitor the performance of the Organization against the Strategic Plan for the Organization and the High-level Action Plan and priorities of the Organization.

6.8 In order to make progress on the issue, the Committee instructed the Secretariat to prepare a relevant proposal for consideration by FAL 36, in case no submissions to this end reach the Organization by the first deadline for the submission of documents for consideration by FAL 36.

Harmonization of forms and notifications for the return of stowaways

6.9 The Committee recalled that resolution A.871(20) on Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases, which was adopted in November 1997, provides a form for the notification of stowaways in its appendix.

6.10 The Committee recalled also that FAL 28, in November 2000, noting the difficulties experienced in the context of the return of stowaways, identified, *inter alia*, the lack of harmonization of national forms and notifications as a contributing factor and agreed to work towards the harmonization of these in the future. FAL 28 further agreed that there would be a need to consider samples of the national forms and notifications used prior to embarking on a work of harmonization and invited Member States to submit, for consideration at FAL 29, models of their national forms and notifications. In addition, FAL 28 decided that such information should be reviewed with the aim of preparing standard forms to be included in the FAL Convention.

6.11 The Committee recalled further that following the entry into force on 1 May 2003 of the 2002 Amendments to the Annex to the Convention, Recommended Practice 4.6.2 and appendix 3 to the Convention provide a form which can be used by the master when gathering relevant stowaway details for notification.

6.12 The Committee recalled that during FAL 32, in July 2005, the Chairman had suggested that, taking into account Recommended Practice 4.6.2 and appendix 3 of the Annex to the Convention, Member States and international organizations might wish to consider changing this Recommended Practice to a Standard and formalize the recommended form into an IMO FAL Form, which may lead to the harmonization of forms used in reporting stowaways to public authorities and thus would assist ships' masters in reducing documentary requirements. FAL 32 had agreed to consider the Chairman's proposal and invited submissions to this end for consideration at FAL 33 and reiterated the invitation to submit models of the national forms and notifications used for the return of stowaways.

6.13 The Committee also recalled that FAL 34 considered the issue of harmonization of forms and notifications for the return of stowaways and agreed that:

- .1 the issue had been under discussion since FAL 28 and until now none of the Member States had submitted information to this end despite the fact that the Committee had reiterated the request for submission of national forms and notifications used for the return of stowaways at every session since FAL 28;
- .2 reiterating once more the request for submission of national forms and notifications used for the return of stowaways may not produce results and thus the Committee needed to take another approach in addressing this issue;
- .3 changing Recommended Practice 4.6.2 to a Standard and appendix 3 to an IMO FAL Form in appendix 1 of the Annex to the Convention would lead to the desired harmonization of forms and notifications for the return of stowaways;
- .4 the aforesaid task could be pursued either by approving the required amendments to the Convention during FAL 34 for consideration with a view to approval during FAL 35 or one of the Contracting Governments could submit, pursuant to article VII(2), the required amendments for consideration with a view to adoption during this session; and
- .5 it would not be practically possible to prepare and approve the required amendments during FAL 34 and, as a result, invited Contracting Governments to consider submitting the required amendments to the Secretary-General for consideration with a view to adoption during this session, when it was contemplated to consider and adopt other amendments to the Annex to the Convention.

6.14 The Committee noted that, as a result, although the Committee had agreed that the harmonization of forms and notifications for the return of stowaways is a desirable objective, the matter has been pending since FAL 28; needs to be resolved; and, once more, the track record indicated that the Committee needs to take another approach to resolving the issue.

6.15 Accordingly, the Committee instructed the Secretariat to prepare a relevant proposal for consideration by FAL 36, in case no submissions to this end reach the Organization by the first deadline for the submission of documents for consideration by FAL 36.

National legislation on practices addressing stowaway incidents

6.16 The Committee recalled that FAL 34:

- .1 noted that FAL 27, in September 1999, had urged Member States to provide the Organization with a summary of their national legislations addressing stowaway incidents or a summary of current practices and the Committee has reiterated this request at every session since then;
- .2 noted that only four Member States have provided information in this respect despite the fact that the Committee had reiterated the request at every session since FAL 27;
- .3 noted that, following the entry into force of the 2002 amendments to the Annex to the Convention, which contain Standards and Recommended Practices in relation to stowaways, a review of the discussions, which led FAL 27 to urge Member States to provide the Organization with a summary of their national legislations addressing stowaway incidents or a summary of current practices suggested that matters may have been overtaken by events and the issue may only be relevant in relation to those Member States which are not yet Contracting Governments; and
- .4 agreed to renew the request for submission of summaries of national legislations or of practices addressing stowaway incidents.

6.17 The Committee recalled also that FAL.2/Circ.50/Rev.1 is also inviting Member States to submit, three months before each session of the Committee, summaries of national legislations or in the absence of legislation summaries of practices addressing stowaway incidents.

6.18 The Committee decided, as the terms of reference for the IMO Stowaway Focal Point envisage the establishment by the Secretariat of an inventory of national legislation and practices relating to stowaways, to renew the request for submission of summaries of national legislations or of practices addressing stowaway incidents only in relation to those Member States which are not yet Contracting Governments, on the understanding that FAL 36 should review the utility of continuing such a request.

Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases (resolution A.871(20))

6.19 The Committee recalled that FAL 34 noted that a review of the Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases (the Guidelines), adopted by resolution A.871(20), clearly showed that these neither make reference to nor reflect any aspects of the provisions which had been included in the Convention in relation to stowaways through the 2002 amendments to the Annex to the Convention. In addition, it was noted that resolution A.871(20) made no reference and took no account of the provisions of SOLAS chapter XI-2 and the ISPS Code. As a result, the Committee agreed that resolution A.871(20) should be reviewed and updated during FAL 35 and invited submissions to this end. However, once more the Committee noted that there had been no submissions in this respect and that there was a need to make progress on this issue.

6.20 Accordingly, the Committee instructed the Secretariat to prepare a relevant proposal for consideration by FAL 36, in case no submissions to this end reach the Organization by the first deadline for the submission of documents for FAL 36.

6.21 The Committee also noted that at present two regimes appeared to co-exist in relation to stowaways. The first one was established by resolution A.871(20) which was adopted in November 1997 and the other had been introduced through the provisions which had been included in the Convention in relation to stowaways through the 2002 amendments to the Annex to the Convention which entered into force on 1 May 2003.

6.22 As a result the co-existence of the two regimes had raised a number of questions, for example, as to what applies or what is the position of the Member States which are Contracting Governments *vis-à-vis* resolution A.871(20).

6.23 Accordingly, pending the revision of the Guidelines, the Committee invited the Assembly to decide that resolution A.871(20) should be followed only by:

- .1 those Member States which are not Contracting Governments;
- .2 those Member States which are Contracting Governments and have notified, in accordance with article VIII(1), the Secretary-General, in relation to the Standards specified in section 4 on Stowaways of the Annex to the Convention, that they find it impracticable to comply with the aforesaid Standards or of differences between their own practice and the said Standards; and
- .3 those Member States which are Contracting Governments which have not yet notified, in accordance with article VIII(3), the Secretary-General that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the Annex to the Convention.

6.24 The Committee agreed that the revision of the Guidelines should be done in cooperation with MSC and in order to avoid the uncertainties which transpired; and so as to provide guidance equivalent to that provided through the 2002 amendments to the Annex to the Convention, it was necessary to find a way to promulgate and make available the revised Guidelines before the twenty-seventh regular session of the Assembly which was expected to take place in the autumn of 2011. To this end, the Committee agreed, taking into account the approach taken in relation to the revision of the Guidelines for the prevention and suppression of the smuggling of drugs, psychotropic substances and precursor chemicals on ships adopted by resolution A.872(20), to prepare and submit for consideration and adoption by A 26 of an Assembly resolution on the revision of the Guidelines through which A 26 would, *inter alia*, authorize the Committee and MSC to adopt jointly the required amendments to the Guidelines (or to adopt a new version of the Guidelines, if necessary) and would require the two Committees to report accordingly to A 27 on the actions taken.

6.25 In this respect, the Committee considered a draft Assembly resolution (FAL 35/WP.8 (Secretariat)) which also addresses the decision requested of the Assembly (paragraph 6.23) and approved the draft Assembly resolution on Revision of the Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases (resolution A.871(20)) as set out in annex 3, for submission to the twenty-sixth regular session of the Assembly for consideration with a view to adoption.

IMO Stowaway Focal Point

6.26 The Committee recalled that FAL 34 requested the Secretary-General to establish, to the extent existing resources allow, within the Secretariat an IMO Stowaway Focal Point on a trial experimental basis. FAL 34 agreed that the primary function of such an IMO Stowaway Focal Point was to provide assistance for the successful resolution of stowaway cases only when the parties concerned had been unable to resolve such issues within the means available to them. In this respect, FAL 34 approved terms of reference for the conduct of such trials and agreed to review the experience gained during this session before taking any further action.

6.27 The Committee noted that, in accordance with the terms of reference, the IMO Stowaway Focal Point was established in the Secretariat with the objective to provide assistance towards the successful and expeditious resolution of stowaway cases by facilitating communications and fostering cooperation between the relevant public authorities of the Governments of the Member States and with the Company and the master of the ship concerned.

Although the terms of reference for the IMO Stowaway Focal Point provide that Member States should: (1) communicate to the Organization a single national point of contact through whom all communications relating to stowaways are to be routed; and (2) provide information in relation to their national laws, policies, practices and procedures relating to stowaways, none of the Member States has provided such information and only one has forward information in relation to their laws and practices thus far. As a consequence, the Secretariat has not been in a position to establish the inventory of national legislation and practices relating to stowaways envisaged in the terms of reference.

Since FAL 34 the assistance of the Secretariat has been requested to assist in only three cases of stowaways on board ship, with a view to the effective disembarkation of such stowaways at the next port. As the Member States have not designated the envisaged national points of contact for stowaway cases, the Secretariat has passed on these requests through the diplomatic or any other channels which were available to the Secretariat. However, as the majority of stowaway incidents are handled at the local level, little or no feedback has been received. As a result, the success or otherwise of IMO intervention cannot be quantified. Nevertheless the establishment of the IMO Stowaway Focal Point did focus attention on the ongoing problem of stowaways and hopefully led to better liaison with relevant bodies including P & I Clubs, which in turn has been reflected in greater accuracy with the statistics on stowaways.

6.28 In view of the limited results of the trials and as the number of stowaway incidents report to the Organization for 2007 are higher than those for 2006, the Committee requested the Secretariat to continue the trial of the IMO Stowaway Focal Point and to report to FAL 36 the experience gained; and agreed to review the experience gained during FAL 36 before taking any further action.

6.29 The Committee urged Member States, as provided in the terms of reference for the IMO Stowaway Focal Point, to communicate to the Organization a single national point of contact (name, title, address, office telephone, facsimile and e-mail address and after hours telephone number) through whom all communications relating to stowaways are to be routed; and to provide information to the Organization in relation to their national laws, policies, practices and procedures relating to stowaways.

Formalities connected with the arrival, stay and departure of persons: illegal migrants

Illegal migrants incidents

6.30 The Committee noted the information provided in relation to the illegal migrants incidents which have reported to the Organization. In particular that since FAL 34, the Secretariat has issued MSC.3/Circ.13, MSC.3/Circ.14 and MSC.3/Circ.15 which are the biannual reports on unsafe practices associated with the trafficking or transport of migrants by sea for the period 1 January 2007 to 30 June 2008.

The Committee noted that 164 cases of illegal migrants had been reported to the Organization in 2006, 90 in 2007, and 41 in for the first six months of 2008.

In terms of numbers of illegal migrants, the cases reported to the Organization involved 13,304 illegal migrants in 2006; 1,354 in 2007; and 578 for the first six months of 2008.

The total number of incidents related to unsafe practices associated with the trafficking or transport of migrants by sea reported to the Organization for the period between 1 January 1999 and 30 June 2008 is 1,294 and it involves 62,384 illegal migrants.

In a number of cases the Organization had received reports which included information on previous years, for example, in some cases the information received during 2006 were going back to incidents which occurred as early as 2000 and this created an erroneous impression under the current system of recording the reports. In a number of cases the reports submitted continue to be incomplete and this prohibited the analysis of the information and the drawing of conclusions.

The Committee was of the view that the current system of recording the reports needed to be reconsidered so as to enable preparation of statistical information on a systematic basis, for example, on year-by-year and thus contribute towards the establishment of reliable data for use in connection with the Performance indicators which are to be used to monitor the performance of the Organization against the Strategic plan for the Organization and the High-level Action Plan and priorities of the Organization. However, the issue needs to be considered and resolved by the MSC under whose purview is MSC/Circ.896/Rev.1 on Interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea, which forms the basis for the reporting.

Formalities connected with the arrival, stay and departure of persons: persons rescued at sea

Administrative procedures for disembarking persons rescued at sea

Background

6.31 The Committee recalled that following several incidents, the twenty-second regular session of the Assembly adopted resolution A.920(22) on the Review of safety measures and procedures for the treatment of persons rescued at sea. That resolution requested various IMO bodies including the Committee to review selected IMO conventions to identify any gaps, inconsistencies, ambiguities, vagueness or other inadequacies associated with the treatment of persons rescued at sea. The objectives were to help ensure that the integrity of the maritime SAR system was preserved.

6.32 The Committee also recalled that, after considerable debate, MSC 78, in May 2004, adopted amendments to the 1974 SOLAS and 1979 SAR Conventions so that the obligation of the master to render assistance should complement the corresponding obligation of parties to the aforesaid conventions to coordinate and cooperate in relieving the master of the responsibility to provide follow-up care of survivors and to deliver the persons retrieved at sea to a place of safety. These amendments were contained in resolutions MSC.153(78) and MSC.155(78) and entered into force on 1 July 2006.

6.33 The Committee further recalled that MSC 78 also adopted associated guidelines, contained in resolution MSC.167(78) on Guidelines on the treatment of persons rescued at sea. The purpose of these amendments and the guidelines was to help ensure that persons in distress are assisted, while minimizing the inconvenience to assisting ships and ensuring the continued integrity of SAR services.

6.34 Specifically, the new SOLAS regulation V/33 and Annex to the SAR Convention, as amended, imposed upon Governments an obligation to coordinate and cooperate to ensure that masters of ships providing assistance by embarking persons in distress at sea are released from their obligations with minimum further deviation from the ship's intended voyage. As recognized by the MSC in adopting the amendments, the intent of the amendments was to ensure that in every case a place of safety is provided within a reasonable time.

6.35 The Committee also recalled that the 2005 amendments to the Annex to the Convention introduced the words "persons rescued at sea" in the heading of section 2H; in Standard 2.20; and in Standard 7.8, dealing with special measures for facilitation of such persons and noted that, in the light of experience, these appear to be insufficient to enable the effective disembarkation of such persons, bearing in mind the complexity of the problem.

6.36 The Committee also recalled that FAL 33 had established the Correspondence Group on Administrative procedures for disembarking persons rescued at sea and its report was considered by FAL 34. The participation in the Group was very limited and it only received descriptions of administrative procedures from two Member States. Due to this very limited input from Member States, the Group chose not to evaluate the administrative procedures or to identify common threads. The Group did, however, identify a number of essential principles for Member States to incorporate in their administrative procedures in order to ensure that the disembarkation of persons rescued at sea is carried out in an expeditious and orderly manner.

6.37 In addition, the Committee recalled that FAL 34, having noted that a number of Member States and non-governmental organizations supported the continuation of the work of the Correspondence Group on Administrative procedures for disembarking persons rescued at sea (the Correspondence Group), instructed it to continue its work and to report to this session.

6.38 The Committee was advised that MSC 84 had considered a proposal by Italy and Spain (MSC 84/22/9) to examine the situation facing the crews of the ships that rescue persons at sea, with the aim of finding a satisfactory solution for the ships and providing adequate arrangements for those rescued at sea to ensure that they are disembarked at a safe place within a reasonable time. MSC 84 had noted that the Committee already had a correspondence group addressing issues related to the disembarkation of persons rescued at sea and that its report was to be considered at this session.

6.39 After much discussion, MSC 84 had agreed to include, in the work programmes of the COMSAR and FSI Sub-Committees, a high-priority item on “Measures to protect the safety of persons rescued at sea”, with two sessions needed to complete the item. In this respect, the Committee noted that COMSAR 14 was scheduled to meet the following week commencing on 19 January 2009 and that the intention was that the Secretariat would be providing an oral report of the outcome of the discussions of this issue by the Committee with a view to avoiding the creation of conflicts between the work of the Committee on the issue and that initiated by MSC 84. In addition, the Secretariat would, for the same reasons, report the outcome of the discussion of the issue by the Committee to FSI 17 which has been scheduled to meet from 20 to 24 April 2009.

Consideration of the report of the Correspondence Group

6.40 In considering the report of the Correspondence Group (FAL 35/6 (Denmark on behalf of the Correspondence Group)), the Committee noted that the report summarizes the practices followed by Denmark, the Netherlands, Norway, Turkey and the United States who provided information to the Group. The Group concluded that having efficient procedures to secure an expeditious disembarkation of persons rescued at sea remains essential not only for those responsible for the initial rescue and for the persons rescued, but also for the shipping community as a whole; and that it is important that disembarkation procedures are rapid, harmonized and predictable in order to avoid problems with recurrent, time-consuming case-by-case negotiations, which may prolong the disembarkation of the persons rescued.

6.41 The Correspondence Group (the Group) also agreed that the procedures should balance the interest of the shipping industry with the basic needs of individuals rescued at sea.

6.42 The Group proposed the approval of a circular setting out a number of principles in connection with the treatment of persons rescued at sea and the interaction with the rescuing shipmaster. The draft circular urged the coastal States to ensure cooperation with entities responsible for matters relating to the disembarkation and to bear in mind the principles of international law, especially the provisions concerning refugees, when disembarking persons rescued at sea.

6.43 In view of the work initiated by MSC 84, the Group recommended, with a view to avoiding the creation of conflict between the work initiated by MSC 84 and the work of the Committee, referring the draft circular, that might be developed following consideration by the Committee, to MSC for its consideration with a view to it being approved as a joint MSC/FAL circular.

6.44 The Committee also noted that again only a very limited number of Member States had participated in the work of the Group and that the United States had reserved its position on the report of the Group in relation to the draft circular as it contained a number of provisions which are in direct conflict with important aspects of United States domestic law.

6.45 During considerable debate the delegation of the United States stated that, while it supported the aims and objectives of the proposed circular, it disagreed with certain aspects of the proposed draft FAL circular as some of the draft proposals were inconsistent with United States domestic law. The delegation of the United States was of the view that a working group should be established to develop the circular.

6.46 The delegation of Malta stated that Malta had serious reservations on paragraph 2.3 of the proposed draft circular as set out in the annex to document FAL 35/6.

They stated that Malta cannot accept the principle that the disembarkation of persons rescued at sea is put on the State responsible for the SAR area in which the rescue was effected. This issue was heavily debated during previous MSC and COMSAR meetings. The approval of the circular in its current form would have huge repercussions on Malta.

It recalled that Malta has formally objected to the SOLAS and SAR amendments relevant to this issue.

Malta was of the view that not enough work had been done to date by the Correspondence Group in order to propose the draft circular under discussion. Only five Member States and one non-governmental organization had participated in the deliberations of the Group and the delegation of Malta believed that this was not representative of the membership of the Committee. Moreover, Malta firmly believed that the Committee should not delve or intervene into search and rescue matters but should only deal with matters related to facilitation of disembarkation as the former does not fall under the remit of the Committee.

In view of the above, Malta reserved its position on the approval of the draft circular in its current form, in particular paragraph 2.3, and requested that this reservation be recorded in the report of the session.

6.47 The majority of the delegations who spoke in principle supported the development of the circular and proposed several amendments, in particular to the list of States and authorities that should cooperate in order to resolve the incidents.

6.48 The Committee agreed that its involvement with issues in relation to persons rescued at sea should be limited to those matters which fall either within the area of its competency or the scope of the Convention which could be broadly summarized as issues relating to the arrival and disembarkation of such persons. The Committee also agreed to invite the MSC to note this decision and to consult with the Committee when discussing matters relating to the disembarkation of persons rescued at sea.

6.49 The Committee agreed to develop a FAL circular on Principles relating to administrative procedures for disembarking persons rescued at sea and, in this respect to use, as a starting point the draft provided in the annex to document FAL 35/6.

Establishment of a Working Group

6.50 The Committee established a Working Group on Principles relating to administrative procedures for disembarking persons rescued at sea, under the chairmanship of Mr. F. Mortensen (Denmark), and instructed it, taking into account the discussions and decisions in plenary, to prepare a FAL circular on Principles relating to administrative procedures for disembarking persons rescued at sea for consideration by the Committee with a view to adoption; and to report to plenary on Thursday, 15 January 2009.

Consideration of the report of the Working Group

6.51 Having received the report of the Working Group (FAL 35/WP.5), there was considerable debate over the outcome of the Working Group, particularly in relation to the proposed draft FAL circular.

6.52 The delegation of the Bahamas was of the view that there was no need for the proposed FAL circular at all as there already was guidance available in the form of the joint IMO/UNHCR booklet on Rescue at sea, a guide to principles and practice as applied to migrants and refugees. This view was supported by some delegations.

6.53 The delegations of Italy and Spain supported by several delegations were of the view that the circular should be issued immediately as the situation was urgent.

6.54 The delegations of Australia, the United States and the Bahamas supported by several other delegations were of the view that the draft circular went beyond the delicately balanced outcome achieved by the MSC and the related amendments to the 1974 SOLAS and 1979 SAR Conventions and needed to be considered with a “whole of Government approach” and that it was premature in the least to issue the circular from FAL 35 and that the Committee should consider the matter again at FAL 36.

6.55 The majority of the delegations who spoke supported the issue of the proposed circular provided it was amended to address the various issues where concerns were expressed.

6.56 The delegation of Spain supported by several delegations did not support the inclusion in paragraph 2.5 of the proposed circular (FAL 35/WP.5, annex) of a summary of provisions of the 1951 Convention relating to the Status of Refugees or other related provisions of public international law. A statement by the delegation of Spain in this respect is set out in annex 4. This approach was supported by the majority of the delegations who spoke and, as a result, the Committee agreed that the text should only contain a reference that “international protection principles as set out in international instruments should be followed”.

6.57 The delegation of Malta was strongly opposed to the circular and in particular paragraph 2.3 of the proposed circular (FAL 35/WP.5, annex) which, *inter alia*, placed responsibility on “The Government responsible for the SAR area where the persons were rescued should exercise primary responsibility for ensuring such cooperation occurs. If disembarkation from the rescuing ship cannot be arranged swiftly elsewhere, the Government responsible for the SAR area should accept the disembarkation of the persons rescued into a place of safety under its control in which the persons rescued can have timely access to post rescue support”.

6.58 The delegation of Japan, recalling that it reserved its position during the Working Group in relation to the proposed wording of paragraph 2.3 (FAL 35/WP.5, annex), proposed the addition of the words “in accordance with immigration laws and regulations of each Member State” in paragraph 2.3. This proposal was supported by the majority of the delegations who spoke and, as a result, the Committee agreed to insert the text proposed by Japan in paragraph 2.3.

6.59 Several delegations opposed to the use of mandatory word “shall” in recommendatory guidance and accordingly the Committee agreed that “shall” should be replaced by “should” where it appeared.

6.60 The Committee authorized the Secretariat to issue a FAL.3 circular on Principles relating to administrative procedures for disembarking persons rescued at sea, which should be based on the text provided in the annex to document FAL 35/WP.5 and should incorporate the amendments thereto agreed by the Committee.

6.61 The Committee also decided to invite the MSC and its Sub-Committees to take the circular into consideration in their ongoing work; and instructed the Secretariat to forward the circular to the UNHCR for its information.

6.62 The delegations of Australia and Malta reserved their positions on the decisions of the Committee and on the issue of the circular under discussions. The related statements of the delegation of Australia and of the delegation of Malta are set out in annexes 5 and 6 respectively.

6.63 The Secretariat, on the basis of the instructions of the Committee, subsequently issued FAL.3/Circ.194 on Principles relating to administrative procedures for disembarking persons rescued at sea.

7 CERTIFICATES AND DOCUMENTS REQUIRED TO BE CARRIED ON BOARD SHIPS AND FAL FORMS

List of certificates and documents required to be carried on board ships

7.1 The Committee recalled that FAL 19 developed a list of certificates and documents required to be carried on board ships together with a brief description of the purpose of the certificates and other relevant documents. This work was carried out in connection with the provisions of section 2 of the Annex to the Convention concerning the formalities required of shipowners by public authorities on the arrival, stay and departure of ships.

The Committee considered that these provisions should not be read as precluding a requirement for the presentation for inspection by the appropriate authorities of certificates and other documents carried by the ship pertaining to its registry, measurement, safety, manning, classification and other related matters.

The list was considered and approved by MSC and MEPC, at their respective sessions in 1990, and was circulated under cover of an MSC/MEPC/FAL circular.

The list was later revised in 1995, 2000 and 2004, following the entry into force of amendments to the various treaties which govern the certificates and documents which are required to be carried on board, so as to take account of the relevant provisions.

The presently available revised list of certificates and documents required to be carried on board ships, as approved by FAL 31 (July 2004), MEPC 52 (October 2004) and MSC 79 (December 2004), had been issued as FAL.2/Circ.87-MEPC/Circ.426-MSC/Circ.1151.

7.2 The Committee agreed that the aforementioned list needed reviewing so as to reflect any additional or new requirements, for example, following the entry into force of related amendments to the 1974 SOLAS Convention and/or MARPOL 73/78 and instructed the Secretariat to prepare a revised list for consideration with a view to approval at the next session.

Online access to certificates and documents required to be carried on board ships

Background

7.3 The Committee recalled that FAL 33 noted that MSC 81 had considered the outcome of FAL 32 and MEPC 54 on the issue and the proposal by INTERTANKO (MSC 81/24/9), regarding the online access to certificates and documents required to be carried on board ships and, having discussed the matter, had agreed with the decision of MEPC 54 that the Committee should explore the matter further, including the reliability and security of databases on online access to ships' certificates and documents, and urged Member States and organizations to submit relevant proposals for consideration by the Committee.

7.4 The Committee also recalled that MSC 81, being conscious of the potential of an online access to certificates and documents and having duly noted the technical feasibility of a system, had recommended that a step-by-step approach should be applied and the emphasis should be given to the facilitation aspects of such a system. Concerning the potential use of such a system in port State control activities, MSC 81 noted the view that an electronic access to certificates would not be considered as an alternative to the physical inspection of the certificates and could, possibly, serve in the context of the prioritization of port State control inspections.

7.5 The Committee also recalled that FAL 33, having concurred with the above views of MEPC 54 and MSC 81 and having considered the proposal by ICS (FAL 33/11/1) reiterating that the validation and examination of many mandatory certificates and documents currently required to be carried on board ships could be better achieved through online access to databases of issuing Administrations, established the Correspondence Group on Electronic access to IMO certificates and documents.

7.6 The Committee recalled that FAL 34 having considered the report of the Correspondence Group agreed to re-establish under revised terms of reference and, *inter alia*, instructed it to report to this session. FAL 34 also reiterated the view that online access to these certificates and documents was still a long-term project and objective.

Consideration of the report of the Correspondence Group

7.7 The Correspondence Group (FAL 35/7) (Saint Kitts and Nevis on behalf of the Correspondence Group) considered the methodology and facilities required for maintaining certificates and documents in electronic format on board ships; the procedures to be adopted for submitting electronic copies of certificates and documents on a pre-arrival basis; the legal implications which need to be addressed, particularly in relation to the related IMO instruments, when implementing such a system; the strengths, weaknesses, opportunities and threats of such a system; and the required steps and associated time frames for implementing such a system. However, in view of the limited participation in its work, the Group recommended that it is authorized to continue the discussion of the original points and any others raised at FAL 35 and report back to FAL 36.

7.8 ICS (FAL 35/7/1) commented on the report of the Correspondence Group in the context of broader facilitation issues such as electronic business and the single window concept and suggested that any discussions about online access to certificates should be seen in the context of broader facilitation goals and are not developed in complete isolation from other electronic or facilitation projects. In particular, ICS pointed out that the discussions under the agenda item on

certificates and documents are considered in the light of related topics, such as electronic means for the clearance of ships.

7.9 The Republic of Korea (FAL 35/7/2) commented on the report of the Correspondence Group by providing an overview of the domestic certified e-Document authority system and by sharing the experience gained, so far, from using an online access system to documents.

7.10 The Committee reiterated the view that online access to these certificates and documents was still a long-term project and objective and agreed that, before engaging further on the development of the project for online access to certificates and documents required to be carried on board ships, it was necessary to identify the certificates and documents in question and, for such a system to be of use, MSC, MEPC and LEG would need to clearly indicate whether they favoured the development of the system and whether they were prepared to adopt the necessary amendments to the various instruments under their respective purview through which, *inter alia*, the existence of certificates and documents in an electronic format would be accepted as an alternative to the paper printed ones, in a similar manner as the Committee had done with respect to the IMO FAL forms. The Committee noted that identification of the certificates and documents in question was the first step in the discussions and developments of an online access system since this would identify under whose control the authoritative electronic version of each one of these were maintained and where the related databases were located. In this respect the Committee agreed to point out to the other Committees, with a view to enabling them to conduct structured discussions, that a provisional list of certificates and documents was provided in the annex to document FAL 34/9.

7.11 The Committee recognized that this was especially important as, during MSC 81, a number of Member States expressed the view that an electronic access to certificates would not be considered as an alternative to the physical inspection of the certificates and could, possibly, serve in the context of the prioritization of port State control inspections.

7.12 The Committee agreed to invite MSC, MEPC and LEG to consider the issue further and to determine their positions on the matter. The Committee noted that MSC, MEPC and LEG should be prepared to make the necessary amendments to the various instruments under their purview, so as to establish the framework which would yield the benefits of having such a system in place. The Committee did not need to develop such a system for the purposes of facilitation of maritime traffic and travel, as the existing provisions of the Convention and those of the Compendium recognized and regulated the provision of the required information through electronic means. The Committee agreed to advise MSC, MEPC and LEG that in terms of technology the establishment of an online system was possible and to consider the issue in terms of the certificates and documents listed in the annex to document FAL 34/9.

Terms of reference for the Correspondence Group on Online access to certificates and documents required to be carried on board ships

7.13 The Committee also agreed that, pending the decisions of MSC, MEPC and LEG and in view of the support that the proposal the Bahamas received during FAL 34 for considering, as an alternative to the online system, a simpler procedure would be for a ship to hold electronic copies of these and to send them electronically to the port with one of its pre-arrival messages agreed to re-establish the Correspondence Group on Online access to certificates and documents required

to be carried on board ships under the coordination of Saint Kitts and Nevis* and instructed it to consider the proposal by the Bahamas (FAL 34/19, paragraph 9.5) in detail and to:

- .1 identify the certificates and documents which might be appropriate for inclusion in such a system, taking into account the material provided in the annex to document FAL 34/9 and any preparatory work to be done by the Secretariat in relation to the revision and updating of material provided in FAL.2/Circ.87-MEPC/Circ.426-MS/Circ.1151;
- .2 determine the methodology and facilities required for maintaining certificates and documents in electronic format on board ships;
- .3 determine the procedures to be adopted for transmitting electronic copies of certificates and documents on a pre-arrival basis to the competent authorities ashore;
- .4 identify any implications which need to be addressed when establishing, implementing and operating such a system;
- .5 advise the strengths, weaknesses, opportunities and threats of such a system;
- .6 identify the required steps and associated time frames for implementing such a system;
- .7 prepare a first list of issues which need to be considered in case the project for online access to certificates and documents required to be carried on board ships is to be pursued; and
- .8 submit a report for consideration by FAL 36.

Implementation of IMO FAL Forms 1 to 7

7.14 The Committee noted that no documents had been submitted for consideration under this subitem.

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Coordinator:

Mr. Nigel Smith
International Register of Shipping & Seamen
St. Kitts & Nevis International Ship Registry
West Wing, York House
48-50 Western Road
Romford RM1 3LP
United Kingdom
Tel: + 44 (0) 1708 380400
Fax: + 44 (0) 1708 380401
E-mail: mail@StKittsNevisRegistry.net

8 PREVENTION AND SUPPRESSION OF UNLAWFUL ACTS IN PORTS AND AT SEA

Piracy and armed robbery against ships in waters off the coast of Somalia

8.1 The Committee noted that the twenty-fifth regular session of the Assembly, as a result of the unprecedented escalation of the number of acts and attempted acts of piracy and armed robbery off the coast of Somalia and the hijacking of ships and seafarers for ransom, adopted resolution A.1002(25) on Piracy and armed robbery against ships in waters off the coast of Somalia which, *inter alia*, set out a number of measures Governments and the shipping industry should put in place with a view to minimizing the risks of becoming victims to such incidents; requested the Transitional Federal Government of Somalia to take specific actions; called upon the countries in the region to conclude, in cooperation with the Organization, and implement, as soon as possible, a regional agreement to prevent, deter and suppress piracy and armed robbery against ships; and requested the Secretary-General to consult with Governments and organizations interested in establishing a process and means by which technical assistance could be provided to Somalia and nearby coastal States to enhance the capacity of these States to give effect to the resolution, as appropriate.

8.2 The Committee also noted that C 100, C 101 and MSC 85 had extensively discussed the issue and that related information may be found in documents C 100/D, C 101/D and MSC 85/26, respectively.

8.3 The Committee further noted that during 2008, initially, at the request of the Transitional Federal Government of Somalia and, during the later part of 2008, as a result of the escalation of the number of incidents which led to a further deterioration of the situation, the United Nations Security Council adopted, under chapter VII of the Charter of the United Nations resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008) and 1851 (2008). These resolutions were intended to address the issue, including the delivery of humanitarian aid to Somalia and the protection and escorting of ships which are employed by the World Food Programme to do so; and envisaged a number of measures to be put in place by States with a view to bringing the situation under control.

8.4 The Committee noted that at present a number of States and regional organizations had sent warships and other military assets in the area and were conducting a variety of patrols.

8.5 The Committee noted that the Secretariat would keep the Committee informed of developments as a number of the issues under discussion may involve matters within the competency of the Committee.

9 SECURING AND FACILITATING INTERNATIONAL TRADE

Authorized Economic Operator

9.1 The Committee recalled that the 2002 Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, when considering proposals to enhance maritime security had recognized the intermodal and international nature of the movement of closed cargo transport units (closed CTU) and requested the World Customs Organization (WCO) to consider urgently measures to enhance security throughout international movements of closed CTUs.

9.2 The Committee also recalled that as a result of a consultative process involving WCO Member Customs Administrations and representatives of the private sector, the WCO Council adopted in June 2005 the Framework of Standards to Secure and Facilitate Global Trade (Framework of Standards). In June 2006 the WCO Council had adopted Authorized Economic Operator Guidelines (AEO Guidelines) which were appended to the Framework of Standards. In June 2007 the WCO Council agreed to merge the Framework of Standards with the AEO Guidelines to form one integrated document to be called the SAFE Framework of Standards.

9.3 The Netherlands (FAL 35/INF.2) provided information on the incorporation into the European Community Customs Code of the concept of Authorized Economic Operator (AEO) and its place in the international context. The Netherlands also advised that the AEO concept aimed at balancing increased security requirements with facilitation for compliant traders and, in particular, the benefits to be obtained from the AEO status which would lead to faster processing of goods by Customs and would ensure that those obtaining such status see a benefit to their investment in good security systems and practices. This should translate into savings of time and costs. AEOs have to meet criteria specified by the Customs such as having an appropriate record of compliance with Customs requirements, a satisfactory system for managing their commercial records and a demonstrated commitment to supply chain security. The Netherlands also provided an overview of the practices adopted by some States in connection with the same concept; and a summary of various cooperation initiatives of the European Union with other States in this field.

9.4 The observer of the WCO thanked the Netherlands for their document, considering it a good illustration of an AEO programme being rolled out – in this case by the European Union. Such roll-outs were happening amongst a growing number of the 154 WCO Members that had committed to implement the SAFE Framework of Standards. The document also highlighted mutual recognition agreements which were coming into being, whereby one Member recognizes another's AEO programme as equivalent to their own. Mutual recognition was an important principle of the SAFE Framework of Standards.

In respect of current developments, the observer of WCO underlined that the SAFE Framework of Standards was not “set in stone” and a SAFE Working Group (SWG) had been formed comprising WCO Member Customs Administrations, business partners and a number of international organizations. The SWG was charged with the further development of the SAFE Framework of Standards.

Currently, the SAFE Framework of Standards had two “pillars” (a series of 17 Standards covering Customs to Customs and Customs to business relations). The SWG was considering a third Pillar – Border Agency Cooperation, comprising two Standards on Single Window and Coordinated Border Management. Several support instruments were also being developed.

In regard to the issue of “100 per cent scanning”, the observer of WCO indicated that 173 out of the 174 WCO Members had formally expressed their opposition to the United States legislation, due to come into force in 2012, which would require the scanning of all United States-bound containers prior to export. WCO believed that risk-based targeting, coupled with scanning of containers identified as high risk as detailed in SAFE Framework of Standards, was a more effective mechanism to enhance supply chain security. The WCO would continue a policy of constructive engagement with the United States Administration to ensure the views of the Customs community are heard. The observer also underlined the efforts of United States

Customs (CBP) to soften the effects of the legislation in somewhat difficult circumstances. Finally, on the “10+2” issue, referring to supplementary data elements and messages which CBP would require from importers and carriers, the observer of the WCO explained that this initiative had consequences for SAFE Framework of Standards, which lays down data document requirements for security purposes. “10+2” was currently under examination by the SWG for future inclusion in SAFE Framework of Standards. The extent of its inclusion was yet to be finalized.

In conclusion, the observer of the WCO indicated that IMO would be most welcome to attend the SWG and the Information Management Sub-Committee, both of which were of relevance to the work of the Committee.

Joint MSC/FAL circular on Securing and facilitating international trade

9.5 The Committee further recalled that FAL 34 approved, from its own point of view, the draft joint MSC/FAL circular on Securing and facilitating international trade (FAL 34/19, annex 4) and instructed the Secretariat to issue it once approved by the MSC. This was considered by MSC 83 and later issued as MSC-FAL.1/Circ.1.

ISO supply chain and freight container initiatives

9.6 The Committee recalled also that FAL 34 noted that MSC 81 and MSC 82 had invited ISO to continue to provide information on the various initiatives it pursued in an effort to contribute to the global efforts to enhance security; and in particular, in connection with the enhancement of security in the supply chain and in relation to the transport of freight containers and that ISO (FAL 34/INF.6) had updated the information on the initiatives it pursued on enhancing security in the supply chain and in relation to the electronic port clearance of ships. FAL 34 invited ISO to continue to keep the Committee updated on the work it undertakes with a view to enhancing security in the supply chain and in relation to the electronic port clearance of ships.

9.7 The Committee noted that updated information had been provided by ISO to MSC 84 (MSC 84/4/5) on maritime and supply chain security standards, and that the MSC also noted the information provided, thanked ISO for its work which complements the efforts of the Organization to enhance maritime security and invited ISO to continue to update the MSC on the activities it is undertaking in this important area.

Enhancement of security of ships other than those already covered by SOLAS chapter XI-2 and the ISPS Code

9.8 The Committee noted that MSC 83 had discussed the issue of the enhancement of security of ships other than those already covered by SOLAS chapter XI-2 and the ISPS Code at length. The Committee noted that a number of Member States had opposed the inclusion of pleasure craft in any guidelines. MSC 83 established a Correspondence Group on security aspects of the operation of ships which do not fall within the scope of SOLAS chapter XI-2 and the ISPS Code, under the coordination of the United Kingdom, assisted by Japan and the United States and instructed it to provide an interim report to MSC 84 and to complete its work and submit it for consideration by MSC 85.

9.9 The Committee noted that MSC 85 considered the report of the Correspondence Group and, using as a basis the draft guidelines prepared by the Group, approved MSC/Circ.1283 on Non-mandatory guidelines on security aspects of the operation of vessels which do not fall within the scope of SOLAS chapter XI-2 and the ISPS Code. MSC 85 reiterated that the guidelines were recommendatory; were not intended to form the basis for a mandatory instrument; and should not be in any way interpreted as the basis for regulation of non-SOLAS vessels and related facilities.

Port facility security audits

9.10 The Committee noted that MSC 84 had considered the proposals of Canada (MSC 84/4/3) on the development of guidance on port facility security audits to supplement the guidance provided in MSC.1/Circ.1194 on Effective implementation of SOLAS chapter XI-2 and the ISPS Code and MSC.1/Circ.1192 on Guidance on voluntary self-assessment by SOLAS Contracting Governments and by port facilities and had deferred the matter to MSC 85 for detailed consideration.

9.11 The Committee noted that MSC 85, in considering whether the development of guidance on port facility security audits would be conducive to improving the implementation of the provisions of SOLAS chapter XI-2 and the ISPS Code, had agreed that there was a need for Contracting Governments to conduct on a voluntary basis, assessments of the implementation of SOLAS chapter XI-2 and the ISPS Code in their own port facilities, and that, in the absence of evidence to the contrary, the existing guidance was adequate for this purpose. In this respect it was recalled that similar guidance for Administrations and for ship security was provided in MSC.1/Circ.1193 on Guidance on voluntary self-assessment by Administrations and for ship security.

9.12 The Committee noted that MSC 85 had therefore recalled paragraph 5 of MSC.1/Circ.1192 and invited SOLAS Contracting Governments, international organizations and non-governmental organizations with consultative status to bring to the attention of the MSC, at the earliest opportunity, the results of the experience gained from the use of MSC.1/Circ.1192 and MSC.1/Circ.1194, for further consideration of action to be taken.

Development of model legislation on maritime security

9.13 The Committee noted that MSC 82 had recommended the inclusion, in the High-level Action Plan for the 2008-2009 biennium, of the development of model legislation on maritime security.

9.14 The Committee noted that MSC 85 had noted that needs assessments missions on maritime security carried out under the Integrated Technical Co-operation Programme and the on-site visits, conducted by the United Nations Security Council Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001), had revealed that in a significant number of cases the required national legislation implementing the provisions of SOLAS chapter XI-2 and the ISPS Code were either absent or inadequate, or were based or dependent on national laws which, in some cases, had been enacted at the beginning of the 1900s.

9.15 The Committee also noted that MSC 85, taking into account the provisions of SOLAS article I(b) and with a view to assisting SOLAS Contracting Governments to improve the situation, had agreed that the development of model enabling legislation, i.e. giving legal force to the provisions within national law of SOLAS chapter XI-2 and part A of the ISPS Code, would be very useful on the understanding that such model legislation should not be overly prescriptive.

9.16 The Committee further noted that MSC 85, recalling that SOLAS Contracting Governments had an obligation under SOLAS article III(c) to communicate to and deposit with the Secretary-General, *inter alia*, the text of laws, decrees, orders and regulations which have been promulgated on various matters within the scope of SOLAS, urged SOLAS Contracting Governments to do so, in order to enable the development of model legislation.

9.17 In addition, the Committee noted that MSC 85 also agreed that the most efficient way forward would be for the Secretariat, working in consultation with a limited number of legal experts, to draft appropriate model enabling legislation rather than trying to do so through a correspondence or working group.

Review of the recommendations and guidance on issues relating to piracy and armed robbery against ships

9.18 The Committee noted that the twenty-fifth regular session of the Assembly, through resolution A.1002(25) on Piracy and armed robbery against ships in waters off the coast of Somalia, had instructed the MSC to undertake a comprehensive review of the guidance provided by the Organization for preventing and suppressing piracy and armed robbery against ships.

9.19 The Committee also noted that MSC 84 had established a correspondence group on the review and updating of MSC/Circ.622/Rev.1 on Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships; MSC/Circ.623/Rev.3 on Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships; and resolution A.922(22) on Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships, under the coordination of Denmark and had instructed it to provide an interim report to MSC 85 and to complete its work and submit it for consideration by MSC 86.

9.20 The Committee further noted that MSC 85, during consideration of the issue of piracy and armed robbery against ships, with particular reference to the situation in the waters off the coast of Somalia, had discussed at length the issue of the carriage of firearms on board ships. MSC 85 overwhelmingly agreed that the carriage of firearms on merchant ships should be discouraged and, in particular, that seafarers should not be armed. The use of unarmed security guards was a matter for individual companies and the carriage of additional unarmed security staff to provide an enhanced lookout capability was acceptable. In considering the use of armed security teams, MSC 85 had agreed that explicit in the carriage of firearms on board ships is the intent to use them and this could lead to escalation of violence both during and after an attack; and could also increase the likelihood of subsequent attacks against other ships becoming more violent.

9.21 In addition, the Committee noted that MSC 85 had noted that there was a lack of any global regulations on the carriage of armed personnel on board ships and a general lack of guidance from flag States. MSC 85 accepted the view of a number of delegations that the carriage of firearms by professional security teams on board merchant ships was, in principle, a matter for determination by flag States rather than the Organization.

9.22 Delegations at MSC 85 had highlighted that port and coastal States' customs procedures for the importation of firearms would provide additional complications potentially resulting in ships being denied entry into port and adversely impacting on shore leave for seafarers.

9.23 Delegations at MSC 85 had also pointed out the complex legal challenges involved in the carriage of firearms on board including the implications for insurance and liability. MSC 85 noted that a recent study by BIMCO had identified significant and costly issues with P and I Clubs on the carriage of firearms.

9.24 MSC 85 had also concluded that any company providing armed personnel on board would be fully accountable under the laws of the flag State and, when operating in a State's territorial waters, the laws of the coastal State.

10 SHIP/PORT INTERFACE

10.1 The Committee recalled that FAL 34 had noted that operative paragraph 7 of resolution A.984(24) on Facilitation of the carriage of IMDG Code class 7 radioactive materials, including those in packaged form used in medical or public health applications, requested the Secretary-General to explore the possibility of establishing an *ad hoc* mechanism within the Organization to coordinate efforts to speedily resolve difficulties in the carriage of the IMDG Code class 7 radioactive materials, in close cooperation with the IAEA.

10.2 The Committee recalled further that FAL 34 noting the discussions of the issue during DSC 11 and MSC 81 which supported the concept of such a mechanism and taking into account the relevant proposals:

- .1 approved, in principle and subject to results of a trial, the proposed mechanism within the IMO Secretariat for the resolution of difficulties in the carriage of IMDG Code class 7 radioactive materials;
- .2 requested the Secretariat to conduct a trial of the proposed mechanism and report on its experience to FAL 35 for evaluation of results of the trial; and
- .3 requested the Secretariat to continue to cooperate with IAEA, ILO and other United Nations bodies on issues surrounding the delays and denials of shipments of class 7 radioactive materials.

10.3 Canada (FAL 35/10) provided, *inter alia*, an overview of the developments on the issue since FAL 34; of the action plan of the IAEA International Steering Committee; a summary of the cases of denial of shipment which have been reported; and proposed a number of steps with a view to taking the issue further. Canada concluded that the denial issue was far from being resolved and suggested that it was imperative that the Committee and all Member States continue to support and participate in the identification and resolution of root cause issues. Canada also noted that through the efforts of many in Administrations and organizations, there had been progress towards a resolution of some of the problems, and it was expected that such efforts needed to be continued.

10.4 The delegation of Canada was of the view that progress was being made and an active integration of IMO/IAEA/ICAO with Member States, non-governmental organizations, industry and functional associations, and the international logistics supply chain existed which was helping to facilitate the transportation of these important medical, industrial and energy products.

10.5 The Committee noted the information provided orally by the Secretariat in relation to the trial of the established mechanism. The Secretary-General, pursuant to the provisions of resolution A.984(24) and the decisions of FAL 34, had nominated an IMO Focal Point on the Resolution of difficulties in the carriage of IMDG Code dangerous goods including class 7 radioactive materials in April 2007. Since then the Secretariat had taken an active role in attempts to resolve such difficulties including participating at relevant IAEA meetings. As a result appropriate amendments had been made to the IAEA Transport Safety Standards, which served as a basis for amendments to the United Nations Recommendations on the transport of dangerous goods, and other modal regulations.

10.6 The Secretariat had also attended all the meetings of the IAEA International Steering Committee on the denial of shipments of radioactive material. IAEA had conducted a number of training sessions and regional seminars with the objective of facilitating such shipments. The Secretariat had established a Dangerous Goods Denial Database and to date had 100 reports in the database, which was accessible to IAEA and ICAO. The Organization is developing a computer-based training package on class 7 e-learning. Work on its development had been initiated and it is expected that the training package would be ready in the third quarter of this year and be available free of cost to all non-commercial users.

10.7 The Committee agreed that, in view of the results of the trials of the mechanism for the resolution of difficulties in the carriage of IMDG Code class 7 radioactive materials, including those in packaged form used in medical or public health applications, it was obvious that the issue of denial of shipments had not yet been resolved. As a result, the Committee agreed to request the Secretary-General to continue the trials of the mechanism within the IMO Secretariat for the resolution of difficulties in the carriage of IMDG Code class 7 radioactive materials and instructed the Secretariat to report the results of the experience gained to FAL 36 with a view to enabling the Committee to determine the actions to be taken.

10.8 The Committee also requested the Secretariat to continue to cooperate with relevant agencies and organizations on issues surrounding the delays and denials of shipments of IMDG Code classified cargoes and in particular of IMDG Code class 7 radioactive materials, including those in packaged form used in medical or public health applications and to report accordingly to FAL 36.

11 TECHNICAL CO-OPERATION AND ASSISTANCE

11.1 The Committee recalled that TC 56 had noted that the IMO mission statement strongly supported the Millennium Development Goals (MDGs) and would contribute substantively to the delivery of the 2005 World Summit Outcome: in promoting environmental sustainability; in strengthening the Organization's maritime security framework and securing global consensus on the Organization's work on vital shipping lanes, recognized by the United Nations as a key element in the global fight against terrorism and in sustaining the security of maritime transport and the global supply chain in general. TC 56 also considered that the Organization's Integrated Technical Co-operation Programme (ITCP) contributed to the United Nation's wider development goals by promoting sustainable development, human resource development and capacity-building.

11.2 The Committee noted the information provided in document FAL 35/11 (Secretariat) on the status of activities relevant to the implementation of the Convention conducted under the ITCF. The activities could be broadly grouped into four categories, namely, seminars which might be regional, sub-regional and national; needs assessment; and follow-up and advisory missions. No needs assessment missions were conducted during the period under review or were scheduled for 2009. The schedule of seminars and advisory missions was set out in the annex to the document.

11.3 The Committee also noted that the objectives of the seminars were to:

- .1 fully acquaint the participants with the Convention;
- .2 make participants fully aware of the institutional and economic advantages and benefits to be derived from the acceptance and implementation of the Convention;
- .3 provide guidelines on follow-up measures concerning the practical implementation of the Convention including the use of the IMO FAL Forms;
- .4 advise on the functions of a national facilitation committee; and
- .5 provide participants with other information relevant to the seminar.

11.4 The Committee further noted that under the ITCF during 2008 one national seminar on facilitation issues had been held in Limbé, Cameroon, with a total of some 103 participants involved and that the regional seminar planned for Fiji would be held in 2009 as its format and contents were being recast to include maritime security-related issues as well as matters concerning the 1988 and 2005 SUA treaties. In 2009, three national seminars were scheduled to be held in Gambia, Ghana and Guinea and three regional seminars in Guatemala, Vietnam and a country to be agreed for ROCRAM countries.

11.5 The delegation of Peru on behalf of the countries in the GRULAC region expressed their appreciation for the technical cooperation activities of the Organization in the region and their thanks to the host countries. The delegation expressed the view that the activities were of great benefit to the region and hoped they would continue.

11.6 The delegation of Nigeria expressed the view that these seminars were of great importance to the countries in the region and expressed appreciation for the technical cooperation activities undertaken by the Organization, while stating that Nigeria would be interested in hosting such a seminar in the future.

11.7 The delegation of the Republic of Korea reiterated that they would fully support any developing country in the training and installation of the Single Window concept.

11.8 The Committee expressed its appreciation to the Governments of the above Member States for their willingness to host these events and the Secretariat and consultants for organizing and successfully conducting the missions.

11.9 The Committee also expressed the view that it was important to continue these technical cooperation activities in relation to facilitation aspects in order to assist in fulfilling the Role, mission, and strategic direction and work of the Committee, as adopted by FAL 32, which,

inter alia, seeks to promote wider acceptance of the Convention and adoption of measures contained therein, to assist the Committee's effort and work towards the universal implementation of measures to facilitate international maritime traffic.

11.10 In this respect the Committee recalled, in particular, that among its strategic directions and work it should:

- identify possible technical assistance measures to facilitate international maritime traffic in developing countries; and
- identify possible technical assistance measures to expand information technology and E-business in the area of maritime traffic, particularly in developing countries,

and invited Member States and international organizations to provide proposals on possible actions which might be pursued in cooperation with the Technical Co-operation Committee (TCC).

Thematic priorities: the Integrated Technical Co-operation Programme (ITCP) covering the 2010-2011 biennium

11.11 In considering FAL 35/11/1 (Secretariat), the Committee recalled that TCC 57 approved the ITCP covering the 2008-2009 biennium, which included Facilitation related thematic priorities. In preparing this ITCP, for the first time, links between the ITCP and the MDGs had been established by TCC and incorporated into the programme.

11.12 The Committee also recalled that the Assembly, at its twenty-fifth regular session, adopted resolution A.1006(25) on The Linkage between the Integrated Technical Co-operation Programme and the Millennium Development Goals and requested the TCC to give high priority to those activities, which not only promote the early ratification and effective implementation of IMO instruments but also contribute to the attainment of the MDGs, taking into account the special needs of the Least Developed Countries (LDCs) and Small Island Developing States (SIDS), and the particular maritime transport needs of Africa, and ensure that these needs are reflected in the ITCP.

In particular, resolution A.1006(25) also recognized the important role that a safe, secure and environmentally sound shipping and port sector plays in the sustainable development of all States and the achievement of the MDGs including effective intermodal access to ports.

11.13 The Committee reviewed the proposals set out in the annex to document FAL 35/11/1 (Secretariat) in relation to the thematic priorities for the facilitation of international maritime traffic for the 2010-2011 biennium; agreed these as set out in annex 7 and instructed the Secretariat to forward these to the TCC for its consideration with a view to inclusion in the ITCP for the 2010-2011 biennium.

Delivery of technical cooperation and assistance activities

11.14 The Committee noted that in a number of cases the delivery of technical cooperation and assistance activities is dependent, *inter alia*, on:

- .1 the applicable security phase(s) in the beneficiary country; and
- .2 the availability of suitable experts, for the specific activity.

11.15 In this respect, the Committee also noted that the delivery or conduct of technical cooperation and assistance activities in a specific country was dependent on whether the United Nations Department for Safety and Security would be in a position to grant the required security clearance for the specific mission. In view of a number of recent experiences, it had been decided that, as matters now stand, the Organization would conduct missions only in countries or areas where there is either no security phase in effect or the security phase is 1 (i.e. Precautionary).

11.16 The Committee further noted that finding willing and competent experts on facilitation-related matters had become very difficult as a number of experts who had been used in the past had now passed the age up to which they can be recruited. As a result Contracting Governments are urged to nominate to the Organization experts on facilitation-related matters, the services of whom the Secretariat may call upon when providing advice or assistance to Member States or other Contracting Governments and should consider making the services of such experts available at no cost to the Organization.

12 RELATIONS WITH OTHER ORGANIZATIONS

Relations with the United Nations and its specialized agencies

12.1 The Committee noted that the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP) held its ninth meeting at the United Nations Headquarters in New York from 23 to 27 June 2008 and its theme was “Maritime security and safety”.

12.2 The Committee was informed that as a contribution to that round of the ICP, the Secretariat had submitted an information paper on “Maritime safety and security – functions and current activities of IMO and its achievements covering technical fields of shipping engaged in international trade”. Discussion panels on maritime safety and security were convened to consider threats to maritime security, the emphasis being placed on piracy and armed robbery against ships, prevention and suppression of transnational crime, people at sea, cooperation and capacity-building. Speakers included representatives of intergovernmental and non-governmental organizations, as well as the United Nations and its Member States.

12.3 The Committee further noted that, on behalf of the Secretariat, the Director of Maritime Safety Division had provided an overview of the activities of the Organization on maritime safety and security issues over the past 50 years: this covered IMO’s response to emerging maritime safety and security challenges, expansion of its scope of activities, and the creation of IMO as an effective forum in which to discuss maritime safety and security issues and to adopt international rules and regulations. An overview was also provided of the current and future challenges facing maritime safety and security with regard to development of new measures, implementation and enforcement, regional and subregional developments and the need for capacity-building. The Secretariat also participated in a side-event on the Treatment of persons rescued at sea, organized by the United Nations inter-agency group.

12.4 The Committee noted that, since FAL 34, there had been two meetings of the United Nations inter-agency initiative on the treatment of persons rescued, being the third and fourth meeting of that initiative. The third meeting was held at the headquarters of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Geneva on 11 December 2007 and the fourth meeting was held during the ninth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at the Headquarters of the

United Nations in New York from 23 to 27 June 2008. The Secretariat had attended both meetings.

12.5 The Committee noted that the Secretariat participated, with UNHCR, in a side event on rescue at sea during the UNHCR High Commissioner's Dialogue on protection challenges for awareness raising, which was held in Geneva from 11 to 12 December 2007.

12.6 The Committee also noted that the Secretariat continued to cooperate with relevant United Nations agencies and bodies as appropriate in incidents involving persons rescued at sea and has participated in several seminars/conferences on the subject.

In January 2008, the Secretariat attended a Conference on Interception, Rescue and Refugee Protection at European Sea Borders in Athens, Greece, organized by UNHCR with the Hellenic Coast Guard and presented a paper on the provisions of the 1974 SOLAS and 1979 SAR Conventions, the amendments thereto and the safety of life regime.

In May 2008, the Secretariat participated in a UNHCR conference in the Gulf of Aden on persons rescued at sea, held in Yemen. The Secretariat was represented by an officer from the Technical Co-operation Division and was thus able to provide details of technical cooperation activities available through IMO, especially in the matter of SAR and capacity-building, with the hope that this leads to further cooperation with UNHCR in this area.

12.7 The Committee recalled that FAL 34 had noted that the IMO/UNHCR Rescue at sea: A guide to principles and practice as applied to migrants and refugees had been published in several languages. The Committee noted that the publication was widely distributed in 2007 and an electronic version of it was available on the IMO website. At present UNHCR and IMO were finalizing a Russian language version of the publication.

12.8 The Committee also noted that the UNECE had held a conference, in which the Secretariat participated, on "Hinterland connections of seaports; the role of seaports as a link between inland and maritime transport", on 27 and 28 September 2008 in Piraeus, Greece. This conference was well attended and sought to ensure efficient links between maritime and inland transport modes, how to effectively integrate seaports in transport infrastructure and on the best ways of solving the hinterland connection problem, as well as providing developing countries in the UNECE region with an opportunity to benefit from the experience of high-income port/hub/transit economies.

Relations with non-governmental organizations

General

12.9 In considering FAL 35/2/1 (Secretariat), FAL 35/2/2 (Secretariat) and FAL 35/2/4 (Secretariat), the Committee noted the relevant decisions of C 98, C/ES.24 and C 100 in respect of relations with non-governmental organizations which had been recently granted consultative status or referred to the Committee with a view to advising the Council as to whether they should be granted consultative status.

Non-governmental organizations granted consultative status

12.10 The Committee noted in particular that, since FAL 34, the Council had decided to grant consultative status to:

- .1 the International Painting and Printing Ink Council (IPPIC);
- .2 the International Fund for Animal Welfare (IFAW), on a provisional basis, for no more than two years, after which a review should be conducted;
- .3 the International Spill Control Organization (ISCO), on a provisional basis, for no more than two years, after which a review should be conducted; and
- .4 the Global Maritime Education and Training Association (GlobalMET).

Consideration of applications for consultative status

12.11 The Committee in accordance with the request of C 100 considered the applications for consultative status from:

- .1 the World Shipping Council (WSC); and
- .2 International Association of Airport and Seaport Police (IAASP).

12.12 The Committee instructed an *ad hoc* Group (the Group) under the chairmanship of R. Adm. Giancarlo Olimbo (Italy) to review the aforesaid applications and to advise the Committee on its recommendations to the Council.

12.13 The Group reported (FAL 35/WP.7) that WSC and IAASP met all the requisite criteria for the granting of consultative status; they were assessed to be able to contribute directly to the Committee's work and did not seem to have access to IMO through other organizations. As a result, the Group recommended that the Committee should recommend to the Council that consultative status be granted to WSC and IAASP.

12.14 The Committee, being satisfied with the information provided, decided to recommend to the Council that consultative status be granted to WSC and IAASP.

World Maritime Day 2009

12.15 The Committee noted that C 100 had approved the Secretary-General's proposal that the theme for World Maritime Day 2009 Day should be:

“CLIMATE CHANGE: A challenge for IMO too!”

13 APPLICATION OF THE COMMITTEE'S GUIDELINES**Adoption of amendments to the Guidelines on the organization and method of work of the Committee**

13.1 The Committee recalled that FAL 34, having reviewed the Committee's Guidelines on the organization and method of work (the Guidelines) in the light of experience gained with their

application and with a view to harmonizing them as much as possible with those of the MSC and MEPC (the MSC/MEPC Guidelines), had approved revised Guidelines, which were disseminated by means of FAL.3/Circ.188.

13.2 The Committee, whilst noting that MSC 83, having considered the recommendations of the 2007 Chairmen's meeting, agreed, and MEPC 57 subsequently concurred, to further amendments to the MSC/MEPC Guidelines, considered, with a view to continuing the harmonization of its Guidelines with those of MSC and MEPC, and approved the amendments to the Guidelines set out in the annex to document FAL 35/13 (Secretariat) and instructed the Secretariat to incorporate these in the existing Guidelines (i.e. the ones disseminated by means of FAL.3/Circ.188) and to disseminate them by means of a FAL.3 circular which should also revoke FAL.3/Circ.188. In this respect the Committee authorized the Secretariat to effect any required editorial amendments which may be found necessary during the preparation of the document.

Development of Guidelines on the application of the Strategic Plan and the High-level Action Plan

13.3 The Committee noted that the twenty-fifth regular session of the Assembly adopted resolution A.990(25) on the High-level Action Plan of the Organization and priorities for the 2008-2009 biennium and through operative paragraphs 4 and 5 of the aforesaid resolution has:

- requested the Council, on a priority basis and through its *Ad Hoc* Working Group on the Organization's Strategic Plan, to develop guidelines for all IMO organs on the application of the Strategic Plan and the High-level Action Plan, including guidance for the assessment of work programme items and for the format and content of reports on work carried out by the respective bodies of the Organization; and
- also requested the Council and the Committees to review and revise the guidelines for the organization and method of their work in the light of the guidelines developed by the Council on the application of the Strategic Plan and the High-level Action Plan.

13.4 The Secretariat (FAL 35/13/1) advised that C/ES.24 approved the establishment of a Correspondence Group for the development of Guidelines on the application of the Strategic Plan and the High-level Action Plan which reported on its work to the eighth session of the *Ad Hoc* Council Working Group on the Organization's Strategic Plan (CWGSP 8) which, in turn reported on the outcome of its work to C 101.

C 101 noted the information provided in the report of CWGSP 8, as well as that provided orally by the Chairman of CWGSP and the Secretary-General. In particular, C 101 noted the progress made in developing Guidelines on the application of the Strategic and High-level Action Plans and, in this context:

- endorsed the decision of CWGSP 8 to re-establish the Correspondence Group;
- approved the holding of an additional session of the CWGSP in 2009 to finalize the Guidelines, along with its scheduled session for that year;
- agreed that the finalized Guidelines should be adopted through an Assembly resolution; and

- urged Member States and the Chairmen of Committees and Sub-Committees to participate actively in the deliberations of both the re-established Correspondence Group and the Working Group's next sessions.

13.5 The Committee also noted that the Secretariat would keep the Committee informed of developments on this issue with a view to enabling the Committee to take the actions expected by the Assembly.

14 WORK PROGRAMME

General

14.1 The Committee noted that the Assembly had adopted resolution A.989(25) on the Strategic Plan for the Organization (for the six-year period 2008-2013) and resolution A.990(25) on High-level Action Plan of the Organization and priorities for the 2008-2009 biennium.

Substantive items for inclusion in the provisional agenda for FAL 36

14.2 On the basis of the progress made during the session, the Committee approved the list of substantive items to be included in the provisional agenda for FAL 36, as set out in the annex to document FAL 35/WP.1 (Chairman).

Establishment of working and drafting groups during FAL 36

14.3 The Committee, taking into account the decisions made under various agenda items, agreed that working groups on the following items should be established at FAL 36:

- .1 General review and implementation of the Convention.
- .2 Electronic means for the clearance of ships.

14.4 The Committee also agreed that, at this stage, it was not possible to predict the exact needs for the establishment of drafting groups at FAL 36.

14.5 The Committee further agreed that, should the need arise, FAL 36 should determine any other working or drafting groups which might need to be established when considering the various agenda items. The Committee instructed the Secretariat, in consultation with the Chairman, to prepare and circulate the provisional timetable for FAL 36 and a list of the likely working or drafting groups which might need to be established no later than one week after the last deadline for the submission of documents for consideration by FAL 36.

Proposals for meeting weeks for the biennium 2010-2011

14.6 The Committee, with a view to enabling the Secretary-General to prepare relevant budgetary proposals for the biennium 2010-2011 for consideration by the twenty-sixth regular session of the Assembly in November 2009, and taking into account that in accordance with Article 50 of the IMO Convention and rule 2(a) of the Rules of Procedure, it shall meet in regular session at least once a year, proposed one meeting week during 2010 and one meeting week during 2011.

Role, mission, strategic direction and work of the Committee

14.7 The Committee recalled that, at its thirty-second session (4 to 8 July 2005), it approved the Role, mission, strategic direction and work of the Committee, as set out in annex 4 to document FAL 32/22 and agreed that the “Strategic Direction” of the Committee should clearly be consistent with the “Strategic Direction” of the Organization, as contained in resolution A.944(23) on Strategic Plan for the Organization (for the six-year period 2004 to 2010) which was adopted in November 2003.

14.8 Since FAL 32, the Committee recognized that the Assembly has revised the Strategic Plan for the Organization twice, in November 2005 and 2007 and the one in effect is that set out in resolution A.989(25) on Strategic Plan for the Organization (for the six year period 2008-2013). It is also expected that the twenty-sixth regular session of the Assembly, in November 2009, would revise the Strategic Plan for the Organization and would adopt one for the six-year period 2010 to 2015. It would also adopt the High-level Action Plan of the Organization and priorities for the 2010-2011 biennium.

14.9 The Committee also recognized that the decision of FAL 32 that the “Strategic Direction” of the Committee should clearly be consistent with the “Strategic Direction” of the Organization, as contained in resolution A.944(23) on Strategic Plan for the Organization (for the six-year period 2004 to 2010) creates a number of complications as it only refers to resolution A.944(23) which was revoked by the Assembly in November 2005. In addition, the Committee has not carried, since FAL 32, any review of the Role, mission, strategic direction and work of the Committee to ensure that it is consistent with the Strategic Plan for the Organization which is in effect.

14.10 With a view to addressing the anomalies which have transpired, the Committee agreed that:

- .1 the “Strategic Direction” of the Committee as set out in the Role, mission, strategic direction and work of the Committee should be, at all times, consistent with the “Strategic Direction” of the Organization as set out in the Strategic Plan for the Organization which is in effect; and
- .2 at its first session after each regular session of the Assembly it would be reviewing the “Strategic Direction” of the Committee as set out in the Role, mission, strategic direction and work of the Committee with a view to ensuring that these are consistent with the “Strategic Direction” of the Organization as set out in the Strategic Plan for the Organization which would be in effect.

14.11 By the next session of the Committee in 2010, five years would have lapsed since the time the Committee approved the current Role, mission, strategic direction and work of the Committee and considered that the time has come for its review and updating, especially in view of the institutionalization of the Committee and the expectations henceforth.

14.12 As a result, the Committee also agreed that, at its next session, it would carry out, in addition to the review which stems from paragraph 14.9.2, a comprehensive review of the Role, mission, strategic direction and work of the Committee with a view to ensuring that it adequately responds to current and emerging needs in terms of facilitation of maritime traffic and in relation to the enhancement of maritime security.

14.13 With a view to progressing this work, the Committee instructed the Secretariat, in cooperation with the Chairman, to draft proposals which may form the basis of the discussions.

Date and venue of the next session

14.14 The Committee noted that FAL 36 had been tentatively scheduled to take place from 26 to 30 April 2010 at the IMO Headquarters, 4 Albert Embankment, London, United Kingdom.

15 ELECTION OF CHAIRMAN AND VICE-CHAIRMAN FOR 2010

15.1 The Committee, in accordance with its Rules of Procedure, unanimously elected Mr. Charles Abela (Malta) to the post of Chairman for 2010 and elected Mr. Eildert Broekema (Netherlands) to the post of Vice-Chairman for 2009 and 2010.

15.2 The Committee expressed its deep appreciation to its former Vice-Chairman Captain Armett E. Hill (Liberia) who had to resign the post upon taking up another position in Liberia, for his loyal and unstinting work in respect of the Committee and its objectives, and wished him well in his future endeavours.

16 ANY OTHER BUSINESS

Special event

16.1 To mark the first meeting of the Committee following its institutionalization under the Convention on the International Maritime Organization, the Committee held a special event entitled "The FAL Committee – Future Challenges" on 12 January 2009.

16.2 The speakers to the event were the Secretary-General, the Chairman Mr. C. Abela, Mr. P. Hinchliffe who spoke on behalf of the International Chamber of Shipping and Mr. J. Bainbridge who spoke on behalf of the International Transport Workers' Federation. Their presentations have been issued under cover of document FAL 35/INF.9.

Improving the provision and quality of nautical port information

16.3 The Committee noted MSC 83 had invited the Committee to consider the information provided in document MSC 83/INF.19 (IHMA *et al.*) and to this end document FAL 35/INF.4 (Secretariat) has been issued. However, since the issue of FAL 35/INF.4, IHMA *et al.* have updated the information they provided to MSC 83 and had submitted this material in document FAL 35/INF.6 (IHMA *et al.*). As a result the Committee did not consider document FAL 35/INF.4 (Secretariat) as it had been superseded by FAL 35/INF.6.

16.4 IHMA *et al.* (FAL 35/INF.6) pointed out that the various, sometimes inconsistent sources, of nautical information required for port entry and berth/terminal usage can lead to confusion on the part of the user. Misunderstanding or misuse of such data bears directly on ship and port safety, the efficiency of port operations and the protection of the environment. IHMA *et al.* suggested that it was, therefore, necessary to consider a more efficient and standardized way of making this information available to users, including publishers of nautical information. IHMA *et al.* also advised that a web-based template for the input and production of port entry information was now available and work was underway to develop a similar system for berths/terminals.

16.5 The Committee noted with appreciation the information provided and the initiative taken by IHMA *et al.* for a more efficient and standardized way of making this information available to mariners and publishers of nautical information and considered that it would be of great benefit to mariners and port authorities.

United States Coast Guard Directive in regard to shore leave and other issues

16.6 The Committee recalled resolution A.989(25) on the Strategic Plan for the Organization (for the six-year period 2008-2013), which states, *inter alia*, specifically in relation to maritime security and facilitation:

“The challenge for IMO is to promote the effective implementation of the security measures, and to instil a security consciousness in ship and port facility operations, at the same time ensuring that the right balance is struck in trade facilitation and that the flow of seaborne trade continues to be smooth and efficient.”

16.7 The Committee also recalled the 2002 SOLAS Conference resolution 11 on Human element-related aspects and shore leave for seafarers and MSC/Circ.1112 on Shore leave and access to ships under the ISPS Code.

16.8 The United States (FAL 35/INF.7) advised that the Commandant of the United States Coast Guard issued, on 22 October 2008, a directive to all units of the United States Coast Guard in relation to shore leave and access issues for welfare and other organizations for seafarers on ships visiting United States ports. In particular the directive addressed issues where it had been reported that some port terminals and other regulated facilities under the ISPS Code in the United States had in some cases refused to grant access to seafarers holding properly issued visas for the purposes of shore leave, crew change, etc.; and also similarly refused access to ships on occasion for seafarers welfare and union representatives. The directive pointed out that the denial of such access ran counter to the intent of the United States Regulations.

16.9 The Committee noted with interest the contents of the directive and thanked the United States for their timely and appropriate initiative, and expressed the view that while security considerations are of vital importance and the associated issues are complex involving many different agencies, such considerations should not be used as an excuse to deny seafarers the equally vital shore leave and their access to welfare organizations. There is a fine balance to strike between security and the facilitation of maritime trade.

16.10 The observer from ICMA stated that they appreciated all the efforts made by Member States to encourage port authorities and terminal operators to facilitate shore leave for seafarers and access to vessels by port chaplains and other welfare practitioners. In their view, denial or restrictions of these facilities ran contrary to the efforts of IMO and other United Nations agencies to encourage recruitment into the seafaring profession and retention of well motivated, educated and trained seafarers. The well-being of seafarers depended in part upon their ability to have shore leave.

16.11 The delegation of Saudi Arabia supported by the delegations of Indonesia, Iran and the observer from the League of Arab States expressed the view that, with crews of varying nationalities, sometimes certain seafarers are discriminated against in certain countries on racial or cultural grounds and not allowed ashore, sometimes with a guard being stationed on the ship

to prevent this, and that there should be fair treatment for all members of the crew especially in regard to shore leave.

Expressions of appreciation

16.12 The Committee expressed appreciation to the following delegates and members of the Secretariat, who had recently relinquished their duties, or were transferred to other duties or were about to, for their invaluable contribution to its work and wished them a long and happy retirement or, as the case might be, every success in their new duties:

- Captain Ronald Quipildor Tito (Bolivia) (on return home);
- Captain Hugo Ricaurte Caravias (Ecuador) (on return home);
- Mr. Howard Hime (United States) (on retirement);
- Mr. Yun Min Jong (Democratic People's Republic of Korea) (on return home);
- Mr. Kwang Nam Ri (Democratic People's Republic of Korea) (on return home);
- Mr. George Demetriades (Cyprus) (on return home);
- Mr. Victor Tsyachnikov (Secretariat) (on retirement);
- Mrs. Catherine Linley (Secretariat) (on separation from service);
- Mr. Alfredo Garofalo (Secretariat) (on retirement);
- Mr. F. van Tongerlooy (Secretariat) (on retirement);
- Ms Michèle Foré (Secretariat) (on retirement); and
- Mr. Leroy Mayers (Secretariat) (on retirement).

ANNEX 1

RULES OF PROCEDURE OF THE FACILITATION COMMITTEE

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RULES OF PROCEDURE OF THE FACILITATION COMMITTEE

Definitions

Rule 1

For the purposes of these Rules:

- (i) “Convention” means the Convention on the International Maritime Organization.
- (ii) “Organization” means the International Maritime Organization.
- (iii) “Member” means a Member of the Organization.
- (iv) “Other Participant” means a Government which is not a Member but which is entitled to participate in the work of the Committee under the relevant provisions of an international convention or other instrument when the Committee performs functions conferred upon it by or under such convention or instrument, in accordance with article 51 of the Convention.

Sessions

Rule 2

- (a) In accordance with article 50 of the Convention, the Committee shall meet in regular session at least once a year.
- (b) Subject to paragraph (a) of this Rule, the Committee shall meet in extraordinary session upon the summons of its Chairman or upon the request in writing made to the Secretary-General by not less than 15 Members.
- (c) The Secretary-General, acting on the direction of the Chairman, shall notify Members, and other Participants where appropriate, at least 60 days in advance of the holding of a session. The notice required for an extraordinary session shall be at least 30 days.

Rule 3

Sessions of the Committee shall be held at the Headquarters of the Organization unless convened elsewhere in accordance with a decision of the Committee and with the prior approval of the Council.

Rule 4

- (a) The Secretary-General shall invite the United Nations, the specialized agencies of the United Nations and the International Atomic Energy Agency to be represented at sessions of the Committee.

- (b) The Secretary-General shall invite other intergovernmental organizations with which agreements or special arrangements have been made to send observers to sessions of the Committee.
- (c) In accordance with the decisions of the Assembly and the Council, the Secretary-General shall invite the liberation movements recognized by the African Union or the League of Arab States to be represented by observers at sessions of the Committee.
- (d) The Secretary-General shall invite non-governmental international organizations with which the Organization has established appropriate relationship in accordance with article 67 of the Convention, to send observers to sessions of the Committee.

Rule 5

- (a) Representatives of the United Nations, the specialized agencies and the International Atomic Energy Agency may participate without vote in the deliberations of the Committee or any of its subsidiary bodies, and shall receive copies of all documents issued to the Committee, subject to such arrangements as may be necessary for the safeguarding of confidential material.
- (b) Observers invited in accordance with Rule 4 above may, upon invitation by the Chairman and with the consent of the Committee, participate without vote in the deliberations of the Committee or of its subsidiary bodies on matters of concern to them. Observers shall have access to non-confidential documents and to such other documents as the Secretary-General, with the approval of the Chairman, may decide to make available to them.
- (c) The participation of observers from non-governmental organizations shall be in accordance with the rules governing consultation with such organizations.

Delegations

Rule 6

Each Member shall designate a representative, and may also designate alternates and such advisers and experts as may be required. Other Participants shall designate representatives, alternates, advisers and experts, as the case may be.

Rule 7

Each Member or other Participant where appropriate shall transmit to the Secretary-General the credentials of its representatives and alternates, if any, together with the names of any other members of its delegation. The credentials shall be issued by the Head of State, or by the Head of Government or by the Minister for Foreign Affairs or by an appropriate authority properly designated by one of them to act for this purpose. The Secretary-General shall examine the credentials of representatives and alternates and report thereon to the Committee without delay.

Rule 8

At sessions for which credentials are required, all representatives shall be seated provisionally with the same rights until the Secretary-General has reported on credentials and the Committee has given its decision.

Publicity

Rule 9

The Committee may decide to hold meetings in private or in public. In the absence of a decision to hold meetings in public, they shall be held in private. Meetings of subsidiary bodies of the Committee shall be held in private, unless the Committee decides otherwise in any particular case.

Notwithstanding the aforesaid, and in accordance with the Guidelines for media access to meetings of the Committees and their subsidiary bodies, adopted by the Organization, media may attend meetings of the Committee and its subsidiary bodies unless the Committee decides otherwise. Meetings of working groups and drafting groups established by the Committee and its subsidiary bodies shall be held in private.

Agenda

Rule 10

The provisional agenda for each session of the Committee shall be drawn up by the Secretary-General with the approval of the Chairman.

Rule 11

The provisional agenda for each regular session of the Committee shall include:

- (i) all items the inclusion of which has been requested by the Assembly;
- (ii) all items the inclusion of which has been requested by the Council or any Committee of the Organization;
- (iii) all items the inclusion of which has been requested by the Committee at a previous session of the Committee. Any item on the agenda of a session of the Committee, consideration of which has not been completed at that session, shall automatically be included in the agenda of the next session unless otherwise decided by the Committee;
- (iv) any item proposed by a Member, or other Participant where appropriate;
- (v) items, if any, pertaining to the report of the Committee to the Council on the work of the Committee;

- (vi) subject to such preliminary consultations as may be necessary, any item proposed by any subsidiary body of the Organization or by the United Nations, or by any of the specialized agencies, or by the International Atomic Energy Agency;
- (vii) any item proposed by the Secretary-General.

Rule 12

The provisional agenda for each session, together with the supporting documents issued, as provided for in Rule 25(a), in all working languages, shall be communicated by the Secretary-General to Members and other Participants, where appropriate, at least one month before the opening of the session.

Rule 13

The first item on the provisional agenda for each session shall be the adoption of the agenda.

Rule 14

In exceptional circumstances, the Secretary-General may, in consultation with the Chairman, include any question suitable for the agenda which may arise between the dispatch of the provisional agenda and the opening day of the session, in a supplementary provisional agenda. The Secretary-General shall advise Members and other Participants where appropriate immediately of the intention to include an item in a supplementary provisional agenda.

Rule 15

The Secretary-General shall report to the Committee on the technical, administrative and financial implications of all substantive agenda items submitted to the Committee, before they are considered. Unless the Committee decides otherwise, no such item should be considered until the Committee has been in possession of the Secretary-General's report for at least forty-eight hours.

Chairman and Vice-Chairman

Rule 16

- (a) The Committee shall elect a Chairman and a Vice-Chairman from among the representatives of Members. The elections shall take place once every calendar year.
- (b) The Chairman and Vice-Chairman shall be eligible for re-election.

Rule 17

- (a) If the Chairman is absent from a session or any part thereof, the Vice-Chairman shall preside.

- (b) If the Chairman, for any reason, is unable to carry out his duties until the expiry of his term of office, the Vice-Chairman shall act as Chairman pending the election of a new Chairman.
- (c) If the Chairman and Vice-Chairman are both unable to preside at a session, the Committee shall elect an interim Vice-Chairman who shall preside and act as Chairman for as long as the Chairman and the Vice-Chairman are unable to do so.

Rule 18

A Chairman, or a Vice-Chairman acting as Chairman, shall not vote.

Subsidiary bodies

Rule 19

The Committee may establish such subsidiary bodies as it considers necessary. Such subsidiary bodies shall follow the present Rules of Procedure as far as they are applicable. The Committee shall examine at least once a year the desirability of continuing the existence of any subsidiary body.

Secretariat

Rule 20

The Secretary-General shall act as Secretary of the Committee and of its subsidiary bodies. The Secretary-General may delegate such functions to a member of the Secretariat.

Rule 21

The Secretary-General or a member of the Secretariat designated by the Secretary-General for the purpose may make either oral or written statements concerning any question under consideration.

Rule 22

The Secretariat shall receive, translate and circulate to Members and other Participants where appropriate all reports, resolutions, recommendations and other documents of the Committee and its subsidiary bodies.

Languages

Rule 23

The official languages of the Committee are Arabic, Chinese, English, French, Russian and Spanish. The working languages are English, French and Spanish.

Rule 24

Speeches at the Committee and its subsidiary bodies shall be made in one of the official languages and shall be interpreted into the other official languages.

Rule 25

- (a) All supporting documents to agenda items of the Committee and its subsidiary bodies shall be issued in the working languages.
- (b) All reports, resolutions, recommendations and decisions of the Committee and its subsidiary bodies shall be drawn up in one of the official languages and translated into the other official languages.

Voting

Rule 26

- (a) Only Members shall be entitled to vote, provided that, when the Committee performs functions assigned to it by or under any international convention or other instrument, the right to vote on amendments to such convention or other instrument shall be in accordance with the applicable provisions of the convention or other instrument in question.
- (b) Each Member or other Participant entitled to vote shall have one vote.

Rule 27

- (a) Except as otherwise provided for in any international convention or other instrument by or under which the Committee performs functions in accordance with article 48 of the Convention, decisions of the Committee and its subsidiary bodies shall be made and reports, resolutions, recommendations adopted by a majority of the Members or other Participants entitled to vote who are present and voting.
- (b) For the purpose of these Rules, Members or other Participants shall be deemed to be “present and voting” when they cast an affirmative or negative vote. Those abstaining from voting or casting an invalid vote shall be considered as not voting. Members or other Participants shall be deemed to be “present” when they are actually present at the meeting when the vote is taken, whether they cast an affirmative or negative vote, whether they abstain, whether they cast an invalid vote or whether they take no part in the voting. Members or other Participants attending the session but who are not present at the meeting at which voting takes place shall be considered as not present.
- (c) The provisions of this Rule shall apply only if the quorum specified in Rule 35 is obtained at the time when the vote is taken.

Rule 28

The Committee shall normally vote by show of hands. However, any Member or other Participant entitled to vote may request a roll-call vote. A roll-call vote shall be taken in the alphabetical order of the names of the Members or other Participants entitled to vote in English, beginning with the Member or other Participant whose name is drawn by lot by the Chairman.

Rule 29

The vote of each Member or other Participant voting in any roll-call shall be inserted in the report of the session concerned.

Rule 30

If a vote is equally divided, a second vote shall be taken at the next meeting within the same session. If this vote is equally divided, the proposal shall be regarded as rejected.

Elections

Rule 31

All elections in which there are more candidates than the places to be filled shall be decided by secret ballot.

Rule 32

In a secret ballot two scrutineers shall be appointed by the Committee to scrutinize the votes cast and report thereon. The scrutineers shall be appointed by the Committee, on the proposal of the Chairman, from the delegations present. The scrutineers shall report to the Committee on all invalid votes cast in the election.

Rule 33

If one person only is to be elected and no candidate obtains a majority in the first ballot, a second ballot shall be taken confined normally to the two candidates obtaining the largest number of votes. If in the second ballot the votes are equally divided, the election shall be deferred until the next meeting during the same session. If, at that meeting, another tie results the Chairman shall decide between the candidates by drawing lots.

Rule 34

- (a) When two or more places are to be filled by election at one time under the same conditions, those candidates obtaining a majority in the first ballot shall be declared elected. If the number of candidates obtaining the requisite majority is greater than the number of places to be filled, those candidates who obtained the highest number of votes shall be declared elected. If the number of candidates obtaining a majority is less than the number of places to be filled, there shall be an additional ballot or ballots, as necessary, to fill in the remaining places. The voting in such ballot or ballots shall be restricted to the candidates obtaining the highest number of votes in the previous ballot, and the number of candidates shall normally not be more than twice as many as the places remaining to be filled.
- (b) The provisions of Rule 33 shall apply if votes are equally divided where two or more places are to be filled.

Conduct of business

Rule 35

- (a) Twenty Members or other Participants, where appropriate, shall constitute a quorum. In the case of subsidiary bodies the quorum shall be as determined by the Committee.
- (b) When an international convention or other instrument in respect of which the Committee performs functions contains a provision for a quorum, that provision shall apply when the Committee performs such functions.

Rule 36

In addition to exercising the other powers conferred by these Rules, the Chairman shall declare the opening and the closing of each session of the Committee. The Chairman shall direct the discussion and ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions resulting from the voting.

Rule 37

Proposals and amendments shall normally be introduced in writing and handed to the Secretary-General who shall circulate copies to delegations. As a general rule no proposal shall be discussed or put to the vote at any meeting of the Committee unless copies thereof have been circulated to delegations at least twenty-four hours in advance. The Chairman may, however, permit the discussion and consideration of amendments to existing proposals or of procedural motions, even though such amendments and motions have not been circulated or have only been circulated the same day.

Rule 38

The Committee may, on the proposal of the Chairman, limit the time to be allowed to each speaker on any particular subject under discussion.

Rule 39

- (a) During the discussion of any matter a Member or other Participant where appropriate may raise a point of order and the point of order shall be decided immediately by the Chairman, in accordance with these Rules of Procedure. A Member or other Participant where appropriate may appeal against the ruling of the Chairman. The appeal shall be put to the vote immediately and the Chairman's ruling shall stand unless overruled by a majority of the Members or other Participants present and voting.
- (b) A Member or other Participant raising a point of order may not speak on the substance of the matter under discussion.

Rule 40

- (a) Subject to the provisions of Rule 39 the following motions shall have precedence, in the order indicated below, over all other proposals or motions before the meeting:
- (i) to suspend a meeting;
 - (ii) to adjourn a meeting;
 - (iii) to adjourn the debate on the question under discussion; and
 - (iv) for the closure of the debate on the question under discussion.
- (b) Permission to speak on a motion falling within (i) to (iv) above shall be granted only to the proposer and in addition to one speaker in favour of and two against the motion, after which it shall be put immediately to the vote.

Rule 41

If two or more proposals relate to the same question the Committee, unless it decides otherwise, shall vote on the proposals in the order in which they have been submitted.

Rule 42

Parts of a proposal or amendment thereto shall be voted on separately if the Chairman, with the consent of the proposer, so decides, or if any Member requests that the proposal or amendment thereto be divided and the proposer raises no objection. If an objection is raised, permission to speak on the point shall be given first to the mover of the motion to divide the proposal or amendment, and then to the mover of the original proposal or amendment under discussion, after which the motion to divide the proposal or amendment shall be put immediately to the vote.

Rule 43

Those parts of a proposal which have been approved shall then be put to the vote as a whole. If all the operative parts of the proposal or amendment have been rejected, the proposal or amendment shall be considered to be rejected as a whole.

Rule 44

A motion is considered to be an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal. An amendment shall be voted on before the proposal to which it relates is put to the vote, and if the amendment is adopted, the amended proposal shall then be voted on.

Rule 45

If two or more amendments are moved to a proposal, the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all amendments have been put to the vote. The Chairman shall determine the order of voting on the amendments under this Rule.

Rule 46

A motion may be withdrawn by its proposer at any time before voting on it has begun, provided that the motion has not been amended or that an amendment to it is not under discussion. A motion withdrawn may be reintroduced by any Member or other Participant where appropriate.

Rule 47

Where a proposal has been adopted or rejected, it may not be reconsidered at the same session of the Committee unless the Committee, by a majority of the Members, and other Participants where appropriate present and voting, decides in favour of reconsideration. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter and to two speakers opposing the motion, after which it shall be put immediately to the vote.

Invitation to experts

Rule 48

The Committee may invite any person whose expertise it may consider useful for its work. A person invited under this Rule shall not have the right to vote.

Amendments to and application of Rules of Procedure

Rule 49

These Rules of Procedure may be amended by a decision of the Committee taken by a majority of the representatives of Members present and voting.

Rule 50

The Committee may at its discretion apply such Rules of Procedure of the Assembly as it may deem appropriate to particular circumstances.

Rule 51

A rule of procedure may be suspended by a decision of the Committee taken by a majority of Members present and voting, provided that twenty-four hours' notice of the proposal of suspension has been given. This notice may be waived if no Member objects.

Overriding authority of the Convention

Rule 52

In the event of any conflict between any provisions of these Rules and any provision of the Convention, the Convention shall prevail.

ANNEX 2

RESOLUTION FAL.10(35)

(Adopted on 16 January 2009)

**AMENDMENTS TO THE ANNEX TO THE CONVENTION ON FACILITATION OF
INTERNATIONAL MARITIME TRAFFIC, 1965**

THE FACILITATION COMMITTEE,

RECALLING article VII(2)(a) of the Convention on Facilitation of International Maritime Traffic, 1965, as amended (hereinafter referred to as “the Convention”) concerning the procedure for amending the Annex to the Convention,

RECALLING FURTHER the functions which the Convention confers upon the Facilitation Committee for the consideration and adoption of amendments to the Convention,

HAVING CONSIDERED, at its thirty-fifth session, amendments to the Annex to the Convention proposed and circulated in accordance with article VII(2)(a) thereof,

1. ADOPTS, in accordance with article VII(2)(a) of the Convention, the amendments to the Convention, the text of which is set out in the Annex to the present resolution;
2. DETERMINES, in accordance with article VII(2)(b) of the Convention, that the amendments shall enter into force on 15 May 2010 unless, prior to 15 February 2010, at least one-third of Contracting Governments to the Convention have notified the Secretary-General in writing that they do not accept the amendments;
3. REQUESTS the Secretary-General, in conformity with article VII(2)(a) of the Convention, to communicate the amendments contained in the Annex to all Contracting Governments;
4. FURTHER REQUESTS the Secretary-General to notify all Signatory Governments of the adoption and entry into force of the said amendments.

ANNEX

**AMENDMENTS TO THE ANNEX TO THE CONVENTION ON FACILITATION OF
INTERNATIONAL MARITIME TRAFFIC, 1965**

Section 2 – Arrival, stay and departure of the ship

B. Contents and purpose of documents

1 In Recommended Practice 2.2.2 after “● flag State of ship” the following new text is inserted:

“● voyage number”.

2 In Recommended Practice 2.3.1(a) after “● call sign” the following new text is inserted:

“● voyage number”.

3 In Recommended Practice 2.3.1(b) after “● call sign” the following new text is inserted:

“● voyage number”.

4 In Standard 2.6.1 after “● call sign” the following new text is inserted:

“● voyage number”.

5 The existing Standard 2.6.3 is deleted and is replaced by:

“2.6.3 *Not in use*”.

6* The existing Recommended Practice 2.6.4 is deleted and replaced by:

“2.6.4 **Recommended Practice.** In cases where a ship, serving in a scheduled programme, calls again at the same port at least once within 14 days and where minor changes in the crew have taken place, public authorities should not normally require a new, full Crew List to be submitted but should accept the existing Crew List with the changes indicated.”

7 The existing Recommended Practice 2.7.1 is deleted and is replaced by:

“2.7.1 *Not in use*”.

8 In Recommended Practice 2.7.3 after “● flag State of ship” the following new text is inserted:

“● voyage number”.

* Consequential amendment included by the Secretariat.

9 In Recommended Practice 2.7.3 the following text is deleted:

- “● type of identity document supplied by the passenger
- serial number of identity document”

and replaced by the following new text:

- “● type of identity or travel document supplied by the passenger
- serial number of identity or travel document”.

10 In Standard 2.8.1 the text reading “● Voyage reference” is amended to read “● Voyage number”.

11 In Standard 2.8.1 at the end, after “● Stowage position on board”, the following new text is inserted:

- “● Additional information”.

Section 3 – Arrival and departure of persons

A. Arrival and departure requirements and procedures

12 In the second sentence in Standard 3.3.6 after the words “responsible for the costs of” insert “stay and”.

13 The existing Standard 3.10 is deleted and replaced by the following new text:

“3.10 **Standard.** A passport or an identity document issued in accordance with relevant ILO conventions, or else a valid and duly recognized seafarer’s identity document, shall be the basic document providing public authorities with information relating to the individual member of the crew on arrival or departure of a ship.”

B. Measures to facilitate clearance of passengers, crew and baggage

14 In Standard 3.14 after the words “accept persons” insert “present”.

15 The existing Standard 3.15 is deleted and replaced by the following new text:

“3.15 **Recommended Practice.** Public authorities should not impose unreasonable or disproportionate fines upon shipowners, in the event that any control document in possession of a passenger is found by public authorities to be inadequate, or if, for that reason, the passenger is found to be inadmissible to the State.”

D. Facilitation for ships engaged on cruises and for cruise passengers

16 The existing Standard 3.21 is deleted and replaced by the following new text:

“3.21 **Recommended Practice.** For cruise ships, the General Declaration, the Passenger List and the Crew List should be required only at the first port of arrival and final port of departure in a country, provided that there has been no change in the circumstances of the voyage.”

17 The existing Recommended Practice 3.35 is deleted and is replaced by:

“3.35 *Not in use*”.

Appendix 1 – IMO FAL Forms

18 The existing IMO FAL Forms are deleted and replaced by the following ones:

“IMO GENERAL DECLARATION
(IMO FAL Form 1)

		<input type="checkbox"/> Arrival	<input type="checkbox"/> Departure
1.1 Name and type of ship		1.2 IMO number	
1.3 Call sign		1.4 Voyage number	
2. Port of arrival/departure		3. Date and time of arrival/departure	
4. Flag State of ship	5. Name of master	6. Last port of call/Next port of call	
7. Certificate of registry (Port; date; number)		8. Name and contact details of ship's agent	
9. Gross tonnage	10. Net tonnage		
11. Position of the ship in the port (berth or station)			
12. Brief particulars of voyage (previous and subsequent ports of call; underline where remaining cargo will be discharged)			
13. Brief description of the cargo			
14. Number of crew	15. Number of passengers	16. Remarks	
Attached documents (indicate number of copies)			
17. Cargo Declaration	18. Ship's Stores Declaration		
19. Crew List	20. Passenger List	21. The ship's requirements in terms of waste and residue reception facilities	
22. Crew's Effects Declaration (only on arrival)	23. Maritime Declaration of Health (only on arrival)		
24. Date and signature by master, authorized agent or officer			

For official use

IMO CARGO DECLARATION
 (IMO FAL Form 2)

		Arrival		Departure	Page Number
1.1 Name of ship		1.2 IMO number			
1.3 Call sign		1.4 Voyage number			
2. Port where report is made		3. Flag State of ship			
4. Name of master		5. Port of loading/Port of discharge			
B/L No.*	6. Marks and Numbers	7. Number and kind of packages; description of goods, or, if available, the HS Code	8. Gross weight	9. Measurement	
10. Date and signature by master, authorized agent or officer					

* Transport document number. Also state original ports of shipment in respect to goods shipped on multimodal transport document or through bills of lading.

IMO DANGEROUS GOODS MANIFEST

(IMO FAL Form 7)

(As required by SOLAS 74, chapter VII, regulations 4.5 and 7-2.2, MARPOL 73/78, Annex III, regulation 4.3 and chapter 5.4, paragraph 5.4.3.1 of the IMDG Code)

Page Number

1.1 Name of ship				1.2 IMO number				1.3 Call sign				
1.4 Voyage number			2. Flag State of ship			3. Port of loading			4. Port of discharge			
5. Booking/ Reference Number	6. Marks & Numbers Container Id. No(s). Vehicle Reg. No(s).	7. Number and kind of packages	8. Proper Shipping Name	9. Class	10. UN No.	11. Packing Group	12. Subsidiary Risk(s)	13. Flashpoint (in °C.c.c.)	14. Marine Pollutant	15. Mass (kg) Gross/Net	16. EmS	17. Stowage position on board
Additional information												
18.1 Name of master						19.1 Shipping Agent						
18.2 Place and date						19.2 Place and date						
Signature of master						Signature of Agent						

ANNEX 3**DRAFT ASSEMBLY RESOLUTION****Resolution A.[...](26)****Adopted on [...] 2009
(Agenda item [...])****APPLICATION AND REVISION
OF THE
GUIDELINES ON THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE
SUCCESSFUL RESOLUTION OF STOWAWAY CASES
(RESOLUTION A.871(20))**

THE ASSEMBLY,

HAVING CONSIDERED the general purposes of the Convention on Facilitation of International Maritime Traffic, 1965, as amended (hereinafter referred to as “the FAL Convention”), and in particular article III thereof,

NOTING with concern the number of incidents involving stowaways, the consequent potential for disruption of maritime traffic, the impact such incidents may have on the safe operation of ships and the considerable risks faced by stowaways, including loss of life,

RECALLING that, at its twentieth regular session, adopted, on 27 November 1997, resolution A.871(20) on Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases (the Guidelines),

RECALLING ALSO that the Facilitation Committee, at its twenty-ninth session, adopted, on 10 January 2002, in accordance with article VII(2)(a) of the FAL Convention and with resolution FAL.7(29) on Amendments to Convention on Facilitation of International Maritime Traffic, 1965, as amended, which introduced a new section 4 on Stowaways in the Annex to the FAL Convention and which prescribes Standards and Recommended Practice on matters relating to stowaways (the FAL provisions on stowaways) which entered into force on 1 May 2003,

NOTING that a number of Member States which are also Contracting Governments to the FAL Convention have:

- .1 notified, in accordance with article VIII(1) of the FAL Convention, the Secretary-General, in relation to the Standards specified in section 4 of the Annex to the FAL Convention, that they find it impracticable to comply with the aforesaid Standards or of differences between their own practice and the said Standards; or
- .2 have not yet notified, in accordance with article VIII(3) of the FAL Convention, the Secretary-General that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the Annex to FAL Convention,

NOTING ALSO that the parallel coexistence of the Guidelines and of the FAL provisions on stowaways has raised a number of questions in relation to the procedures to be followed for dealing with stowaways as far as those Member States which are also Contracting Governments to the FAL Convention and in particular the ones referred to above,

CONVINCED of the need to align, to the extent it is possible and desirable, the Guidelines with the FAL provisions on stowaways and to revise them in a manner that reflects the developments in the efforts undertaken to prevent stowaways, as well as, to provide guidance and recommendations, taking into account the FAL provisions on stowaways, on measures which may be implemented by vessels for preventing stowaways,

RECOGNIZING that the revision of the Guidelines should be done in such a manner that the end result does not duplicate the existing provisions of the Special measures to enhance maritime security contained in chapter XI-2 of the International Convention for the Safety of Life at Sea, 1974, as amended and the International Ship and Port Facility Security (ISPS) Code, but augments and supplements them, in the context of preventing stowaways,

BEING AWARE that considerable difficulties continue to be encountered by shipmasters and shipping companies, shipowners and ship operators in disembarking stowaways from ships into the care of the appropriate authorities,

APPRECIATING difficulties of the Member States in accepting stowaways for examination pending repatriation and then allowing the vessels concerned to sail,

AGREEING that the existence of the Guidelines and of the FAL provisions on stowaways should in no way be regarded as condoning or encouraging the practice of stowing away and other illegal migration, and should not undermine efforts to combat the separate problems of alien smuggling or human trafficking,

RECOGNIZING that stowaway incidents should be dealt with humanely by all parties involved, giving due consideration to the operational safety of the ship and its crew,

URGING national authorities, port authorities, shipowners and masters to take all reasonable precautions to prevent stowaways gaining access to vessels,

ALSO RECOGNIZING that a comprehensive revision of the Guidelines may entail their complete replacement and the need eventually to revoke resolution A.871(20),

HAVING CONSIDERED the recommendation made by the Facilitation Committee at its thirty-fifth session:

1. AGREES that the provisions of resolution A.871(20) should be considered, henceforth, as being only of relevance with respect to:

- .1 the Member States which are not Contracting Governments to the FAL Convention; and
- .2 the Member States which are also Contracting Governments to the FAL Convention which have:

- .1 notified, in accordance with article VIII(1) of the FAL Convention, the Secretary-General, in relation to the Standards specified in section 4 of the Annex to the FAL Convention, that they find it impracticable to comply with the aforesaid Standards or of differences between their own practice and the said Standards; or
 - .2 have not yet notified, in accordance with article VIII(3) of the FAL Convention, the Secretary-General that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the Annex to the FAL Convention;
2. ALSO AGREES that there is a need to revise the Guidelines as a matter of priority and, to that end, requests the Facilitation Committee and the Maritime Safety Committee to work jointly and expeditiously on the revision of the Guidelines;
 3. AUTHORIZES the Facilitation Committee and the Maritime Safety Committee to adopt jointly the necessary amendments to the Guidelines and to promulgate them by appropriate means;
 4. DECIDES that, as from the date of the joint adoption by the Facilitation Committee and the Maritime Safety Committee of the amendments to the Guidelines, resolution A.871(20) should be deemed as revoked;
 5. REQUESTS the Facilitation Committee and the Maritime Safety Committee to report on action taken in accordance with this resolution to the twenty-seventh regular session of the Assembly;
 6. INVITES Member States, intergovernmental organizations and non-governmental organizations in consultative status to participate actively in the revision of the Guidelines.

ANNEX 4**Agenda item 6****STATEMENT BY THE DELEGATION OF SPAIN**

(Original: Spanish)

I should like to thank the working group for its efforts in producing this report.

While, in principle, this delegation agrees with the content of the circular, I wish to draw the Committee's attention to paragraph 2.5 and express the following concern. What are being developed here are regulations, albeit in the form of a circular, on a topic which, in the opinion of this delegation, seems to us to exceed the remit of the FAL Committee. The latter is not the appropriate forum to decide on matters concerning the treatment of potential candidates for asylum or refugees. These involve considerations of international public law relating to international protection, which have nothing to do with the legal provisions governing SAR operations.

I consider that this Committee has insufficient competence when it comes to examining the conditions and legal status of rescued persons, as these are legal situations involving the relationship between the disembarked persons, their country of origin and their country of nationality, as well as the legal system of the country where disembarkation takes place.

This delegation requests that the above-mentioned subparagraph be amended, either by ending it at the first full stop, i.e. after the word "followed", and deleting the remainder, or by deleting it from the circular.

Thank you.

ANNEX 5**Agenda item 6****STATEMENT BY THE DELEGATION OF AUSTRALIA**

(Original: English)

During the debate, a number of countries including Australia, with large SAR areas voiced strong concerns with some aspects of the proposed draft circular. Whilst reaffirming their commitment to rescues and the resumption of normal operations of rescuing vessels, it was noted that there were a number of options to achieve this. In addition, there were a number of national agencies involved in disembarkation issues whose views needed to be incorporated in any draft circulars to reflect a whole of government view.

It was therefore proposed that agreement to the proposed circular be deferred for consideration at FAL 36 and that options for identifying the most appropriate State to take on the ultimate responsibility for facilitating the disembarkation of persons rescued at sea. In the event that consideration was not deferred, Australia reserved its position in respect of the circular and in particular to paragraph 2.3.

ANNEX 6**Agenda item 6****STATEMENT BY THE DELEGATION OF MALTA**

(Original: English)

Malta does not feel in any way bound by the Circular on Principles relating to Administrative Procedures for Disembarking Persons Rescued at Sea proposed to be adopted by the Facilitation Committee.

First of all Malta has formally objected the 2004 SOLAS and SAR amendments relevant to this issue.

Also this matter is outside the remit of FAL and moreover, the Committee does not have the expertise required to deal with this highly delicate matter.

In particular, Malta has serious reservations on paragraph 2.3 of the adopted circular and cannot accept the principle that the disembarkation of persons rescued at sea is put on the State responsible for the SAR area in which the rescue was affected.

The Maltese Government will never shy away from its responsibilities as to provide rescue services, always within our capabilities. Malta's search and rescue facilities are heavily taxed and our resources onshore are at a breaking point. Considering the size of our country and that of our population this has become a national issue of crisis proportion. While Malta will continue to do its utmost to coordinate efforts so that a place of safety is provided, we cannot guarantee that Malta itself provides it.

Furthermore, the text contained in paragraph 2.3 of this circular can result in serious repercussions to the shipping industry. If, as stated in paragraph 2.3, the swift disembarkation of persons rescued is to be assured and if owners of a ship involved in a rescue operation are to be spared unnecessary financial costs, a ship involved in a rescue operation should be allowed to proceed to the nearest land and be allowed to disembark rescued persons there, and not obliged to have to proceed to the State responsible for the relative SAR area even when this is much farther away than the nearest land of another State.

Moreover, paragraph 2.3 will further encourage the transportation of asylum seekers and migrants at sea, since organizers will only have to sail for a few miles until they reach a SAR area and then call the responsible RCC for assistance; the State responsible for that SAR area has to bring the asylum seekers ashore.

Another important factor that needs to be taken into consideration is the fact that the declaration of SAR areas is non-mandatory and there are to date a number of Contracting governments that have overlapping areas. This will lead to the question as to who will be responsible to disembark persons rescued in an overlapping area. Furthermore, there are areas around the world that have not been declared by any Contracting Party and incidents in these areas are normally coordinated by distant RCCs. Hence the question arises whether the coordinating State will have to take responsibility for the disembarkation of persons rescued.

In view of the above, Malta reserves its position on the circular and in no way feels bound by it. Malta also reserves its position to reopen the debate on this issue in future meetings of the Organization.

ANNEX 7

**THEMATIC PRIORITIES FOR THE
FACILITATION OF INTERNATIONAL MARITIME TRAFFIC
FOR INCLUSION IN THE ITCP COVERING THE 2010-2011 BIENNIUM**

- 1 Enhancing the facilitation of international maritime traffic including in the context of maritime security;
 - 2 fostering the wider acceptance of the FAL Convention and its effective and efficient implementation;
 - 3 contributing to capacity-building in maritime Administrations in respect of training, assessment and examination responsibilities and quality standards relating to the FAL Convention;
 - 4 supporting Administrations to introduce and adopt electronic data processing and interchange techniques based on Electronic Data Interchange Maritime (EDIMAR) standards or other internationally accepted relevant standards to facilitate the clearance of ships, crews, passengers and cargo, effective port operation and vessels' turnaround;
 - 5 supporting training of personnel involved in ship/port interface activities with the aim of raising awareness and understanding of their responsibilities and improving communication and cooperation between all parties involved at the ship/port interface, including Administrations, in respect of the facilitation of international maritime traffic, including inter-modal access to ports;
 - 6 enhancing facilitation of shipments of dangerous cargoes, including IMDG Code class 7 radioactive materials; and
 - 7 promoting the early ratification and effective implementation of IMO instruments while also addressing the special needs of Least Developed Countries (LDCs) and Small Island Developing States (SIDS) and, in particular, maritime transport needs of Africa.
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