

International Labour Organization

International Maritime Organization

Final report

Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers

Geneva, 4–7 February 2008



ILO



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Opening of the session

1. The Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers (Joint Working Group) held its Seventh Session from 4 to 7 February 2008 at the headquarters of the International Labour Organization in Geneva, Switzerland. Mr Jean-Marc Schindler (Government of France) chaired the meeting. The Shipowner spokesperson was Ms Edith Midelfart (Norway) and the Seafarer spokesperson was Mr Brian Orrell (United Kingdom). The list of participants is contained in Appendix I to this document.
2. Ms Johanna Walgrave, Acting Executive Director of the Social Dialogue Sector welcomed participants on behalf of the Director-General of the ILO. She recalled that the Sixth Session of the Joint Working Group had been held more than two years ago, in September 2005. A few months later, in February 2006, the 94th (Maritime) Session of the International Labour Conference had adopted the Maritime Labour Convention, 2006 (MLC). The Conference had also adopted a resolution (see IMO/ILO/WGLCCS/7/2/1, Annex 1) that, inter alia, had found that there was a gap in the international legal regime addressing the issue of decent work for seafarers. In particular, the resolution considered that the text in the Convention did not fully address many of the provisions set out in the Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers and the Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers that both the Assembly of the International Maritime Organization and the Governing Body of the International Labour Office had adopted, respectively, as annexes to IMO Assembly resolution A.930(22) and A.931(22) (see IMO/ILO/WGLCCS/7/2/1, Annexes 2 and 3). As a consequence, the Conference had believed that the Joint Working Group should continue its work, and recommended to both organizations that the way forward was for the Joint Working Group to develop a standard accompanied by guidelines, which could be included in the MLC or another existing instrument at a later date.
3. Ms Walgrave gave special thanks to Mr Schindler for once again taking on the task of leading the Joint Working Group and, noting that he was approaching retirement, thanked him for all that he had done to chair not only the Joint Working Group but also the 94th (Maritime) Session of the International Labour Conference in 2006, and the related preparatory meetings leading up to that Conference.
4. In welcoming the participants on behalf of the Secretary-General of the International Maritime Organization (IMO) and of Dr Rosalie P. Balkin, Director of the IMO Legal Affairs and External Relations Division, Mr Gaetano Librando, Deputy Director, Head, Treaties and Rules Section, thanked the International Labour Office for hosting this session during the refurbishment of the IMO headquarters.
5. The IMO representative pointed out that the IMO's objectives for the current decade focus on people and noted in this connection that the IMO Legal Committee has on its agenda the complex issue of seafarers detained ashore as a result of accidents involving ships on which they were serving. He recalled the adoption in 2006 by IMO and ILO of the "Guidelines on fair treatment of seafarers in the event of a maritime accident", which took effect from 1 July of the same year and that the Legal Committee, at its 93rd Session (22–26 October 2007), had agreed that the Joint IMO/ILO Ad Hoc Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident should be reconvened to monitor the implementation of the Guidelines. To this end, the Joint Secretariat was in the process of collecting information on cases of mistreatment of seafarers (Circular letter No. 2825 of 7 November 2007).

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6. He recalled the genesis, composition and the mandate of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, as well as the main achievements of the Joint Group, under the able chairmanship of Mr Jean-Marc Schindler of France: namely, the development of two important resolutions and related guidelines, one on provision of financial security in case of abandonment of seafarers, the other on shipowners' responsibilities in respect of contractual claims for personal injury to, or death of, seafarers, which he highlighted, and the Database on Abandonment of Seafarers, developed and maintained by the ILO, in cooperation with the IMO.
 7. He noted that, in accordance with its revised terms of reference, the group was now tasked with: continuing the monitoring of the implementation of resolutions A.930(22) and A.931(22) and related Guidelines; reviewing the relevant provisions contained in the MLC, vis-à-vis the provisions contained in the said resolutions and Guidelines, in order to determine the existence of possible gaps; starting to develop a standard accompanied by guidelines to cover any identified gaps, which could be included in the MLC or another existing instrument, at a later date; and deciding on appropriate recommendations to be made to the IMO Legal Committee and the ILO Governing Body.
 8. In this connection, the IMO representative recalled that the IMO Legal Committee, at its 93rd Session, while agreeing that the group should focus on practical and long-term sustainable solutions, had suggested particular caution when considering the adoption of mandatory instruments aimed at proposing long-term solutions. The Committee had also expressed concern at the lack of prompt action by some States to deal with reported cases of abandonment involving ships flying their flag, and the consequent burden imposed upon port States to provide humanitarian assistance. In this regard, reference had been made to the need for effective legal mechanisms to ensure that shipowners be made liable to pay for the related costs.
 9. In concluding, the IMO representative said that IMO has always acknowledged the central role of seafarers in the maritime world and their invaluable contribution to the smooth flow of international seaborne trade and the world economy. As stated by the IMO Secretary-General, "seafarers and their families deserve an adequate supporting framework for when things go wrong. Beside that, it is important to provide this kind of support and protection to seafarers also in order to present a positive image of life at sea".
 10. Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department, expressed her pleasure to host the Joint Working Group and reminded the participants to use the available time for discussions in the best way possible.
 11. The Chairperson of the Joint Working Group, Mr Jean-Marc Schindler (Government of France), welcomed participants and declared the meeting as officially opened. The provisional agenda, as set out at Appendix II, was adopted.

Abandonment of seafarers

12. Prior to the opening statement of her group, the Secretary of the Shipowners' group said that she wished the report of the meeting to reflect the International Shipping Federation's and the International Organisation of Employers' opposition to the presence of representatives of the press as discussed with the secretariat prior to the meeting.
13. In her opening speech, the Shipowner spokesperson, referring to her group's submission (IMO/ILO/WGLCCS/7/2/3), reiterated that the issue of abandonment was still not a widespread problem. The cases reported so far amounted to only 0.05 per cent of the world

joint fleet of merchant and fishing vessels. Half of these cases had been resolved, thereby confirming that only 0.02 per cent of all vessels were causing a concern. Referring to the case of Meugang 1, which was resolved, but failed to be reported as resolved by the International Transport Workers' Federation (ITF), she expressed her concerns about the cases quoted in the database. She appreciated that the ILO and IMO secretariats had taken these concerns seriously and rectified the database entries.

14. She said that the Shipowners believed that there was still not a compelling need for a mandatory instrument, but suggested that if considered necessary it should be resolved within the ILO as this was a social matter. She also noted that the Shipowners had requested that the International Union of Marine Insurers (IUMI) be consulted to determine the feasibility of insurance against abandonment. Finally, her group wished to put before the Joint Working Group a document (see Appendix III) setting out certain amendments to the MLC that the Shipowners had proposed at the 94th (Maritime) Session of the ILC in 2006. She also made reference to the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).
15. The Seafarer spokesperson, after thanking the Chairperson, recalled that it was quite some time since the Joint Working Group had met in September 2005. He found the delay unsettling, as both the IMO and the ILO had agreed that, given the global nature of the shipping industry, seafarers needed special protection. He read the related resolution from the Maritime Session of the ILC in 2006, noting that it had been jointly introduced by the Shipowners and Seafarers and had been supported by the Vice-Chairperson of the Government group. In the view of his group, the reference to "standard" in the resolution meant a mandatory instrument. His group found the submission by the United States to be constructive and said the paper prepared by the IMO secretariat on existing liability and compensation schemes developed by the IMO had been very helpful.
16. He noted that shipping had experienced a boom period and there was a potential that this would end, thus leading to many more cases of abandonment of seafarers. Furthermore, abandonment hurt the image of seafaring and contributed to recruitment problems. For these reasons, it was essential to make substantial progress towards sustainable mandatory solutions.
17. The representative of the Government of the Philippines also expressed expectation for a productive discussion, noting the great interest of his Government as seen in size and depth of his delegation.
18. The representative of the Government of France stressed the importance of providing humanitarian assistance in cases of abandonment. He recalled the previous years' progress, especially the adoption of the consolidated MLC in 2006. France had set up a system for tackling cases of abandonment, and would provide the meeting with a document explaining this system. He believed that no member State could find a solution by its own to the problem of abandonment. There were always international aspects that needed to be dealt within a binding international instrument.
19. The representative of the Government of Cyprus stressed that, even if cases of abandonment are few, there was need to protect seafarers. He referred to the fund for stranded seafarers in Cyprus which had partly resolved this problem. However, the system did not address the matter of unpaid wages. Thus, the issue of unpaid wages in cases of abandonment remained the most difficult issue. He was concerned that a system that called on governments to pay such wages could interfere with the pursuit of claims for unpaid wages in court. It could also result in governments subsidizing some unscrupulous owners who intentionally abandoned ships to avoid paying wages. Nevertheless, the issue of abandonment was an issue that had a moral dimension that needed to be addressed.

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20. The representative of the Government of the United States strongly supported the need to continue the work of the Joint Working Group in order to protect the uniquely vulnerable maritime workers. He stated that the time had come to seriously consider the development of a mandatory instrument to address the financial security for abandoned seafarers. The compelling need was demonstrated not by the number of reported cases, but rather by the grave human impact on this disadvantaged class of seafarers who were too often left destitute in foreign countries with no means of supporting themselves or their dependants.
 21. He commented that port States were not typically equipped to handle seafarers abandoned by their employers. The problem was left to charitable organizations, while those responsible for the abandonment decision simply walked away from the entire situation. He concluded by hoping that the group would achieve results that would aid seafarers and reduce the gaps in legal protection.
 22. The representative of the Government of Greece believed it necessary to have a procedure for claims for injury and abandonment and also for the legal protection of abandoned seafarers.
 23. The Shipowner spokesperson said she understood the argument for a mandatory instrument, but said that experience had shown that such instruments might be ignored by some flag States. It was therefore difficult to see how a mandatory instrument would help. She recognized the concerns expressed by the representative of Cyprus, and further noted that some of the proposals put forward might lead to responsible shipowners subsidizing those that abandoned seafarers. She said that what was relevant here was to concentrate on the MLC and the answers to the problem abandonment found therein.
 24. The Seafarer spokesperson referred to the problem of enforcement. He noted that whilst intending to be a mandatory instrument, the MLC has not yet been in force. As for the possible cost of insurance, he noted that, if the risk of a shipowner abandoning seafarers was low, then any related insurance premiums related to such insurance would also be low. The Seafarers liked some features of the financial security systems described by the IMO secretariat in document IMO/ILO/WGLCCS/7/2/5. Therefore, there was the need to concentrate on a valid mandatory instrument for both death and injury and abandonment issues. However, whatever the solution, it should not interfere with the smooth ratification of the MLC.
 25. The Shipowner spokesperson pointed out that the inclusion of provisions for financial assistance in the MLC would further complicate the ratification process of that Convention. She said that, since 2002, most countries had not followed the ILO/IMO Guidelines because they were too complicated a basis for financial security. She said that, in practice, obtaining insurance coverage might not be realistically possible.
 26. The Secretary of the Shipowners' group reiterated the need for the ILO and IMO secretariat to consult with the International Union of Marine Insurance (IUMI) to determine if it was indeed possible to insure against abandonment. She also looked forward to the views of the representative of the International Group of P&I Clubs, who was present as an observer.
 27. In response to the earlier query from the Shipowners, Mr Librando (IMO) noted that the IMO secretariat had discussed this matter with the IUMI. It was the preliminary view of the IUMI that, if the instrument providing for compensation was not mandatory, the market would not be less sufficiently attractive for insurers. This meant that without a mandatory instrument, the insurance solution was not realistic.
 28. The Chairperson noted that it would be necessary to make such insurance mandatory in order to generate a sufficient market for insurers.

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29. The Seafarer spokesperson suggested that there were many ways of providing financial security for cases of abandonment. This could include, for example, establishment of a fund. One needed to look at Standard A2.5 to see if it provided an adequate solution. The Seafarers did not believe it provided the solution needed. This is why the ILC resolution had been adopted. The Seafarers had subsequently based their submission on the ILO/IMO resolution and related guidelines.
 30. The Shipowner spokesperson noted that her group had expressed concern over abandonment prior to the adoption of the MLC and indeed had initially submitted amendments to the draft MLC to address the issue. She drew attention to these submissions, indicating that, if accepted, these would be sufficient to address the issue.
 31. The representative of the Government of Cyprus stated that he agreed with the suggestion that financial security had different forms, not only as provided through the P&I Clubs. He again pointed out that if the liability to pay off the wages or compensation to the abandoned seafarers rests with the governments, there would be an increase in the number of cases of abandonment because some shipowners would take advantage of this situation.
 32. The representative of the Government of the Philippines underlined that the fact that cases of abandonment are not so many did not mean that the issue was not important. He supported the need for a separate, mandatory instrument.
 33. The representative of the Government of Norway said that he did not support a separate instrument but preferred that the solution remain in the framework of the MLC. Part of the problem was to identify when a situation becomes abandonment. Abandonment was a special case of repatriation. He did not want to see overlap between instruments.
 34. The Chairperson stressed the need for the Working Group to move forward. He stated that the ILO/IMO Working Group's framework had changed now that the MLC has been adopted. Therefore, the main target was that of seeking as soon as possible the ratification and enforcement of the MLC. The Joint Working Group should decide later on whether any new provisions would be amendments to the MLC or a stand-alone instrument.
 35. The Shipowner spokesperson recalled that the relevant Conference resolution provided for two alternatives for the development of a standard. It could be included either in the MLC or in another existing instrument. That ruled out the development of a new instrument.
 36. The Secretary of the Shipowners' group observed that the fishing industry was not covered by the MLC. Therefore, fishers should be dealt with separately if the abandonment of seafarers was dealt with by an amendment of the MLC.
 37. In response, the Seafarer spokesperson stated that it was premature to decide which instrument should be used. The Guidelines on abandonment, which the Working Group had drafted, covered the fishing industry as well as seafarers.
 38. Responding to a request for clarification from the Shipowner spokesperson, a representative of the Office observed that the resolution on continuing the Joint ILO/IMO Working Group was adopted in the context of the work of the International Conference on the MLC. The sentence "a standard accompanied by guidelines, which could be included in the MLC or another existing instrument" was therefore clear. The development of a mandatory text accompanied by guidelines should come first and a decision on where these texts should go could be made later.

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39. The representative of the IMO supported this view. He also stressed the need to improve the implementation of the guidelines by contacting flag and port States. To this end, governments should be reminded to appoint national focal points for abandonment and to inform the IMO and ILO accordingly.
 40. The Seafarer spokesperson recalled that the resolution containing the guidelines was adopted after several meetings of the Working Group. He did not believe that the ILC resolution had changed the terms of reference of the Working Group. He reiterated his group's commitment to get a positive result. This meeting should aim at first agreeing on standards and guidelines as required by the resolution and the Working Group's revised terms of reference and later decide where they should go.
 41. The Shipowner spokesperson presented her group's proposal to amend the MLC with regard to abandonment based on the amendments they had withdrawn at the request of the Chairperson to facilitate the work of the International Labour Conference in February 2006 which he had clearly explained would be able to be revisited at a later date.

Examination of financial security with regard to abandonment

42. The Seafarer spokesperson gave a run down of the history of the Guidelines from the start of discussions in 1998 to their adoption in 2001. The MLC in 2006 did not resolve these burning issues. The MLC did not cover many of the provisions contained in the Guidelines, in particular, it did not give a definition of abandonment. The Seafarers did not believe that the provisions of the MLC were sufficient and would not want the group's work in all these years to be wasted. He listed several provisions of the Guidelines which were missing from the MLC. He insisted especially for the need to have direct access to the financial guarantees on behalf of the abandoned seafarers.
43. The Shipowner spokesperson introduced two of the amendments relating to Standard A2.5 and Guideline B2.5 to take care of abandonment. These texts could provide the basis to revise the MLC in that regard.
44. The representative of the Government of the United States agreed with the Seafarers' arguments highlighting the gap between the MLC and the Guidelines. He stated that the MLC does not cover compensation and various other expenses, hence they supported the adoption of a mandatory instrument to "operationalize" the provision of all the entitlements and other benefits of seafarers after abandonment.
45. The Shipowner spokesperson, while expressing disagreement with the adoption of a separate mandatory instrument, stated that many of the issues related to abandonment, such as wages, repatriation and medical care were covered by Title 2 of the MLC, in particular A2.5.5.
46. The Chairperson asked the Working Group to examine the Guidelines and the MLC to determine which provisions were missing with respect to abandonment. Thereafter, the discussions could be focused on filling such gaps in the Convention for consistency.
47. The Seafarer spokesperson, referring to Title 2 of the MLC, pointed out that its provisions fell under the responsibility of the shipowner. That shipowner, in the case of abandoned vessels, was not there any more. As a consequence, seafarers on board such vessels ceased to have an employer or responsible persons who could be held liable for any form of compensation. Therefore, there was a pressing need to "operationalize" the financial security measures in case of abandonment.

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48. The representative of the Government of the United Kingdom supported the view of the Seafarers that there was no proper definition of the term abandonment in the MLC.
 49. The Shipowner spokesperson proposed to keep the definition of “abandonment” as contained in the Guidelines, as opposed to the United States proposal.
 50. The representative of the Government of the United States observed that the definition of abandonment as per the Guidelines was not precise enough for a mandatory instrument.
 51. The Chairperson noted the necessity to have the term “abandonment” defined properly. He asked the Working Group to identify the elements which would be needed in mandatory provisions and which were missing in the MLC.
 52. The Seafarer spokesperson identified the gaps in the MLC by running through the Guidelines. Most of the elements of the Guidelines were not in the mandatory parts of the MLC. He also referred to document IMO/ILO/WGLCCS/7/2/5 which dealt with financial security and requested the representative of the IMO to explain how the IMO had “operationalized” the coverage of liability by financial security in its Conventions.
 53. The Shipowner spokesperson remarked that identifying any differences was one thing but whether they needed to be covered was another thing.
 54. Replying to the request from the Seafarer spokesperson, the representative of IMO stated that he was not in a position to immediately provide the correct information on the all financial security measures. He said that P&I Clubs partly covered this aspect and could be asked to make a presentation later. A paper (IMO/ILO/WGLCCS/7/WP.1) (see Appendix IV) on this subject was later submitted by the IMO secretariat.
 55. With regard to the issues of abandonment and financial security, the Chairperson encouraged the Working Group to assess the provisions present in the Guidelines that were not in the MLC. For this purpose, he suggested the preparation by the Office of comparative lists of “gaps” existing between the Guidelines and the MLC (see Appendix V).
 56. The representative of the Government of France presented information on the national system which had been implemented in her country so as to deal with cases of abandonment.

Examination of financial security with regard to personal injury and death of seafarers

57. The Shipowner spokesperson introduced an amendment, which had been reluctantly withdrawn at the International Labour Conference, again at the request of the Chairperson, which proposed to insert into Guideline B4.2 of the Code of the MLC a number of non-mandatory provisions on financial security in cases of work-related injury or death of seafarers (see Appendix III).
58. The Seafarer spokesperson – referring to the fact that this amendment regards the non-mandatory part of the MLC – questioned whether the eventual amendments proposed by the Shipowners’ group would be mandatory.
59. The Shipowner spokesperson replied that the solution to this question should be considered by the Governments. However, the Shipowners’ group believed it was sufficient in the Guidelines.

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60. The Seafarer spokesperson referred to Annex II of document IMO/ILO/WGLCCS/7/2/2, containing a proposal by the International Transport Workers' Federation (ITF) for a standard to address the need for financial security in cases of work-related injury or death. The representative underlined the most important points of this suggested standard.
 61. The representative of the Government of the United States, while recalling that their paper dealt only with "abandonment", agreed with the Seafarers' group on the existing gaps between the Guidelines and the MLC. He was willing to look at a comprehensive instrument dealing with financial security in cases of work-related injury or death as well.

Database on abandonment cases

62. The Chairperson introduced the issue of database on abandonment cases and presented the document IMO/ILO/WGLCCS/7/2/3 regarding this issue.
63. The Seafarer spokesperson introduced document IMO/ILO/WGLCCS/7/2/3, underlining that: (i) to date there were 50 abandonment cases listed on the database, up of which 25 were marked as resolved; (ii) in these cases there was no evidence to confirm the effective repatriation of the crew and the payment of all due compensation to the crew members; (iii) in order to avoid misinterpretation in the information contained in the database, it would be appropriate to establish a third category in the database for all cases which, though not resolved, are no longer active ("inactive" or "dormant").
64. The Shipowner spokesperson said the proposal was helpful, and her group accepted the inclusion of a third category.
65. The proposal was also supported by the representatives of the United States and the United Kingdom. The representative of the United Kingdom further asked whether it would be possible to identify ships insured by a member of the International Group of P&I Clubs.
66. The observer from the International Group of P&I Clubs referred to the International Group's submission IMO/ILO/WGLCCS/7/2/7. He said that the Clubs that were members of the International Group of P&I Clubs did not generally cover repatriation in case of insolvency, which is one of the more frequent causes leading to abandonment. Normally when insolvency occurs, P&I cover ceases. Thus, cover for repatriation might not be in place during an abandonment situation.
67. The Chairperson summed up that it was agreed that a third category for cases which, though not resolved, were no longer active, could be included in the database. It was later decided that the organization which had initially reported a case would be consulted before it was declared "dormant".
68. The Seafarer spokesperson observed that of the 50 cases of abandonment reported since 2004, 47 had been reported by the ITF and the rest by European countries. Surely there were other cases, in particular in places where the ITF did not have inspectors or contacts. The database was useful but could not be considered comprehensive. He stressed the importance of improving the contact with the governments, especially by identifying who to contact and where.
69. The Shipowner spokesperson expressed her concern at this issue. She proposed, on behalf of her group, that a letter or circular be sent jointly by the IMO/ILO to States in order to draw their attention on the database and encourage them to report on cases of abandonment. Moreover, a prompt follow-up of such cases should be in place for having in the database honest and valid data.

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70. A representative of the Office drew attention to paragraph 10 of IMO/ILO/WGLCCS/7/2/1, as submitted by the joint ILO/IMO secretariat, which noted that the Office had received information about several non-reported cases of abandonment which could not be entered into the database, for want of adequate information. He noted that paragraph 10 of the document invited the Joint Working Group to reflect on practical ways to improve the reporting of abandonment cases, in order to provide an up to date and accurate picture of the abandonment to the industry. He also recalled the earlier suggestion by the representative of the ILO for States to identify focal points on abandonment.
 71. A representative of the Office said that, in her view, a proactive approach was needed. A letter might not be enough to encourage States. It was important to identify the appropriate persons to be contacted in order to have a constructive result. She encouraged the Joint Working Group to find innovative ways to get Governments to report information for inclusion in the database.
 72. The Shipowners and the Seafarer spokespersons agreed that such an approach was needed. They proposed various alternative ways for encouraging the Governments to report on cases of abandonment, such as raising this issue at the ILO Governing Body or asking the regional coordinators of the Government group to draw the attention of governments to this issue.
 73. Both the Seafarer and Shipowner spokespersons stressed that all governments and all organizations of the maritime industry should be fully involved and be encouraged to report relevant information.
 74. The IMO's representative suggested that it would be possible for the secretariat to ask governments to communicate the relevant contacts in order to facilitate the management of abandonment cases. In this regard, he also stressed the importance of the participation and interaction between port and flag States.

Comparison between the MLC and the Joint ILO/IMO Guidelines on abandonment

75. The Chairperson opened the discussion on a document listing the existing gaps between the MLC and the ILO/IMO Guidelines on the issue of abandonment (Appendix V). He proposed to go through this document in order to indicate the points which needed further consideration.

Definitions

76. The Chairperson pointed out that, according to the document, while there was a definition of abandonment in the Guidelines, no exact equivalent could be found in the MLC. Therefore it appeared that there was a need for a definition of abandonment in the MLC.
77. The Secretary of the Shipowners' group first clarified that her group understood that, at this stage, the Joint Working Group would be looking at differences between the MLC and the ILO/IMO Guidelines. The Shipowners were not at this time stating whether new provisions should be mandatory or not, or where agreed text, if any, would be placed.
78. As a consequence, the Shipowner spokesperson expressed her doubts about the necessity of including a definition of abandonment in the MLC, as it would be a very difficult task. It is not a definition, just an explanation. She also said that she had heard very little on these issues from the Governments' side and encouraged them to contribute to the debate.

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79. The Seafarer spokesperson said that the protection for seafarers provided by the MLC was based on the assumption that the employer still existed. Indeed, in the case of abandonment, the employer had disappeared. He pointed out that, for the Seafarers, “gap” meant lack of a mandatory provision in the MLC. He agreed with the definition of abandonment contained in the submission by the United States. With regard to the forms of financial security to be agreed on in cases of abandonment, he expressed the opinion that they should certainly be put in a mandatory part of the MLC.
 80. The representative of the Government of Norway stressed that a definition of abandonment should appear in the document if the purpose is to agree on the amendments. He supported the wording suggested by the United States in its submission. He also noted that the definition of “shipowner” in the ILO/IMO Guidelines was different from the definition in the MLC. He noted that it was important to determine the consequences of any differences in these definitions. The representative of the Government of Denmark supported this view.
 81. The representative of the Government of Cyprus stressed that the definition of abandonment should be very clear.
 82. The Chairperson noted that it was unlikely that an appropriate definition would be found at that time and decided to defer discussion on the definition of abandonment.
 83. The Seafarer spokesperson said that the difference in the definition of “shipowner” was minimal. The definition found in the MLC would apply.
 84. The representative of the Republic of Korea said that the definition of “shipowner” could be dealt with later. He suggested that the differences between the text of the ILO/IMO Guidelines and the MLC be examined, then it should be determined if missing text needed to be included in a new instrument, or the MLC or not. Specific wording would come later.
 85. Denmark supported postponement of the discussion of definitions until a later stage, on the condition that such definitions would at some point be discussed.
 86. The Chairperson concluded that the abandonment issue was to be retained for further discussion.

Financial security

87. The Seafarer spokesperson opened the discussion by raising several questions concerning financial security in cases of abandonment. Was it desirable to have: (1) a specific form of financial security? (2) this to be clear and effective? (3) the liability to be specified? (4) elements of financial security to be identified and details of coverage to be specified? The Seafarers would answer all these questions positively, meaning that they envisaged a specific form of financial security to be determined (in the MLC or other mandatory instrument), as well as a financial security system to be effective. He noted that the document (IMO/ILO/WGLCCS/7/WP.1) submitted by the IMO secretariat was very useful for addressing these issues.
88. A representative of the Office clarified that, from the legal point of view, in case of abandonment the shipowner, the employer, was in breach of the contract and even if he disappeared, he would still be liable towards the employee, i.e. the seafarer. How then to enforce liability? – through the financial security system. She argued that the breach of the contract did not make the liability of the employer disappear. The financial security needed to be in place to avoid the consequences of the absence or disappearance of the shipowner in cases of abandonment.

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89. The Shipowner spokesperson agreed on the clarification of this. She said that the issue of financial security for cases of abandonment was difficult. At least, she stressed, there should be flexibility, meaning that it should be possible to opt for various forms of financial security. On this point, she recalled section 6.1 of the ILO/IMO Guidelines, which listed various options for financial security. The Secretary of the Shipowners' group added that the matters covered in the MLC as concerns repatriation were covered by the financial security requirement in Regulation 2.5.
90. The representatives of the Governments of Norway, Greece and the United States said that, if the instrument is to be ratified, it would be necessary to have flexibility as to the form of financial security.
91. The Shipowner spokesperson said that she was not sure that there was need at this point in time for discussion with regard to the form of financial security. From the point of view of the Shipowners, the form of financial security should necessarily be flexible. In response to a question from the Seafarer spokesperson if her group agreed to the inclusion of all of paragraph 6 of the ILO/IMO Guidelines (i.e., "social security schemes, insurance, a national fund, or other forms of financial security"), she said that her group only agreed to the concept that there should be flexibility as to the form of the system. She also emphasized the importance of the role of the flag State in such provision.

Scope of the financial security system

92. The representative of the Government of France noted that the expenses for repatriation provided for in the MLC were different than those in the ILO/IMO Guidelines.
93. The representative of the Government of the United States said that the obligations in the MLC focused on the shipowner, but in cases of abandonment, the shipowner was gone. While he agreed with the representative of the Office that a legal obligation on the shipowner existed, he stressed that there remained a practical problem as concerns provision of wages, food, medical assistance, etc., to the abandoned seafarers.
94. A representative of the Office said that the financial security system had to be devised in an effective and dissuasive manner in order to cover any practical problems.
95. The representative of the Government of Norway agreed. He said the problem was with the shipowner and his obligations. In Norway, when a vessel is registered, the shipowner must provide a financial guarantee. The focus should be on the flag State's obligations to require such a guarantee.
96. The representative of the Government of the United Kingdom noted that because the vessel had been abandoned, there was no insurer. This was essentially a discussion about action to be taken in case of insolvency.
97. The Seafarer spokesperson agreed with the representative of the Office. The MLC dealt with the employment situation and apart from the provisions under Standard A2.5 on repatriation, abandonment was hardly covered. He observed that the time between abandonment and repatriation was a pretty long period during which seafarers were denied their wages, as well as other basic necessities. He stressed that, even in such situations seafarers should be provided with their contractual remuneration and other entitlements. For this, he suggested that there should be mandatory provisions requiring employers to pay for cover for these liabilities before abandonment occurred. He agreed with the representative of the Government of the United States that comparing the Guidelines and the MLC was not appropriate since in the MLC the employer was present, while in the Guidelines, the employer had abandoned ship and seafarers.

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98. The Shipowner spokesperson read out Regulation 2.5 and stated that the above questions were well answered in the MLC. It stated clearly who should take over when the shipowner failed to comply with their obligations. Paragraph 3 of Guideline B2.5 provided for many of the costs following abandonment. With regard to “passage” and “accommodation and food”, the Shipowner spokesperson observed that the provisions under Standard A2.5.3 and Guideline B.2.5.3 were similar to those contained in the Guidelines and therefore did not need to be amended. She considered the above provisions as sufficiently covering the financial security. The appropriate mechanisms were contained within Title 5 of the MLC.
 99. The Secretary of the Seafarers’ group repeated that the Seafarers still found gaps in the relevant text of the MLC which needed to be filled.
 100. The Shipowner spokesperson said that there might be differences but this did not imply that there were gaps.

Certificates

101. The Shipowner spokesperson felt that discussing certificates would be too difficult as long as the discussion on financial security remained incomplete.
102. The representative of the Government of Norway, while agreeing with the Shipowners, said that certificates are linked to the form of financial security. He suggested that the term “documentary evidence” could replace or be added to the term “certificate”.

Contact details

103. The Shipowner spokesperson recognized that seafarers should be aware of the appropriate contacts. She observed that the MLC and any appropriate legislation should hold the flag State responsible for action in case of non-compliance by a shipowner. She believed that the flag State should provide a contact person for seafarers. There should also be a relevant person available in the company ashore. This could be discussed again at the appropriate time.
104. The Seafarer spokesperson agreed to reopen this when certificates would be discussed. He also suggested noting down those provisions which are similar in both the Guidelines and the MLC.

Development of a standard and guidelines

105. The representative of the Government of France, reporting on discussions between Governments, summed up their position on abandonment. The majority supported the adoption of a mandatory instrument as a long term sustainable solution for abandonment and financial security. Some Governments underlined that they wanted to work on the basis of an agreement between the social partners.
106. The representative of the Government of Cyprus stated that flag States were not charitable institutions and they had to properly manage their finances. The representative of the Government of Cyprus insisted on having a clear definition of abandonment. Abandonment was important for port States as they were at the receiving end. Court cases for the recovery of costs took years. There was a need for a mandatory instrument to reduce the number of cases of abandonment and ensure that charges fell on the shipowners.

In Cyprus, a judge would not arrest a ship unless the creditor paid the interim costs for crew maintenance.

107. A representative of the Government of the Philippines also agreed with the need for a mandatory solution. She explained that her country had an institutionalized system of protecting the interests and welfare of the seafarers on board national and foreign-flag ships. The provisions for compensation and benefits in cases of repatriated seafarers were well covered in the minimum terms and conditions of their standard employment contract. National legislation provided adequate protection to seafarers. There were no instances of Filipino seafarers abandoned in a foreign port who were not repatriated. The compensation and liability regime was exercised through the National Labour Relations Commission and repatriation procedures through the Welfare Fund Assistance Program of the Overseas Workers' Welfare Administration. She concluded by stating that her country being one of the leading supplier of seafarers to the world fleet, the Government supported the ongoing efforts towards addressing the issue of financial security through a mandatory instrument.
108. The representative of the Government of Greece supported the comments by Cyprus and expressed the wish to have a mandatory instrument with a clear definition of abandonment.
109. The delegation of the United States supported the comments by France. He was disappointed that the social partners were unable to reach an agreement on this issue. He once again stressed the need for a mandatory instrument, which in his opinion should be an IMO instrument.
110. The Seafarer spokesperson expressed satisfaction at the Government group's decision to support a mandatory instrument. In reply to the comments by the United States, he stated that he was also disappointed for not having an agreement between the social partners on this issue. He suggested that a time limit should be fixed for such an agreement to be reached. He sought guidance from the secretariat as to the possibility of resuming the present meeting within the next six months.
111. The Secretary of the Shipowners' group welcomed the Government group's views and suggested that shipowners would work with the Seafarers towards a solution. She suggested that a meeting in nine months' time would be ideal. She felt that a mandatory solution within the MLC should be sought.
112. The Shipowner spokesperson stated that she had expected that Governments would have clear ideas on how to deal with the issues at hand. However, she also agreed to work towards an agreement between the social partners.
113. The Chairperson concluded that informal consultations, in particular between the social partners, should be held before a future formal meeting.

Comparison between the MLC and the Joint ILO/IMO Guidelines on personal injury or death of seafarers

114. The Chairperson introduced a document listing the existing gaps between the MLC and the Joint ILO/IMO Guidelines on the issue of compensation regarding claims for death and personal injury (see Appendix VI).

Financial security

115. The Shipowner spokesperson stated that, even if the texts of the Guidelines and of the MLC on this subject were slightly different, the substance was the same.
116. There was no disagreement with this statement.

Shipowners' responsibilities

117. The Seafarer spokesperson noted that certain definitions contained in the Guidelines were not in the MLC, e.g. "personal injury", "claims", "insurer" and "insurance". These definitions would have to be included in the MLC. He also reiterated that, notwithstanding the agreement on flexibility of the financial security system, financial security needed to be clearly identified in the MLC.
118. The Shipowner spokesperson observed that the MLC contained a definition for "shipowners" and for "seafarers". With regard to "personal injury" she did not believe there was a big difference between the MLC and the Guidelines. As for "insurance", the text of the MLC and the Guidelines did not have the same wording, but she believed the issue was adequately covered up by the MLC. Indeed, she felt that all the points raised were adequately covered by the MLC.
119. A representative of the Office explained that shipowners' liability was adequately covered in Regulation 4.2 of the MLC, even if not as clearly defined as in the ILO/IMO Guidelines. The MLC covered compensation for injury and death. The MLC did not address in detail how the financial security was to be provided. However, the claims related to all contingencies for personal injuries and death, were covered by the MLC.
120. The Seafarer spokesperson stated that mental disease did not seem to be covered by the MLC. He questioned whether the term "occupational injury", used by the Shipowners, included mental disease.
121. The Secretary of the Shipowners' group stated that the MLC covered every type of occupational illness and that, in her opinion, used the word "illnesses" to include mental illness.
122. The meeting agreed to seek from the Office a full comparison between, on the one hand, Regulations 4.2 (Shipowners' liability) and 4.5 (Social security) and, on the other, the ILO/IMO Guidelines.
123. The representative of the Government of Norway said that in his country any illness during the period when the seafarer was employed by the shipowner was covered. There was, in general, no limit as to what types of illnesses were covered. There was no need for more detail on this matter than what was currently found in the MLC.
124. The Chairperson noted that these matters seemed to be covered by the MLC text. He reminded the Joint Working Group that the provisions of the ILO/IMO resolution would disappear if a mandatory instrument was adopted.
125. The Shipowner spokesperson pointed out that their document, containing proposed amendments to Guideline B4.2 of the MLC (see Appendix III), included seven new paragraphs to be added to the Guideline. It should be taken into account during the drafting of any possible new instrument.

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- 126.** The Seafarers' representative noted that they had some concerns with the Shipowners' amendments. He stressed the importance of paragraphs 4.2 (which concerned prompt and full payment of valid contractual claims and that there should not be pressure for a payment less than the contractual payment), 4.3 (which concerned interim payments to avoid undue hardship) and 4.4 (which concerned display on board of contact details of persons or entities responsible for handling claims). Furthermore, concerning payment of claims, the Seafarers wanted the model receipt and release form found in the annex to the Guidelines to be used. The difficulties would be on the claims in progress, who lodged them, as well as if the liability of the insurance for injuries was clearly on the certificate. The Seafarers also felt that these important points of substance were currently not in the MLC and should be included in mandatory provisions.
- 127.** The Shipowner spokesperson replied that most of the points mentioned by the Seafarer spokesperson were covered in the Shipowners' proposed amendments to the MLC. Furthermore, she observed that how "prompt" a payment was made could depend on the situation, though it was recognized that this should be as soon as possible. As to the elimination of "pressure", she said it was important to eliminate pressure on both sides. She said it was important that the offer of a solution to a particular problem would not automatically be considered "pressure". As concerns the matter of a "contact person", she noted that, in their proposed amendments to the MLC, the Shipowners had provided for this. Other issues had also been addressed in the Shipowners' proposed amendments, such as how to resolve situations where there were disputes about the validity of a claim. She also stressed the importance of accurately defining what would be a valid claim. As to whether or not to use the model forms in the ILO/IMO Guidelines, this could be left for a later discussion. The key matter was to try to expedite the process where possible.

Insurance cover

- 128.** The Seafarer spokesperson commented on the three paragraphs (6.1.2, 6.1.4 and 6.1.5) that related to issues addressed in Regulation 4.2.2 of the MLC, which concerned "other legal remedies not affected". They considered these provisions to be common sense. Most payments were covered by P&I Clubs. These operated under their own rules and were somewhat independent of the shipowners themselves. He noted the concerns of the seafarers in the development of the ILO/IMO Guidelines: for instance, the "pay to be paid" principle and when, unbeknownst to the seafarer, insurance cover was withdrawn for various reasons, such as the failure by the shipowner to pay the premium. The Seafarers also had concerns over the retroactive withdrawal of insurance cover. They felt that coverage for seafarers should be met without exception.
- 129.** The Seafarer spokesperson noted that provisions relating to the above had not been included in the MLC because they were in the ILO/IMO Guidelines. It was not reasonable to place a condensed version of these provisions in the MLC. Despite this, they found the MLC provisions on shipowners' liability to be rather good. What was fundamentally important was that seafarers should be told when insurance was cancelled or would not be renewed. He pointed out that was not really an issue for shipowners, but for the P&I Clubs.
- 130.** The observer from the International Group of P&I Clubs responded on the points raised, namely on the "pay to be paid" rule and the retroactive withdrawal of coverage rules. He said that the P&I Clubs were currently looking into the implementation of those rules in relation to valid seafarer P&I claims. He said that what had been included in paragraph 6.1.4 of the IMO/ILO Guidelines was problematic from an insurer's point of view because of the difficulty for the insurer to get in direct contact with the seafarers. Paragraph 6.1.5 also raised difficulties because insurance cover might be withdrawn for various reasons during the period covered by the certificate, for example, failure to maintain class, not in compliance with certain international Conventions, and liability

could cease from the time of such breach. This was common to all insurers whether P&I Clubs or commercial.

131. The Shipowner spokesperson underlined point 9 of the amendment which had been withdrawn at the request of the Chairperson at the ILC relating to financial security. Seafarers had to be informed by the shipowners if the financial security was cancelled before the normal expiry date. She added that their submission covered similar ground as the Guidelines with improvements for inclusion in the MLC. They would prefer to see their text rather than the guideline text in the MLC.
132. The Seafarer spokesperson stated that if no insurer could deliver on 6.1.5 of the Guidelines, he would like to have clarification on how payments were made and claims made with the P&I Clubs.
133. The representative of the International Group of P&I Clubs recalled that there were 13 member Clubs, mostly in the United Kingdom but also in Scandinavia, the United States and Japan. The ones based in the United Kingdom operated under English law. That law prescribed that the liability of the insurer could cease upon a breach of warranty by the insured. Clubs, however, have a discretion not to rely on such breach and had exercised such discretion on many occasions.
134. The Seafarer spokesperson answered that it struck him as wrong that insurance for injury and death where the premium had been paid for the year could be withdrawn for whatever reasons, and particularly without the seafarers knowing. He, however, understood the justification for warranties whose breaches could result in a reduction of safety and therefore an increase in injuries and death.

Certificates

135. The Shipowner spokesperson said that they preferred the text set out in the amendments to Guideline B4.2 of the MLC, but remained flexible.
136. The Seafarer spokesperson said that the provisions 7.1, 7.2 and 7.3.8, as taken from the ILO/IMO Guidelines, were absent from any existing mandatory instruments. He wanted the principles set out in these paragraphs to be included in a mandatory instrument, though they were not wedded to any specific text.

Discussion on future work of the Working Group

137. The Chairperson recalled that the social partners had been requested to consult on a possible way out or process that they could agree upon. He asked the social partners to report on the outcome of those consultations.
138. The Seafarer spokesperson said his group appreciated the concerns raised by the Governments regarding the need to identify any areas of agreement by the social partners. He said that the two groups were able to agree upon certain points:
 - It was agreed that there should be an effective financial security system for abandonment.
 - The essential elements must be mandatory.

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- It can be flexible in how it is delivered but it should ensure that there is a level playing field in this area.
 - The text should be elaborated and a decision on how it should be brought into force should be taken later.
 - The social partners shall meet within six months.
 - The ILO and IMO secretariats should use their expertise to produce text on the way it is delivered effectively and is operationalized.
- 139.** He also added that the results of the meeting scheduled to take place within six months would be sent to the ILO and IMO secretariats. He hoped that the Governments would see this as a positive move from the side of social partners.
- 140.** The Shipowner spokesperson agreed with the statement made by the Seafarer spokesperson on behalf of the social partners. However, she expressed her disappointment that the Governments were unable to identify their choice for the system of financial security. She hoped that they would be able to give indications on their preference for a choice of system at a future meeting.
- 141.** The Seafarer spokesperson said his group did not share the view of the Shipowners on the matter of the Governments' choice of a system of financial security.
- 142.** The Chairperson opened the floor for Government comments. The representatives of the Governments of Norway and France said they thought that the agreement between the social partners was quite positive and helpful. As for the choice of a system, it would be important to obtain the agreement of the social partners.
- 143.** The representative of the Government of the United States appreciated the progress made in the consultation and noted that the elements in that agreement were consistent with the paper that had been submitted to the Joint Working Group by the United States. He was concerned about the time frame of the work, and encouraged the social partners to meet in such a way so as to be able to discuss its outcome at the next session of the IMO Legal Committee in October 2008, noting that his Government was considering the submission of a document concerning a possible mandatory instrument on abandonment to that Committee. As for the choice of a system of financial security, he pointed out that the United States had put forward specific ideas on this matter in its submission to the Joint Working Group.
- 144.** In reply to the issue of the time frame for the work as raised by the representative of the United States, the Seafarer spokesperson said that the social partners planned to meet with each other quite soon, and proposed that the Joint Working Group meet again in July 2008. This next meeting of the Joint Working Group would need to discuss how to make the financial security system effective. After the social partners met, they would provide the outcome of their meeting to the ILO and IMO secretariats, which in turn should prepare a paper to the proposed July meeting on the form such a financial security system should take.
- 145.** The Chairperson stated that, in view of the future IMO Legal Committee in October and of the ILO Governing Body session in November 2008, a clear report would be needed before those dates. He underlined the importance of an agreement on a precise schedule for future work.
- 146.** A representative of the Office stressed that the Working Group needed to continue the ongoing process. She confirmed that the Office would be willing to prepare the necessary

papers to assist the Working Group as well as report to the Governing Body of the ILO and the IMO Legal Committee.

- 147.** The Seafarer spokesperson observed that, out of seven meetings, the present had been the only decisive one. He pointed out that it was clear that it was not the role of the social partners to identify the gaps between the MLC and the Guidelines. The most important was, therefore, to have a rapid solution to all the issues raised. In this regard, it was suggested that the ILO secretariat could advise the Working Group on the relevant issues, especially on what should be included in the MLC or other mandatory instruments regarding abandonment and death or injury. He also suggested that, for this purpose, the secretariat should prepare a paper to be available for the next meeting of the Working Group. This would assist the Working Group to reach a final decision and formulate a recommendation. He finally reiterated that this was an issue which needed to be solved in a short time, no matter what the chosen final instrument: the MLC or other mandatory instruments.
- 148.** The Shipowner spokesperson also recognized that the situation had to be solved rapidly. She stressed that her group needed to be sure that all States would provide and promptly enforce a financial security system in cases of abandonment. In this regard, she questioned whether the MLC was the correct instrument and asked for clarification regarding the ratification process. It was possible that the MLC would come into force in 2010 or even at a later date. Therefore, she asked whether other instruments would possibly be better than the MLC to address the issue in a rapid and more effective way.
- 149.** A representative of the Office agreed that the contributions from the Governments could be helpful and that, after receiving such contributions, including those from the social partners, the secretariat would be able to draw options about the relevant issues, for consideration by the Working Group. She proposed the dates for the next meeting, 21–24 July 2008 (to be confirmed).
- 150.** The representative of the IMO informed the meeting of the administrative procedures in the IMO and to the future dates of the next Legal Committee (94th Session, 20–24 October 2008). Documents had to be submitted well in advance of the meeting; 15 August for bulky documents (more than six pages) and 19 September for non-bulky documents.
- 151.** On behalf of the Governments in the Joint Working Group, the representative of France said that the Governments represented agreed on the principle of mandatory provisions for financial security. Some pointed out that financial security was a responsibility of the shipowners. The majority stressed the importance of flexibility in financial security. Some specified that they already had in place regulations providing an element of financial security in case of insolvency, but this did not exclude the possibility of having a mandatory international instrument. The majority expressed preference for a MLC solution in principle; all agreed that the legal framework should be decided at a later stage.
- 152.** The Shipowner spokesperson referred to the IMO secretariat's paper IMO/ILO/WGLCCS/7/WP.1 and noted that it was important for the ILO's secretariat to prepare a similar paper in relation to how this works within the ILO, for example, in the case of occupational safety and health.
- 153.** A representative of the Office referred to the various ILO occupational safety and health Conventions which treated the issue of liability. In particular, she noted that the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) provided for the protection of workers' claims in cases of the insolvency of the employer, but allowed for alternative regimes for doing so. The Office would provide information on these instruments at the next meeting of the Joint Working Group. Furthermore, she referred to the European Union Directive concerning such insolvency, noting that perhaps 25 of the

27 European Union Member States had systems in place in conformity with that Directive. Thus, while some States might not have in place a specific system concerning abandonment of seafarers, they did provide protection through broader insolvency regimes.

154. The Secretary of the Shipowners' group noted that one of the ISF members had indicated that his country had such a system. She said that even within the European Union there were different types of systems in place. Any mandatory instrument must be sufficiently flexible to be acceptable not only for Europe but also internationally.
155. A representative of the ILO suggested that it would be very useful for Governments to provide to the secretariats, before the next meeting of the Joint Working Group, updated information on legal requirements and practical arrangements for the systems they had in place.
156. The Seafarer spokesperson understood that most Governments preferred to find a solution through amendment of the MLC. The Seafarers wanted a solution as soon as possible. If the quickest route was through amendment of the MLC, this was fine. However, if there were a faster route, they would take it. He reiterated that their position was to see from the requested ILO paper what was covered and what was not, and then consider how to go forward.
157. He further noted that experience had shown that seafarers were often excluded from the protection provided for other workers. He therefore wanted the requested secretariat paper to be clear on how strict liability for seafarers could be achieved and in which legal text it could be included, including, of course, the MLC.
158. The representative of Cyprus clarified that even though many European countries had established legal remedies for insolvency and abandonment, these systems were incomplete as concerns abandonment, as they did not sufficiently address such practical issues as timely payment of wages and provision of food, medical care, etc.
159. The representative of the IMO secretariat referred to and explained in detail document IMO/ILO/WGLCCS/7/WP.1. The working paper was in fact an abstract from document IMO/ILO/WGLCCS/7/2/5 and that it contained a brief description of the main elements of the financial security system contained in existing liability and compensation regimes developed by the IMO, namely relating to: strict liability of the shipowner; limitation of liability; channelling of liability towards the shipowner; compulsory insurance; and direct access. In addition, insurance certificates must be carried on board ship with a copy deposited with the authorities of the ship register.
160. The Seafarer spokesperson said that document IMO/ILO/WGLCCS/7/WP.1 included many elements that the Seafarers particularly liked, such as strict liability of the shipowner; direct access; compulsory insurance; and an insurance certificate to be carried on board each ship. The paper requested of the secretariats for the next meeting should address these points. He invited the Governments to indicate whether they, too, liked such clauses.
161. The representative of the Government of the United States, responding to the comments by the Seafarers, stated that the United States' submission contained all the essential elements laid down in document IMO/ILO/WGLCCS/7/WP.1, and the proposal was harmonized with the suite of the IMO Conventions concerned with compensation.
162. The observer from the International Group of P&I Clubs noted that there had been concerns raised concerning particular Club rules which, as he had said previously, Clubs were currently considering. He noted that, because of coverage difficulties relating to terrorism, difficulties had been experienced for States issuing certificates attesting that

insurance or other financial security is in place and special guidelines had been developed in relation to that Convention which had delayed the entry into force of that Convention.

- 163.** In response to the inquiry from the P&I Clubs, the Chairperson clarified that it had not yet been decided whether the insurer or flag State would issue the certificate.
- 164.** The representative of the Government of the United Kingdom, in response to a request from the representative of the P&I Clubs, recalled that the provision of insurance for claims resulting from war or terrorism had been complex and negotiations on these issues had delayed entry into force of the Protocol to the Athens Convention by perhaps four years.
- 165.** The representative of the Government of the United States drew attention to the United States' submission (IMO/ILO/WGLCCS/7/4) for the development of a mandatory instrument to address the issue of financial security for abandoned seafarers. He stated that despite the adoption of the Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers and other past efforts to address the problem, there seemed to be numerous cases of abandonment, even in the face of favourable shipping economic dynamics. He quoted the report of the 93rd Session of the IMO Legal Committee to stress the "need for effective legal mechanisms to ensure that shipowners be made liable to pay for the related costs" (of abandonment). Many cases were unrecorded in the statistics.
- 166.** Recognizing that the MLC partly dealt with some of the consequences of abandonment, he reiterated his proposal for action to fill the gaps that existed. Under the United States proposal, flag States would be required to ensure that its ships within the scope of application have an adequate financial security system in place, but would also obligate port States to ensure the same for all relevant ships entering or leaving its ports and offshore facilities. This revolutionary mechanism of interlocking conditions of port entry (first employed in the Wreck Removal Convention) would have the potential of ensuring widespread compliance with the financial security system requirements, even by vessels of non-State parties. This mechanism could potentially get even non-signatory States to comply.
- 167.** The Secretary of the Shipowners' group again expressed her group's commitment to addressing the issue of abandonment. The Shipowners would examine the submission by the United States, but thought that the solution might be better dealt with in the ILO under the Maritime Labour Convention, 2006.
- 168.** The Seafarer spokesperson commented that the paper by the United States was a constructive one. He stressed that this paper should be analysed when the secretariat prepares their papers regarding the standard-setting options. He expressed his satisfaction that the United States had been sensitive to the humanitarian needs of seafarers.

Interim actions to promote the implementation of the ILO/IMO Guidelines

- 169.** The meeting also discussed ways and means to make the Guidelines more effective. It was suggested, *inter alia*, that:
- the database should be as accurate as possible;
 - the resolutions should be publicized as much as possible.
- 170.** The meeting considered the production of a leaflet to be distributed to governments, training schools or ships and all concerned to promote the resolutions.

Final considerations

171. Considering that its work had considerably progressed but had not yet been completed, the Joint Working Group decided to request the IMO and the ILO to convene an eighth session from 21 to 24 July 2008 at ILO headquarters in Geneva.
172. The Joint Working Group concluded the present session by adopting the present report.

List of participants
Liste des participants
Lista de participantes

Appendix I

Chairperson

Président

Presidente

M. Jean-Marc Schindler, directeur du Bureau d'enquêtes sur les événements de mer, ministère de l'Ecologie, du Développement et de l'Aménagement durable, La Défense, France

Experts nominated by Governments

Experts désignés par les gouvernements

Expertos designados por los Gobiernos

CYPRUS/CHYPRE/CHIPRE

Captain Andreas A. Constantinou, Senior Surveyor of Cyprus Ships, Department of Merchant Shipping, Ministry of Communications and Works, Lemesos

Ms Chryso Demetriou, Merchant Shipping Officer (Legal Affairs), Head of Ships' Registry, Department of Merchant Shipping, Ministry of Communications and Works, Lemesos

FRANCE/FRANCIA

M^{me} Catherine Blot, chargée d'études au Bureau du travail maritime, Direction des affaires maritimes, Paris

Mr Fabien Joret, Office of Maritime Transport, Regulation and Organization, Ministry in Charge of Transport, La Défense

M. Eric Levert, adjoint du sous-directeur des gens de mer, ministère de l'Ecologie, du Développement et de l'Aménagement durable, Paris

GHANA

Ms Margaret Campbell, General Manager, Ghana Ports, Tema

Mr Ben Owusu-Mensah, Director-General, Ghana Ports, Tema

GREECE/GRÈCE/GRECIA

Ms Marina Charalampous, Seamens' Labour Directorate, Hellenic Ministry of Mercantile Marine, the Aegean and Islan Policy, Athens

Mr Nikolaos Isakoglou, Lieutenant Commander HCG, Hellenic Ministry of Mercantile Marine, the Aegean and Islan Policy, Athens

PHILIPPINES/FILIPINAS

Ms Gloria Bañas, Deputy Administrator for Planning, Maritime Industry Authority, Manila

Ms Maria Elena Bautista, Undersecretary for Maritime Transport, Department of Transportation and Communication, Mandaluyong City

Mr Noriel Devanadera, Deputy Administrator, Overseas Workers' Welfare Administration and Head, Department of Labor and Employment Maritime Office

Mr Neil Frank Ferrer, First Secretary and Consul and Alternate Permanent Representative of the Philippines to IMO, Embassy of the Philippines, London

Mr Manuel Imson, Labor Attaché, Philippines Mission to the UN and other international organizations

Ms Arhleen Romero, Director, Manpower Development Office, Maritime Industry Authority, Manila

Mr Ramon Tionloc, Labor Attaché, Madrid

REPUBLIC OF KOREA/RÉPUBLIQUE DE CORÉE/REPÚBLICA DE COREA

Mr Ki Tack Lim, Minister Counsellor, Embassy of Republic of Korea, London

UNITED KINGDOM/ROYAUME-UNI/REINO UNIDO

Mr David Best, Senior Policy Adviser, Department for Transport, London

Mr David Bolomini, Head of the United Kingdom delegation, Department for Transport, London

UNITED STATES/ETAT-UNIS/ESTADOS UNIDOS

Mr Patrick Bonner, Vice-President, Maritime Law Association, New York

Mr William Eglinton, Adviser, Seafarers International Union, Maryland

Captain Charles Michel, Chief, Office of Maritime and International Law, United States Coast Guard, Washington, DC

Mr Douglas Stevenson, Director, Center for Seafarers' Rights, Seamen's Church Institute of New York and New Jersey, New York

Lieutenant Amber Ward, Attorney Adviser, Office of Maritime and International Law, United States Coast Guard, Washington, DC

Observers nominated by Governments
Observateurs désignés par les gouvernements
Obersvadores designados por los Gobiernos

COSTA RICA

Sr. Carlos Garbanzo, Misión Permanente de Costa Rica

DENMARK/DANEMARK/DINAMARCA

Mr Jan Gabrielsen, Head of Division, Danish Maritime Authority, Copenhagen

MARSHALL ISLANDS/ILES MARSHALL/LAS ISLAS MARSHALL

Ms Angela Plott, Deputy Commissioner of Maritime Affairs, Office of the Maritime Administrator, Reston

NETHERLANDS/PAYS-BAS/PAÍSES BAJOS

Ms Ingeborg Van Gasteren, Senior Policy Adviser, Unit Maritime Shipping, Maritime Transport, The Hague

NORWAY/NORVÈGE/NORUEGA

Ms Unn Caroline Lem, Senior Adviser, the Norwegian Maritime Directorate, Haugesund

Mr Haakon Storhaug, Senior Adviser, the Norwegian Maritime Directorate, Haugesund

PANAMÁ

Sra. Tanya Carlucci, Jefa de la Unidad de Cumplimiento de la Dirección General de Gente del Mar de la Autoridad Marítima

Sra. Luz Lescure, Embajadora, Representante Alternativa de la Misión Permanente de Panamá ante la Oficina de las Naciones Unidas y otras organizaciones internacionales en Ginebra

Sra. Giovanna Villamonte Santos, Abogada, Asuntos Marítimos, Autoridad Marítima de Panamá

Shipowner representatives Représentants des armateurs Representantes de los armadores

Mr James Hudson, fishing vessel owner representative

Mr George Koltsidopoulos, Legal Adviser, Union of Greek Shipowners, Piraeus

Mr Paddy McKnight, Japan Shipowners' Association, London

Ms Edith Midelfart, International Shipping Federation, London

Advisers/Conseillers techniques/Consejeros técnicos

Mr Dierk Lindemann, Attorney at Law, Hamburg

Mr Tim Springett, International Shipping Federation, London

Secretariat of the Shipowners' group

Ms Natalie Shaw, Secretary of the Shipowners' group, ILO, International Shipping Federation, London

Seafarer representatives Représentants des gens de mer Representantes de los marinos

Mr Sigismund Buckman, General Secretary, Ghana Merchant Navy Officers' Association, Tema

Mr Brian Orrell, General Secretary, Nautilus, London

Mr J. Sale, Associated Marine Officers' and Seamen's Union of the Philippines

Mr Agis Tselentis, Director, Department of International Relations, Pan-Hellenic Seamen's Federation, Piraeus

Secretariat of the Seafarers' group

Ms Estelle Brentnall, International Transport Workers' Federation, London

Ms Katie Higginbottom, International Transport Workers' Federation, London

Mr Jon Whitlow, Secretary of the Seafarers' group to the Joint Maritime Commission, International Transport Workers' Federation, London

Representatives of the United Nations, specialized agencies
and other official international organizations

Représentants des Nations Unies, des institutions spécialisées
et d'autres organisations internationales officielles

Representantes de las Naciones Unidas, de los organismos especializados
y de otras organizaciones internacionales oficiales

International Maritime Organization (IMO)

Organisation maritime internationale (OMI)

Organización Marítima Internacional (OMI)

Mr Gaetano Librando, Deputy Director, Head, Treaties and Rules Section, Legal Affairs and External Relations
Division, International Maritime Organization, London

Representatives of non-governmental international organizations

Représentants d'organisations internationales non gouvernementales

Representantes de organizaciones internacionales no gubernamentales

International Trade Union Confederation (ITUC)

Ms Raquel Gonzalez, Geneva

International Organisation of Employers (IOE)

Organisation internationale des employeurs (OIE)

Organización Internacional de Empleadores (OIE)

Mr Jean Dejardin, Adviser, Geneva

International Christian Maritime Association (ICMA)

Association maritime chrétienne internationale

Asociación Marítima Cristiana Internacional

Reverend Ken Peters, Director, Justice and Welfare, the Mission to Seafarers, London

Mr Domingo Gonzalez Joyanes, Madrid

International Federation of Shipmasters' Associations (IFSMA)

Mr Mark Dickinson, Vice-President, London

International Group of P&I Clubs

Mr Hugh Hurst, Legal Adviser, International Group of P&I Clubs, London

International Ship Suppliers Association (ISSA)

Mr Spencer Eade, Secretary-General, International Ship Suppliers Association, London

**Secretariat of the meeting
International Labour Office**

Ms Johanna Walgrave, Acting Director, Social Dialogue, Labour Law, Labour Administration and Sectoral Activities Department

Ms Cleopatra Doumbia-Henry, Director, International Labour Standards Department

Ms Elizabeth Tinoco, Chief, Sectoral Activities Branch

Mr Dani Appave, Senior Maritime Specialist, Sectoral Activities Branch

Mr Joachim Grismann, Coordinator – Maritime Team, International Labour Standards Department

Mr Jean-Yves Legouas, Senior Maritime Specialist, Sectoral Activities Branch

Ms Susan McCrory, Senior Legal Specialist, Office of Legal Services

Mr Brandt Wagner, Senior Maritime Specialist, Sectoral Activities Branch

Mr Woon-Yul Oh, Associate Expert, Sectoral Activities Branch

Appendix II

Provisional agenda for the Seventh Session of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers to be held at ILO headquarters, Geneva from Monday, 4 February 2008 at 9.30 a.m. to Thursday, 7 February 2008

1. Adoption of the agenda
2. Examination of the issue of financial security for crew members/seafarers and their dependants with regard to compensation in cases of personal injury, death and abandonment, taking into account the relevant IMO and ILO instruments, including those currently under review or likely to be adopted in the near future. In particular,
 - Re: Abandonment of seafarers:
 - continue the monitoring of the implementation of the resolution and *Guidelines on provision of financial security in case of abandonment of seafarers*, taking into account all relevant information, including that communicated to the Secretary-General of the IMO or the Director-General of the ILO pursuant to the questionnaire on the implementation of resolution A.930(22), the information contained in the Joint Database on Abandonment of Seafarers developed and maintained by the ILO and the technical solutions available for financial security;
 - review the relevant provisions contained in the Maritime Labour Convention, 2006, vis-à-vis the provisions contained in the resolution and *Guidelines on provision of financial security in case of abandonment of seafarers*, in order to determine the existence of possible gaps;
 - start developing a standard accompanied by guidelines to cover any identified gap, which could be included in the Maritime Labour Convention, 2006, or another existing instrument, at a later date; and
 - decide on an appropriate recommendation to be made to the IMO Legal Committee and the ILO Governing Body.
 - Re: Personal injury or death of seafarers:
 - continue monitoring the implementation of the resolution and *Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers*, taking into account all relevant information, including that communicated to the Secretary-General of the IMO or the Director-General of the ILO pursuant to the questionnaire on the implementation of resolution A.931(22);
 - review the relevant provisions contained in the Maritime Labour Convention, 2006, vis-à-vis the provisions contained in the resolution and *Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers* in order to determine the existence of possible gaps; and
 - start developing longer-term sustainable solutions to address the problems of financial security with regard to the compensation in cases of death or personal injury. The eventual solutions should not interfere, affect, erode or in any way diminish any rights or remedies seafarers may enjoy in a particular State under an existing legal framework.
3. Possible revision of the Working Group's terms of reference
4. Any other business
5. Adoption of the draft report

Appendix III

Amendments proposed (and withdrawn) by the Shipowners at the 94th (Maritime) Session of the International Labour Conference

Proposed amendment

Standard A2.5.1c

Amend text to read:

When the seafarers, including abandoned seafarers, are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in specific circumstances.

Proposed amendment

Guideline B2.5.1.1

Add new (iv) in the event of abandonment, characterized by the severance of ties between seafarers and shipowners, it will be for the competent authority in the flag State or recruitment State to decide if abandonment has taken place.

Proposed amendment

Guideline B4.2

Add the following paragraphs after paragraph 3:

4. The financial security to be provided in case of work-related injury or death may cover all possible entitlements including tort and damage or be limited to contractual entitlement. Employment contracts or collective agreements should clearly indicate the nature of the entitlement and the maximum compensation amount.
5. Disputes about the entitlement to compensation may be resolved by the relevant institution in the flag State or in the seafarer's state of residence (court of justice or voluntary arbitration).
6. Payment of compensation may be made in full if the shipowner has accepted the claim, or if the claim is recognized as valid by the relevant institution in the flag State or the seafarer's State of residence.
7. When any doubt exists about the size of the claim, an interim payment may be made to avoid undue hardship.
8. Shipowners may display on board contact details of the persons or entity responsible for handling claims covered by these requirements.
9. A copy of the document showing the financial security that covers the shipowners' liability, as provided for in these guidelines, may be posted on board with a clear indication on when the financial security will expire. The seafarer should be informed by the shipowner in the event the financial security is cancelled before expiry.
10. Receipt for payment may indicate whether the payment is an interim payment or a full payment of the compensation. Any disagreement between the seafarer and the shipowner about the nature of the payment should be indicated in the receipt.

Appendix IV

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JOINT IMO/ILO AD HOC EXPERT WORKING GROUP ON LIABILITY AND COMPENSATION REGARDING CLAIMS FOR DEATH, PERSONAL INJURY AND ABANDONMENT OF SEAFARERS

Seventh session
Agenda item 2

IMO/ILO/WGLCCS/7/WP.1
4 February 2008
ENGLISH ONLY

EXAMINATION OF THE ISSUE OF FINANCIAL SECURITY FOR CREW MEMBERS/SEAFARERS AND THEIR DEPENDENTS WITH REGARD TO COMPENSATION IN CASES OF PERSONAL INJURY, DEATH AND ABANDONMENT

Key elements of the financial security system contained in existing liability and compensation regimes developed by IMO

Submitted by the IMO Secretariat

1. At the request of the Joint Working Group, at its seventh session, this working paper briefly describes the key elements of the financial security system contained in existing liability and compensation regimes developed by IMO.¹
2. These key elements, initially contained in the liability and compensation scheme for ship-source oil pollution have, so far, remained constant and, with or without modifications,² have formed the backbone of the other liability and compensation regimes subsequently developed by the Organization.
3. Apart from the notion of **limitation of liability**, which was, in fact, not new to shipping, the international regime for liability and compensation for oil pollution damage constituted by the CLC and Fund Convention contains the following elements of an innovative character:
 - **Strict liability of the shipowner**, that is, liability independent of fault. The shipowner is exonerated from liability only in limited circumstances set out in the CLC;

¹ Namely: the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC); the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund Convention); the 1992 Protocols to the 1969 CLC and 1971 Fund Convention; the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention); the International Convention on Liability and Compensation for Bunkers Oil Pollution Damage, 2001 (Bunkers 2001); the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (the Athens Convention); the 2002 Protocol to the 1974 Athens Convention and the Nairobi International Convention on the Removal of Wrecks, 2007 (Wreck Removal Convention).

² See document IMO/ILO/WGLCCS/7/2/5.

-
- “**Channelling of liability**”. These provisions preclude claims for compensation being brought against individuals other than the shipowner. By requiring claims to be pursued against the shipowner, who must also take out insurance to cover such claims, it is clear who is the person responsible for pollution damage.
 - “**Direct access**”. Claims for compensation may be brought directly against the insurer, rather than having to proceed in the first instance against the shipowner;
 - **Compulsory insurance**. This requirement is aimed at ensuring that the shipowner has available, at all times, the necessary financial resources to pay for any **compensation** that might be decided upon. By making insurance compulsory, the CLC achieves the protection of potential victims and a more equitable playing field for shipowners; and
 - **Insurance certificate**, attesting that insurance or other financial security is in force in accordance with the provisions of the Convention, **to be carried on board the ship**, with copy deposited with the authorities of the ship register and must contain the following particulars:
 - (a) name of the ship, distinctive number or letters and port of registry;
 - (b) name and principal place of business of the owner;
 - (c) IMO ship identification number;
 - (d) type and duration of security;
 - (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
 - (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.
-

Appendix V

Abandonment

Note – The following table in no way prejudices the hierarchy or legal status of provisions of the Maritime Labour Convention, 2006, in relation to the ILO/IMO *Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers*.

MLC	ILO/IMO Guidelines
<p>■ Definitions (No exact equivalent)</p>	<p>2.1.3. Abandonment is characterized by the severance of ties between the shipowner and the seafarer. Abandonment occurs when the shipowner fails to fulfil certain fundamental obligations to the seafarer relating to timely repatriation and payment of outstanding remuneration and to provision of the basic necessities of life, inter alia, adequate food, accommodation and medical care. Abandonment will have occurred when the master of the ship has been left without any financial means in respect of ship operation;</p>
<p>■ Financial security Regulation 2.5.2. Each Member shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.</p> <p><i>No specification</i></p>	<p>4.1. Shipowners should arrange a financial security system which complies with these Guidelines.</p> <p>6. Form of the financial security system</p> <p>6.1. The financial security system may be in the form of, inter alia, social security schemes, insurance, a national fund, or other forms of financial security;</p> <p>6.2. The financial security system in addition to the provisions of paragraph 5.1 should provide the following:</p> <ol style="list-style-type: none">1. a right of direct access by the seafarer to the financial security system;2. sufficient coverage in respect of the elements of abandonment contained in these Guidelines; and3. the applicability of the financial security system to all seafarers irrespective of nationality.
<p>Standard A2.5.5.c The expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 3 of this standard.</p>	<p>5.1.1. the expenses of the repatriation of the seafarer, which are to be met without costs to the seafarer;</p>
<p>■ Scope of financial security system <i>Cost:</i> Guideline B.2.5.1.3. The costs to be borne by the shipowner for repatriation under Standard A2.5 should include at least the following:</p> <p>(a) passage to the destination selected for repatriation in accordance with paragraph 6 of this Guideline;</p> <p>(b) accommodation and food from the moment the seafarers leave the ship until they reach the repatriation destination;</p> <p><i>No specification</i></p>	<p><i>Cost:</i> 5.1.2. the maintenance of the seafarer from the time of abandonment to the time of arrival at the place of repatriation;</p> <p>5.2. In the event that the shipowner fails to fulfil its responsibilities, the financial security system should provide for repatriation of the seafarer by appropriate and expeditious means, normally by air, and including provision of food and accommodation for the seafarer from leaving the ship until arrival at the place of repatriation, medical care, passage and transport of personal effects and any other reasonable charges.</p> <p>5.2. See above.</p> <p>5.1.3. Payment to the seafarer of all outstanding remuneration and contractual entitlements; and</p>

MLC	ILO/IMO Guidelines
<i>No specification</i>	5.4. Payment to the seafarers of all outstanding remuneration should include accrued wages and other entitlements as provided for in the contract of employment and/or under national law.
<i>No specification</i>	5.1.4. Payment to the seafarer of other expenses incurred during the period of abandonment arising from the abandonment.
(d) transportation of 30 kg of the seafarers' personal luggage to the repatriation destination; and	5.2. See above.
(e) medical treatment when necessary until the seafarers are medically fit to travel to the repatriation destination.	5.2. See above.
<i>No specification</i>	5.2. See above.
<i>No specification</i>	5.3. The maintenance of seafarers while abandoned should include: adequate food, clothing, accommodation, medical care and other basic necessities of life.
<i>No specification</i>	6.2.1. A right of direct access by the seafarer to the financial security system;
<i>Implicit</i>	6.2.2. sufficient coverage in respect of the elements of abandonment contained in these Guidelines; and
<i>Implicit</i>	6.2.3. the applicability of the financial security system to <i>all</i> seafarers irrespective of nationality.
<p>■ Certificates</p>	7. Certificates
<i>No specification</i>	7.1. Shipowners should ensure that their seagoing ships engaged on international voyages have on board a certificate attesting to the existence of a financial security system in the event of abandonment of seafarers. It should be posted in a prominent position in the seafarers' accommodation.
	7.2. Where more than one certificate is required to cover all seafarers on board a ship, all such certificates should be posted.
	7.3. As a minimum, the certificate should include:
	1. name of the ship;
	2. port of registry of the ship;
	3. call sign of the ship;
	4. IMO Number of the ship;
	5. name of the provider of the financial security;
	6. place of business of the provider of the financial security;
	7. name of the shipowner;
	8. period of validity of the financial security; and
	9. an attestation that the financial security meets the recommended standards set out in these Guidelines.
	7.4. A copy of the certificate should be provided when required to the immigration authorities for the purpose of informing them that the seafarers are provided with a financial security system covering their maintenance, repatriation and payment of outstanding remuneration.
<p>■ Contact details</p>	4.2. Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these Guidelines.
<i>No specification</i>	

Appendix VI

Death and injury

Note – The following table in no way prejudices the hierarchy or legal status of provisions of the Maritime Labour Convention, 2006 in relation to the ILO/IMO *Guidelines on Shipowners' Responsibilities in Respect of Contractual Claims for Personal Injury to or Death of Seafarers*

MLC	ILO/IMO Guidelines
Financial security	4.1. Shipowners, in discharging their responsibilities to provide for safe and decent working conditions, should have effective arrangements for the payment of compensation for death or personal injury. Shipowners should arrange for their ships effective insurance cover that complies with these Guidelines.
A4.2.1(b) shipowners shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers' employment agreement or collective agreement;	
<i>No specification</i>	2.1.5. Insurance means effective insurance or other forms of financial security to meet claims against shipowners which comply with the functional criteria set out in these Guidelines; and
Shipowners' responsibilities	4.2. Shipowners should take steps, when a claim arises, for its prompt payment. Shipowners should also ensure that all valid contractual claims should be paid in full. There should be no pressure, by their representative or by the representative of their insurers, for a payment less than the contractual amount or for a payment which in any way conflicts with these Guidelines.
	4.2. No pressure to be exercised, see above
	4.4. Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these Guidelines.
	<i>Payment of claims</i>
	5.1. Notwithstanding provisions of national law, the parties to the payment of a contractual claim are recommended to use the Model receipt and release form attached as an Annex to this Appendix.
Insurance cover	
R4.2.2 This Regulation does not affect any other legal remedies that a seafarer may seek.	6.1.2. The functional criteria for insurance for claims should include, inter alia, that: the seafarer should receive payment without prejudice to other legal rights, but such payment may be offset against any damages resulting from any action in tort arising from the same incident;
<i>No specification</i>	6.1.4. The functional criteria for insurance for claims should include, inter alia, that: the seafarer should receive prior notification if the insurance is to be cancelled and be notified immediately if it is not to be renewed; and
	6.1.5. the insurance should provide for the payment of all claims arising during the period for which the certificate is valid.
Certificates	7.1. Shipowners should ensure that their ships have on board a certificate issued by the insurer. It should be posted in a prominent position in the seafarers' accommodation.
	7.2. Where more than one insurer provides cover for claims, certificate from each insurer is required.
	7.3.8. As a minimum, the certificate should include: period of validity of the financial security; and
	Annex: Model release form

Annex

Model receipt and release form for contractual claims

Ship:

Incident:

Seafarer/legal heir and/or dependant:

Shipowner

I, [seafarer] [seafarer's legal heir and/or dependant]³ hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the shipowner's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of my/the seafarer's employment and I hereby release the shipowner from its obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to my/the Seafarer's legal heir and/or dependant's right to pursue any claim at law in respect of negligence, tort or any other legal redress available and arising out of the above incident.

Dated:

Seafarer/Legal heir and/or dependant:

Signed:

For acknowledgement:

Shipowner/shipowner representative: Signed:.....

Insurer/insurer representative: Signed:.....

³ Delete as appropriate.