

INTERNATIONAL MARITIME ORGANIZATION
4 ALBERT EMBANKMENT
LONDON SE1 7SR

Telephone: +44 (0)20 7735 7611
Fax: +44 (0)20 7587 3210



INTERNATIONAL LABOUR OFFICE
4 ROUTE DES MORILLONS
CH-1211 GENÈVE 22

Telephone: +41 (0)22 799 6503
Fax: +41 (0)22 799 7050

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

**Ninth Session
Original: English**

**IMO/ILO/WGLCCS 9/ 1
ILO/IMO/WGPS/9/2009/1**

**Geneva, 1st February 2009
ENGLISH ONLY**

DRAFT FOR DISCUSSION

**Document submitted by the Joint Secretariat
Provision of financial security in case of abandonment of seafarers**

COMMENTARY

General

1. The attached *Proposal for the text of a draft instrument* (“draft instrument”) has been prepared by the Joint Secretariat to assist 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), in accordance with its Terms of Reference, to “continue with its 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” in order to “complete the discussions and agree on principles to facilitate the drafting of mandatory provisions for inclusion in an appropriate instrument or instruments”. This is in accordance with the relevant Resolution of the 94th Session of the International Labour Conference which recommended that the Joint Working Group “...develop a standard accompanied by guidelines, which could be included in the Maritime Labour Convention or another existing instrument, at a later date”¹. At its 8th Session the Joint Working Group requested the Joint Secretariat “...to produce a draft instrument or instruments for the Ninth Session with appropriate commentaries”².
2. The draft instrument takes account of the Report of the 8th Session in July 2008, which contained the work performed so far by the Joint Working Group, and is based, as much as possible, on the principles agreed between the Shipowner and Seafarer representatives and,

¹ Resolution III of the 94th (Maritime) Session of the International Labour Conference.

² Report of the Eighth Session (21-24 July 2008), paragraph 124. See: IMO Document No. IMO/ILO/WGLCCS 8/5, dated 8 August 2008

where they could not agree, on the direction that appeared to be indicated by the majority of Government representatives (as reflected in the Report and the “Government recommendations resulting from group consultations” set out in Appendix II to the Report). As proposed in the Report of the 8th Session of the Joint Working Group, there has also been intersessional cooperation and discussion with a view to advancing the discussion at the 9th Session.³ Comments received subsequently from members of the Government group and representatives of the Shipowners and Seafarers were also taken into account. The joint submission of the Shipowners and Seafarers is being separately published.⁴

3. As envisaged by the discussion at the 8th Session, the draft instrument reflects the concept that clarity is needed on the substantive content and principles of any future instrument that builds upon the existing 2001 IMO/ILO *Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers*.⁵ The question of a recommendation from the Joint Working Group as to whether the most appropriate form for a future instrument should be a stand-alone instrument developed under the auspices of the International Maritime Organization or the International Labour Organization or should be an amendment, or amendments, to an existing legal instrument is a decision that would flow from the recommendations on principles to be reflected in the text of a mandatory instrument. As suggested in the draft revised Terms of Reference agreed at the 8th Session, options regarding the precise location or form of any recommended provisions are a secondary consideration; however, as also indicated in the revised Terms of Reference, the Joint Working Group in its examination of the issues should also take account of the relevant IMO and ILO instruments “including those currently under review or likely to be adopted in the near future”⁶.
4. Accordingly the draft instrument has been developed as a possible “stand-alone” instrument. However account must be taken of the potential interaction of the possible instrument with existing instruments, or instruments likely to be adopted in the near future, which, to some extent, address aspects of the issue (in particular, the *Maritime Labour Convention, 2006* (MLC, 2006)). Such consideration would be necessary if only to avoid duplication or conflicting provisions. This approach appears to be consistent with the Resolution referred to above and to the Joint Working Group’s revised Terms of Reference⁷. The draft instrument presents this “dual” approach visually using italicized (*italicized*) text to indicate provisions that would not need to be included if the new provisions were, in particular, included as an amendment to the Code of the MLC, 2006 (Parts A and B), as discussed next.
5. Account must also be taken of the concerns expressed in the Joint Working Group that a viable solution needs to be developed for adoption as a mandatory instrument as rapidly as possible. As noted above, the draft instrument has been designed to allow its possible inclusion in the MLC, 2006, if considered appropriate, through an amendment adopted (to the extent possible) under the accelerated amendment process set out in Article XV of the MLC, 2006, which applies to the Code of the MLC, 2006 (Parts A and B). In principle this would be possible with a few adjustments and the deletion of the text in the draft instrument that is in italics, which reflects principles or provisions that are already contained in the

³ *Supra*, note 2, paras 112- 118.

⁴ See IMO/ILO/WGLCCS 9/ 3.

⁵ IMO Resolution A.930 (22).

⁶ *Supra*, note 2, para. 125 point 2.

⁷ *Supra*, note 2. point 2. “2. In so doing the Joint Working Group should take account of relevant IMO and ILO instruments, including those currently under review or likely to be adopted in the near future.”

MLC, 2006. However, to take advantage of the accelerated amendment procedure under the MLC, 2006, the amended provisions would have to come within the scope of an existing MLC, 2006 Regulation (or Regulations)⁸. The use of the terms “The Standard” and “The Guideline” in the draft instrument reflects this approach.

6. Irrespective of the final conclusions of the Joint Working Group as to the recommendation on the form of the future provisions, the two following considerations appear relevant:
 - A. There are several advantages in linking the new provisions to relevant recognized international standards that already exist to avoid conflicts and to build on existing obligations and rights – for example, seafarers already have a legal right to repatriation under the MLC, 2006 and States are already obliged to require ships that fly their flags to provide financial security to ensure that seafarers are repatriated and to verify that shipowners have provided this security. It is understood that seafarers should be entitled to repatriation when the shipowner is “not able to continue to fulfil their legal or contractual obligations as an employer by reason of insolvency, sale of the ship or other similar reason”⁹. The precise content of crucial concepts relevant to abandonment, such as the duty to provide “the necessary maintenance and support” of seafarers, is already clear and complete. It is also proposed (following suggestions submitted to the 8th Session of the Joint Working Group) to link the concept of “abandonment” with a violation of the requirements of the MLC, 2006 or of the seafarers’ employment agreement (paragraph 3 of the proposed Standard). Thus, (to take an example discussed at the 8th Session), the question of the extent to which a refusal to repatriate a seafarer, based on the latter’s serious default, could constitute “abandonment” would depend upon the extent to which the MLC, 2006 contains an obligation to repatriate the seafarer in such a case (reference was made in this connection to Standard A2.5, paragraph 3). The link between the draft instrument and the MLC, 2006 would, of course, be obvious if the future provisions were actually part of the MLC, 2006. But, because of the advantage just referred to, even if it is decided to include the provisions in another instrument, it is suggested that the link with the MLC, 2006 should be retained. The draft instrument, if it were considered as a stand-alone instrument (i.e., with inclusion of the italicized parts), would still incorporate by reference the requirements of the MLC, 2006 relevant to the concept of abandonment (see, for example, paragraph 3 of “The Standard” in the draft instrument, read with (the currently italicized) paragraphs 1(d) and (e) of the proposed provisions on definition and

⁸ Articles XIV and XV of the MLC, 2006 address the procedures for amendment once the Convention comes into force. It is anticipated that this will happen in 2011. *Article XIV* provides that the MLC, 2006 (any provision - *Articles, Regulations* or the *Code*, Parts A and B) can be amended by the International Labour Conference (ILC) under article 19 of the ILO Constitution. In addition, the *Code* (Part A “Standards” and Part B “Guidelines” and the related appendices) can be amended by a simplified, accelerated amendment process, provided that the new or amended provisions come within the scope of the existing Articles or Regulations. If a new Regulation is required, the Article XIV process would have to be used. This involves *express ratification* of either the entire amended MLC, 2006 (for non-ratifying Members) or the amendment only for ratifying Members by the same number of Members as are required to bring the MLC, 2006 into force. The accelerated process under Article XV is based on a *tacit acceptance* procedure similar to the approach adopted in connection with amendments to IMO Conventions. Under this procedure, amendments to the Code are adopted by a Special Tripartite Committee and submitted to the ILC for approval. Approved amendments are then circulated to States that have ratified the MLC, 2006. The States will be bound if they have not notified the ILO of their disagreement within a set period (from one to two years). An amendment will enter into force (six months after the end of the period) unless more than 40 per cent of ratifying States that represent not less than 40 per cent of the world gross tonnage of the ships of the ratifying States have formally expressed disagreement. After the amendment enters into force the MLC, 2006 can only be ratified in its amended form.

⁹ Guideline B2.5, para 1(b)(iii).

scope). Non-parties to the MLC, 2006 would not be bound by the provisions establishing those requirements, but (because of the incorporation by reference) they would have to respect the basic requirements.¹⁰

- B. The other main consideration which the Joint Working Group would no doubt wish to take into account is the need for rapid intervention by the financial security system to assist the victims of abandonment, and consequently the need for as much clarity as possible in the formulation of the conditions for intervening. Illustrations are given below in the context of specific provisions in the draft instrument which take this consideration into account.

The Draft Instrument: Comments on specific provisions

7. Some of the provisions in the draft instrument are not the subject of comment. This is the case of text which essentially reflects wording and/or principles that appeared acceptable at the 8th Session of the Joint Working Group.

Preamble

8. In the event that the Joint Working Group recommends that the new provisions take the form of a stand-alone instrument, then it is suggested that a Preamble would be appropriate. The draft instrument has not set out the details of the possible content of a Preamble. However, references to the IMO/ILO Guidelines attached to Resolution A.930 (22) and the MLC, 2006 and, also, possibly, the Work in Fishing Convention, 2007 would be relevant.

Objectives and general principles

9. *Paragraph 1* and the concept of stating the objectives draws upon ideas in suggestions for wording submitted to the 7th session of the Joint Working Group.¹¹ *Paragraph 2* reflects the views of the 8th Session regarding the need to clarify the relationship between these provisions and any remedies that a seafarer may also have under relevant national laws, and, in particular, to clarify that the intention of the draft instrument is to supplement existing rights that seafarers may have, but it is not intended to result in dual recovery.¹² The proposed wording draws upon the wording regarding preservation of existing rights that is now in the MLC, 2006, Standard A2.6, paragraph 2 addressing seafarers' rights in the event of a ship's loss or foundering. *Paragraph 3*, is in italics as it, in effect, reproduces text regarding substantial equivalence already found in the MLC, 2006.

Definition and scope

10. As indicated above, the definitions under this heading would not be included if the new text is integrated into the MLC, 2006. However, in view of the considerations discussed above at point 6A, as to how a stand-alone instrument could create a link to the MLC, 2006, all the provisions in this part of the draft instrument reference corresponding provisions of the MLC, 2006.
11. *Paragraph 2* deals with the general application of the draft instrument. The MLC, 2006 does not contain a general limitation based on Gross Tonnage; but it does have specific provisions

¹⁰ They would be in a comparable position to countries which ratify the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), with respect to the Conventions referred to in its appendix that they have not ratified.

¹¹ *Provision of financial security for abandonment of seafarers*, Submitted by the United States, IMO Doc. No. IMO/ILO/WGLCCS 7/2/4

¹² *Supra* note 2, paras 17 and 18. The 8th Session agreed to include this idea as a footnote in a draft text.

regarding application on various matters based on Gross Tonnage and/or trade. The 8th Session left open the question of whether the instrument as a whole would apply to all ships irrespective of tonnage or trade, although it appeared that the certification requirement would apply only to ships engaged in international voyages.¹³ The intersessional cooperation discussions referred to above appeared to envisage a potential limitation on application based on Gross Tonnage. All options proposed are reflected in the draft instrument in italics. However if an amendment to the MLC, 2006 was recommended, which differed from its current scope of application, then a provision regarding application to a specific tonnage would be needed.

12. The question of the extension of the scope to ships engaged in fishing was left in abeyance at the 8th Session. The draft instrument does not contain a provision on this matter; however, based on a suggestion made at the 8th Session, paragraph 3 could be amended to add the phrase “*or to ships engaged in fishing or in similar pursuits unless provided otherwise under the law and practice of the Party whose flag the ship flies.*” Although the MLC, 2006 does not apply to ships engaged in fishing because of a decision by the ILC to develop a Convention devoted to addressing the particularities of that sector, provisions of the MLC, 2006 could, from a legal perspective, be extended to cover fishing vessels, “if expressly provided”. In the event that fishing is included, consideration may need to be given to whether all ships engaged in fishing would be covered. If an amendment to the MLC, 2006 is recommended, then a provision “expressly providing otherwise” (e.g., coverage for all or some category of fishing vessels, perhaps along the lines suggested above) would need to be included in the proposed amendments.
13. *Paragraph 5* reflects the concept of port State control already contained in the MLC, 2006, Article V, paragraph 4. However it is not in italics in the draft instrument because it relates to the question of whether there is a recommendation to amend the MLC, 2006 and whether there are additional recommendations with respect to adding a reference to the draft instrument or relevant Regulation to Appendix A5-I and A5-III.¹⁴ *Paragraph 6* reflects the concept of “no more favourable treatment” in the context of port State control. This is already contained in the MLC, 2006, Article V, paragraph 7.

The Standard

14. *Paragraph 3* of the proposed Standard delimits the concept of abandonment. Following the approach in the Guidelines attached to IMO Resolution A.930 (22), it seeks to clarify the concept rather than to define it. As noted in the report of the 8th Session, all seafarers are entitled to coverage for repatriation, which is secured by the requirement in the MLC, 2006 for financial security (a topic that must be set out in the seafarers’ employment agreement and also verified on flag State inspections). However, there is a concern that, as a practical matter, the needs of seafarers that are abandoned may not be adequately covered under existing mechanisms. The main concern in the proposed provision has been to provide the administrators of the financial security system with clear directions as to the cases which constitute abandonment (referred to under the General comments, at point 6B above). Accordingly, rather than seeking to agree on a single definition, which may not be easy, it

¹³ *Supra* note 2, paras 43-45 and Appendix II.

¹⁴ In the event there is a recommendation for an amendment to the MLC, 2006 consideration should also be given to amendments to the provisions setting out the content of seafarers’ employment agreements.

seems preferable for the Joint Working Group to seek to identify the kinds of cases in which seafarers are clearly in need of support from a financial security system of the kind envisaged. Three possible cases are set out in subparagraphs (a), (b) and (c) of paragraph 3.

- (a) Subparagraph (a), relating to where a shipowner fails to meet its repatriation obligations is linked to the existing flag State obligations under Regulation 2.5, paragraph 2 and Standard A2.5 paragraphs 1 and 2 and 5 of the MLC, 2006, giving due consideration to the provisions in Guideline B2.5.1.
 - (b) The lack of maintenance and support, referred to in subparagraph (b), is generally recognized as an element of abandonment: the content of this concept is clarified in *paragraph 4*.
 - (c) The concept of a unilateral severance by the shipowner of ties with a seafarer, which was a key element of the definition of abandonment at the 8th Session of the Joint Working Group and was proposed in a definition¹⁵, has been placed in subparagraph (c) after the two more specific cases in (a) and (b). As administrators might have difficulty in determining whether or not ties have been completely severed in a particular case, the focus is given to cases (a) and (b), with (c) being designed as a catch-all provision to covers cases of abandonment that fall outside (a) and (b).
15. *Paragraphs 5 to 11* set out the requirements for an Abandonment Security Certificate for the purposes of the Joint Working Group discussion. They are not italicized in the draft instrument although they might possibly overlap with existing provisions in the MLC, 2006. In the event that a recommendation is made that the new provisions should take the form of an amendment to the MLC, 2006, these paragraphs would need adjusting depending on decisions that are made regarding the scope of application and whether a certificate needs to be issued separately from the MLC, 2006 certification.
16. *Paragraphs 5 and 6* provide that a certificate may be issued by the competent authority and/or possibly a Recognized Organization or, in the case of a stand-alone instrument any other entity that is authorized, for a period not exceeding five years. The former issue was not addressed at the 8th Session of the Joint Working Group. It is noted that, at this 8th Session, a concern was expressed about possible administrative burdens if the requirement to issue certificates covered all ships engaged in international voyages. The five-year period referred to in paragraph 6 is intended to coincide with other ship certification requirements. If the instrument is to cover ships in general (without, e.g., any tonnage limitation), as discussed in paragraph 11 above, it would still need to be determined whether or not the certification requirement should be limited to ships above a certain tonnage and/or engaged in particular trades. This is why a possible limitation of this kind has been noted inside square brackets in paragraph 5 of the Standard. If it is decided to integrate the new provisions into a Standard which would be part of the MLC, 2006, the proposed wording might also be modified so as to allow for certification with respect to abandonment security to be

¹⁵ *Supra*, note 2, paras 60ff and the definition of abandonment in Appendix II. Although a unilateral severance of ties is characteristic of abandonment (see the Guidelines under Resolution A.930(22)), it may not always be an essential element: there could be cases where seafarers are deprived of maintenance and support without a total severance of legal ties and possibly cases where a total severance of legal ties is accompanied by adequate compensatory measures avoiding any need for recourse to a financial security system.

incorporated in or attached to the certificate issued under Regulation 5.1.3 of that Convention (for ships that must be certified under the MLC, 2006)¹⁶.

17. *Paragraph 7* sets out alternatives regarding the form of a certificate. The proposed content is drawn from the IMO/ILO Guidelines set out in IMO Resolution A.930 (22) and reflects the discussion at the 8th Session. The Standard could simply refer either to minimum content or to a model certificate. This possibility is also reflected in the proposed Appendix. The requirement for the certificate to be in English is based on the MLC, 2006 requirements related to port State control.
18. *Paragraph 8* addresses the question of record keeping and the access to information about documentation filed in the flag State and, if relevant, access for inspection in foreign port States. The square brackets reflect differing options as to wording for access, depending on the decision as to application. The requirement for posting in *paragraph 9* is also drawn from the MLC, 2006 and the submissions to Joint Working Group sessions.
19. *Paragraph 10* tentatively refers to the circumstances for withdrawal, a question that was raised at the 8th Session of the Joint Working Group. The extent to which such a provision is appropriate and its precise content would depend on the nature of the system adopted by the flag State.
20. The reference in *paragraph 11* to a certificate constituting *prima facie* evidence of compliance is intended to explain the *raison d'être* of the flag State inspection and certification system of the MLC, 2006, which is supported by port State control. Although it is not italicized, in the event that the certificate forms part of the MLC, 2006 on-board documentation that is subject to inspection in a port State, this provision would not be necessary.
21. *Paragraph 12* of the proposed Standard seeks to combine, using more concrete terms, two considerations put forward at the 8th Session, namely that “in the event of abandonment the financial security system shall come into effect” and that seafarers must have a right of direct access to the financial security system.
22. In *paragraph 13*, the words placed inside square brackets reflect a controversial aspect, relating to the payment of outstanding entitlements, including accrued wages. Obviously, those contractual obligations – and in particular the obligation to pay wages on time and in full in accordance with Regulation 2.2 and Standard A2.2 of the MLC, 2006 – must be properly enforced. The question under consideration is, however, whether or not the failure by shipowners to meet those obligations should be included among the items to be covered by the financial security system. Since such inclusion would be a means to ensure full payment, in addition to any other legal remedies already available, it could be an appropriate subject for an amendment to the MLC, 2006. However, there could be legal difficulties if it was desired to introduce an amendment of this kind using the accelerated amendment procedure under Article XV of that Convention.¹⁷ As discussed above, if contractual obligations, in particular the payment of wages, are not being met by the shipowner, the seafarers have a right to be repatriated and to receive payment of the associated costs. Shipowners are obliged to provide financial security under Regulation 2.5 regarding those obligations. However the purpose of this financial security is “to ensure that seafarers are

¹⁶ However, if this option is adopted, the Gross Tonnage and other criteria concerning the kinds of ship required to have the financial security certificate would have to correspond to those laid down in Regulation 5.1.3 of the MLC, 2006.

¹⁷ See note 8 *supra*.

duly repatriated”. The recuperation of accrued unpaid wages would thus be outside the scope of the financial security under Regulation 2.5. It is noted that the provision of financial security by shipowners is also required for one aspect of the provisions on shipowners’ liability under Regulation 4.2, but this liability relates to compensation for death or long-term disability due to occupational injury or illness or hazard.

23. The question of whether there should be any constraints (either a minimum or a maximum) on the amount of accrued wages, and, possibly, also on the inclusion of other assistance related claims, that could be recovered under the system, was also raised at the 8th Session of the Joint Working Group and not resolved.¹⁸ Any limitations of this kind, if permitted, might take account of whether seafarers are already protected by minimum coverage provisions such as those required by the *Convention concerning the Protection of Workers' Claims in the event of the Insolvency of their Employer* (No.173).
24. *Paragraph 14* clarifies the scope of coverage in the context of repatriation. This provision may need to be adjusted to take into account the existing coverage under the MLC, 2006 as there may be some overlap.
25. *Paragraph 15* (which would be redundant if it is recommended that the provisions be included in the MLC, 2006) contains the substance of the last sentence of Article VI, paragraph 2 of that Convention. It is important that members of the Joint Working Group keep in mind the special status of the Guidelines in Part B of the Code of the MLC, 2006.

The Guideline

26. The first sentence of *paragraph 1* of the proposed Guideline is based on the recommendation of Government representatives on a provision for which the Shipowner and Seafarer representatives could not agree. The Seafarers’ position was that the financial security system should be arranged by the shipowners concerned. If the proposed Standard were included in the MLC, 2006, the governing provision would be Regulation 2.5, paragraph 2, under which each Member (a State Party to the Convention) is to “require ships that fly its flag to provide financial security ...”.
27. *Paragraph 2* is in line with consideration B of the General Comment at paragraph 6 above, namely to ensure a speedy response to requests for relief.
28. *Paragraph 3* provides guidance regarding the approaches that States Party to the instrument should consider when fulfilling their ship certification requirements.

¹⁸ *Supra*, note 2, paras 63- 69. This question was not resolved in the intersessional discussions.

Proposal for the text of a draft instrument

Provision of financial security in case of abandonment of seafarers

NOTE:

1. Text that is *italicized* would not be included if it is recommended that the provisions take the form of a Standard and Guideline that would be an amendment to the Maritime Labour Convention, 2006.

2. In this draft instrument, the term “Party” has been used for the sake of convenience. Depending upon the form that the draft provisions will take, this term may be changed to “Contracting State”, for example, or to “Member” if it is recommended that the provisions should be introduced by way of amendment to the MLC, 2006 or be included in a protocol to that Convention.

Preamble

[Recalling the IMO/ILO Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers adopted in 2001 by....(IMO Resolution A.930(22))

[Recalling MLC 2006, relevant provisions]

[Recalling Work in Fishing Convention, 2007 (No. 188), relevant provisions]

Objectives and general principles

1. This [instrument] establishes requirements to ensure the provision of a rapid and effective financial security system to assist seafarers in the event of abandonment.

2. The provisions in this [instrument] are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. They are, in addition, without prejudice to the principle that the same set of circumstances should not, give rise to a [dual recovery] [double indemnity].

3. *For the purposes of [this instrument] a Party which is not in a position to implement the rights and principles in the manner set out in this [instrument] may, unless expressly provided otherwise in this [instrument], implement them through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of this [instrument]. Any law, regulation, collective agreement or other implementing measure shall be considered to be substantially equivalent, in the context of this instrument, if the Party satisfies itself that:*

(a) it is conducive to the full achievement of the general object and purpose of the provision or provisions in this [instrument], and

(b) it gives effect to the provision or provisions of this [instrument].

Definition and scope

1. *For the purposes of this instrument and unless provided otherwise in particular provisions, the term:*

- (a) **shipowner** means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this [instrument], regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner;
 - (b) **seafarer** means any person who is employed or engaged or works in any capacity on board a ship to which this [instrument] applies;
 - (c) **ship** means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
 - (d) **requirements of the Convention** means the requirements of the Maritime Labour Convention, 2006;
 - (e) **seafarers' employment agreement**, which includes both a contract of employment and articles of agreement, means a seafarers' employment agreement conforming to the requirements of the Maritime Labour Convention, 2006;
2. This [instrument] applies to all ships [of greater than [200][500] Gross Tonnage], whether publicly or privately owned, that are ordinarily engaged in commercial activities.
 3. This [instrument] does not apply to ships of traditional build such as dhows and junks and warships or naval auxiliaries.
 4. Except as expressly provided otherwise this [instrument] applies to all seafarers.
 5. Each Party may also verify that ships calling in its ports, in the normal course of business or for operational reasons, are in compliance with this [instrument] and, if they are found not to conform to the requirements of this [instrument], may take steps to ensure that they shall not proceed to sea until the non-compliance has been rectified.
 6. Each Party shall implement its responsibilities under this [instrument] in such a way as to ensure that the ships that fly the flag of any State that has not ratified this [instrument] do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.

The Standard

1. Each Party shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag.
2. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer who was employed or engaged or working in any capacity on a ship flying its flag.
3. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of the Convention or the terms of the seafarers' employment agreement, the shipowner:
 - (a) fails to cover the cost of the seafarer's repatriation; or
 - (b) has left the seafarer without the necessary maintenance and support; or
 - (c) has otherwise unilaterally severed their ties with the seafarer.

4. For the purposes of this Standard, necessary maintenance and support of seafarers shall include: adequate food, clothing, accommodation, necessary medical care and other reasonable costs or charges arising from the abandonment.
5. Each Party shall require ships that fly its flag [which are [X Gross Tonnage and above and] engaged in international voyages or voyages between ports in another country] to carry an Abandonment Security Certificate certifying that the seafarers on the ship concerned are covered by a financial security system complying with the requirements of this Standard.
6. The Abandonment Security Certificate shall be issued to a ship by the competent authority, or by [a recognized organization] [any other entity] duly authorized for this purpose, for a period not exceeding five years.
7. [The Abandonment Security Certificate shall be drawn up in the form corresponding to the models given in Appendix xX.] [The Abandonment Security Certificate shall contain the information required in Appendix xX]. It shall be in English or accompanied by an English translation.
8. A copy of the Abandonment Security Certificate shall be deposited with the competent authority and shall be [made available in accordance with national laws and regulations, upon request, to seafarers, flag State inspectors, authorized officers in port States, and shipowners' and seafarers' representatives][provided, when required, to the port State].
9. The Abandonment Security Certificate shall be posted in a prominent position in the seafarers' accommodation. Where more than one certificate is required to cover all seafarers on board a ship, all such certificates shall be posted.
10. The Abandonment Security Certificate shall be withdrawn by the competent authority if there is evidence that the ship concerned does not comply with the requirements of this Standard.
11. A valid Abandonment Security Certificate shall be accepted by other States Party as prima facie evidence that the ship is in compliance with the requirements of this Standard.
12. Assistance provided by the financial security system shall be granted promptly upon request made by or on behalf of the seafarer concerned and supported by the necessary justification of entitlement in accordance with paragraph 3 above.
13. Assistance provided by the financial security system shall be sufficient to cover the following:
 - (a) [outstanding entitlements of the seafarer, including [three] [four] [months of] accrued wages;]
 - (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation by appropriate and expeditious means (normally by air) and transport of personal effects;
 - (c) the cost of necessary maintenance and support from the act or omission constituting abandonment until the seafarer's arrival at the destination of repatriation.
14. For the purposes of this Standard, the repatriation of the seafarers shall be provided by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarers from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

15. *Each Party shall give due consideration to implementing its responsibilities under this Standard in the manner provided for in the Guideline below.*

The Guideline

1. The financial security system required by the Standard may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. The form should be determined after consultation with the shipowners' and seafarers' organizations concerned.
2. In implementation of paragraph 12 of the Standard, if time is needed to check the validity of certain aspects of the seafarer's request, this should not prevent the seafarer or a representative from immediately receiving such part of the assistance requested as is recognized as justified.
3. A Party may fulfil the certification requirements of this Standard by issuing individual Abandonment Security Certificates bearing the particulars of each ship or, alternatively, may issue an Abandonment Security Certificate applicable to all ships flying its flag.

Appendix XX

[Model Form for] [Mandatory Content of] an Abandonment Security Certificate

- 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 and address of the provider of the financial security;
- 6 contact details of the persons or entity responsible for handling seafarers' requests for relief;
- 7 name of the shipowner;
- 8 period of validity of the financial security; and
- 9 an attestation that the financial security meets the requirements of the Standard.

Alternatively, a model certificate could be adopted along the lines of the existing IMO certificates submitted to the 7th Session.