



THIRD ITEM ON THE AGENDA

**Report of the Fourth 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
(London, 30 September-4 October 2002)**

1. At its 282nd Session (November 2001), the Governing Body considered the report of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers (the Working Group).¹ It approved the holding of a fourth session of the Working Group, with participation by the eight ILO (four shipowner and four seafarer) representatives, at no cost to the ILO, in mid-2002.
2. In keeping with the abovementioned decision, the Working Group met in its Fourth Session from 30 September to 4 October 2002, at the headquarters of the International Maritime Organization (IMO) in London (report appended).
3. At its fourth session, the Working Group agreed that:
 - (a) the mechanism of monitoring of the implementation of the resolutions and guidelines on provision of financial security in case of abandonment of seafarers and shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers should be maintained, including:
 - gathering information from governments and relevant organizations through questionnaires on the issues of abandonment, personal injury and death of seafarers, adopted by the Working Group, to monitor the impact of the resolutions and guidelines;
 - encouraging governments to implement the guidelines and to report on their implementation;

¹ GB.282/STM/5.

- establishing monitoring procedures to review the situation in about one year's time, also in the light of the developments in other international fora;
 - establishing and maintaining a joint IMO/ILO database containing salient information on instances of abandonment and compliance or otherwise of involved parties with relevant international instruments in order to monitor the problem of abandonment in a comprehensive and informative manner;
- (b) the issue of a mandatory instrument to deal with the issues of liability and compensation regarding claims for death, personal injury and abandonment of seafarers should be discussed when the effectiveness of the implementation of abovementioned resolutions and guidelines and the consolidation process of ILO maritime labour instruments proved to provide insufficient alternatives;
- (c) no substantial amendment was necessary to its present terms of reference except for some wording concerning monitoring of the implementation of abovementioned resolutions and guidelines and making suitable recommendations to the IMO Legal Committee and the Governing Body of the ILO for better implementation and for longer term sustainable solutions.

4. The Working Group invited the IMO Legal Committee and the ILO Governing Body:

- (a) to take note of the report of the Working Group at its Fourth Session attached as an appendix to this document;
- (b) to approve the revised terms of reference for the Working Group, as contained in Annex 6 of the report;
- (c) to approve the communication to the member States of the questionnaires, in Annex 2 and 3 of the report, as part of the monitoring process of the resolutions and related guidelines;
- (d) to approve the communication of the circular letter to the member States and non-governmental organizations concerning reporting on incidents of abandonment;
- (e) to consider establishment of a database on incidents of abandonment of seafarers.

5. *The Committee on Sectoral and Technical Meetings and Related Issues is invited to take note of the report of the Joint IMO/ILO Ad Hoc Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers and may wish to recommend that the Governing Body approve the recommendations of the Working Group, as contained in paragraph 4 above.*

Geneva, 29 January 2003.

Point for decision: Paragraph 5.



JOINT IMO/ILO AD HOC EXPERT
WORKING GROUP ON LIABILITY AND
COMPENSATION REGARDING CLAIMS
FOR DEATH, PERSONAL INJURY AND
ABANDONMENT OF SEAFARERS
4th session
Agenda item 9

IMO/ILO/WGLCCS 4/3
4 October 2002
Original: ENGLISH

REPORT OF THE WORKING GROUP

1 Opening of the session

1.1 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 fourth session from 30 September to 4 October 2002 at the Headquarters of the International Maritime Organization (IMO). The list of participants is given at Annex 8 of this document. A list of documents submitted for use at this session of the Joint Working Group is given at Annex 1.

1.2 In welcoming the participants on behalf of the Secretary-General, Dr. Rosalie P. Balkin, Director, Legal Affairs and External Relations Division (IMO), noted that originally, the session was scheduled to take place from 28 January to 1 February 2002. The session was then postponed to 16 to 20 September 2002 in order to allow sufficient time for the resolution and related guidelines on provision of financial security in case of abandonment of seafarers, and the resolution and related guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, both of which were adopted in November 2001, to be implemented at national level. The date for the session was then slightly adjusted, to avoid clashing with another meeting.

1.3 She recalled the achievements of the Joint Working Group under the able chairmanship of Mr. Jean-Marc Schindler (France). The Working Group had first examined and discussed the issues of financial security for crew members and their dependants with regard to the payment of compensation in cases of death, personal injury and abandonment. This was done in light of relevant IMO and ILO instruments, including those elaborated under the joint auspices of the United Nations and IMO.

1.4 Dr. Balkin reminded the Group that the issue had been referred to it by the IMO Legal Committee, which had been working on a revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. It was the view of the Committee that financial security for seafarers should be examined separately from that of passengers. In order to address in the short term the fact that none of the existing international instruments adequately and comprehensively deals with the problems relating to personal injury, death and abandonment of seafarers, the Group had prepared the draft Assembly resolutions and related guidelines.

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

1.5 She stated that the importance of the resolutions and the related guidelines lay in the fact that, for the first time, an international instrument sought to define as regards financial security the rights of seafarers and the resultant duties not only of the shipping companies as employers, but also those of flag States and in some cases the States of nationality of the seafarers. The aim was to provide seafarers and their families with a level of protection with respect to financial security that had hitherto been lacking in respect of two very fundamental areas of seafarer rights and welfare.

1.6 The Legal Committee of IMO, at its eighty-third session (October 2001), had approved the then draft resolutions and related guidelines. They were subsequently adopted by the IMO Assembly, at its twenty-second session (November 2001) by resolutions A.930(22) and A.931(22), respectively, both of 29 November 2001. The resolutions and guidelines were also adopted by the Governing Body of the International Labour Office (ILO) at its 282nd session (16 November 2001) (GB.282/10 and GB.282/STM/5). Both the resolutions and guidelines had taken effect on 1 January 2002. The texts of resolutions and related guidelines had been circulated to IMO Member States and the Shipowners' and Seafarers' Members nominated by the ILO.

1.7 The IMO Legal Committee and the IMO Assembly, as well as the ILO Governing Body, had expressed their appreciation of the results of the work of this Group and of the spirit of co-operation between the social partners. However, the work of the Group was not yet complete and it was now tasked with the function of monitoring the implementation of the resolutions and related guidelines. As part of this exercise, she noted that the Group should also make an assessment of the general situation and might wish to give some consideration as to the necessity for any future work, so that a recommendation in this regard might be made to the IMO and ILO governing bodies.

1.8 Mrs. Cleopatra Doumbia-Henry, Deputy Director, Sectoral Activities Department and responsible for maritime questions (ILO), welcomed the participants on behalf of Mr. Juan Somavia, Director-General of the ILO. She stressed the good start that had been made on the issue of financial security, which was not covered by pre-existing international instruments.

1.9 She recalled that the ILO was in the process of developing a single "framework" instrument that would consolidate the existing body of ILO maritime Conventions and Recommendations. The new treaty would provide an effective third pillar - the social pillar - to complement the safety and environmental pillars. She concluded by noting that the activity of the Working Group was totally in line with ILO current work.

1.10 In his opening comments, the Chairperson of the Joint Working Group, Mr. Jean-Marc Schindler (Government Member - France) thanked the representatives of the IMO and ILO Secretariats and stated that the Joint Working Group had successfully completed the first step of the two-step approach of its mandate by preparing the resolutions and related guidelines on provision of financial security in case of abandonment of seafarers, and on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers. The Group had now to tackle the second stage, which consisted in monitoring their implementation and assessing the general situation with a view to determining the need and direction of any future action, including the possible establishment of a database. The Group might then embark on the consideration of long-term, mandatory solutions to the issue of abandonment and reduced and/or delayed payment of death and personal injury claims.

2 Adoption of the agenda

2.1 The Working Group adopted the provisional agenda contained in document IMO/ILO/WGLCCS 4/1.

3 Monitoring of the implementation of the resolution and guidelines on provision of financial security in case of abandonment of seafarers

A General comments

3.1 The Working Group had before it one document submitted by the International Confederation of Free Trade Unions (ICFTU/ITF) (IMO/ILO/WGLCCS 4/2) commenting on agenda items 3, 4, 5 and 6. This was introduced by the representative of the ICFTU/ITF.

3.2 The Shipowners' representative expressed the view that, in spite of the postponement of the meeting, it was still too early to monitor the implementation of the resolution and guidelines on shipowners' responsibilities concerning contractual claims in respect of personal injury or death of seafarers and of the resolutions and related guidelines on provision of financial security in case of abandonment of seafarers. He recalled that important decisions had been taken in the course of the previous year concerning the proposed revision and consolidation by ILO of all ILO maritime conventions, and that these might well affect the situation of seafarers, since the proposed consolidation would take into account many of the issues covered by the resolutions and guidelines. He concluded by stating that, in spite of their position, the Shipowners were nevertheless ready to discuss all the various issues on the agenda, pending a proper assessment of the situation.

3.3 The Seafarers' representative noted its appreciation to both the ILO and the IMO for the important work that is being undertaken by this Joint Expert Working Group. The IMO had rightly stressed the importance of the human element and had in recent years pursued human element related themes on the occasion of World Maritime Day. The current one, which is that safe shipping demands a safety culture, was a case in point. The human element was also central to the work of the ILO and a recent ILO maritime meeting had agreed a consensual statement which considered:

"that it is urgent to effectively address the decent work deficits in the shipping industry."

He noted that the expert meeting had called for the strongest possible national and international measures to be taken against practices which undermined decent living and working conditions for seafarers. If an effective and functioning safety culture was to be established on board ships it was essential that the decent work deficits were addressed and the meeting provided an opportunity to do so in a number of crucial areas. The considerable amount of time and effort devoted to the maritime sector by the ILO over many years was a reflection of the fact that seafarers were regarded as vulnerable workers who need special protection. In practice it had not happened and the changes in the industry and the way it was run had made casual employment almost the norm and many seafarers were basically now in the same position as migrant workers. The international community had rightly stressed the need for inter-governmental organizations to co-operate and the meeting and the previous work reflected very favourably on both the IMO and the ILO as it provided a good example of how co-operation and bringing together the synergies which resulted from shared and overlapping competencies had the capacity to make a significant improvement to the life chances and working conditions of seafarers. In doing so it enabled both organizations to meet their central aims which were respectively safer and cleaner oceans and the achievement of decent work for seafarers. The real problems and the injustice

which goes with them had to be addressed to achieve a sustainable and rationale shipping industry, one that was seen in a good light by civil society and which was able to attract suitably qualified new entrants. The work being undertaken by this Joint Working Group was fundamental and complementary to the wider work of both organizations and the seafarers looked forward to participating fully in the work of the meeting. The meeting is expected to take some important and fundamental decisions which would set in train a process which would ultimately secure a permanent and lasting solution to the problems we had discussed at length over the previous three meetings.

3.4 The delegation of France reported that, since the last meeting of the Group, there had been 20 reported cases of abandonment or pre-abandonment taking place in different ports of the country, characterized by bad living conditions of the crew.

3.5 The delegation of Cyprus requested information on the ongoing work on the revision and consolidation of the ILO maritime conventions. The delegation also noted that the Group should reach an understanding on what to recommend to the Legal Committee, before the Assembly takes place in the autumn of next year.

3.6 The delegation of the United States commented that it was extremely important for countries to have national legislation in place covering the issues raised in the resolutions and guidelines. To monitor that process was critical to ensure that the mandate of the Working Group was accomplished. A clear need exists to monitor both national legislations and regulations as well as the impact these acts of Government have upon seafarers.

B Monitoring the implementation of resolution A.930(22) and related guidelines

3.7 The Seafarers' representatives made reference to the relevant section of document IMO/ILO/WGLCCS 4/2. Annex 1 of the submission contained a list of instances of crew abandonment recorded by the ITF during the period 1 July 1999 to 31 December 2001 and at annex 2 a list of cases of crew abandonment recorded by the ITF during the six months period from 1 January 2002 to 30 June 2002. In that period alone there were 89 cases involving a total of 1,780 crew members. In the reported cases there was no suitable financial security system in place to deal with the event of abandonment. The only assistance to the Seafarers came from trade unions and charitable organizations. In spite of the resolution, it was obvious that the problem continued and a binding solution was therefore necessary.

3.8 The Shipowners' representatives declared their shock at the number of cases of abandonment reported in annexes 1 and 2 of the document and by the delegation of France. They suggested that the flag States of the concerned ships should be specifically reminded of the guidelines. They also proposed that the reporting of cases of abandonment should be formalized and standardized, since, at present, this information was available only to ICFTU/ITF.

3.9 The representative of ICMA noted that the ICFTU/ITF was not the only repository of such information.

3.10 The Chairman noted that it was important to know how the Governments concerned dealt with the cases and what steps, if any, they had taken to implement the resolution.

3.11 The delegation of France reported on the establishment of a public fund in France which provides for the subsistence of abandoned crew, and, in particular, for a partial advance on the payment of wages. The cost of repatriation has also been covered in several cases. At a later stage, the French authorities would seek to recover the cost from the shipowner or from the sale

of the vessel. An office dedicated to international repatriation had also been set up. The system had been created to fulfil the French Government's responsibilities as port State which complies with the guidelines.

3.12 The delegation of Cyprus noted that, from the Seafarers' submission, it was obvious that the problem of abandonment continued to exist. He also noted that the data should be seen in the context of the implementation of the resolution. He proposed that a questionnaire on the implementation of the resolution be circulated to national Administrations. The questionnaire should, *inter alia*, request information on the way cases have been dealt with.

3.13 The delegation of Norway informed the Group that Norway had encountered practical difficulties in implementing the guidelines stemming from the fact that, while domestic legislation provided for the shipowner to have a bank guarantee covering eight weeks of wages, the guidelines did not similarly limit the period of the guarantee. The delegation supported the need for the establishment of a database.

3.14 The delegations of Ghana and the United States noted that the problem of abandonment of seafarers was a world-wide problem and that continued monitoring of the situation was necessary.

3.15 After debate the Group agreed to prepare a questionnaire to be sent to the competent national Administrations. The information should include:

- steps taken by Governments concerning the implementation of the guidelines;
- difficulties encountered by Governments in the implementation of the guidelines; and
- action taken to solve cases of abandonment, particularly if related to the implementation of the resolution.

The task of identifying the elements to be included in the questionnaire was entrusted to a drafting group led by the delegation of the United States and constituted by two Seafarers, two Shipowners and two Governments' representatives. The questionnaire as approved by the Group is attached at Annex 2.

4 Monitoring of the implementation of the resolution and guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers.

4.1 In introducing the relevant part of their submission, the representative of the Seafarers stressed the resistance encountered to the application of the principles contained in the resolution and guidelines since their adoption. Seafarers and their families were still suffering unacceptable hardship and undue delays in the settlement of claims. What had been done was not sufficient to resolve the problems and an effective way to implement the guidelines yet had to be found.

4.2 The representative of the Shipowners stated that there were two particular issues to consider. First, it seemed clear that there was a fundamental disagreement between the Seafarers' representatives and the representatives of the International Group of P&I Clubs as to the legal situation which existed in certain countries, such as the Philippines. Three of the four cases quoted in the ICFTU/ITF submission concerned this major difference of opinion and unless this was resolved there was little point in establishing a mechanism to resolve disputes.

Secondly, it was a matter of regret to the Shipowners that efforts had not been made to consider further how it might be possible to create a mechanism to resolve disputes over claims handling as suggested by the P&I Clubs. It was, therefore, suggested that there should be further discussion of this issue.

4.3 The representative of the Seafarers stated that the Shipowners' offer had not been taken up because it was not a meaningful mechanism and passing papers or arguments along a chain of disparate organizations was neither efficient nor realistic. Before asking another Seafarers' representative to comment on the national legislation of the Philippines, he stressed the primacy of the law of the flag State in such matters, as provided for in UNCLOS and other international instruments. He noted the legal complexities involved which were beyond the resources of most seafarers and their next of kin and the fact that the international community had recognized the vulnerability of seafarers and the need to provide them with extra protection in such matters. The Standard Employment Contract (SEC) of the Philippine Overseas Employment Administration was cited. While the new SEC had undergone changes, the interpretation of its new provisions remained the same, specifically on the claims outside contractual obligations. On the issue of the quit claim form of the National Labour Relations Commission (NLRC), the agency responsible for hearing labour-related cases, it was a fact that the form contained elements to ensure that the settlement was not prejudicial to the seafarer. Moreover, the seafarer was not precluded from claiming at a proper forum within the Philippine jurisdiction in response to forum shopping. The assumption was that when the seafarer signed a quit claim, all claims had been ventilated. Therefore, claims not yet ventilated could have been subject to another claim. Also, the SEC could not prevent or limit the capacity of the proper Philippine courts from hearing cases of that nature.

4.4 The Chairperson requested Government representatives to indicate their views on this question and in particular whether their legal systems provided for alternative and additional remedies over and above that provided in the contract.

4.5 The delegation of Ghana observed that, in the shipowner-seafarer relation, the seafarer is at a disadvantage, if left to the law relating to freedom of contract. The relation has to be regulated by mandatory instruments, containing guidelines for national legislation. In Ghana the relevant legislation was in the process of being reviewed and the guidelines attached to resolutions A.930(22) and A.931(22) could be taken into account.

4.6 After further debate, the Group decided that a questionnaire should also be prepared on the implementation of the resolution and guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers. The identification of the principal issues to be covered in the questionnaire was entrusted to the drafting group led by the United States delegation, which was developing a questionnaire covering the monitoring of the implementation of the resolution and guidelines relating to abandonment. The questionnaire concerning the death and injury guidelines is attached as Annex 3.

Discussion concerning difficult cases

4.7 The Group thereafter turned its attention to the consideration of a mechanism for facilitating the settlement of difficult cases regarding claims for personal injury and death.

4.8 The representative of the International Group recalled that during informal meetings between the Seafarers, ISF and the International Group with a view to meeting the Seafarers perceived concerns, the ISF and the International Group had proposed an informal arrangement which was set out in paragraph 17 of the document submitted by the International Group to the

third session of the Expert Working Group (IMO/ILO/WGLCCS 3/4/3), whereby in the event of an allegation that manifestly unfair claims techniques were being employed in relation to a death or personal injury claim, the claim be referred to the ISF by the seafarer or his representative. The ISF would then take the claim up with the owner or the insurer concerned. If the claim involved a Group Club, the International Group would refer it to the Club concerned. Both the ISF and the International Group had been of the view that such an informal arrangement would be effective in ensuring that abuses did not occur, that the arrangement was flexible and efficient, and could be implemented without delay. The informal arrangement had been used three or four times (once by the ILO and two or three times by the Seamen's Church Institute) with satisfactory results. The Seafarers had not taken up that offer. He said that a formal arrangement would be unworkable.

4.9 The Seafarers reiterated their view that they could not accept the P&I proposal, since the procedure envisaged was not transparent and even excluded direct communication. Although they were not opposed to an informal procedure, the Seafarers expected to take part in any mechanism involving the ISF and the International Group, in order to ensure that all relevant facts and rights were brought to bear.

4.10 The representative of the Shipowners pointed out that the proposal had not been properly discussed at the first session of the Working Group due to its rejection by the Seafarers. In his opinion, the informal procedure was not well known and there was no understanding of it. He noted that, because of the different legal situation pertaining in different countries with regard to the payment of contractual claims, particularly in the Philippines, it would be helpful to have a process which might be used in difficult cases. The process need not be secretive.

4.11 The representative of the International Group stated that the Group did not dictate to Clubs or shipowners how claims should be handled. The informal arrangement had been used successfully on a number of occasions, including with regard to the **Manila Spirit** and other claims not relating to the POEA contract.

4.12 The representative of the Seafarers advised that in the case of the **Manila Spirit** the next of kin had contacted the IMO and the ILO and these communications had been referred to the ITF. The facts of this case were such that the ITF had formally raised the matter with the Government of Norway's focal point, as that was where the P&I Club was located, using the complaint mechanism contained in the OECD Guidelines for Multinational Enterprises.

4.13 The representative of the United States stated that the monitoring of national legislations and regulations is critical in ensuring that the goals of the Working Group are accomplished. Without effective monitoring, such goals will be frustrated. In the opinion of the delegation of the United States, the informal arrangement which had been proposed by the International Group could be useful in the establishment of a framework for the settlement of claims, without prejudice to the rights of either party.

4.14 The observer delegation of Norway expressed concern about the emphasis given by the Working Group to the legislation of the seafarer's country of residence. In order to seek a successful solution on the problems the Group was tasked with, it had to focus on the flag State's legislation. The Group could not take into consideration all the different legislations in the seafarers' countries of residence. As information, he mentioned that any seafarer serving on board a Norwegian ship had the right to file a case before a Norwegian court under Norwegian law. He was of the opinion that the informal mechanism could offer advantages in the settlement of claims, but it needed to be adequately structured.

4.15 The delegation of Ghana explained that, under Ghanaian law, a disputant had the option to sign an agreement relinquishing its rights or to submit its case to a court in Ghana, the decision of which would be binding. He added that some aspects of the issues under consideration would be kept in mind when preparing a mechanism for the settlement of disputes, to be included in the new Maritime Code.

4.16 The Group agreed to request the drafting group to discuss further the informal mechanism for settlement of claims, and the relation between the law of the flag State and the national law of the seafarer. The results of the work of the drafting group are contained in Annex 4.

4.17 The representative of the International Group advised that he had no mandate or authority from the International Group to discuss any proposal on an informal arrangement as had been previously proposed and set out in paragraph 17 of document IMO/ILO/WGLCC 3/4/3, but was prepared to sit in on discussions as an observer, if that was the Working Group's wish.

4.18 Following discussion of these matters, a separate statement was submitted by the delegation of the Philippines, as reproduced at Annex 7. However, the debate was not reopened.

5 Monitoring and assessment of the general situation with a view to determining future action, including the possible establishment of a database.

5.1 The representative of the Seafarers recalled that the Seafarers had already raised the issue of creating a database in order to monitor the problem of abandonment in a more comprehensive way. He proposed that the database should be maintained by the Joint Secretariat and located at IMO. It should contain salient information, as listed in paragraph 5.2 of their submission, on instances of abandonment and compliance, or otherwise, with the relevant international instruments.

5.2 The Shipowners' representative supported the proposal on the establishment of a database.

5.3 The delegation of Cyprus made a number of practical suggestions as to how the information for the database should be composed. He then noted that the setting-up of the database would require the authorization of both the IMO and ILO Governing Bodies. The two Secretariats would then be able to decide between them who should assume the responsibility for maintaining the database.

5.4 The IMO Secretariat pointed out that, at present, it had no adequate resources to establish and maintain the proposed database. The same situation pertained for the ILO.

5.5 The Chairman requested Governments to provide further details on what they wished for the database.

5.6 France offered technical assistance to develop the database within its technical department located at Saint-Malo.

5.7 There was consensus in the Group about the importance of the database. It was agreed that the recording of information could follow the model established in the case of piracy and armed robbery, and that was more of a data list rather than a database in terms of the complexity of the recorded information. The Group noted that operative paragraph 8 of resolution A.930(22) already invited Governments and non-governmental organizations in consultative status to record instances of abandoned seafarers and to provide data to the IMO and the ILO as and when

requested. The Group decided that, for the time being, the database would only be used for the preparation of circulars reporting on the situation, to be updated on a regular basis, and agreed that it was for the Governing Bodies of the two Organizations to decide on the funding of the database. Non-governmental organizations would be invited to contribute with information on abandonment cases. The Joint Secretariat should then verify the information received by transmitting it to the flag States, port States and any other competent authorities, and, once that had been done, the information should then be entered into the database.

5.8 A circular letter and form for providing information as proposed by the Working Group are contained in Annex 5.

5.9 The representative of the United States stated that the creation of a database will enable the Working Group to measure the success of the resolutions and their guidelines. U.S. Stated that the IMO/ILO had the credibility to create and maintain such a database or data list. The responsibility should not fall upon a particular Government or group of Governments.

6 Discussion of options for longer-term solutions to the problems of abandonment, personal injury and death of seafarers, including assessment of the need for a mandatory instrument

6.1 On the invitation by the Chairman, Dr. Balkin gave an overview of the current legal activities at the IMO. In particular, a diplomatic conference taking place from 21 October to 1 November 2002, would consider a protocol to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. The protocol was intended, *inter alia*, to enhance the limits of liability for death and personal injury to passengers and to introduce a system of compulsory insurance and strict liability for certain claims. She noted that, during the same two-week period the Legal Committee will hold its eighty-fifth session. The main items on its agenda are a draft convention on wreck removal and the review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol).

6.2 The Chairman, in his capacity also as Chairman of the ILO High-level Tripartite Working Group on Maritime Labour Standards, reported on the status of the work relating to the revision and consolidation of the ILO maritime conventions into a single instrument. He explained that the draft text would be modelled to some extent on the IMO treaties, in the sense that it would contain a tacit amendment procedure. Parts of the text would deal with conditions of employment; working and living conditions; and social security. In this context, it should, for instance, contain provisions on repatriation, and in that context the Guidelines on provision of financial security for abandonment of seafarers could be made mandatory. There will also be provisions concerning shipowners' liability for medical care on board and ashore and for occupational accident and injury. It was anticipated that the draft should be ready by mid-2003 and, after approval by the ILO Governing Body, it would then be submitted to a diplomatic conference scheduled to take place in 2005. He concluded by suggesting that it was advisable to wait for the developments taking place in that forum, before pursuing the study of other longer-term solutions.

6.3 The Seafarers' representative referred to paragraph 4 of their submission, which set the reasons why abandonment should be dealt with in a mandatory instrument. He stated that, not only was abandonment a scandal, it was also a violation of fundamental human rights. He noted that the discussions in ILO had started more than 20 years ago and, in the meantime, the problem continued to exist, hence the need for developing a mandatory safety net based on the Guidelines.

6.4 Another representative of the Seafarers, recalled that at its first session the Group had concluded that although there were a number of mandatory instruments, none of them adequately covered the issue of abandonment. He warned that it would be complicated to introduce questions relating to financial security in the ILO review. The new element added by the IMO/ILO joint process was the provision of a financial security system and the ILO had no experience in the provision of such system in ILO standards.

6.5 The Shipowners' representative commented that, when the Group started its work, the ILO plan to revise its instruments on maritime labour standards had not been agreed. That was a new development. He recalled that in 1986 the social partners had agreed to study the responsibility of flag States and port States with respect to abandonment. He therefore concluded that the subjects dealt with in the two resolutions and guidelines, including the elements on monitoring, could be included in the revision taking place in ILO. He noted that there are at least three ILO instruments dealing with different aspects of the problem.

6.6 The delegation of the United States was of the view that once national legislation implementing the guidelines was adopted, this should provide the seafarers with the protection they needed. He warned that work at this stage on a mandatory solution could jeopardize the implementation of the resolutions at the national level and was premature. Sufficient time should be given for the resolutions to work and that discussion of a mandatory instrument is not necessarily germane to the fourth session. Discussions on a mandatory instrument should occur at the next session if it is clear that the resolutions are failing to accomplish the goals of the Working Group.

6.7 The observer delegation of Norway was of the opinion that there could be need for a mandatory instrument and, in the further work, the Working Group must be prepared for that task. The history of ILO Convention No 166 which had only been ratified by three countries, was a demonstration of that. In the process of developing a mandatory instrument it will be important to take notice of the difficulties the monitoring process showed the flag States were faced with.

6.8 The delegation of France expressed the view that resolutions alone could not be expected to solve the problems. There was a need for a mandatory and enforceable instrument.

6.9 At the invitation of the Chairman, Dr. Balkin gave an account of what would be the process for an international treaty instrument of a binding nature to be adopted through IMO. A decision of the Council or the Assembly would not be sufficient to give the guidelines a mandatory character. They would need to be approved in a treaty form, or incorporated into an existing treaty instrument. To start with, at the initiative of one or more Member States, the IMO competent body would have to establish that there is a compelling need for developing a new treaty or an amendment to an existing treaty. The draft would then be discussed in the Legal Committee, or in a working group of that Committee, and developed by a lead country. Once the Committee decided that the draft text was ready for submission to a diplomatic conference and that it had good prospects to be adopted and to enter into force, the draft would be submitted to the Council with a recommendation to convene a diplomatic conference.

6.10 The representative of the Seafarers noted that, while there was agreement that the development of a mandatory instrument might be necessary if the guidelines did not have the desired impact on the ground, there was a feeling that more experience was required. The Seafarers could go along with that on the basis that, should after the agreed limited period of

monitoring the situation remain the same, the previously agreed two-step approach of developing a mandatory instrument would be implemented.

The way forward

6.11 The Group decided to maintain the item on monitoring the implementation of the two resolutions in its agenda. It further decided to encourage Governments to implement the Guidelines and to report on their implementation. Finally, the Group decided to establish monitoring procedures and to review the situation in about one year's time, also in the light of the developments in other international fora. With regard to the monitoring of the implementation of the Guidelines on abandonment, the Group agreed that the mere number of shipping companies bankruptcies would not be taken as an indicator of progress or lack of it, but rather whether, in such cases, the resolutions and guidelines had provided an effective remedy in respect of crew members abandoned without any resources.

6.12 The Working Group adopted the questionnaires developed by the drafting group and requested the Secretariats to distribute them to Governments and to relevant organizations as appropriate. The Joint Secretariat was requested to report to the Group at its next session on the replies received. The report concerning Annexes 2 and 3 would cover the period up to 31 December 2002. Subsequent to that, the Group would continue to receive information on any new cases to be reported in response to another questionnaire (Annex 5), also prepared by the drafting group.

7 Possible review of the terms of reference

7.1 The Group decided that no substantial amendment was necessary to its present terms of reference contained in annex 7 to document IMO/ILO/WGLCCS 3/11. The Secretariat was, however, requested to add some wording to the terms of reference regarding, especially the monitoring and on the progress of the work. The revised terms of reference are contained at Annex 6.

8 Action requested of the IMO Legal Committee and the ILO Governing Body

8.1 The IMO Legal Committee and the ILO Governing Body are invited:

- to take note of the report of the Working Group at its fourth session;
- to approve the revised terms of reference for the Working Group, as contained in Annex 6 of the present document;
- to approve the communication to the Member States of the questionnaires, in Annexes 2 and 3 of the present document, as part of the monitoring process of the resolutions and related guidelines;
- to approve the communication of the circular letter to the Member States and non-governmental organizations concerning reporting on incidents of abandonment; and
- to consider the establishment of a database on incidents of abandonment of seafarers.

ANNEX 1

**LIST OF DOCUMENTS SUBMITTED FOR THE PURPOSES OF THE JOINT
WORKING GROUP**

Document Number	Document Title
IMO/ILO/WGLCCS 4/1	Provisional Agenda
IMO/ILO/WGLCCS 4/2	Financial security for crew members and their dependants with regard to the payment of compensation in cases of death and personal injury and abandonment (ICFTU/ITF)
IMO/ILO/WGLCCS 4/3	Report of the Working Group

ANNEX 2

**QUESTIONNAIRE ON MONITORING OF RESOLUTIONS AND GUIDELINES
CONCERNING THE PROVISION OF FINANCIAL SECURITY IN CASE OF
ABANDONMENT OF SEAFARERS¹**

1 Questions concerning status of national laws and regulations

1. Abandonment has been defined in paragraph 2.1.3 of the Guidelines contained in the annex to Res.930 (22) as follows:

“Abandonment is characterised 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 remunerations and to provision of the basic necessities of life, *inter alia*, adequate food, accommodation and medical care. Abandonment will have occurred when master of the ship has been left without any financial means in respect of ship operation”

a) Do your laws and regulations contain a definition of abandonment?

- Yes No

If Yes, please provide a copy of the relevant provisions.

b) If Yes to a), does it cover the situation of abandonment occurring both on board ship and ashore?

- It covers only the situation of abandonment occurring on board ship
- It covers only the situation of abandonment occurring ashore
- It covers both situations of abandonment mentioned above

c) If Yes to a) above, to what extent is your definition consistent with Res.930 (22)?

d) If No to a) above, what is the practical definition as developed by courts or other authorities?

e) Who is covered by the definition contained in your national laws or regulations:

- Your nationals on board ships entitled to fly your flag
- Your nationals on board foreign-flagged ships

¹ A copy of the Resolutions and Guidelines are attached

- Foreign seafarers on board ships entitled to fly your flag
- Foreign seafarers on board foreign-flagged ships in your ports?

2. Do your existing or proposed laws and regulations contain protection for seafarers, which give effect to or are substantially equivalent to the provision of the Guidelines in respect of:

a. Repatriation

- Yes
- No

b. Payment of wages

- Yes
- No

If Yes, please indicate period for which wages are paid.

c. Food and accommodation

- Yes
- No

d. Health Care

- Yes
- No

3. In the framework of question 2 above, what systems or mechanisms concerning financial security concerning question 2 above do you have in place to give effect to the laws and regulations in respect of:

- a) Your nationals on board ships entitled to fly your flag
- b) Your nationals on board foreign-flagged ships
- c) Foreign seafarers on board ships entitled to fly your flag
- d) Foreign seafarers on board foreign flag ships in your ports?

Please specify the system or mechanism of financial security.

4. Has there been any changes in your laws, regulations or practice since the adoption of the above-mentioned Resolution and its entry into force on 1 January 2002?

- Yes
- No

If Yes, please indicate the details.

5. Do you have any plans to change your laws, regulations or practice to comply with the requirements of the above-mentioned Resolution in the near future?

- Yes No

If Yes, please indicate the details.

6. Do you have any difficulties in implementing the above-mentioned Resolution and Guidelines?

- Yes No

If Yes, please describe these difficulties.

II. Questions concerning incidents of abandonment

7. Concerning cases of abandonment for the years 2000, 2001 and 2002, please provide, as appropriate, information using the attached model on:

- Vessel name,
- Flag of vessel,
- IMO number of the vessel,
- Number of seafarers involved,
- Nationality of seafarer,
- Name of port
- Circumstances of abandonment²
- Date abandonment occurred
- Action(s) taken by your authority or other organization
- Status of repatriation³

8. What are the major difficulties you encounter in dealing with foreign seafarers abandoned in your ports?

- Contact with flag State or consular authorities
- Contact with State of nationality of the seafarer

² Circumstances of abandonment can include the following: ship arrested; ship detained; shipwreck; shipowner dissolved/bankrupt; change of shipowner; ship at shipyard.

³ Date of payment of remuneration and other contractual entitlements should be included where the information is available.

- Contact with other organizations
- Absence of national arrangements for dealing with abandonment
- Other, please indicate the details

9. As provided for in paragraph 7 of the Resolution, have you nominated a focal point(s) for dealing with cases of abandonment?

- Yes No

If Yes, please provide relevant details: name, title, address, e-mail, facsimile etc.

ANNEX

Form for providing information on the implementation of the Resolutions and Guidelines on abandonment

In case of abandonment of your nationals on board ships entitled to fly your flag

Vessel name	IMO No.	Number of seafarers	Name of port	Circumstances of abandonment	Date of incident	Actions taken	Status of repatriation	Status of payment of remuneration, if known

In case of abandonment of your nationals on board foreign-flagged ships

Vessel Name	Flag	IMO No.	Number of seafarers	Name of port	Circumstances of abandonment	Date of incident	Actions taken	Status of repatriation	Status of payment of remuneration, if known

In case of abandonment of foreign seafarers on board ships entitled to fly your flag

Vessel name	IMO No.	Number of seafarers	Nationality of seafarers	Name of port	Circumstances of abandonment	Date of incident	Actions taken	Status of repatriation	Status of payment of remuneration, if known

In case of abandonment of foreign seafarers on board ships foreign-flagged ships in your ports

Vessel name	Flag	IMO No.	Number of seafarers	Nationality of seafarers	Name of port	Circumstances of abandonment	Date of incident	Actions taken	Status of repatriation	Status of payment of remuneration, if known

ANNEX 3

**GUIDELINES ON SHIPOWNERS' RESPONSIBILITY IN RESPECT OF
CONTRACTUAL CLAIMS FOR PERSONAL INJURY OR DEATH OF SEAFARERS****QUESTIONNAIRE TO STATES ON IMPLEMENTATION**

1. In accordance with paragraph 2 of the operative provisions of Resolution A.931(22), has your Government brought or does it intend to bring the Resolution and Guidelines to the attention of :

- a) Shipowners and their representative organizations; and
- b) Seafarers and their representative organizations?

Please provide relevant details, including the names of the organizations concerned.

2. a) In accordance with paragraph 3 of the operative provisions of the Resolution, has your Government taken steps or does it intend to take steps to ensure that shipowners comply with the Guidelines?
- b) In particular, do you ensure that shipowners, whose ships are entitled to fly your flag, have on board an insurance certificate issued by the insurer, which is posted in a prominent position in the crew accommodation area?
- c) Have you taken measures to encourage shipowners and through them their insurers, to use the model receipt and release form, as recommended in the guidelines, for the prompt settlement of contractual claims?
- d) Please provide details of any monitoring mechanism that you have put or intend to put in place.

3. Do your national laws and regulations meet or exceed the requirements of the Guidelines, and are seafarers employed or engaged on ships entitled to fly your flag protected, in case of contractual claims for personal injury or death, by a financial security equivalent or similar to that envisaged in the Guidelines? If yes, please explain.

4. If your national laws and regulations do not meet the requirements of the Guidelines, please indicate:

- a) Type of protection afforded to seafarers as regards financial security for claims for death and injury; and
- b) Action you intend to take to ensure that the requirements of the Guidelines are met?

5. Do you consider that there is a need to amend any part of the Guidelines? If so, please indicate the part of the Guidelines that needs to be amended, the reasons and the suggested text of the amendments.

6. Do you consider any explanations to the Guidelines necessary? If so, please identify the part of the Guidelines for which explanations are required and the reasons for such explanations.

ANNEX 4**AN INFORMAL ARRANGEMENT FOR DEALING WITH MANIFESTLY UNFAIR TECHNIQUES IN RESPECT OF CLAIMS FOR DEATH AND INJURY**

1. It is to be recalled that at the third session of the Joint Working Group, the International Group of P&I Clubs submitted a document (IMO/ILO/WGLCCS 3/4/3). Paragraph 17 of the document referred to a proposal made by the ISF and International Group during informal meetings with the Seafarers as follows:

“With a view to meeting the Seafarers’ perceived concerns, the ISF and the IG proposed an informal arrangement whereby in the event of an allegation that manifestly unfair claims techniques were being employed in relation to a death or personal injury claim, the claim be referred to the ISF by the seafarer or his representative. The ISF would then take the claim up with the owner or insurer concerned. If the claim involved a Group Club, the IG would refer it to the Club concerned. Both the ISF and the IG took the view that such a simple and straightforward arrangement, which could be implemented without delay, would be very effective in ensuring that abuses did not occur and that such allegations are properly addressed.”

2. At the fourth session of the Joint Working Group, the above proposal was further discussed. Both the Seafarers and the Shipowners saw certain difficulties with the arrangement which had been proposed.

3. The Joint Working Group however agreed that the ISF and the ITF should meet and discuss the ground rules for this informal arrangement. The International Group of P&I Clubs would be invited to attend the meeting. The ISF and the ITF should report on progress made to the next meeting of the Joint Working Group.

ANNEX 5

Circular Letter No.
(Date....)

Ref.....

To: All IMO/ILO Member States
Non-governmental organizations with consultative or observer status in the IMO or the ILO

Subject: REPORTING ON INCIDENTS OF ABANDONMENT

1 The Secretary-General of the IMO and the Director-General of the ILO have the honour to refer to the Resolution A.930(22) and Guidelines on the Provision of Financial Security in case of Abandonment of Seafarers adopted by the Assembly of the IMO and the Governing Body of the ILO on 17 December 2001 and on 16 November 2001 respectively.

2 Preambular paragraph 8 of the Resolution calls on Member Governments and non-governmental organizations with consultative or observer status in the IMO or the ILO to record instances of abandoned seafarers and to provide data to the IMO or the ILO whenever requested.

3 With a view to giving effect to this provision, the (Legal) Committee, at its ... session in ...2002/3 and the ILO Governing Body at its 286th session in March 2003, have instructed the Secretariats of the two Organizations to issue six monthly reports of all incidents of abandonment¹ reported to the Organizations, and in addition on an annual basis, composite reports accompanied by an analysis of the situation and an indication whether the frequency of incidents is increasing or decreasing and advising on any new feature or pattern of significance.

4 Member States and organizations are requested to complete the form, shown in the Annex to this Circular letter, whenever an incident or case occurs and when the incident or case has been resolved. The completed form should be sent to the following address, preferably in electronic form:

IMO, 4 Albert Embankment, London, SE1 7SR, United Kingdom, info@imo.org

ILO, 4 Rte des Morillons, 1211 Geneva 4, Switzerland, marit@ilo.org

The compilation of information is effective from 1 January 2003.

¹ "Abandonment" is defined in the Guidelines on Provision of Financial Security in case of Abandonment of Seafarers as follows:

"Abandonment is characterised 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".

Form for providing information on incidents of abandonment

I. Instructions

1. A form is to be submitted when an incident or case of abandonment has occurred
2. Another form is to be submitted once the incident or case has been concluded.

All cases of abandonment of seafarers, whether or not such cases have been resolved

Vessel name	Flag	IMO No.	Number of seafarers	Nationality of seafarers	Name of port	Circumstances of abandonment ²	Date of incident	Date of notification to flag State	Other actions taken	Date on which incident is resolved, where applicable (Please indicate detail ³)	Reporting State or International organization

* Is this a follow-up to a previously completed form? Yes No

² Circumstances of abandonment can include the following: ship arrested; ship detained; shipwreck; shipowner dissolved/bankrupt; change of shipowner; ship at shipyard.

³ Details to include, where applicable:

- a) date of repatriation
- b) date of payment of remuneration settled
- c) other alternative solutions

ANNEX 6**REVISED TERMS OF REFERENCE FOR FURTHER WORK OF THE
JOINT IMO/ILO *AD HOC* EXPERT WORKING GROUP ON LIABILITY AND
COMPENSATION REGARDING CLAIMS FOR DEATH, PERSONAL INJURY AND
ABANDONMENT OF SEAFARERS**

- 1 The Joint IMO/ILO Ad Hoc Expert Working Group should 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 the light particularly of the guidelines adopted pursuant to resolution A.930(22) and resolution A.931(22).
- 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.
- 3 It should monitor and evaluate the scale of the problem of abandonment of crew members/seafarers and compensation in cases of death and personal injury, taking into account all relevant information, including that communicated to the Secretary-General of IMO or the Director General of ILO pursuant to the above-named resolutions.
- 4 It should make suitable recommendations to the IMO Legal Committee and the Governing Body of the ILO in relation to appropriate action for better implementation and wider acceptance of the resolutions and for longer-term sustainable solutions to address the problems covered by the resolutions and associated guidelines, in line with the previously agreed two-step approach.

ANNEX 7

**PHILIPPINE STATEMENT ON THE AGENDA ITEMS OF THE FOURTH 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**

Agenda item 3 - Monitoring of the implementation of the Resolution and Guidelines on provision of financial security in case of abandonment of seafarers

The Philippines already has a national system in place to provide financial security for seafarers, as follows:

- a. Section 15 of Republic Act (RA) No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), to wit:

“The repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation shall be borne by or charged to the agency concerned and/or its principal. Likewise, the repatriation of remains and transport of the personal belongings of a deceased worker and all costs attendant thereto shall be borne by the principal and/or the local agency. However, in cases where the termination of employment is due solely to the fault of the worker, the principal/employer or agency shall not in any manner be responsible for the repatriation of the former and/or his belongings.”

Following the procedures under the law, Sections 54 and 55 of the Omnibus Rules and Regulations implementing RA 8042 provide that if the principal fails to provide the cost of repatriation, the Philippine Overseas Employment Administration (POEA) shall notify the manning agency that deployed the Filipino worker overseas. If the agency fails to provide the airline ticket within 48 hours from receipt of the notice, the POEA will impose a preventive suspension on the concerned manning agency. The Overseas Workers Welfare Administration (OWWA) shall advance the costs of repatriation with recourse to the principal.

- b. The source of funding for the mechanism on financial security is the Seafarers Welfare Fund collected by the OWWA from the contributions of foreign principals and seafarers. President Gloria Macapagal-Arroyo directed OWWA in June this year to separate the Seafarers Welfare fund from the welfare fund contribution of land-based workers to rationalize the allocation of funds for the various welfare and social support programs for seafarers and their families.
- c. Rule II, Section 4 of the POEA Rules and Regulations requires manning agencies to:
- i. submit an escrow agreement in the amount of One Million Pesos (P1,000,000); and
 - ii. a surety bond of One Hundred Thousand Pesos (P100,000).

The bonds and escrow shall answer for all valid and legal claims arising from violations of the condition for the grant and use of the license and/or contract of employment. Moreover, the capitalization of recruitment agencies has been increased from One Million Pesos (P1,000,000) to Two Million Pesos (P2,000,000). All these financial requirements are intended for the protection of the Filipino seafarers.

- d. RA 8042 and the POEA Rules and Regulations provide that the liability of the principal/employer and the manning agency for any and all claims shall be **joint and several**.
- e. The Philippines has ratified ILO Convention No. 23 (Repatriation of Seafarers) in November 1960. The Philippines applies the Convention by way of Section 19 (Repatriation), Items B and C of the Standard Employment Contract of the POEA, to wit:

“Item B – If the vessel arrives at a convenient port before the expiration of the contract, the master/employer may repatriate the seafarer from such port, provided the unserved portion of his contract is not more than one (1) month. The seafarer shall be entitled only to his earned wages and earned leave pay and to his basic wages corresponding to the unserved portion of the contract, unless within 60 days from disembarkation, the seafarers is rehired at the same rate and position, in which case the seafarer shall be entitled only to his earned wages and earned leave pay.

“Item C – If the vessel arrives at a convenient port within a period of three (3) months before the expiration of his contract, the master/employer may repatriate the seafarer from such port provided that the seafarer shall be paid all his earned wages. In addition, the seafarer shall also be paid his leave pay for the entire contract period plus a termination pay equivalent to one (1) month of his basic pay, provided, however, that this mode of termination may only be exercised by the master/employer if the original contract period of the seafarer is at least ten (10) months, provided, further, that the conditions for this mode of termination shall not apply to dismissal for cause.”

Agenda Item 4 - Monitoring of the implementation of the Resolution and Guidelines on shipowners’ responsibilities in respect of contractual claims for personal injury or death of seafarers

- a. The definition of personal injury under the POEA Standard Employment Contract is consistent with the definition of personal injury the Guidelines. The POEA Standard Employment Contract states:

“Work-Related Injury – injury(ies) resulting in disability or death arising out of and in the course of employment.”

The term “work-related injury” is used in the contract under Section 20 on Compensation and Benefits.

- b. Regarding the Model Release Form, the quit claim form of the National Labor Relations Commission (NLRC) contains elements to ensure that the settlement is not prejudicial to the seafarer. The amount of claim is within a reasonable limit. The seafarer is amply protected when he signs the quit claim, which is written as follows:

“This is to certify that (name of seafarer) has personally appeared before me and expressed his/her voluntary agreement to the settlement of his claims against _____ based on his/her actual receipt of the amount of _____ in consideration of the agreement, settlement and/or waiver, and in accordance with law and jurisprudence, as follows:

- 1. there is no fraud or deceit on the part of any of the parties;*
- 2. the consideration is substantial and reasonably acceptable to the complainant; and*
- 3. the contract agreement is not contrary to law, morals, good customs, public order and public policy.*

- c. The legal framework for this agreement or settlement is based on the provisions on Contracts in the Civil Code of the Philippines and jurisprudence. Moreover, the seafarer is not precluded from filing a claim before a court or any proper forum within the Philippine jurisdiction. This is in line with the Bill of Rights under the Philippine Constitution which guarantees that: “Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.” When the seafarer signs a quit claim, it is assumed that all his claims have been ventilated before the proper forum. Philippine laws frown upon forum shopping since the laws provide amply avenues to settle disputed claims. Thus, the jurisdiction of the courts or quasi-judicial bodies should be respected.
- d. As provided under Section 10 of RA 8042, the NLRC **shall have original and exclusive jurisdiction** to hear and decide claims for moral, exemplary and other forms of damages.
- e. Bilateral agreements of the Philippines with other Flag States such as Norway and Cyprus contain provisions on tort claims:

Article 10, Section 2 of the Philippine-Cyprus Agreement on Merchant Shipping states that disputes arising out of the respective contract of employment between a Cyprus shipowner and a Filipino seaman shall be referred for settlement solely to the exclusive jurisdiction of the competent Courts or Authorities, as the case may be, in the country of the seaman’s nationality.

Article XI of the Philippines-Norway Agreement provides that any dispute or claims, including claims for torts arising from or related to the contract of employment or relations between a Norwegian shipowner and a Filipino crewmember but not limited to wage claims, and claims for damages as a result of the illness, personal injury or death of a crew member, shall be referred for determination and resolution solely to the exclusive jurisdiction of the competent Courts, Tribunals or Authorities, as the case may be, of the Contracting Party in which the vessel is registered or of the other Contracting Party where the complainant is a national. The Contracting Parties will provide the appropriate mechanisms for such cases to be heard when raised.

Agenda Item 5 - Monitoring and assessment of the general situation with a view to determining future action, including the possible establishment of a database.

The Philippine Government welcomes the move to create a joint database. The information in this database will also be useful for the POEA's system on the accreditation of principals and the watchlisting or blacklisting of erring principals and the imposition of preventive suspension on erring manning agencies.

Agenda Item 6 - Discussions of options for longer-term solutions to the problems of abandonment, personal injury and death of seafarers, including assessment of the need for a mandatory instrument

The Philippines has a well-structured social and welfare support system for its seafarers deployed aboard Philippine-flagged ships as well as those on foreign-flagged ships. It has ratified the ILO Convention on Repatriation of Seafarers. Moreover, the POEA Standard Employment Contract for Seafarers contains specific provisions on financial security in cases of death, personal injury or abandonment, pursuant to the requirements under RA 8042.

It would be noted that the AMOSUP/ITF TCCC Agreement 2001-2002 provides for a comprehensive financial security for Filipino seafarers and their families for claims arising from the above-mentioned three cases. The Philippines therefore as the proper "safety net" for Filipino seafarers that would sufficiently respond to the provisions of the Guidelines. But as in any other social support system, the Philippine system is not perfect and thus there are still cases of disputed or unpaid claims by Filipino seafarers as cited by the ITF in its paper IMO/ILO/WGLCCS 4/2.

While it notes the suggestion for a mandatory instrument, the Philippines is of the view that it should first focus its efforts towards improving the current social and welfare support system so as to cover the cases cited in the ITF paper and to further enhance its role as a flag State and as a major supplier of shipboard labor.

ANNEX 8**LIST OF PARTICIPANTS**

Chairman: Mr. J.-M. Schindler
(Member Government - France)

Vice-Chairmen: Captain K. Akatsuka
(Shipowner representative)

ILO PARTICIPANTS**SHIPOWNERS' MEMBERS****- E-MAIL ADDRESSES**

Capt. K. Akatsuka (Japan) - office@jsaldn.org.uk (English)
 - senkyo@jsaldn.org.uk (Japanese)
 Mr. D. Lindemann (Germany) - Lindemann@Reederverband.de
 Ms. L. Howlett (ICS) - linda.howlett@marisec.org
 Mr. R. Guy (ISF) - richard.guy@marisec.org

Adviser

Mr. D. Dearsley (International Shipping Federation) (focal point for Shipowners, with a copy to Mr. J. Lusted) - david.dearsley@marisec.org
 Capt. W. McKnight (Japan) - office@jsaldn.org.uk

SEAFARERS' MEMBERS

Mr. A. Tselentis (Greece)
 Mr. S. Buckman (Ghana)
 Mr. A. Serang (India) - nusi@vsnl.com
 Mr. J.R.V. Lamug (Philippines) - amosup@info.com.ph

Advisers

Mr. J. Whitlow (International Transport Workers' Federation) (focal point for Seafarers, with a copy to Mr. B. Orrell) - whitlow_jon@itf.org.uk
 Ms. D. Fitzpatrick (International Transport Workers' Federation) - mail@itf.org.uk
 Mr. M. del Olmo (ITF)
 Mr. J. Smith (France)

IMO PARTICIPANTS

MEMBER GOVERNMENTS

- E-MAIL ADDRESSES

CYPRUS

Mr. N. Charalambous - dmslo@ukgateway.net

FRANCE

Mr. J-M. Schindler - jean-marc.schindler@diplomatie.fr
Mr. X. Marill - xavier.marill@equipement.gouv.fr
Mr. F. Joret - fabien.joret@equipement.gouv.fr
Mr. A. Moussat - alain.moussat@equipement.gouv.fr

GHANA

Mr. S. Quaye - samquaye@mailbox.as
Mr. K.A. Bonna - abonna@ghanaports.net
Mr. G.Y. Amoah - agyamoah@talk21.com

GREECE

Capt. (HCG) S. Zeibekis

PHILIPPINES

Mr. G. Asuque - multilateral@philemb.co.uk

UNITED KINGDOM

Mr. C. Ellis - chris.ellis@dft.gsi.gov.uk

UNITED STATES

Lt. Cdr. C. Dahill
Mr. W. Eglinton
Mr. E.A. Cohen
Mr. P.J. Bonner

OBSERVER GOVERNMENTS

- E-MAIL ADDRESSES

BANGLADESH

Capt. A. Moin Uddin

MARSHALL ISLANDS

Mr. J. Ramage
Mr. D.J.F. Bruce

MEXICO

Mr. J.A. Suarez Valleso

NORWAY

Mr. A. Østre - anders.ostre@sjofartsdir.dep.no

PANAMA

Captain O. Allard - oallard@panamauk.org

VENEZUELA

J.C. Oti

NON-GOVERNMENTAL ORGANIZATIONS

INTERNATIONAL SHIPPING FEDERATION LTD (ISF)

Mr. D. Lindemann - Lindemann@Reederverband.de
Mr. D. Dearsley - david.dearsley@marisec.org
Ms. L. Howlett
Mr. R.E.C. Guy - richard.guy@marisec.org.uk
Capt. W. McKnight - office@jsaldn.org.uk
Capt. K. Akatsuka - office@jsaldn.org.uk (English)
- senkyo@jsaldn.org.uk (Japanese)

INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

Mr. J. Smith - itf_france@club-internet.fr

INTERNATIONAL CHRISTIAN MARITIME ASSOCIATION (ICMA)

Mr. K. Peters - justice@missiontoseafarers.org

INTERNATIONAL SHIP SUPPLIERS ASSOCIATION (ISSA)

Mr. P. Albury - pfa@pfa-consultants.co.uk

JOINT SECRETARIAT

ILO

Ms. C. Doumbia-Henry, Deputy Director, Sectoral Activities Department
doumbia@ilo.org

Mr. Heui-Jin Ji, Maritime Specialist, Sectoral Activities Department, ILO, **ji@ilo.org**

Mr. B. Subramaniam, Senior Maritime Adviser, ILO

IMO

Dr. R.P. Balkin, Director, Legal Affairs and External Relations Division

Mr. A. Blanco-Bazán, Senior Deputy Director/Head, Legal Office, Legal Affairs and
External Relations Division

Mr. G. Librando, Senior Legal Officer, Legal Office, Legal Affairs
and External Relations Division - **glibrando@imo.org**
