



EIGHTH ITEM ON THE AGENDA

**Report of the Fifth 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, 12-14 January 2004)**

1. At its 286th Session (March 2003), 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). It approved the holding of a Fifth Session of the Working Group, with participation of eight ILO (four Shipowner and four Seafarer) representatives, at no cost to the ILO.
2. In keeping with the abovementioned decision, the Working Group met in its Fifth Session from 12-14 January 2004, at the headquarters of the International Maritime Organization (IMO) in London (report appended).
3. At its Fifth Session the Working Group, concerning the problem of abandonment of seafarers, recommended that:
 - (a) the revised circular on reporting of incidents of abandonment as contained in Annex 1 of the report should be re-sent;
 - (b) the revised circular containing the questionnaire on monitoring the implementation of the guidelines on provision of financial security in case of abandonment of seafarers adopted by IMO resolution A.930(22) should be re-sent (see Annex 2 of the report);
 - (c) it was necessary to remind member Governments of the importance of a rapid and comprehensive answer to be received at the latest by a date to be determined by the joint secretariat in accordance with the guidelines contained in Annex 4 of the report;
 - (d) it review, at its next session in spring 2005, the preliminary determination regarding the implementation of the resolution and of the guidelines in the light of all the answers to the questionnaire and data relating to abandonment available at that time; and

- (e) it take its final decision at its next session on the recommendation to be made to the ILO Governing Body and to the IMO Legal Committee.
4. Regarding the development of a longer term sustainable solution to address the problems of financial security with regard to compensation in case of death and personal injury, the Working Group agreed:
- (a) that the time had come for the ILO Governing Body and the IMO Legal Committee to authorize the Group to proceed with the development of such a longer term sustainable solution;
 - (b) to advise and seek the concurrence of the ILO Governing Body and the IMO Legal Committee on the following:
 - (i) bearing in mind the reservation expressed by the social partners on the text of resolution A.931(22) and of the associated guidelines, neither resolution A.931(22) nor the associated guidelines should prejudice or serve as a precedent constraining, in any way whatsoever, the eventual mandatory solution;
 - (ii) the eventual mandatory solution should not in any way interfere, affect, erode or in any way whatsoever, diminish any rights or remedies seafarers may enjoy in a particular state under an existing legal framework;
 - (c) that in the case that the IMO Legal Committee and the ILO Governing Body were to accept the recommendation of the Joint Working Group under (a) and concur with the views expressed in (b), the Group agree to recommend that the IMO Legal Committee and the ILO Governing Body:
 - (i) also authorize the joint secretariat to prepare suggestions, including possible headings, concepts and likely outline of the content of possible mandatory solutions for the consideration of the Joint Working Group at its next session; and
 - (ii) to allow the joint secretariat to circulate the outcome of the discussions of the ILO Governing Body and IMO Legal Committee as soon as possible to enable the social partners and the governments to make their own written submissions on the form and content of possible eventual mandatory solutions as soon as possible.
5. Finally, the Working Group agreed that an amendment to its present terms of reference was necessary to reflect the abovementioned recommendations.
6. The Working Group invited the ILO Governing Body and the IMO Legal Committee to:
- (a) take note of the report of the Working Group at its Fifth Session;
 - (b) approve the communication of the revised circular letter in Annex 1 of the report to member States and non-governmental organizations concerning reporting on incidents of abandonment;
 - (c) approve the communication to member States of the revised questionnaire in Annex 2 of the report, as part of the monitoring process of the resolution and related guidelines on the abandonment of seafarers;
 - (d) approve the revised terms of reference for the Working Group, as contained in Annex 3 of the report;

- (e) decide on the recommendation of the Working Group, as contained above in paragraph 4(a), considering the principles contained in paragraph 4(b) and to allow appropriate action, as contained in paragraph 4(c) to be taken;
- (f) further pursue the establishment of a database on incidents of abandonment of seafarers.

7. 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 6 above.

Geneva, 3 February 2004.

Point for decision: Paragraph 7.



JOINT IMO/ILO AD HOC EXPERT
WORKING GROUP ON LIABILITY AND
COMPENSATION REGARDING CLAIMS
FOR DEATH, PERSONAL INJURY AND
ABANDONMENT OF SEAFARERS
5th session
Agenda item 6

IMO/ILO/WGLCCS 5/3
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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 fifth session from 12 to 14 January 2004 at the Headquarters of the International Maritime Organization (IMO). A list of documents submitted for consideration at this session of the Joint Working Group is given at Annex 5 and the list of participants is given at Annex 6 to this document.

1.2 In welcoming participants, the Secretary-General of IMO remarked that this was the second meeting he had addressed in his new capacity and, given his background, he was very pleased to begin the year and his new functions with a meeting aimed at improving the welfare of seafarers and their families.

1.3 He recalled that the Joint Working Group had been established under the provisions of the Agreement of Co-operation between IMO and the International Labour Office (ILO) in order to ensure, through the operation of appropriate international instruments, the rights of seafarers to adequate compensation for loss of life and personal injury as well as to adequate protection in cases of abandonment.

1.4 The Secretary-General then proceeded to recap briefly the main achievements of the Joint Working Group. In particular, he recalled that, after having agreed that none of the existing international instruments adequately and comprehensively addressed the problems relating to compensation for death, personal injury and abandonment of seafarers, the Group had prepared, as a short-term response, two draft resolutions and related Guidelines, one on provision of financial security in case of abandonment of seafarers and the other on shipowners' responsibilities in respect of contractual claims for personal injury to, or death of, seafarers. The two draft resolutions had been approved by the Legal Committee prior to adoption by the IMO Assembly, at its twenty-second session in November 2001, by resolutions A.930(22) and A.931(22), respectively. They were then adopted by the Governing Body of ILO at its 282nd session, also in November 2001. Both the resolutions and associated Guidelines had taken effect on 1 January 2002.

1.5 The importance of the two resolutions and associated Guidelines, he stressed, lay in the fact that, for the first time, the rights of seafarers and the resultant duties, not only of shipping companies as employers, but also of flag States and in some cases the States of nationality of the seafarers, are defined in international instruments, the aim of which is to provide seafarers and their families with a level of protection which was hitherto lacking.

1.6 This level of support and protection, the Secretary-General continued, presented a positive image of life at sea. While acknowledging that most seafarers' conditions of employment were fair and reasonable, some were still subject to harsh treatment and unreasonable conditions. These seafarers and their representative organizations looked to IMO and ILO to safeguard their legitimate interests.

1.7 Both IMO and ILO had expressed their appreciation of the Group's work and the spirit of co-operation between the Social Partners. However, the work was not yet complete and, in accordance with its revised terms of reference, the Group should continue to examine all the related issues, and, in particular, monitor the implementation of the Guidelines adopted by the aforementioned resolutions.

1.8 The Group should also monitor and evaluate the scale of the problem of abandonment of seafarers and that of compensation in cases of personal injury and death and make suitable recommendations to the IMO Legal Committee and the ILO Governing Body, directed towards taking appropriate action for better implementation and wider acceptance of the resolutions and for longer-term sustainable solutions to address the problems, in line with the agreed two-step approach.

1.9 In closing, the Secretary-General expressed concern on the issue of reported cases of seafarers detained ashore as a result of accidents involving the ships on which they were serving. Although this complex matter was not on the Group's agenda, he considered that measures needed to be taken to address the issue in view of the negative impact it would certainly have in general and, in particular, on youngsters contemplating pursuing a career at sea.

1.10 Mrs. Cleopatra Doumbia-Henry, Director, Sectoral Activities Department (ILO), extended ILO's warmest congratulations to Mr. E.E. Mitropoulos, the new Secretary-General of IMO and wished him well as he began his mandate with a strategic vision for the Organization. She also welcomed the participants on behalf of Mr. Juan Somavia, Director-General of ILO.

1.11 Mrs. Doumbia-Henry pointed out that the Joint Working Group's achievements during the next two days may have an impact on the fourth meeting of the High-level Tripartite Working Group on Maritime Labour Standards, to be held in Nantes during the week 19-23 January 2004, since the issues raised may be integrated into that Group's work.

1.12 She pointed out that the joint resolutions and Guidelines had now been in operation for two years. The report prepared sought to reflect how the Guidelines had been used and their effect in law and practice. A total of thirteen States had replied. Twelve States had completed the questionnaire on the implementation of resolution A.930(22) and five had provided information on specific cases.

1.13 Concerning the cases of abandonment, she continued, the data showed that for the period January to November 2003, there had been thirty-one new cases, sixteen of which had been concluded and fifteen of which were still pending. The size of the crew on two of the vessels was not known, and one seafarer had died during abandonment.

1.14 She informed participants that ILO had examined the question of the creation of a database on abandonment, had carried out the relevant studies and had decided, in consultation with the IMO Secretariat, to host the database. ILO was now in the process of exploring the financing for the set-up costs.

1.15 The Shipowners sought clarification from the Director, Sectoral Activities Department (ILO) as to whether she needed to be present for the discussion on the content of the report, as there appeared to be factual inaccuracies in relation to reported cases of abandonment. The Director advised that she did not need to be present for the discussion.

1.16 In his opening remarks, the Chairperson of the Joint Working Group, Mr. Jean-Marc Schindler (Government Member - France), thanked the Secretary-General of IMO and the Director, Sectoral Activities Department (ILO) and stated that the Joint Working Group had taken good note of what had been said in their opening addresses.

1.17 In his opening speech, the Seafarers' representative stated that the fact that there had been four preceding meetings of this Joint Working Group demonstrated the importance of the issues at stake. He reminded the Group of the fact that the resolutions were conceived as short-term measures and that strict liability had been established for oil pollution, HNS, bunker oil, passengers and their luggage and would soon be established for wreck removal. He regretted that, so far, seafarers were not on an equal level. He congratulated the new Secretary-General of IMO on his appointment and for the statement he had made at the opening of this meeting. He also noted that Mr. Mitropoulos was strongly committed to the Seafarers' cause. Regarding the inclusion of the Working Group's agenda into the work programme of the High-level Tripartite Working Group on Maritime Labour Standards, his opinion was that the highly technical nature of that Group's work did not make an inclusion seem ideal. Moreover, such inclusion might take too long and might possibly not lead to a mandatory instrument, which was the Seafarers' aim.

1.18 In her opening speech, the Shipowners' representative expressed concern regarding the number of responses to the questionnaires and questioned whether the report provided a reliable and valid statistical sample in order to make a considered decision on the Group's further work. The absence of data from major maritime States was especially critical in this context. Moreover, different definitions of the term "abandonment" apparently caused confusion when answering the questionnaire. Doubts existed on the Shipowners' group's side also with regard to some of the cases of abandonment listed in the report. She also noted that no country appeared to have changed its legislation in response to the resolution and the Guidelines. As to a possible inclusion of the Guidelines into the Consolidated Convention, the Shipowners' group felt that the Guidelines could be considered appropriate to be placed therein, but recognized that this may be difficult to achieve within the current timeframe. An inclusion in the new Convention at a later date could, however, be considered.

2 Adoption of the agenda

2.1 The Joint Working Group adopted the provisional agenda contained in document IMO/ILO/WGLCCS 5/1.

3 Discussion of options for longer-term solutions to the problems of abandonment, personal injury and death of seafarers, taking into account relevant IMO and ILO instruments, including those under review or likely to be adopted in the near future

Abandonment of seafarers

3.1 The delegation of Cyprus described the process required for IMO to adopt a new treaty instrument of a binding nature. In particular, he stressed that the Legal Committee and the IMO Council would have to establish a compelling need for developing a new treaty based on statistics and on information on actions taken by Governments to implement the resolutions and related Guidelines. Noting that current work on the Legal Committee agenda would prevent the Committee from starting work on a new subject before 2006, he concluded that the best option for the time being would be to use the resolutions to get interim results.

3.2 Referring to Mrs. Doumbia-Henry's earlier allusion to the possible contribution of this meeting to the fourth meeting of the High-level Tripartite Working Group on Maritime Labour Standards, the Shipowners' representative remarked that her group was not in favour of including the outcome of the present session of the Joint Working Group in the Consolidation process, at least at present. However, her Group deemed the ILO to be the appropriate forum and suggested that the Joint Working Group's recommendations could be referred to ILO for action at a later stage.

3.3 The Seafarers' representative agreed that it would be difficult for the current session of the Joint Working Group to provide satisfactory guidance to the forthcoming meeting on consolidation and remarked that the work on consolidation may be slowed down considerably if abandonment issues were included in the agenda of that meeting.

3.4 In response to the Seafarers' representative's statement that a binding instrument needed to be created in the framework of both ILO and IMO, the Shipowners' representative remarked that concrete assistance for the seafarers concerned was the most important factor and that in their opinion, ILO would be the best place for the formulation of this instrument. Flag States, port States, and trade unions had been very helpful in most cases. Therefore, it was suggested that flag States should provide national focal points to deal with these cases and to organize necessary assistance. Existing infrastructure was often not used, because seafarers lacked information on who to contact for assistance.

3.5 The representative of the International Group of P&I Clubs supported the view of the representative of the Shipowners and of the delegation of Cyprus that the statistical sample was too small to draw meaningful conclusions at this stage.

3.6 The delegation of France, however, suggested that the information available suggested the Guidelines could not be expected to have the intended effect and therefore the Group should now discuss the best way to move toward a mandatory solution.

3.7 A Shipowners' representative observed that there was a need for more data, since 13 States out of 163 States, which is 7.9%, did not constitute a sufficient statistical sample which would allow for a valid assessment.

3.8 The delegation of the United States said that sufficient time had passed since the resolution came into effect to make a determination on whether it had succeeded or failed. The delegation further stated that the body of evidence showed that the resolution had failed to meet its goals and that a mandatory instrument should be discussed as an option.

3.9 The delegation of Cyprus indicated that the questionnaire on implementation should be re-issued, with the addition of some questions on supplementary information for States that had already replied and on difficulties encountered in replying to the questionnaire for those States which had not yet replied.

3.10 Referring to the Appendices in documents IMO/ILO/WGLCCS 5/2 and IMO/ILO/WGLCCS 5/2/Add.1, which had been introduced by the ILO Secretariat, the Shipowners' representative remarked that some cases which had been concluded, according to ISF information, were not listed as such.

3.11 A representative of the Seafarers' group stated that these documents should be viewed as snapshots of a particular point in time and noted that disparities resulted from the time delay in reporting and the distribution of documents. The ITF had adopted a rigorous "quality control" to ensure the veracity of all cases submitted.

3.12 In response to a Shipowners' representative's request for additional information and supporting evidence on the cases listed in documents IMO/ILO/WGLCCS 5/2 and IMO/ILO/WGLCCS 5/2/Add.1, the ILO Secretariat observed that the information was provided on a bona fide basis.

3.13 The suggestion by the representative of Cyprus that the relevant information could be cross-checked between the Social Partners and interested Governments before its submission to the Secretariats was welcomed by the Joint Working Group.

3.14 The Seafarers' representative stated that monitoring was showing that the situation had not improved. Should the Group therefore decide to re-issue the questionnaire, a similar situation would, in all probability, arise at the next session of the Joint Working Group. In order to ensure that the problems could be dealt with by the next meeting, parallel steps should already be taken now.

3.15 The delegation of the United Kingdom stated that, when re-issuing the questionnaire, States should be clearly informed that their replies would be used to evaluate the necessity for a mandatory solution. He further suggested the addition of a column for comments, which could be submitted by any interested party to a particular case of reported abandonment.

3.16 The Shipowners' representative remarked that the United Kingdom's suggestion was useful and declared that any such information should not be published without providing a possibility for the parties to check the accuracy of the data.

3.17 The above suggestion was supported by the delegation of Cyprus, which also suggested that sufficient time should be given for the joint Secretariat to submit the information received from one Social Partner for comments to the other Social Partner, before inclusion in the report.

3.18 The Shipowners' representative supported the comments by the delegation of Cyprus.

3.19 The Seafarers' representative stated that although, in his opinion, evidence existed that the Guidelines were not having any impact, there was a need to identify more precisely the necessary information. He supported the comments by the Government representative of Cyprus and agreed that more time might be necessary to achieve this objective.

3.20 The delegation of the Philippines stated that, as the largest supplier of seafarers, their interests were of paramount importance for the country. She then supported the re-issuing of the questionnaire.

3.21 The delegation of Cyprus noted that the problem of abandonment was related to shipowners' financial conditions, hence the need for appropriate safeguards to be in place. He then suggested that, when re-issuing the questionnaire, States should be informed of the Joint Working Group's preliminary conclusions, based on the replies received so far. The Joint Working Group, at its next session in early 2005, should decide on further work, so that its recommendation could be considered by the Legal Committee at its ninetieth session in Spring 2005, for possible insertion in the Committee's work programme for the next biennium.

3.22 The Shipowners' representative indicated that Governments needed to develop appropriate legislation and pointed out that difficulties observed in responses to the questionnaires resulted *inter alia* from an unclear definition of abandonment.

3.23 The Chairperson of the Joint Working Group remarked that it would not be possible for the Group to re-draft the questionnaire during this session.

3.24 The delegation of the United States suggested that the Joint Working Group make a preliminary determination from the evidence already received. The delegation stated that the preliminary determination would be subject to possible revision at the next session of Group, based on the evidence received in response to the second issuance of the circular.

3.25 A Shipowners' representative remarked that important decisions should not be taken on the basis of limited samples, in particular, when major registers or large labour-supplying countries had not yet provided their responses.

3.26 Following a proposal by the Chair, a small working group was established to prepare the covering note to be sent to Governments for re-issuing the questionnaire, taking into account the United Kingdom's suggestion to add a new box for comments.

3.27 The observer delegation of Norway advocated that the Joint Working Group should work towards the recommendation of a mandatory instrument, since this issue concerned seafarers' fundamental rights. The lack of an effective international instrument in itself constituted a compelling need, in the view of this delegation. The delegation also advised the Group to pursue the principle of flag State responsibility in this area. The possibility of port State supervision was also envisaged.

3.28 The Seafarers' representative, referring to pages 6 and 16 of document IMO/ILO/WGLCCS 5/2, stated that the ILO summary was accurate and that it confirmed his Group's evaluation of the situation. His Group was of the opinion that the preparation of a mandatory instrument should be recommended by the Joint Working Group.

3.29 The Shipowners' representative, having observed that immigration was also an issue, remarked that the Joint Working Group could only reach a preliminary determination. She also underlined that this issue needed broader consideration than had been given so far. Opinions of Government experts were needed in this area.

3.30 Summing up the discussion, the Chairperson remarked that the Governing Bodies of both Organizations would require the demonstration of a compelling need to agree on the development of a binding instrument. So far, no compelling need could clearly be established. Hence, the need to re-issue the questionnaire in the light of the suggestion made by the United States.

3.31 The Joint Working Group noted, with regret, that only very few Member Governments, namely only 12, had submitted replies to the questionnaire.

3.32 The Joint Working Group particularly noted that eight of the 12 Member Governments that replied to this questionnaire do not have a legal definition of abandonment. It seems, however, that mechanisms often exist to address these problems at the national level. Due to differing legal systems, mechanisms to deal with abandonment vary greatly in their coverage and effectiveness. Furthermore, the terminologies used to describe these situations also vary considerably and various terms, other than "abandonment", are used to describe the matter. In addition, the issues addressed vary considerably and do not necessarily include all the aspects contained in the definition of abandonment in the Guidelines.

3.33 The Member Governments that responded often have mechanisms to address the problems of their own nationals and of foreign seafarers on ships flying their flag. However, the situation of foreign seafarers working aboard ships flying a foreign flag in their ports is often not specifically addressed by national legislation.

3.34 The national systems in place to deal with abandonment cases vary widely. While most areas (such as repatriation and health care) seem to be covered by national legislation, differences exist regarding the payment of wages, as well as the provision of food and accommodation. Limitations and inconsistencies exist that result in the Guidelines not being fully applied.

3.35 No changes to legislation as a result of the Guidelines have yet occurred. Three Member Governments of the 12 that responded have indicated that they are willing to amend their legislation, but not necessarily in accordance with the Guidelines.

3.36 The assignment of focal points by countries constitutes a step towards implementation of rules in this area.

3.37 Based on the data received so far, the Group determined that the resolution and the Guidelines had not yet been fully implemented. This preliminary determination is subject to possible revision at the next session.

3.38 On the basis of a study of the replies received to the questionnaire and in view of the number of cases of abandonment which have been reported, the Seafarers and some Governments considered that the only way forward would be to recommend the drafting of a mandatory instrument.

3.39 However, the Shipowners and some Governments were of the view that, in the light of the limited data available and the fact that the resolution and the Guidelines had not yet been fully implemented, it was premature to take such a decision at this stage.

3.40 The Joint Working Group agreed that after five sessions, the time had come for it to reach decisions on the advice to be offered to the IMO Legal Committee and the ILO Governing Body on whether a longer-term sustainable solution will be required to deal with cases of abandonment and thus agreed to take its final decision at its next session, on the recommendation to be made to the ILO Governing Body and to the IMO Legal Committee.

3.41 The Joint Working Group also agreed that a renewed attempt to collect additional answers to the questionnaire and relevant data would be useful.

3.42 The Joint Working Group noted the Seafarers' view that the only viable way forward to resolve issues relating to abandonment is through the development and adoption of a binding mandatory instrument in the light of the lack of implementation of the Guidelines.

3.43 The Group decided:

- to resend the circular on reporting of incidents of abandonment, the revised text of which is contained in Annex 1 to this report;
- to emphasize to Member Governments the importance of a rapid and comprehensive answer to be received by [1 November 2004] at the latest;
- to review, at its next session in spring 2005, the preliminary determination regarding the implementation of the resolution and of the Guidelines in the light of all the answers to the questionnaire and data relating to abandonment available at that time; and
- to take its final decision at its next session on the recommendation to be made to the ILO Governing Body and to the IMO Legal Committee.

3.44 The Seafarers' representative expressed the view that the fact that this was the fifth session of this Joint Working Group clearly demonstrated the existence of a compelling need to progress this issue.

3.45 The Shipowners' representative agreed with the Chairperson's suggestion to re-circulate the questionnaire and to form a preliminary view on future action.

3.46 The Joint Working Group agreed to amend and re-issue the questionnaire on Monitoring the implementation of the Guidelines on provision of financial security in cases of abandonment of seafarers, adopted by resolution A.930(22), the text of which is contained in Annex 2 to this report. In this regard, the Group also approved the draft circular letter prepared for this purpose, the text of which is contained in the same Annex.

3.47 The ILO representative gave information on the stage of development of the database on abandonment and how it envisaged that it should be funded. The representative of ISSA confirmed its interest in the database and supported the funding thereof.

Personal injury and death of seafarers

3.48 The representative of the ILO Secretariat introduced Part C of IMO/ILO/WGLCCS 5/2 and IMO/ILO/WGLCCS 5/2/Add.1 on personal injury and death and outlined the findings contained therein.

3.49 A Seafarers' representative introduced document IMO/ILO/WGLCCS 5/3. He stressed that it was an independent academic study (done by SIRC) which, due to time constraints, had to be limited to two representative samples. Its purpose was to assess the extent to which the Guidelines were being complied with and it confirmed that there was a clear need for action.

3.50 At the invitation by the Chairman, the representative International Group of P&I Clubs introduced document IMO/ILO/WGLCCS 5/2/2, setting out the International Group's proposals in relation to an informal procedure for dealing with allegations of the use of unfair claims techniques in respect of claims for contractual compensation for death and personal injury. He stated that the evidence before the Joint Working Group did not reveal a significant problem in the payment of contractual compensation for death and injury claims. The proposed informal procedure would be of assistance in the solution of difficult cases.

3.51 A Shipowners' representative said that her office had contacted SIRC in advance of the meeting, and had sought clarification on some of the data presented in the report. Her office had been advised that this was not possible as the document was copyrighted to ITF and that any questions should be accordingly addressed directly to ITF.

3.52 The Seafarers' representative regretted that the Shipowners had not given them prior notification of the questions, as they would have had to consult SIRC. As it was an independent study, the ITF had not been involved in the interviews or in contacting the individual respondents.

3.53 The representative of the International Group of P&I Clubs questioned the methodology used in preparing document IMO/ILO/WGLCCS/5/2/2, which largely consisted of untested assertions.

3.54 In response to a question from the delegation of Cyprus, the representative of the International Group of P & I Clubs confirmed that Clubs' rules provided that a member's insolvency terminated cover and the effects of abandonment were not therefore generally covered. With regard to payment of contractual compensation, he noted that the Clubs were mutual organizations and recalled the information that had been provided to the Joint Working Group at its third session on the Clubs and Club rules in paper IMO/ILO/WGLCCS 3/4/3. He reiterated, as stated in that paper, that the Clubs had not in the past relied on the "pay to be paid" rule or the retrospective withdrawal of cover rules in relation to valid compensation claims for death and personal injury and intended to continue that approach, as illustrated by the example appearing in the SIRC paper IMO/ILO/WGLCCS 5/2/1.

3.55 The Seafarers' representative reiterated that monitoring had demonstrated that the Guidelines were not being implemented and suggested that sensitive issues should be identified and included in the questionnaire.

3.56 A representative of the Seafarers' group, quoting IMO resolution A.898(21), observed that shipowners were expected to arrange insurance cover in compliance with the Guidelines identified in that resolution.

3.57 The Shipowners' representative agreed that, so far, the resolution and Guidelines had had no influence.

3.58 The delegation of France said that the International Group of P&I Clubs' unwillingness to provide cover in compliance with the Guidelines, established, in itself, that they had not been adhered to.

3.59 The representative of ICCL suggested that the ITF submission should be complemented by supplementary information supporting the conclusions. She expressed doubts on the possibility that mandatory Guidelines would be widely ratified by Governments, considering the low interest demonstrated so far.

3.60 The delegation of Cyprus, referring to the intervention by France, suggested that necessary coverage could be found in the rest of the insurance market.

3.61 The Seafarers' representative supported the statement by the delegation of Cyprus and reaffirmed the need for a mandatory instrument.

3.62 The Shipowners' representative reiterated that the resolutions and Guidelines had had no impact and wondered whether Governments would be willing to ratify a mandatory instrument. This attitude of Governments not present at the meeting, indicated that they were satisfied with the current situation and the product offered by the P&I Clubs.

3.63 The observer delegation of Norway stated that the unwillingness of the P&I Clubs to change their rules indicated that there was a problem to be addressed by a mandatory instrument.

3.64 The Seafarers' representative, having remarked that various types of compulsory insurance already existed in the maritime industry for cases such as pollution damage, stressed that the same concept should apply to the issue of personal injury and death of seafarers.

3.65 The representative of the International Group of P&I Clubs recalled that, in resolution A.898(21) and its Guidelines, IMO Member States had stated that shipowners should effect insurance of the kind provided by P&I Clubs belonging to the International Group. However, the Club cover would not be able to comply with certain aspects of the Guidelines, such as individual notification to seafarers that cover was being terminated. He concluded by indicating that, in his opinion, the appropriate forum for developing a long-term solution, if that were considered necessary, would be the ILO.

3.66 The Shipowners' representative remarked that the debate would not have focused on the attitude of the P&I Clubs if Governments had volunteered to legislate on this issue.

3.67 The Shipowners' representative stated that very little guidance was provided since, so far, no compelling evidence existed on the Governments' performance and interest. Such information was, however, a precondition for further steps.

3.68 The delegation of the United Kingdom clarified that the United Kingdom had not responded to the questionnaire due to an administrative problem and not to a lack of interest in the subject.

3.69 The Seafarers' representative observed that the responsibility to provide fundamental rights to protect seafarers had not been discharged by the existing Guidelines. Something had to be done, and it was not important to consider who would provide the appropriate insurance. He referred to an earlier remark made by the observer delegation of Norway and reiterated that issues such as retrospective withdrawal of cover under Club rules needed to be addressed. He expressed the opinion that the Joint Working Group needed to become proactive and firmly pursue the development of a mandatory instrument, that this could not be affected by Club rules.

3.70 The Shipowners' representative reiterated that a re-issuing of the questionnaire was one way to provide the information needed for further steps. She also asked if the Joint Secretariat or Governments present had any other ideas about how to obtain opinions and reports from more Governments.

3.71 The delegation of the United States stated that the evidence collected showed that the resolution had had no impact on national legislation. In his opinion, the resolution had not met its goals, and it was a matter for the Joint Working Group to assess and discuss whether or not a mandatory instrument was needed. United States' support for a mandatory instrument was, he said, contingent upon an exemption for countries which already afford greater statutory or common law protection for their seafarers. This exemption would be consistent with the resolution, which exempted flag States whose existing law met or exceeded the standards set by the resolution and Guidelines. The United States concurred with the delegations of Cyprus and France, which had already expressed support for a mandatory instrument.

3.72 The observer delegation of Norway expressed the view that this matter concerned seafarers' fundamental rights. That, in itself, should be sufficient to conclude that there is a compelling need for a mandatory instrument in this area. The delegation therefore recommended that the Joint Working Group should reach a conclusion at this session that a mandatory instrument was necessary.

3.73 This position was supported by the other Government delegations which intervened. In particular, the delegation of Cyprus stated that the existing Guidelines should not prejudice or limit the content of the future mandatory instrument.

3.74 The Seafarers' representative stated that the P&I Clubs had not acted in accordance with the Guidelines, since no existing mandatory legislation obliged them to do so. His Group recommended that a mandatory instrument should now be developed, taking into account the fact that the preparation would require time.

3.75 The Shipowners' representative pointed out that the role of Governments was decisive in ensuring a level playing field. So far, however, no prediction could be made on the reaction of Member States' parliaments, since vital information was still missing.

3.76 Assuming that responsible flag States would take all necessary steps to ensure the protection of their seafarers, whilst others would not, the Seafarers' representative reiterated that only a mandatory instrument could provide for a level playing field. Moreover, an inclusion into the non-mandatory part B of the Code in the future ILO Consolidated Convention could not be agreed upon and would not replace a mandatory instrument.

3.77 A Shipowners' representative remarked that the Shipowners' Group took the proposed consolidated convention very seriously. She clarified that it believed that Part B of a future instrument was an important and fundamental element. The Shipowners also felt that adequate coverage would be made in the proposed Part A on Shipowners' liability within the proposed convention.

3.78 The Seafarers' representative recalled the genesis of the discussion within the framework of the preparation of a general insurance regime. That general regime had later been divided into several subjects and the issue at stake constituted a missing link. That was the reason for establishing the Joint Working Group and for pursuing a mandatory solution. Moreover, the complex and sensitive issues which arose, for example the "pay to be paid" rule, had frequently been discussed within the IMO Legal Committee, and had the capacity to disrupt the ILO process severely.

3.79 The representative of the International Group of P&I Clubs reiterated that in the light of the information collected, there was no need for a mandatory solution. The great majority of the States that had replied to the questionnaire had domestic legislation in place that met or exceeded the Guidelines' recommended standards. He suggested that the fact this was true of most States might be the reason why so few States had responded to the questionnaire. There was therefore no compelling reason to develop a mandatory solution and States were therefore unlikely to ratify a Convention that may conflict with domestic employment and welfare law, which was often not restricted to seafarers, but included other members of the workforce.

3.80 The Shipowners' representative stressed that her Group fully shared the necessity to protect the seafarers' interests, whenever they were endangered. Although there was no provision in the Guidelines to develop an instrument, the Joint Working Group could recommend to the respective Governing Bodies to allow for the preparation of more practical proposals than the present ones.

3.81 The Seafarers' representative drew the attention of the Joint Working Group to issues such as one-ship companies, which had no assets left once bankrupt.

3.82 At the end of the debate it appeared that:

- (1) The Seafarers and the four Governments which spoke expressed the view that the current situation was no longer acceptable, and saw no reasons for resending the questionnaire. They were in favour of moving towards a mandatory solution.
- (2) The Shipowners believed that the present P&I coverage was satisfactory and that no other technical solutions were necessary. They also expressed the view that the questionnaire should be resent and that no conclusions should be drawn until further data had been collected and evaluated.
- (3) The Social Partners and the Governments were of the view that neither resolution A.931(22) nor the associated Guidelines had had any impact so far.

3.83 The Joint Working Group agreed that, if it was to fulfil its mandate, it was necessary to go back to the IMO Legal Committee and the ILO Governing Body with proposals and recommendations for future actions on the issue of claims for compensation in case of death and personal injury.

3.84 The Joint Working Group agreed to recommend to the IMO Legal Committee and the ILO Governing Body that the time had come for the two bodies to authorize the Group to proceed with the development of longer-term sustainable solutions to address the problems of financial security with regard to compensation in case of death and personal injury and that such solutions should be of a mandatory character.

3.85 In this respect, the Joint Working Group also agreed to advise and seek the concurrence of the IMO Legal Committee and the ILO Governing Body with the following principles:

- (1) Bearing in mind the reservation expressed by the Social Partners on the text of resolution A.931(22) and of the associated Guidelines, neither resolution A.931(22) nor the associated Guidelines should prejudice, or serve as a precedent constraining, in any way whatsoever, the eventual mandatory solution;
- (2) The eventual mandatory solution should not in any way interfere, affect, erode or in any way whatsoever, diminish any rights or remedies seafarers may enjoy in a particular State under an existing legal framework.

3.86 In the case that the IMO Legal Committee and the ILO Governing Body were to accept the recommendation of the Joint Working Group contained in paragraph 3.84 and concur with the views expressed in paragraph 3.85, the Group also agreed, subject to the provisions of paragraph 3.87 below, to recommend that the IMO Legal Committee and the ILO Governing Body also authorize the Joint Secretariat to prepare suggestions, including possible headings, concepts and likely outlines of contents of possible mandatory solutions for the consideration of the Joint Working Group at its next session.

3.87 The Joint Working Group instructed the Joint Secretariat to circulate the outcome of the discussions of the IMO Legal Committee and the ILO Governing Body on the recommendations of the Working Group contained in paragraphs 3.84, 3.85 and 3.86 as soon as possible in order to enable the Social Partners and the Governments to make their own written submission on the format and content of possible eventual mandatory solutions as soon as possible.

3.88 The Shipowners agreed to the Seafarers' representative's request to meet before the next session of the Joint Working Group. However, she stated that it would be impossible to prejudge the outcome of this meeting.

4 Possible revision of the Joint Working Group's terms of reference

4.1 The Joint Working Group agreed to revise its terms of reference, the text of which is contained in Annex 3 to this report.

5 Any other business

5.1 The Joint Working Group approved, after debate, its Guidelines on method of work, the text of which is contained in Annex 4 to this report.

6 Adoption of the report

6.1 The Joint Working Group approved its report for its fifth session, as contained in the present document, but, in this connection, the Seafarers' representative commented that his Group considered that the text which came from the small working group which met aside did not fully reflect the debate in the Plenary and the support the Governments had given to the Seafarers' position on the need for a mandatory solution.

ANNEX 1

DRAFT CIRCULAR LETTER

REPORTING CASES 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) (the Resolution) and Guidelines on the Provision of Financial Security in case of Abandonment of Seafarers (the Guidelines) 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 Operative paragraph 8 of the Resolution calls on Member Governments and nongovernmental 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 IMO Legal Committee, at its eighty-sixth session (28 April – 2 May 2003) 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. As a result Circular Letter No. 2486 was issued providing a standardized form for reporting such incidents.

4 The Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers during its fifth session (12 – 14 January 2004), when studying the cases of abandonment which were reported, found that it was necessary to amend the form which is annexed to Circular Letter No. 2486 so as make provisions for recording any comments or observations which either the party which has submitted the report or any other Member Governments and non-governmental organizations with consultative or observer status in the IMO or the ILO wishes to put forward.

The revised form to be used when reporting cases of abandonment is annexed to this Circular Letter.

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”.

5 The Joint IMO/ILO Ad Hoc Expert Working Group recalled that its mandate included the task of monitoring and assessing the impact and the effectiveness of the Resolution and of the associated Guidelines. The Working Group also recalled that it has been instructed to establish whether the frequency of cases of abandonment is increasing or decreasing and to advise on any new feature or pattern of significance. To facilitate this mission the criterion to be used in determining whether a case of abandonment exists is the definition of abandonment contained in the Guidelines.

6 Member States and organizations are requested to complete the form, attached as Annex to this Circular Letter:

- (1) to report a case of abandonment for the first time;
- (2) to report the status of repatriation of affected seafarers or the status of payment of any outstanding remuneration; and
- (3) to submit any comments or observations in connection with a reported case of abandonment.

7 Cases of abandonment and the subsequent repatriation of affected seafarers or the payment of any outstanding remunerations should be reported as soon as practicable.

8 Member Governments and non-governmental organizations with consultative or observer status in the IMO or the ILO have the opportunity to submit comments and observations on a reported cases of abandonment. Any reporting discrepancies relating to a particular case should be included in the six monthly and in the annual composite reports to be prepared by the Secretariats.

9 Any Member Government or organization submitting information may attach to its submission any supporting documentation it considers necessary.

10 All information relating to cases of abandonment should be sent to either of the following addresses, preferably in electronic format:

- IMO, 4 Albert Embankment, London SE1 7SR, United Kingdom, info@imo.org
Mr. G. Librando, Senior Legal Officer at the above address, glibrando@imo.org
- ILO, 4 Rue des Morillons, 1211 Geneva 4, Switzerland, marit@ilo.org
Mrs. C. Doumbia-Henry, Director, Sectoral Activities at the above address,
doumbia@ilo.org

11 The attached form of reporting should be used when:

- (1) reporting cases of abandonment which occur on or after 1 January 2004 or submitting comments thereto; and
- (2) reporting, after the date of issue of this Circular Letter, cases of abandonment which occurred during 2003;

- (3) submitting, after the date of issue of the Circular Letter, comments relating to cases of abandonment reported as having occurred during 2003.

12 In addition if a Member Government or organization decides, after the date of issue of this Circular Letter, to report cases of abandonment which occurred during 2002, or to submit any comments relating to such cases, the attached form should also be used.

13 This Circular Letter replaces and supersedes Circular Letter No. 2486.

ANNEX 2**DRAFT CIRCULAR LETTER****MONITORING THE IMPLEMENTATION OF THE GUIDELINES ON
PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT
OF SEAFARERS ADOPTED BY RESOLUTION A.930(22)**

1 The Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers during its fifth session (12-14 January 2003), reviewed the replies received to the questionnaire on monitoring the implementation of the resolution A.930(22) and of the Guidelines on provision of financial security in case of abandonment of seafarers which have been adopted with this resolution which is attached as Annex 1 to Circular Letter No. 2457.

2 The Joint IMO/ILO Ad Hoc Expert Working Group noted, with regret, that only very few Member Governments, namely only 12, had submitted replies to the questionnaire.

2.1 Eight of the 12 Member Governments that replied to this questionnaire do not have a legal definition of abandonment. It seems, however, that mechanisms often exist to address these problems at the national level. Due to differing legal systems, mechanisms to deal with abandonment vary greatly in their coverage and effectiveness. Furthermore, the terminologies used to describe these situations also vary considerably and various items, other than "abandonment", are used to describe the matter. In addition, the issues addressed vary considerably and do not necessarily include all the aspects contained in the definition of abandonment contained in the Guidelines.

2.2 The Member Governments that responded often have mechanisms to address the problems of their own nationals and of foreign seafarers on ships flying their flag. However, the situation of foreign seafarers working aboard ships flying a foreign flag in their ports is often not specifically addressed by national legislation.

2.3 The national systems in place to deal with abandonment cases vary widely. While most areas (such as repatriation and health care) seem to be covered by national legislation, differences exist regarding the payment of wages, as well as the provision of food and accommodation. Limitations and inconsistencies exist that result in the Guidelines not being fully applied.

2.4 No changes to legislation as a result of the Guidelines have yet occurred. Three Member Governments of the 12 that responded have indicated that they are willing to amend their legislation but not necessarily in accordance with the Guidelines.

2.5 The assignment of focal points by countries constitutes a step towards implementation of rules in this area.

2.6 Based on the data received so far, the Joint Working Group determined that the resolution and the Guidelines had not yet been fully implemented. This preliminary determination is subject to possible revision at the Group's next session.

2.7 On the basis of a study, the replies received to the questionnaire and in view of the number of cases of abandonment which have been reported, the Seafarers and some Governments considered that the only way forward would be to recommend the drafting of a mandatory instrument.

2.8 However, the Shipowners and some Governments were of the view that, in the light of the limited data available and the fact that the resolution and the Guidelines had not yet been fully implemented, it was premature to make such a decision at this stage.

2.9 The Joint Working Group agreed, that after five sessions, the time had come for the Group to reach decisions on the advice to be offered to the IMO Legal Committee and the ILO Governing Body on whether a longer-term sustainable solution will be required to deal with cases of abandonment and thus agreed to take its final decision at its next session, on the recommendation to be made to the ILO Governing Body and to the IMO Legal Committee.

2.10 The Group also agreed that a renewed attempt to collect additional answers to the questionnaire and relevant data would be useful.

2.11 The Group noted the Seafarers' view that the only viable way forward to resolve issues relating to abandonment is through the development and adoption of a binding mandatory instrument in the light of the lack of implementation of the Guidelines.

3 The Joint IMO/ILO Expert Working Group decided:

- to resend the questionnaire, as revised, annexed to this draft circular letter;
- to emphasize to Member Governments the importance of a rapid and comprehensive answer to be received by [1 November 2004] at the latest;
- to review, at its next session in [Spring] 2005, the preliminary determination regarding the implementation of the resolution and of the Guidelines in the light of all the answers to the questionnaire and data relating to abandonment available at that time; and
- to take its final decision at its next session on the recommendation to be made to the ILO Governing Body and to the IMO Legal Committee.

4 Further details on the discussions of the matter by the Joint IMO/ILO Ad Hoc Expert Working Group may be found in paragraphs 3.1 to 3.88 of the report of its fifth session (document IMO/ILO/WGLCCSS/5/3).

5 The Joint IMO/ILO Ad Hoc Expert Working Group at its fifth session reviewed and to some extent, revised the questionnaire which is attached as Annex I to this circular. Some modifications have been introduced to some of the questions and the form to be used for reporting cases of abandonment has been replaced to ensure consistency with the one included in the draft circular letter contained in Annex 1 to this report.

6 The purpose of the questionnaire is to collect information on steps taken by Member Governments concerning the implementation of the Guidelines, action taken to solve cases of abandonment and difficulties encountered in the implementation of resolution A.930(22) and of the associated Guidelines, a copy of which is contained in Annex II to this circular.

7 Member Governments are urged to complete and submit the attached questionnaire as soon as possible. The information collected will be submitted to the sixth session of the Joint IMO/ILO Ad Hoc Expert Working Group, scheduled to take place in the Spring of 2005, in order to enable the Joint Working Group to progress its mandate.

8 Those Member Governments which have already submitted answers to the questionnaire which has been issued under the cover of Circular Letter No. 2457, may wish to consider submitting supplementary or additional information, in particular, for example, in relation to issues they have either indicated that the matter was not dealt with at the national level or the matter was being considered for further action. Furthermore, they may wish to consider submitting information relating to cases of abandonment which occurred since their previous submission or supplementary information to previous reported cases.

9 The completed questionnaires should be sent to either of the following addresses, preferably in electronic format:

- IMO, 4 Albert Embankment, London, SE1, 7SR, United Kingdom, info@imo.org
Mr. G. Librando, Senior Legal Officer at the above address, glibrando@imo.org
- ILO, 4 Rue des Morillons, 1211 Geneva 4, Switzerland, marit@ilo.org
Mrs. C. Doumbia-Henry, Director, Sectoral Activities at the above address, doumbia@ilo.org

10 All aspects of Circular Letter No. 2457, dealing with the issues of abandonment of seafarers and in particular Annex 1 of the aforesaid Circular Letter are superseded and replaced by the present Circular Letter.

ANNEX I

**QUESTIONNAIRE ON MONITORING THE IMPLEMENTATION OF THE
RESOLUTION AND GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN
CASE OF ABANDONMENT OF SEAFARERS⁴**

I. Question concerning legislative and administrative arrangements, mechanisms and practices

1 Questions concerning your national laws and regulations:

(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) Abandonment has been defined in paragraph 2.1.3 of the Guidelines contained in the annex to Resolution.A.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”

If Yes to (a) above, to what extent is the definition of abandonment contained in your legislation consistent the definition included in Resolution A.930 (22)?

(d) If No to (a) above, have your courts or other authorities developed a practical definition of abandonment?

If Yes, what is the practical definition as developed by your courts or other authorities?

⁴ A copy of the resolution and Guidelines is attached as an Appendix to this Annex

5. Do you have any plans to change your laws, regulations or practice to comply with the requirements of Resolution A.930(22) in the near future?

Yes No

If Yes, please indicate the details.

6. Do you have any difficulties in implementing the Resolution A.930(22) or the Guidelines?

Yes No

If Yes, please describe these difficulties.

II. Questions concerning cases of abandonment

7. Please provide information⁵ using the form attached to this Questionnaire on cases of abandonment which occurred on or after 1 January 2002 and which:

- (a) Involved ships entitled to fly your flag;
- (b) Involved seafarers who are your nationals, irrespective of the flag the ship in question was/is entitled to fly;
- (c) Occurred in your ports, irrespective of the flag the ship in question was/is entitled to fly or the nationality of the affected seafarers.

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

Contact with other organizations

Absence of national arrangements for dealing with abandonment

Other, please indicate the details

9. As provided for in operative 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.

⁵ Draft circular letter contained in Annex 1 to this report also covers the issue of reporting cases of abandonment.

ANNEX II

Resolution A.930(22)

*Adopted on 29 November 2001
(Agenda item 10)*

**GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN CASE OF
ABANDONMENT OF SEAFARERS**

THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE,

NOTING the importance in the plan of action of the International Maritime Organization (IMO) of the human element, which is central for the promotion of quality shipping, and the core mandate of the International Labour Organization (ILO), which is to promote decent conditions of work,

RECALLING the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up as well as the relevant international labour standards applicable to maritime employment;

RECALLING ALSO the generally accepted principles of international human rights applicable to all workers;

RECALLING FURTHER Article 94 of the United Nations Convention on the Law of the Sea, 1982, which requires the flag State to exercise its effective jurisdiction and control in administrative, technical and social matters over ships flying its flag;

CONSIDERING the provisions of Article 5 of the Vienna Convention on Consular Relations, 1963, in particular the extension by a State of consular protection and assistance to its nationals and to its vessels and their crews;

CONSIDERING FURTHER the International Convention on Maritime Liens and Mortgages, 1993, and the International Convention on Arrest of Ships, 1999;

NOTING the relevant international labour standards applicable to maritime employment, in particular the ILO Repatriation of Seafarers Convention (Revised), 1987 (No. 166);

NOTING FURTHER the Resolution concerning the Protection of Wages and Stranded Seafarers adopted by the Governing Body of the International Labour Office at its 252nd session (March 1992);

RECOGNIZING that abandonment of seafarers is a serious problem, involving a human and social dimension;

CONSIDERING ALSO that, given the global nature of the shipping industry, seafarers need special protection;

CONCERNED THAT, if shipowners do not have effective financial security, seafarers may not receive due remuneration or be promptly repatriated in cases of abandonment;

NOTING that the Guidelines represent a valuable contribution to the objectives of eliminating the operation of sub-standard ships and enhancing the social protection of seafarers;

RECOGNIZING ALSO that the present resolution does not call for the adoption of additional mechanisms where national legislation already meets or exceeds the provisions of the Guidelines;

AFFIRMING that provision for repatriation, maintenance while abandoned, and payment of remuneration should form part of the seafarer's contractual and/or statutory rights, and are not affected by the failure or inability of the shipowner to perform its obligations;

RECOGNIZING FURTHER that in cases where the shipowner fails to meet its obligations, the flag State may be called upon, and in some cases the State of which the seafarer is a national or the port State may be called upon, to intervene;

CONVINCED that the adoption of guidelines is an appropriate interim measure to ensure provision of financial security in case of abandonment of seafarers;

1 ADOPT the Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers, set out in the annex to the present resolution;

2 REQUEST Member Governments to bring this resolution and Guidelines to the attention of shipowners and seafarers and their respective organizations;

3 URGE Member Governments, when discharging their obligation as flag States:

.1 to ensure that shipowners comply with the Guidelines;

.2 to ensure that seafarers employed or engaged on ships flying their flag are protected, in case of abandonment, by a financial security system;

.3 to have in place, as a contingency, arrangements for the maintenance and repatriation of seafarers employed or engaged on ships flying their flag, in case of abandonment;

4 URGE ALSO Member Governments, where seafarers have been abandoned within their jurisdiction, to inform the flag State of the ship and the States of which the seafarers are nationals about the event, and to cooperate and assist each other in the speedy resolution of the situation;

5 INVITE Member Governments to recognise that, in accordance with the relevant international labour standards, when the shipowner has not fulfilled its international obligations and the financial security system or the flag State fails to repatriate abandoned seafarers, the port State or the States of which the seafarers are nationals may undertake the repatriation without prejudice as to the recovery of the costs;

6 RECOMMEND that Member Governments:

- .1 draw the attention of their immigration authorities to the benefits provided to abandoned seafarers covered by a financial security system; and
- .2 consider that the absence of a financial security system should not prejudice the immigration status of abandoned seafarers;

7 CALL UPON Member Governments, without prejudice to notification requirements under applicable international instruments, to communicate to the Secretary-General of the IMO or the Director General of the ILO, for the purpose of disseminating the information widely, national focal points responsible for dealing with cases of abandonment and with other issues falling within the scope of the Guidelines;

8 INVITE Member Governments and non-governmental organizations with consultative or observer status in the IMO or the ILO, as appropriate, to record instances of abandoned seafarers and to provide data to the IMO or the ILO whenever requested;

9 REQUEST the Assembly of the IMO and the Governing Body of the ILO to keep the problem of abandonment under review and to assess periodically the scale of the problem;

10 INVITE the IMO Assembly and the ILO Governing Body to consider other appropriate action for longer-term sustainable solutions to address the problems covered by these Guidelines;

11 REQUEST the IMO Assembly and the ILO Governing Body to keep the Guidelines under review and to amend them as necessary; and

12 INVITE Member Governments to note that these Guidelines will take effect on 1 January 2002.

GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT OF SEAFARERS

1 INTRODUCTION

1.1 The purpose of the Guidelines is to assist States, when establishing their national requirements, to identify the most crucial issues relating to financial security in case of abandonment of seafarers.

1.2 The Guidelines recommend measures to be implemented by shipowners to ensure the provision of an adequate financial security system for seafarers in case of abandonment. The Guidelines set out the main features and scope of coverage of the financial security system and also contain recommendations for certification of the financial security system.

1.3 These Guidelines also apply to fishing vessels engaged in international voyages.

2 DEFINITIONS

2.1 For the purpose of these Guidelines, unless expressly provided otherwise:

- .1 *Shipowner* means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities*;
- .2 *Seafarer* means any person who is employed or engaged in any capacity on board a seagoing ship; and
- .3 *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;

3 SCOPE OF APPLICATION

3.1 Shipowners are urged to comply with these Guidelines in respect of all seagoing ships.

3.2 These Guidelines do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

* Article 1(c) of the Recruitment and Placement of Seafarers Convention 1996 (No.179) and Regulation IX/1.2 of SOLAS 1974 as amended.

4 SHIPOWNERS' RESPONSIBILITIES

4.1 Shipowners should arrange a financial security system which complies with these Guidelines.

4.2 Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these Guidelines.

5 SCOPE OF FINANCIAL SECURITY SYSTEMS

5.1 The financial security system should provide for:

- .1 the expenses of the repatriation of the seafarer, which are to be met without costs to the seafarer;
- .2 the maintenance of the seafarer from the time of abandonment to the time of arrival at the place of repatriation;
- .3 payment to the seafarer of all outstanding remuneration and contractual entitlements; and
- .4 payment to the seafarer of other expenses incurred during the period of abandonment arising from the abandonment.

5.2 In the event that the shipowner fails to fulfil its responsibilities, the financial security system should provide for repatriation of the seafarer by appropriate and expeditious means, normally by air, and including provision of food and accommodation for the seafarer from leaving the ship until arrival at the place of repatriation, medical care, passage and transport of personal effects and any other reasonable charges.

5.3 The maintenance of seafarers while abandoned should include: adequate food, clothing, accommodation, medical care and other basic necessities of life.

5.4 Payment to the seafarers of all outstanding remuneration should include accrued wages and other entitlements as provided for in the contract of employment and/or under national law.

5.5 In the event that the seafarer incurs any other reasonable expenses during the period of abandonment, the seafarer should be entitled to recover such expenses from the financial security system.

6 FORM OF THE FINANCIAL SECURITY SYSTEM

6.1 The financial security system may be in the form of, *inter alia*, social security schemes, insurance, a national fund, or other forms of financial security;

6.2 The financial security system in addition to the provisions of paragraph 5.1 should provide the following:

- .1 a right of direct access by the seafarer to the financial security system;
- .2 sufficient coverage in respect of the elements of abandonment contained in these Guidelines; and
- .3 the applicability of the financial security system to all seafarers irrespective of nationality.

7 CERTIFICATES

7.1 Shipowners should ensure that their seagoing ships engaged on international voyages have on board a certificate attesting to the existence of a financial security system in the event of abandonment of seafarers. It should be posted in a prominent position in the seafarers' accommodation.

7.2 Where more than one certificate is required to cover all seafarers on board a ship, all such certificates should be posted.

7.3 As a minimum, the certificate should include:

- .1 name of the ship;
- .2 port of registry of the ship;
- .3 call sign of the ship;
- .4 IMO Number of the ship;
- .5 name of the provider of the financial security;
- .6 place of business of the provider of the financial security;
- .7 name of the shipowner;
- .8 period of validity of the financial security; and
- .9 an attestation that the financial security meets the recommended standards set out in these Guidelines.

7.4 A copy of the certificate should be provided when required to the immigration authorities for the purpose of informing them that the seafarers are provided with a financial security system covering their maintenance, repatriation and payment of outstanding remuneration.

ANNEX 3

**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.

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 complete the monitoring of the problem of abandonment of crew members/seafarers taking into account all relevant information including technical solutions available for financial security. At the next session it should make appropriate recommendations to the IMO Legal Committee and the ILO Governing Body.

4 It should develop longer-term sustainable solutions to address the problem of financial security with regard to the compensation in cases of death or personal injury.

ANNEX 4**GUIDELINES ON METHOD OF WORK**

1 The Joint Working Group noted that most of the documents relating to the session were issued during December 2003 and did not reach most members of the Joint Working Group until the beginning of January 2004, just a few days before the session. The Group considered that this situation is unsatisfactory, since it does not allow either in depth study of the documents submitted or necessary consultations between parties concerned. Therefore, in order to alleviate the situation, the Joint Working Group has decided that documents should be received by Secretariats as follows:

- (i) documents containing more than 6 pages of text (bulky documents), by a date which is 10 weeks prior to the opening of the session of a Joint Working Group;
- (ii) non-bulky documents, including information documents, by a date which is 8 weeks prior to the opening of the session of the Joint Working Group; and
- (iii) documents commenting on those referred to in (1) or(2) above containing 6 pages or text or less, by a date which is 4 weeks prior to the opening of a session of the Joint Working Group. These documents should start with a paragraph clearly indicating the document on which comments are made.

2 The Joint Working Group agreed that all Members of the Group should adhere to the above guidelines and instructed the Secretariats to observe and implement these accordingly.

ANNEX 5

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

- | | | | |
|---|--|--|--|
| 1 | Opening of the session | | |
| 2 | Adoption of the Agenda | | |
| | IMO/ILO/WGLCCS 5/1 | ILO and IMO Secretariats | Provisional Agenda |
| 3 | Discussion of options for longer-term solutions to the problems of abandonment, personal injury and death of , taking into account relevant IMO and ILO instruments, including those under review or likely to be adopted in the near future, including: | | |
| | IMO/ILO/WGLCCS 5/2 | ILO and IMO Secretariats | Synopsis of replies to the questionnaires on the implementation of resolutions A.930(22) and A.931(22) |
| | IMO/ILO/WGLCCS 5/2/Add.1 | ILO and IMO Secretariats | Same as above |
| | IMO/ILO/WGLCCS 5/2/1 | International Confederation of Free Trade Unions (ICFTU/ITF) | Study on implementation of resolution A.931(22) |
| | IMO/ILO/WGLCCS 5/2/2 | International Group of P & I Clubs | Informal procedure for dealing with allegations of use of unfair claims techniques |
| 4 | Possible revision of the Working Groups terms of reference | | |
| | No document submitted | | |
| 5 | Any other business | | |
| | No document submitted | | |
| 6 | Adoption of the draft report | | |
| | IMO/ILO/WGLCCS 5/WP.1 | ILO and IMO Secretariats | Draft report of the Working Group |
| | IMO/ILO/WGLCCS 5/3 | ILO and IMO Secretariats | Report of the Working Group |

ANNEX 6**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) - k.akatsuka@jsanet.or.jp
 Mr. D. Lindemann (Germany) - Lindemann@Reederverband.de
 Mr. R. Guy (ISF) - richard.guy@marisec.org
 Mrs. E. Midelfart (Norway) - edith.midelfart@rederi.no
 Ms. N. Wiseman (ISF) - isf@marisec.org
 Mr. T. Springett (ISF) - tim.springett@british-shipping.org

SEAFARERS' MEMBERS

Mr. B. Orrell (NUMAST) - borrell@numast.org
 Mr. G. Oca (Philippines)
 Mr. S. Buckman (Ghana)

Advisers

Mr. J. Whitlow (ITF) - whitlow_jon@itf.org.uk
 Ms. S. James (ICFTU) - james-sharon@itf.org.uk
 Mr. J. Smith (France) - Smith_James@itf.org.uk
 Mr. J.R.V. Lamug (Philippines) - amosup@info.com.ph

IMO PARTICIPANTS**MEMBER GOVERNMENTS****- E-MAIL ADDRESSES****CYPRUS**

Mr. N. Charalambous - dmslo@ukgateway.net
 Capt. A. Constantinou - aconstantinou@dms.mcw.gov.cy
 Mr. A.I. Chrysostomou - dmslo@ukgateway.net

FRANCE

Mr. J-M. Schindler - jean-marc.schindler@diplomatie.fr
Mr. F. Joret - fabien.joret@equipement.gouv.fr
Mr. A. Moussat - alain.moussat@equipement.gouv.fr
and: gm3.damgm@equipement.gouv.fr

GREECE

Mr. G. Sivitos
Mr. A. Margetis

PHILIPPINES

Mrs. E. Berenguel - dcm@philemb.co.uk
Mr. V.J. Ablan - labattvic@yahoo.com

UNITED KINGDOM

Mr. P. Sadler - paul_sadler@mcga.gov.uk

UNITED STATES

Mr. P.J. Bonner - Bonner@freehill.com
Mr. D. Stevenson - csr@seamenschurch.org

OBSERVER GOVERNMENTS

- E-MAIL ADDRESSES

BRAZIL

Mr. D. Santos Pinheiro - darlei@mar.org.uk

MARSHALL ISLANDS

Mr. D.J.F. Bruce - djfbuce@hotmail.com

MEXICO

Dr. David Enriquez - sctlon@aol.com

NORWAY

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

INTERGOVERNMENTAL ORGANIZATIONS

THE EUROPEAN COMMISSION (EC)

Ms. A. Devouche - anne.devouche@cec.eu.int

NON-GOVERNMENTAL ORGANIZATIONS

INTERNATIONAL SHIPPING FEDERATION LTD (ISF)

Mr. D. Lindemann - Lindemann@Reederverband.de
Miss N. Wiseman - isf@marisec.org
Mr. R.E.C. Guy - richard.guy@marisec.org
Capt. K. Akatsuka - office@jsaldn.org.uk (English)
- senkyo@jsaldn.org.uk (Japanese)
Capt. F. Preece - Fepreece@dml.co.im
Mr. T. Springett - tim.springett@british-shipping.org

INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

Mr. J. Smith - itf_france@club-internet.fr
- Smith_James@itf.org.uk
Ms. S. James - james-sharon@itf.org.uk
Mr. G.M. Anastassiou - gram@pno.gr

INTERNATIONAL ASSOCIATION OF PRODUCERS OF INSURANCE AND REINSURANCE (BIPAR)

Mr. C. Fernandez - Fernandezc@willis.com

INTERNATIONAL GROUP OF P AND I ASSOCIATIONS (P AND I)

Mr. H. Hurst - heh.hurst@btinternet.co.uk

INTERNATIONAL SHIP SUPPLIERS ACCOCIATION (ISSA)

Mr. S. Eade - issa@dial.pipex.com

INTERNATIONAL COUNCIL OF CRUISE LINES (ICCL)

Mr. M. Crye - mcrye@iccl.org

INTERNATIONAL CHRISTIAN MARITIME ASSOCIATION (ICMA)

Mr. J. Laasio - jaakko.laasio@merimieskirKKko.fi

WORLD MARITIME UNIVERSITY

Prof. D. Nielsen

- dn@wmu.se

JOINT SECRETARIAT

ILO

Ms. C. Doumbia-Henry, Director, Sectoral Activities Department, doumbia@ilo.org
Mr. M.G. Hahn, Legal Officer
Mr. J.-Y. Legouas, Senior Maritime Specialist, legouas@ilo.org

IMO

Mr. E.E. Mitropoulos, Secretary-General
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
Mr. C. Young, Senior Legal Officer, Legal Office, Legal Affairs
and External Relations Division
Ms. G. Gibson, Administrative Officer, Legal Office, Legal Affairs
and External Relations Division
