



FIFTH ITEM ON THE AGENDA

**Report of the Sixth 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, 19-21 September 2005)**

1. At its 289th Session (March 2004), 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 sixth session of the Working Group, with participation by 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 sixth session from 19 to 21 September 2005, at the headquarters of the International Maritime Organization (IMO) in London (report appended).
3. At its sixth session, the Working Group was of the view, regarding the problem of abandonment of seafarers, that the situation was not satisfactory and that work should proceed towards the development of a mandatory solution, subject to the outcome of the 94th (Maritime) Session of the International Labour Conference to be held in February 2006.
4. Concerning 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 requested the secretariats to prepare a document containing elements for discussion and possible inclusion in a longer term solution.
5. Concerning the operation of a database on reported cases of abandonment, the Working Group agreed:
  - on procedures to be followed (paragraphs 3.90 and 3.91 of the attached report);
  - on the presentation of cases of abandonment (paragraphs 3.105 and 3.106); and

- that, at this stage, no information should be deleted (paragraph 3.111).

It also agreed to reassess the operation of the database in light of the experience gained at the Working Group's next session.

6. Concerning the inclusion of fishing vessels on international voyages in the remit of any longer term solution, the Shipowner members pointed out that they did not represent fishing vessel owners. In order to ensure participation of fishing vessel owners, it was proposed that the ILO consider including in the composition of the ILO delegation one fishing vessel owner representative.
7. The Working Group proposed an amendment to its present terms of reference to reflect its abovementioned recommendations. The proposed terms of reference are contained in Annex 1 of the report of the Working Group.
8. At its 294th Session (November 2005), the ILO Governing Body received an oral update on the sixth session of the Working Group, and took note of the information provided.<sup>1</sup>
9. ***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:***
  - (a) *the revised terms of reference for the Working Group, as contained in Annex 1 of the report;*
  - (b) *the operation of a database on incidents of abandonment of seafarers on the terms proposed by the Working Group; and*
  - (c) *the holding of a seventh session of the Working Group, with participation by eight ILO (three Shipowner, one fishing vessel owner, and four Seafarer) representatives, at no cost to the ILO.*

Geneva, 20 January 2006.

*Point for decision:* Paragraph 9.

<sup>1</sup> See GB.294/12, paras. 29-33.



IMO

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

Sixth session  
Agenda item 6

IMO/ILO/WGLCCS 6/6  
3 November 2005.  
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 sixth session from 19 to 21 September 2005 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 provided at Annex 2 to this document and the list of participants is provided at annex 3 to this document.

1.2. In welcoming participants on behalf of the Secretary-General of IMO, Dr. Rosalie Balkin, Director, Legal Affairs and External Relations Division, underlined the Organization's commitment to the consideration of human element issues in shipping, this being one of its prime objectives for the current decade. The complex issue of seafarers detained ashore as a result of accidents involving ships on which they were serving had been incorporated into the agenda of IMO's Legal Committee, and the first session of the Joint IMO/ILO Ad Hoc expert Working Group on Fair Treatment of Seafarers had taken place in IMO in January 2005. As a first step the Group had adopted a draft resolution on guidelines on fair treatment of seafarers in the event of a maritime accident, to be presented to the twenty-fourth session of the IMO Assembly in November 2005

1.3. Dr. Balkin recalled that the present Joint Working Group had been established under the provisions of the Agreement of Co-operation between IMO and ILO to ensure, through the operation of appropriate international instruments, the rights of seafarers on an equally important topic, namely the right to adequate compensation for loss of life and personal injury, as well as to adequate protection in cases of abandonment.

1.4. Dr. Balkin further recalled the main achievements of the Joint Group, namely the development of two important resolutions and related guidelines, one on provision of financial security in case of abandonment of seafarers, the other on Shipowners' responsibilities in respect of contractual claims for personal injury to, or death of, seafarers, both of which had taken effect on 1 January 2002, after approval by the IMO and ILO Governing Bodies.

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1.5. After highlighting the aims of the two resolutions, Dr. Balkin stated that the Joint Database on Abandonment of Seafarers developed by ILO, with the financial support of the International Ship Suppliers Association (ISSA) was, of course, another important outcome of the work of the Joint Working Group. Subject to reaching agreement at this session on procedures to be followed for the clearing of the information to be recorded in it and, in particular, on the definition of “resolved case”, this database should provide an effective tool to monitor the problem of abandonment of seafarers in a comprehensive and efficient manner.

1.6. In accordance with its revised terms of reference, the Group was now tasked with the examination of all the related issues and, in particular, with monitoring the implementation of the guidelines established by the resolutions.

1.7. Also among the Group’s tasks was examination of the issue of financial security for crew members/seafarers and their dependants with regard to compensation in cases of personal injury, death and abandonment, taking into account the relevant IMO and ILO instruments, including those currently under review or likely to be adopted in the near future. In this connection, appropriate recommendations to the IMO Legal Committee and the ILO Governing Body would have to be made, particularly with regard to possible longer term sustainable solutions to address the problem of financial security with regard to the compensation in cases of death or personal injury.

1.8 In this connection, Dr Balkin suggested that, pending the outcome of the 94th Session of the ILO International Labour Conference (Maritime Session), scheduled to take place in February 2006, such recommendations should be directed towards taking appropriate action for better implementation and wider acceptance of the resolutions and related guidelines, and continuing the monitoring of the progress, or lack of it, in this regard.

1.9. In conclusion, Dr Balkin said that the central role accorded by IMO to seafarers in the maritime world and the Memorial to Seafarers, clearly visible to all who entered the IMO premises, evidenced their invaluable contribution to the smooth flow of international seaborne trade and the world economy. As recognized by the Secretary-General of IMO, “seafaring can be a lonely profession, the work demanding and occasionally dangerous and the hours long – so seafarers and their families deserve an adequate supporting framework for when things go wrong. Beside that, it is important to provide this kind of support and protection to seafarers also in order to present positive image of life at sea”.

1.10. On behalf of the Director-General of ILO and of Mrs. Cleopatra Doumbia-Henry, Director of the International Labour Standards and Maritime Activities Department, Mr. Jean Yves Legouas, Senior Maritime Specialist, extended ILO’s welcome to all participants. He pointed out that the debates and achievements of the Joint Working Group during the next three days would have particular significance, taking place a few months before the anticipated adoption, in February 2006, of a major new ILO instrument, namely, the Consolidated Maritime Labour Convention.

1.11. The report prepared jointly by the IMO and ILO Secretariats, contained in document IMO/ILO/WGLCCS 6/3/1, sought to reflect how the guidelines had been used and their effect in law and practice. In addition to the 11 Member States that had replied before the Joint Working Group’s last session in January 2004, another 35 Member States had responded. He extended his thanks to all for their assistance in providing this information, as well as that previously provided and contained in the report of the Joint Working Group’s fifth session. In addition to the 46 replies contained in document IMO/ILO/WGLCCS 6/3/1, two replies from Member States were received after its finalization. These are contained in document IMO/ILO/WGLCCS/WP.1

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1.12. Mr. Legouas then drew the attention of participants to the list of reported cases of abandonment attached to document IMO/ILO/WGLCCS 6/3/1, the annex of which included all cases arising during the reporting period January 2004 to June 2005 that had been reported to the Secretariats by Member States, the ISF and the ITF. For easier reference, these had been grouped into two categories: “cases reported” and “cases reported to be resolved”. He underlined the importance of the creation of a database on abandonment. The relevant studies had been carried out and it had been decided, in consultation with the IMO Secretariat, that the ILO would host the database. He thanked ISSA for its help in financing the set-up costs.

1.13. From an electronic viewpoint, he continued, the database was ready. A number of technical matters had, however, been raised and until these had been clarified, it had been decided to limit access to the database to the Chairperson of the Joint Working Group and to the Secretariats of the ISF and the ITF. It was for this reason that document IMO/ILO/WGLCCS 6/3/4 had been issued for the present meeting and it was hoped that good progress would be made in this respect.

1.14. In his opening remarks, the Chairperson of the Joint Working Group, Mr. Jean Marc Schindler (Government Member - France), thanked Dr. Balkin and Mr. Legouas and stated that the Joint Working Group had taken good note of what had been said in their opening addresses.

1.15. He stated that this time the Joint Working Group faced a different situation. Firstly, everybody was aware that in ILO the process of elaboration of the new consolidated Maritime Labour Convention was ongoing. A draft text had been referred to in the documents. But, as it was drafted, it could not be taken as an already adopted text in force. Secondly, the Joint Working Group had only completed a very first monitoring of the situation since the publication of the resolutions. Thirdly, the Joint Working Group was likely to be presented with new possible solutions. Accordingly, a further meeting of the Group might be necessary and participants were encouraged to be as open minded and constructive as they did previously had been.

## **2. Adoption of the agenda**

2.1. The Joint Working Group adopted the provisional agenda contained in document IMO/ILO/WGLCCS 6/1.

## **3. Examination of the issue of financial security for crew members/seafarers and their dependants with regard to compensation in cases of personal injury, death and abandonment, taking into account the relevant IMO and ILO instruments, including those currently under review or likely to be adopted in the near future**

### Abandonment of seafarers

3.1. In her opening speech, the Shipowners’ representative expressed her hope that the current session would bring the work of the Joint Working Group to a good end. As set forth in more detail in her group’s submissions, the Shipowners believed that the database demonstrated that abandonment was not a widespread problem. The cases reported amounted to only 0.04% of the world fleet and many had been resolved. In addition, fishing vessels had been included, although these did not form part of the work of the Joint

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Working Group. Even the four additional cases submitted by the Seafarers did not significantly change the statistical picture. A compelling need for a mandatory instrument no longer existed; the draft of the ILO Consolidated Maritime Labour Convention dealt with the issues addressed by the IMO/ILO Guidelines, while allowing flexibility for the variety of national systems already existing. This was also true for crew claims, which were also adequately addressed by the most recent draft of the Consolidated Convention. Her group was looking forward to hearing from the Governments and Seafarers.

3.2. The Seafarers' representative said that he was looking forward to the decisions to be taken in this session of the Joint Working Group. Although the Joint Working Group was convening for the sixth time, not much had changed. Fewer cases had been reported recently, due to the boom in the industry. He therefore feared that, should the boom end, many cases would occur. The importance of this issue had been acknowledged by the Joint Working Group, which had also applied the guidelines to fishing vessels engaged in international voyages, and was reflected in its previous decisions. Cases of abandonment were shedding a very bad light on the industry, which was fiercely competing with other sectors to attract suitable entrants. It was, therefore, important that mandatory instruments were created to lessen the negative impact of these issues on shipping. To this effect, his group had, in two submissions to the Joint Working Group, identified principles that should be included in mandatory instruments. If these mandatory instruments could not be created on a multilateral basis, his group would also support unilateral or regional approaches. His group was convinced that the ILO Consolidated Maritime Labour Convention did not fully address all issues. Since the Consolidation simply compiled already existing standards and the Joint Working Group had, after thorough analysis, established that existing instruments were not sufficient, his group did not share the Shipowners' view that the Consolidation could provide a solution to this unresolved problem. Moreover, given that the instrument was still a draft; other important aspects were still unknown, such as entry into force requirements. These aspects might have significant impact on the expected timeframe and could amount to several years. Moreover, the Guidelines were far more substantial than the provisions of the draft Consolidated Convention. His group, therefore, did not share the Shipowners' views; the need for a mandatory instrument existed.

3.3. The delegation of the Philippines stated that, as a major supplier of seafarers to ocean going ships, the country had an institutionalized system to protect the well being of its seafarers through a comprehensive welfare and assistance programme. The provision for compensation and benefits in cases of death, injury or illness and repatriation of seafarers had long been enshrined in the minimum terms and conditions governing the employment of our seafarers.

3.4. She believed in the importance of a continuing discussion of issues and concerns relating to Seafarers' injury, sickness or death and abandonment in foreign ports. While it was true that the Preparatory Technical Maritime Conference of the International Labour Organization had considered in the draft Consolidated Maritime Labour Convention provisions relating to Seafarers' injury, illness or death and abandonment in foreign ports, such provision could only be effective if the ILO Consolidated Maritime Labour Convention would receive widest acceptance among member States and comes into force within the shortest time possible. Pending that, the work of the Joint Working Group should continue to ensure that the principles embodied in the resolutions were implemented. The continued monitoring of cases, particularly those pertaining to abandonment of seafarers in foreign ports, was also essential.

3.5. The delegation was of the opinion that certain flexibilities should be allowed in determining the longer term sustainable solution to address the problem of financial security to cases of abandonment of crew members. The Philippines was a party to one of the ILO instruments governing the responsibility for repatriation of seafarers, which had

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been duly implemented. She informed the Joint Working Group that the Department of Labour and Employment had a welfare fund for overseas seafarers which ensured that no Filipino seafarer was left in foreign ports without recourse for repatriation. That responsibility also attached to the licensed agencies that employed the seafarers.

3.6. On the matter of the longer term sustainable solution to address the problem of financial security with regard to compensation in cases of personal injury to or death of crew members, the delegation believed that the provisions contained in the draft Consolidated Maritime Labour Convention were comprehensive enough to ensure that seafarers were provided with adequate financial assistance in case of injury, illness or death. She also believed that alternative modes of cover should be taken into consideration, given national arrangements existing in various jurisdictions. While acknowledging the role played by Protection and Indemnity Clubs in providing the necessary cover, she explained that national regulations provided a more comprehensive protection for Filipino seafarers.

3.7. The delegation concluded by stating that, given the growing volume of marine cargo trade and the importance of ensuring a steady supply of seafarers to man the ships, it was necessary to address the issue of a longer term sustainable solution on the matter of injury, illness or death and abandonment of seafarers.

3.8. The delegation of the United States of America, while acknowledging the position of the Shipowners that the draft ILO Consolidated Convention may offer some long term solutions to the issues at hand, stated that it would be premature to discontinue actions in this forum based upon that instrument. He noted that, at this point, the content of the final text was uncertain, as was the ratification process and timeline for ratification by those nations that choose to become a party to the Consolidated Convention. He then warned the Joint Working Group not to draw overly broad conclusions from the limited data currently in the Joint Database on Abandonment of Seafarers since the maritime industry was currently in the midst of a very prosperous business cycle which could not last forever.

3.9. The observer delegation of Norway stated that it was in favour of these matters to be regulated by a binding instrument. The current guidelines were a good foundation for the development of a longer term sustainable solution. The Joint Working Group had to complete its work and then discuss where to place the agreed provisions.

3.10. This position was supported by the observer delegation of the Russian Federation

3.11. The delegation of France commented that the ILO draft Consolidated Maritime Labour Convention did not adequately deal with the protection of seafarers in case of abandonment, injury or death. In this connection he noted the absence, in the ILO draft, of a provision on a financial security in case of abandonment.

3.12. The financial security provisions in case of illness, injury or death were lacking in specifics, for example, they did not provide for direct access to the insurers, or the obligation to notify withdrawal of cover.

3.13. During the debate in ILO, detailed discussion on those points had been deferred to the Joint Working Group, which now had to pursue work on the details of a mandatory solution.

3.14. The delegation of the United Kingdom supported the work of the Joint Working Group on issues of great importance regarding claims for death, personal injury and abandonment of seafarers and stated that it was necessary to ensure that the generally good image of the shipping industry was maintained and improved where necessary, and that the industry was attractive for young people looking for a worthwhile and rewarding career.

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He noted that there was a wide divergence of views and responses to the issues at wider consideration. In particular, the alternative solutions for providing financial security needed to be more closely examined. He believed it was too early to conclude that the draft ILO consolidation convention would provide the solution to all the issues before the Joint Working Group, although it may go a considerable way in that direction, and concluded that it was premature to suggest that the Group had no further role.

3.15. The delegation of Greece commented that, irrespective of the frequency of incidents, the Joint Working Group had to continue working, keeping in account the work done at ILO.

3.16. The observer delegation of Brazil was in favour of a longer term sustainable solution and suggested that an appropriate binding instrument could be incorporated into an existing IMO mandatory instrument.

3.17. The observer delegation of the International Group of P&I Clubs, referring to documents IMO/ILO/WGLCCS 3/4/3 and 5/2/2 submitted to the third and fifth session of the Joint Working Group, reiterated that an impartial assessment and evaluation of the facts and evidence relating to the payment to seafarers of compensation for personal injury and death did not reveal a deep seated problem, nor any suggestion that there was a widespread practice of such claims being dealt with unfairly to the detriment of seafarers.

3.18. In the International Group's opinion, many of the concerns and reservations expressed by the Seafarers' representatives stemmed from the content of employment contracts (many of which were negotiated by the seafarer representative bodies such as the ITF) and the application of law in relevant jurisdictions.

3.19. The International Group had sought to address the concerns by:

- investigating and responding to allegations of unfair treatment of claims;
- circulating to Club correspondents a reminder of the International Group's stated policy that contractual compensation claims should be paid promptly and in full (copy of the circular was attached to document IMO/ILO/WGLCCS 3/4/3 Add.1) submitted by the International Group;
- proposing an informal procedure whereby allegations of the use of unfair claims handling techniques by a Club or a Club correspondent could be reported to the International Group Secretariat. This procedure was being used by a number of organizations; and
- he noted that provisions in the ILO Consolidated Maritime Labour Convention (Conmarcon) addressed the protection of seafarers in relation to death and personal injury and should meet any further concerns that the seafarers might have.

3.20. In this connection, he suggested that developing a mandatory solution in IMO starting from scratch was likely to take a considerably longer time than implementing the well developed ILO text and concluded by noting the International Group did not believe that there was a compelling need to develop a long term mandatory solution, or to consider the issue further.

3.21. The Chairperson noted the very different positions of the Social Partners. He also noted that, in spite of being fully aware of the progress of the work at ILO, none of the Governments had suggested that the Joint Working Group stopped its work.



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3.22. The Shipowners' representative stressed that ILO was the right place to handle the issues under discussion. Unlike some Governments, her group believed that the ILO Consolidated Maritime Labour Convention covered these issues. In this connection, she felt that the consolidation exercise went further than simply consolidating existing standards. Much action had been taken since the last meeting of the Joint Working Group in this regard, and the new ILO text went beyond that in current conventions. Also, the point raised by some Governments, that the creation of a mandatory IMO instrument would require considerable time, was shared by the Shipowners. Not many cases of abandonment currently existed; most of them had been resolved. It was, however, not possible to make an exact determination today.

3.23. The delegation of Greece noted that, in continuing its work, the Joint Working Group should keep in mind some of the elements already included in the draft ILO Consolidated Maritime Labour Convention.

3.24. The Shipowners' representative agreed with the delegation of Greece and stressed that the text of the ILO Consolidated Maritime Labour Convention could only be discussed at the forthcoming International Labour Conference (ILC). The draft, which was a very solid text, allowed dealing with the provision of financial security in the context of the Consolidation under Regulation 2.5 and Standard A2.5. For further refining these provisions, the Guidelines might prove helpful, they should, however, not be forced into the new text.

3.25. The Seafarers' representative understood that the Shipowners were not interested in fully including the Guidelines in the new Convention and subjecting the issue to port state control. Moreover, it had been suggested that specific details of a new text could not be discussed in the Joint Working Group. While his group acknowledged the interplay between the work of the Joint Working Group and the ILC, he warned the Joint Working Group that his group would seek radically change the ILO Labour Convention, if the Joint Working Group should decide to solely rely on a provision in the Consolidation.

3.26. The Shipowners' representative explained that, since the last session of the Joint Working Group, the draft ILO Consolidated Maritime Labour Convention had matured. It was now very robust and had taken into account Seafarers' earlier criticisms. This considerable progress needed to be recognized by the Joint Working Group and taken into account, when taking a decision.

3.27. The representative of ILO introduced IMO/ILO/WGLCCS 6/3/1 and WP.1. He explained that this report, which constitutes a regular feature of the Joint Working Group proceedings, analysed the responses sent by Member States to the Questionnaire issued by the Secretariats in the aftermath of the last session. He noted that the rate of responses had been quite high and thanked member States for this constructive effort. He noted that appropriate legislation

regarding abandonment had rarely been adopted, and that only a minority of Member States had nominated a focal point in this respect. He explained that WP.1 had been drafted for the sake of comprehensiveness, reporting on two late arrivals of information.

3.28. On behalf of the Joint Working Group, the Chairperson thanked the Governments for replying to the questionnaires and encouraged them to appoint focal points.

3.29. The Shipowners' representative introduced her group's submissions (IMO/ILO/WGLCCS 6/3, IMO/ILO/WGLCCS 6/3/2 and IMO/ILO/WGLCCS 6/3/3) and explained that her group had been proactive in assessing the recently established abandonment database and had identified a number of concerns. She questioned the compelling need for the Joint Working Group to continue, given that there were few

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reported cases. Moreover, a tripartite agreement on provisions in the draft Consolidated Convention to deal with crew claims had been reached. Accordingly, there was no longer a compelling need to further address this issue, as a solution had now been found.

3.30. The Seafarers' representative introduced IMO/ILO/WGLCCS 6/8, which dealt with the Shipowners' submissions. Although he did not want to discuss individual cases of abandonment, he disagreed with a number of details contained in the ISF's list of cases. His group oppose the deletion of older, resolved cases, since it was important that a historical record of solved cases be kept. ITF had taken great care in ensuring that internal certification systems were put into place to validate cases reported and was, thus, underreporting. He urged the Joint Working Group to concentrate on the creation of a mandatory instrument and pointed out that paragraph 17 of IMO/ILO/WGLCCS 6/8 listed all elements important to his group to be included. It was important that a mandatory instrument was created and that it would fall in the ambit of port state control. While a mandatory instrument could not be decided upon by the group at this session, the Joint Working Group should, at least, decide on principles and the form the future instrument should take.

3.31. In response to the Seafarers' representative's remarks that the Guidelines explicitly covered fishing vessels, the Shipowners' representative clarified that ISF did not represent the fishing industry. This made it impossible for ISF to verify the veracity of cases of abandonment that concerned fishing vessels. If it was intended to include fishing vessels, a meeting with representatives of fishing vessel owners needed to be held, to allow this industry to be adequately involved in the exercise. The International Organization of Employers (IOE) was the relevant international body that might be able to verify these cases; it had full United Nations consultative status and represented the fishing sector vis-à-vis ILO.

3.32. The ILO representative noted that the work had been conducted on the basis that fishing vessels engaged in international voyages would be covered and pointed out that the Joint Working Group had earlier agreed to this. In the context of the database, the Office was, however, willing to tag fishing vessels clearly and to contact IOE in the future, if the Joint Working Group so wished.

3.33. The Seafarers' representative said that IOE had been involved in the process so far, since it was represented in the Governing Body of ILO, which had adopted the Guidelines.

3.34. The Shipowners' representative reiterated that cases of abandonment concerning fishing vessels would need to be raised with the people affected by them. IOE needed to be involved, if fishing vessels should continue to be featured in the database.

3.35. The Chairperson suggested that, for the present, fishing vessels engaged in international voyages should be included in the database as such vessels are not excluded from the Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers (resolution A.930(22)). He suggested that the Secretariat might identify the proper organization to represent their rights.

#### Proposal for insurance coverage by Seacurus Ltd

3.36. In introducing document IMO/ILO/WGLCCS 6/INF.2, the delegation of the United Kingdom clarified that the document did not contain a proposal from its Government, but was submitted on behalf of a commercial company based in the United Kingdom. In spite of being neutral, he was pleased to note that there were companies willing to undertake the risk.

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3.37. The delegation of the United States supported the comments by the United Kingdom. It had been a premise of many participants that a commercially viable insurance product was impossible to create and be made available to help to address the issues surrounding abandonment. If such a commercial product had in fact been developed, then the Joint Working Group should take that into due consideration in developing solutions to the problem of abandonment.

3.38. The United States believed that any future mandatory framework for a financial security scheme must be effective, efficient and reliable. This was essential to providing true benefits and protection to seafarers.

3.39. The Shipowners' representative noted her surprise that a financial instrument had been proposed. In her negotiations with the biggest Norwegian bank and P&I Clubs, she had been informed that the Guidelines were not specific enough to be implemented in this fashion. They were too wide and flexible to create a financial instrument.

3.40. The delegation of France informed the Joint Working Group that he had been advised by French commercial insurance experts that there were possible solutions but that these might present technical difficulties, especially regarding the coverage of unpaid wages.

3.41. Mr. Parry gave a presentation of the proposals developed by Seacurus Ltd. concerning seafarers' abandonment insurance. He then replied to questions from the floor.

3.42. During the discussion following the Seacurus presentation, the following points were made:

3.43. The Shipowners' representative observed that there was a mandatory solution within the ILO Consolidated Maritime Labour Convention, once it had been adopted and entered into force, and that, in her opinion, there was no need for any other instrument.

3.44. The Seafarers' representative replied that there had been some deficiencies in the development of the ILO Consolidated Maritime Labour Convention, and that some points of importance had not been taken into account. As a consequence, there was a need to develop some regulatory material in this Joint Working Group, especially with respect to those areas not covered by the future Convention. He enumerated the principles to be made mandatory as contained in document IMO/ILO/WGLCCS 6/3/5 and requested the Governments to voice their opinions on the positions expressed by the social partners.

3.45. The Shipowners' representative recognised that this was a difficult issue. She was of the opinion that developing a solution through IMO, based on the present Guidelines, could be as time consuming as through ILO, and raised a number of issues that could hamper possibilities to progress the matter. She also suggested that the Secretariats might request IUMI to evaluate the proposals made by Seacurus Ltd.

3.46. She observed that Seacurus Ltd. had indicated that at least one thousand vessels were needed for their proposed scheme to be profitable, and that the Joint Working Group should not be influenced by commercial considerations. Noting further that Regulation 2.5 of the future Consolidated Convention required financial security to be provided for every ship, she observed that such language did not limit possibilities to insurance only.

3.47. The delegation of France noted that insurance cover could be offered by the marine or non-marine insurance markets. The Joint Working Group should discuss whether to recommend compulsory insurance, knowing that this would probably be a precondition for the functioning of the system, and noting that the mechanisms of insurance contract law should apply to this type of cover.

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3.48. The delegation of the United Kingdom noted that the question of who would be liable to pay still presented difficulties.

3.49. The Seafarers' representative agreed with the delegation of the United Kingdom that the real issue was who should pay for the insurance. He was of the opinion that it should not be Governments but shipowners.

#### Consideration and approval of the Joint Database on Abandonment of Seafarers developed by ILO and suitable definition of "resolved case"

3.50. The representative of the ILO then presented document IMO/ILO/WGLCCS 6/3/4, recalling the process that had led to the present database, and to the necessity for the Joint Working Group to agree on operational procedures that would avoid incorrect information to be displayed in it.

3.51. The Shipowners' representative agreed that the database was useful and voiced her appreciation for the work done. She agreed that resolved cases should be readily identified as such in the database, and took note of the suggestion made earlier by the ILO representative that fishing vessels should be identified. She also requested that time should be allotted so that cases could be checked before they would go on a public website.

3.52. The Seafarers' representative suggested that, though the procedure identified in the ILO's document was interesting, the time it would take until the effective publication of an abandonment case might be too long.

3.53. The Shipowners' representative replied that she welcomed the steps suggested since the ISF wanted to be sure that the information entered on the web would be as accurate as possible. She saw the database more as a way to become more proactive in the field of abandonment than as a name and shame exercise.

3.54. The Seafarers' representative replied that the ITF felt that the information they decided to provide to the database regarding abandonment was accurate enough to be directly put on the website without unnecessary delay.

3.55. The delegation of France confirmed that its Government had reported two cases and was of the opinion that the reported information should be made public immediately.

3.56. The Shipowners' representative expressed her concern about insufficient checking time given to the various organisations concerned. She however agreed that the total of forty days could probably be reduced.

3.57. The delegation of the United Kingdom stated that the information reported by Governments should immediately appear on the database, subject to review or removal, should it be proved not to be correct.

3.58. Mr. Martin-Castex, Head, Implementation and PSC Co-ordination Section, IMO, explained that the current GISIS facilities allowed direct entry of data by reporting States, however such information becomes available to the public only after validation by the Secretariat. He suggested that, in the case of the database on abandonment of seafarers, a password for data input could be given to NGOs and validation of the information reported could be made by the IMO and/or ILO Secretariats. After 15-20 days, data could be automatically validated and released.

3.59. The Seafarers' representative reiterated that they would like an initial, immediate and public reporting on abandonment cases.

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3.60. The observer delegation of Norway commented that it was important to develop a mandatory solution. To that aim, more work at international level was necessary.

3.61. The delegations of Cyprus, France, Greece, Philippines, United Kingdom and United States stated that the current situation of abandonment was not satisfactory. Further consideration should be given to a possible mandatory solution. Some of the Governments were in favour of taking into account the outcome of the forthcoming ILO Conference. The principles contained in document IMO/ILO/WGLCCS/6/3/5 submitted by ITF/ICFTU, could constitute a good basis for future work.

3.62. The observer delegation of the Russian Federation supported the need to develop a mandatory international instrument that would adequately and comprehensively address problems relating to compensation for death of and personal injury to crew members and provide financial security in cases of abandonment of crew members.

3.63. Such an instrument should be developed by IMO, especially taking into consideration the importance attached to the role of the human element on the IMO agenda. In this connection he also recalled that article 94 of the United Nations Convention on the Law of the Sea, 1982, required the flag State to exercise effective jurisdiction and control in administrative, technical and social matters over ships flying their flag and that the goal of such an international mandatory instrument was to oblige flag States to provide financial security in cases of abandonment of crew members and compensation for death of and personal injury to crew members. Such a goal could be achieved by enacting an international convention, which would address both the problems. Therefore the flag State should have the freedom to choose the specific form of financial security. At the same time an international convention could also contain recommended practice, which would provide the flag State with the different methods of implementation and enforcement of conventional provisions.

3.64. He noted that the existence of financial security should be proved by a certificate to be carried on board. Such a certificate should be issued by the provider and endorsed by the flag State. The flag State should have the freedom to choose the mechanism of realization of the conventional rule and the certificate could be endorsed by the flag State's competent authority or organization recognized by that authority.

3.65. The observer delegation of Brazil stated that the problem of abandonment should be eliminated, with a binding instrument to be developed in the light of the outcome of the ILO Conference.

3.66. The Joint Working Group agreed that the current situation was not satisfactory; that it should proceed to the development of a mandatory solution, subject to the outcome of the work at ILO.

#### Personal injury or death of seafarers

3.67. The Shipowners' representative referred to her earlier comments on IMO/ILO/WGLCCS 6/3. The issue under discussion was well covered by the provisions in the draft Consolidated Maritime Labour Convention. IMO/ILO/WGLCCS 6/3/3 provided further clarification.

3.68. The Seafarers' representative noted that these arguments had been put forward already at earlier sessions of the Joint Working Group, which at its last meeting, came to the view that it should be progressing towards a mandatory solution. This agreement had been reflected in the decisions of the ILO Governing Body and the IMO Legal Committee who had charged the Joint Working Group with drawing up an instrument to address this issue. The argument brought forward by the Shipowners that new developments put these

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decisions into question was not substantiated, as these bodies had been well aware of the developments in the draft Consolidated Maritime Labour Convention and had factored them into their decisions. In order to advance the discussion, the Joint Working Group should focus on providing guidance to the Secretariat so that it could provide a draft to be discussed in the next session of the Joint Working Group. To this effect, the Seafarers had submitted IMO/ILO/WGLCCS 6/6/3, which outlined in its paragraphs 10 to 12 important elements to be included. Paragraphs 13 to 15 contained recommendations on actions that would allow the Joint Working Group to progress further, e.g., by forming a correspondence group.

3.69. The Shipowners' representative referred to the report of the Joint Working Group's fifth session and pointed out that in the discussions on the Joint Working Group's mandate, it had been said that a mandatory solution did not necessarily require creating an independent instrument, but could also take the form of additional provisions in the draft Consolidated Maritime Labour Convention. At the forthcoming ILO International Labour Conference (Maritime Session) in February 2006, these issues should be discussed and dealt with accordingly, since it was a labour issue. She added that to simply refer the text of the Guidelines into the Consolidated Maritime Labour Convention would not be possible. Title 4 already had an adequate text and it might be possible to develop this text further, if the Conference felt that this would be necessary. Title 4 of the Consolidated Maritime Labour Convention was the right place to deal with this issue.

3.70. The representative of the International Group of P&I Clubs noted that the Legal Committee, at its eighty-eighth session, had left open the question whether or not the solution should be mandatory.

3.71. The observer delegation of the Russian Federation insisted on the necessity of developing a mandatory solution within IMO. This delegation suggested that the Joint Working Group make a recommendation to the Legal Committee to instruct it to begin work on the draft of the mandatory instrument.

3.72. The Seafarers' representative stressed that the decision had already been taken and that the decisions of the IMO Legal Committee and the ILO Governing Body had been clear. The Joint Working Group's recommendation to proceed with the development of a mandatory instrument had been endorsed.

3.73. The delegation of France suggested that the Joint Working Group should start working on the content of the prospective binding instrument, based on the principles contained in document IMO/ILO/WGLCCS/6/3/5, submitted by ITF/ICFTU.

3.74. The Shipowners' representative pointed out that when the Guidelines were submitted to the IMO Legal Committee, several Governments had made statements that they did not intend to implement them. The existing national rules were very diverse; moreover, the criticism of the P&I Clubs was not justified, since her group saw many reasons for believing that P&I Clubs provided a good solution to the problem. Already at the last meeting, her group had stressed that was not necessary to create an instrument and had suggested that the Consolidated Maritime Labour Convention was the appropriate vehicle.

3.75. The representative of the International Group of P&I Clubs stressed that the International Group had actively participated in the work of the Joint Working Group. In this connection, he mentioned the documents submitted at previous sessions. He warned a mandatory solution could be in conflict with the work done at ILO.

3.76. The Chairperson stated that the Social Partners had a common interest in solving the problem. Far from being in conflict, the work carried out at IMO and ILO was

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complementary. He invited the Joint Working Group to reflect on the work to be done and to give appropriate guidance to the Secretariats to enable them to produce a document at the next session. This could be done pending the outcome of the work at ILO.

3.77. This statement was supported by the delegations of France, the Philippines and the United States. The Seafarers, together with the observer delegations of Brazil, the Netherlands and the Russian Federation also supported the Chairman's statement.

3.78. Replying to a question from the Shipowners, the Chairperson clarified that, for the next session, the Secretariat would prepare a document containing elements for discussion and possible inclusion in a longer term sustainable solution.

#### Discussion on the database (continuation)

3.79. The Chairperson reverted to the discussion regarding the Database as outlined in document IMO/ILO/WGLCCS WP.2.

3.80. The Shipowners' representative requested clarification on the expressions "appropriate organisation" and "interested parties". She also advised that a delay of less than 15 working days in indent 4 was not acceptable. Moreover, she was of the opinion that the role devoted to the reporting organisation gave it too strong a position. Time was needed for the assessment of a report, or even for the reasons of its inclusion as a case.

3.81. The Shipowners' representative requested an explanation as to what would happen if a disagreement were to occur. She also proposed to limit the understanding of "appropriate organisations" to ICMA and Apostleship of the Sea. After explanations by the representative of the ILO, she agreed that other organisations involved in seafarers' welfare might also be included.

3.82. The Seafarers' representative agreed that WP.2. was acceptable to his group, adding that different points of view should be reflected in the database. He suggested that "all interested parties" should be understood as all organisations holding a recognised status at the ILO or at the IMO.

3.83. The Shipowners' representative agreed with the seafarers' representative on this last issue.

3.84. The delegation of Greece requested information as to how interested parties might know when the ten days period would start. The Secretariat responded that it would inform interested parties by appropriate means.

3.85. The Shipowners' representative reiterated their view that the period allocated to check the information to be kept at a maximum of fifteen days and that this was motivated by practical reasons, namely, availability of personnel. This was opposed by the Seafarers' group on the basis that this period was far too long, considering that the suffering of crews had to be alleviated as soon as possible. The Shipowners' representative explained that these 15 working days represented a maximum which would not always be used.

3.86. The delegation of Cyprus was of the opinion that one or two days should be sufficient.

3.87. The Seafarers' representative recalled that the IMO had other databases where the ICS and BIMCO regularly made entries, and never had expressed a need for such delays. Ten working days were sufficient.

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3.88. The delegation of the Philippines observed that they would like to have the information provided made public immediately, but that, in a gesture of good will in this debate, they were ready to accept a maximum delay of ten working days.

3.89. The shipowners maintained their position that fifteen days was an appropriate time to review and follow up on the cases cited.

3.90. The Chairperson of the Joint Working Group summed up the debate as follows:

3.91. Regarding the suggested procedure to be followed for the operation of the database on reported incidents of abandonment of seafarers, after discussion of IMO/ILO/WGLCCS 6/WP.2, the following procedure would be adopted, subject to revision at the next meeting of the Joint Working Group, in the light of the experience gained.

1. a Member State or an organization accredited to ILO or IMO sends information to ILO regarding abandonment case(s), using the form described in document IMO/ILO/WGLCCS 5/3, page 4, as hyperlinked in the home page of the Database;
2. ILO sends this information for verification to IMO, which checks the information given on the IMO number, flag, type of vessel, company and registered owner;
3. IMO sends (modified as necessary) the information back to ILO; and
4. following consultations between IMO and ILO, the information is entered on a restricted, i.e. non public and password-restricted website. Interested parties are then notified of new entries and would then have an opportunity to provide further information within 10 working days, after which time the information would be released for public access. If necessary, different points of view would be reflected.

3.92. The procedure was agreed, after acceptance of a proposal by the Shipowners' representative that complementary relevant information received after the ten working days would go on the public website.

3.93. The debate then passed to the consideration of expression "resolved case" in the Abandonment Database.

3.94. The delegation of Greece requested an explanation of the expression "representative organisations".

3.95. The Seafarers' representative expressed difficulties with paragraph 2(iii) of the Annex to document IMO/ILO/WGLCCS 6/3/4, and was of the opinion that it should be deleted. The expression "wage arrears" could usefully be completed by reference to other terms such as those contained in Resolution A.930(22), or by an expression such as "and any contractually accrued entitlements".

3.96. A Shipowners' representative suggested the use of the term "remuneration".

3.97. The Shipowners' representative was concerned that the Guidelines would be considered to be part of the database. The delegations of France and the USA observed that the Guidelines had been previously adopted, not only by the Joint Working Group but also by IMO and ILO.

3.98. The Chairperson clarified that, though the Guidelines were not mandatory, the wording they contained could, however, be used.



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3.99. The Shipowners' representative then remarked that, in her opinion, issues related to the Guidelines had been "sneaked into" the present text; the seafarers' representative assured the meeting that he was not pursuing any ulterior motive when referring to the Guidelines.

3.100. The Chairperson, regarding the expression "resolved case" in the Abandonment Database, summed up the debate as follows: a case of abandonment would be considered as resolved if, and only if, ILO has received clear advice from the Member State or organization having originally provided the information that:

- (i) the totality of the crew has been successfully repatriated; and
- (ii) the totality of all outstanding remuneration and contractual entitlements have been paid and duly received by all the crew members.

3.101. The Group then debated the method of displaying "resolved cases", as opposed to "unresolved cases".

3.102. The Shipowners' representative requested that disputed cases should be readily identifiable, for instance, by using a different colour.

3.103. The Seafarers' representative recalled the necessity to realise searches easily.

3.104. In the discussion that ensued, the delegation of Greece, as well as the social partners made various practical suggestions.

3.105. Regarding the proposed method of displaying "resolved cases", as opposed to "unresolved cases", the Chairperson summed up as follows:

3.106. The Secretariat would ensure that the information displayed would clearly distinguish between "resolved cases" as opposed to "unresolved cases" and that a third category of cases would be added, namely, "disputed cases", which would also be clearly identified.

3.107. The Group then discussed a possible date for the deletion of information following the resolution of a case.

3.108. The Shipowners' representative remarked that she had no major problem, as long as disputed and resolved cases were clearly identified.

3.109. The Seafarers' representative said that he did not see any necessity for the deletion of this kind of data. This view was supported by the delegations of France and Cyprus, on the basis that this information constituted a public record. The delegation of France stated that historical data were needed to follow up the situation, and could be useful for insurers.

3.110. In response to the question from the Shipowners' representative regarding possible changes of ownership of the vessel, the delegations of Cyprus and France expressed the opinion that the owner's name, rather than the name of the vessel, was the important issue.

3.111. Regarding the date of the deletion of information following the resolution of a case, the Chairperson summed up as follows: it was decided that, at this stage, no information should be deleted following the resolution of a case and that this issue would be reassessed by the Joint Working Group at the next session in the light of experience gained.

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3.112. This concluded the debate on the database.

#### Personal injury or death of seafarers (continuation)

3.113. The Joint Working Group then reverted to the consideration of the elements in a document to be prepared by the Secretariat which would contain elements for possible inclusion in a sustainable long-term solution to the problems of personal injury to or death of seafarers.

3.114. The Shipowners' representative stressed that her group did not want to have fishing vessels included in the sustainable solution. She explained that her group did not represent fishing vessel owners and could not speak for the fishing industry or be held accountable for it. If fishing vessels were to be included, the International Organization of Employers (IOE) needed to be part of the debate

3.115. The Seafarers' representative reminded the Joint Working Group of the decision reached at its last meeting. In order to allow the Joint Working Group to proceed, his group had listed elements of importance in paragraph 12 of IMO/ILO/WGLCCS 6/3/6. He encouraged Government members to voice their opinions, since their views on these matters were very important.

3.116. The delegation of France commented that it was also necessary to decide whether the longer term sustainable solution should be inserted in the proposed ILO consolidated Maritime Labour Convention, in a new IMO treaty, or in an existing one. Notification of withdrawal of coverage, no retroactive cancellation of cover, direct action and prompt payment were among the main elements to be considered.

3.117. The observer delegation of Norway commented that the longer term solution should promote good practices. He suggested to add documentary evidence to the elements mentioned in the intervention by the delegation of France.

3.118. The delegation of the Philippines supported the previous speakers on the important elements of prompt payment of claims and notification of seafarers in case of withdrawal of coverage. She also informed that the national law of the Philippines covers fishing vessels on international voyages, including shipowners' liability for personal injury to and death of seafarers, as specified in the contract of employment.

3.119. The delegation of the United States stated that, in accordance with the Joint Working Group's Terms of Reference, it was essential that no existing seafarers' rights or remedies were eroded or compromised by any future longer term solution. This statement was supported by the observer delegation of the Netherlands.

3.120. The Shipowners' representative warned the Government members that the requirements proposed by the Seafarers might have the effect of excluding P&I Club coverage as possible solutions. They had been working well for years; their track record was very good. The list of elements in IMO/ILO/WGLCCS 6/3/6 consisted of the most difficult issues to deal with in this field and required intimate knowledge of insurance. Most shipowners would face considerable problems, if P&I coverage would no longer be an option – the Seafarers' suggestions would, however, lead to just this situation. Other insurers would also run into the same problems. Interim payments were, e.g., always problematic; even for "normal" insurers. In her experience, insurance companies had often taken lengthy periods to deal with claims resulting from injury in order to determine the validity of the claim and the amount to be paid. Similarly, the concept of direct action was problematic, since it excluded collective coverage. Instead agreements between the shipping company and the insurance company to the benefit of a third party should be possible. De facto, differences between P&I cover and that provided by a normal insurer

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were not so great. This also extended to the cases that the Seafarers were trying to address by introducing a notification requirement – in comparison with a “normal” insurance, P&I cover was more robust. Also the requirement to produce certification was something that was normally not part of common practice of insurers and generally not done in regard to collective arrangements. It seemed to her that Seafarers and Governments were overestimating the advantages of a “normal” insurance in comparison to P&I cover. The overall experience demonstrated that P&I Clubs were reliable and widely used in the industry, since they ensured speedy handling and created far less problems than “normal” insurers.

3.121. Another Shipowners’ representative added that the Joint Working Group should always ask itself who the insurer and the insured would be. If it was not clear that the seafarer was the beneficiary, he would encounter the same legal problems, independent of whether P&I cover or a “normal” insurance had been chosen. The underlying problem was that the Seafarers were not satisfied with the time required for the P&I Clubs to validate claims; they did not, however, realise that this time would also be required if “normal” insurance cover had been chosen instead. Referring to the presentation by Seacurus Ltd, he pointed out that the mechanism proposed (premiums to be paid annually and in advance) could easily run into similar problems. In cases where a seafarer joined a vessel at the midlife of an insurance policy and continue to stay on board, he would not be covered if the policy was not renewed for the next year.

3.122. The delegation of France informed the Joint Working Group that, under French Law, direct action against the liability insurer was permissible.

3.123. The representative of the International Group of P&I Clubs, reiterated that, over a period of six years (1995-2001), the Clubs paid compensation over US\$1.6 billion in respect of over 80,000 claims. The retrospective withdrawal and pay to be paid rules had not been relied on by Clubs in the past, in relation to valid contractual death, personal injury and sickness claims and the International Group intended to continue this approach. This indicated that the Club rules were not an impediment to the payment of such claims. The International Group of P & I Clubs consists of mutual organizations, and Club rules were primarily aimed at maintaining high standards between Club members. Because the Clubs were insurers and not shipowners, it would not be possible for them to comply with any requirement to notify each and every seafarer on board a ship if cover for the ship lapsed. He also pointed out that CLC-type certification, if adopted, would require States to check on the financial viability of financial providers, which could prove problematic for States, particularly if the providers were domestic insurers domiciled in other jurisdictions.

3.124. The observer delegation of the Russian Federation informed the Joint Working Group that, the Russian Federation has great experience in the sphere of legal regulation of social security. Until 1998, the national legislation of the Russian Federation was based on the obligation of employers to pay compensation in cases of injury or death of their employees. But after the liberalization of the Russian economy in 1998, the practice revealed the inefficiency of the system. Since 1998, all employers in the Russian Federation contribute to a national fund, which plays the role of insurer in the social security system and which actually pays compensation in case of an accident. He stated that the Russian system is an example of a successful insurance scheme and that an international solution could be based on the same principles.

3.125. The observer delegation of Brazil stated that a mandatory solution to provide financial security to seafarers in case of an accident was necessary and that it should be contained in an IMO instrument.

3.126. The Seafarers’ representative stressed that he had heard the arguments put forward by the International Group before. In other cases, however, problems that were made to

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seem insurmountable had been overcome. IMO had prior experience with direct liability to cover oil spills, passengers and luggage and the elements in IMO/ILO/WGLCCS 6/3/6 were found in these instruments. He, therefore, suggested that, at the next session, IMO should provide the Joint Working Group with a brief overview on how these issues had been addressed in existing IMO instruments.

3.127. The Shipowners' representative agreed with the Seafarers' perception that all these arguments had been discussed in earlier sessions. This demonstrated that a difference in opinion existed on how best to resolve the issue. When preparing a document for the next session on elements for inclusion in a longer term sustainable solution, the Secretariat should, therefore, concentrate on listing only the points raised in the discussion.

3.128. The Seafarers' representative said that the Shipowners' defence of the P&I Clubs had been unnecessary, since IMO/ILO/WGLCCS 6/3/6 had not been drafted to criticise the clubs. His group had simply tried to outline on what elements should be contained in a sustainable solution. His group had not suggested that the clubs did not provide a valuable service to the shipping community. But since the Joint Working Group was dealing with a particular niche and it had been indicated in the fifth session that either rules needed to be changed or others would need to fill the gap. The presentation by Seacurus Ltd. had suggested that this was an option; moreover, it had been the Seafarers' experience that, when put to the test, the P&I Clubs had delivered. His group did not prefer one provider to the other, but wanted to ensure that the resulting solution was acceptable. The discussion of whether P&I Clubs would be able to comply with the elements put forward in IMO/ILO/WGLCCS 6/3/6 was beside the point and not helpful. He noted that, so far, no Government had taken a position on this issue and suggested that the Joint Working Group should focus on the issue of enforcement.

3.129. The Joint Working Group requested the Secretariat to prepare for its next session a document listing the elements to be included in a long term solution and another document listing the elements in existing liability and compensation regimes developed by IMO.

#### **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, subject to approval by the ILO Governing Body and the IMO Legal Committee, the text of which is contained in Annex 1 to this report.

#### **5. Any other business**

5.1. There was no other business.

#### **6. Adoption of the report**

6.1. The Joint Working Group approved its report for its sixth session, as contained in the present document.

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## **Annex 1**

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

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## Annex 2

### List of documents submitted for the purposes of the sixth session of the Joint Working Group

#### 1. *Opening of the session*

#### 2. *Adoption of the Agenda*

IMO/ILO/WGLCCS 6/1 ILO and IMO Secretariats Provisional Agenda

#### 3. *Examination of the issue of financial security for crew members/seafarers and their dependants with regard to compensation in cases of personal injury, death and abandonment, taking into account the relevant IMO and ILO instruments, including those currently under review or likely to be adopted in the near future*

IMO/ILO/WGLCCS 6/3	Shipowners' Group	Discusses the database and questions the need for a mandatory instrument
IMO/ILO/WGLCCS.6/3/1	ILO and IMO Secretariats	Synopsis of replies to the questionnaires on the implementation of resolution A.930(22) and related guidelines
IMO/ILO/WGLCCS 6/3/2	Shipowners' Group	Discusses the problem of repatriation following abandonment
IMO/ILO/WGLCCS 6/3/3	Shipowners' Group	Discusses the issue of protecting seafarers' wages after abandonment
IMO/ILO/WGLCCS 6/3/4	ILO	Contains information on the Joint Database on abandonment of seafarers and suggestions for its operation
IMO/ILO/WGLCCS 6/3/5	ITF/ICFTU	Discusses options for a long-term sustainable solution to address the problem of financial security for abandoned crew members
IMO/ILO/WGLCCS/6/3/6	ITF/ICFTU	Contains proposals for a sustainable solution to address the problem of compensation in cases of personal injury to or death of crew members

IMO/ILO/WGLCCS/6/3/7	ITF/ICFTU	Lists cases of abandonment brought to the attention of the between 30/11/2004 and 30/6/2005
IMO/ILO/WGLCCS/6/3/8	ITF/ICFTU	Comments on document IMO/ILO/WGLCCS 6/3/8
IMO/ILO/WGLCCS/INF.1	IMO Secretariat	List of participants
IMO/ILO/WGLCCS/INF.2	United Kingdom	Proposals concerning seafarer abandonment insurance developed Seacurus Ltd
IMO/ILO/WGLCCS/WP.1	ILO and IMO Secretariats	Synopsis of the two additional responses to the questionnaire on monitoring of resolutions and guidelines concerning provision of financial security in cases of abandonment
IMO/ILO/WGLCCS/WP.2	ILO and IMO Secretariats	Suggested procedure to be followed for the operation of the database on reported incidents of abandonment of seafarers

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

No documents submitted

**5. Any other business**

No documents submitted

**6. Adoption of the draft report**

IMO/ILO/WGLCCS 6/WP.3	ILO and IMO Secretariats	Draft report of the Joint Working Group
IMO/ILO/WGLCCS 6/6	ILO and IMO Secretariats	Report of the Joint Working Group

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## Annex 3

### List of participants

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	Mr. B. Orrell (Seafarers' Representative)

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