



FIFTH ITEM ON THE AGENDA

**Report on the 92nd Session of the
IMO Legal Committee****(b) Second meeting of the Joint ILO/IMO
Ad Hoc Expert Working Group on the
Fair Treatment of Seafarers in the
Event of a Maritime Accident**

1. At its 290th Session (June 2004), the Governing Body approved the establishment of a Joint ILO/IMO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident (Joint Working Group), composed of eight Government experts to be nominated by the International Maritime Organization (IMO) as well as four Shipowner and four Seafarer experts to be nominated by the ILO, after consultations with the secretariats of their respective groups.¹ The IMO Legal Committee nominated eight member States (China, Egypt, Greece, Nigeria, Panama, the Philippines, Turkey and the United States) with the proviso that any other government could attend the meeting as an observer. The Terms of Reference of the Joint Working Group were submitted to and approved by the 291st Session (November 2004) of the ILO Governing Body as well as by the Legal Committee of the IMO at its 89th Session (25–29 October 2004).
2. The first session of the Joint Working Group took place from 17 to 19 January 2005. The Joint Working Group considered that it was premature to envisage producing valid guidelines during its first meeting. However, it agreed to the adoption of a draft resolution that would stress the concern of the entire maritime industry on the matter. The ILO Governing Body approved this resolution at its 292nd Session (March 2005). The IMO Legal Committee also approved this resolution.
3. The second session of the Joint Working Group took place at the IMO, in London, on 13–17 March 2006. It drafted detailed Guidelines, together with a draft resolution (see Annex 5 to IMO document LEG 91/5/1, appended). Taking into account the constant increase in the number of cases of criminalization of seafarers, the Joint Working Group also suggested that the Guidelines, if adopted, should be promulgated by both the ILO and the IMO as of 1 July 2006.

¹ GB.290/8.

4. The IMO Legal Committee approved the resolution and the Guidelines at its 91st Session, held in London on 24–28 April 2006. It also decided to postpone to its next session (16–20 October 2006) the consideration of the draft Terms of Reference for the continuation of the Joint Working Group.
5. The ILO Governing Body, at its 296th Session (June 2006), approved the resolution and the draft Guidelines contained in GB.296/5/1, and authorized their dissemination by the ILO as of 1 July 2006. It also agreed to defer the approval of the draft Terms of Reference for the continuation of the Joint Working Group.
6. The 92nd Session of the IMO Legal Committee took place in Paris (France) on 16–20 October 2006 (see accompanying report, IMO LEG 92/13, pages 25–27, available on request from the secretariat). During this session, the Committee established an Ad Hoc Working Group to review the Guidelines adopted at its preceding session and to consider concerns expressed by some delegations about their interpretation and application. The Ad Hoc Working Group was also tasked with the review of the revised Terms of Reference for the Joint ILO/IMO Ad Hoc Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident.
7. The delegation of China suggested adding another item to the Terms of Reference of the Joint Working Group namely, that it collect information on cases of mistreatment of seafarers.
8. The Ad Hoc Working Group met on 16–18 October 2006 and reported to the Committee on 19 October. The Committee noted that the Ad Hoc Working Group had been divided in its conclusions. As a result, in the absence of sufficient time to examine the issues and the Terms of Reference for the Joint Working Group in detail and, taking into account the apparent lack of urgency to reconvene that Group, the Committee decided to retain this matter on its agenda for its next session (November 2007).
9. Considering that this is the second time that these Terms of Reference have been submitted to the Committee, the Office is of the view that the Committee could give favourable consideration to the approval of these Terms of Reference incorporating the additional element proposed by the Government of China.
10. ***The Governing Body is requested to:***
 - (i) ***take note of the information provided;***
 - (ii) ***approve the revised Terms of Reference for the Joint Working Group, as contained in Annex 5 of the Report of the meeting (LEG 91/5/1, appended); and***
 - (iii) ***further approve, subject to the IMO incorporating the proposal noted in paragraph 7 above, the amendment of the revised Terms of Reference accordingly.***

Geneva, 22 January 2007.

Point for decision: Paragraph 10.

Appendix

Document LEG 91/5/1

ANNEX 5

Recommendation for revised Terms of Reference

1. The Joint IMO/ILO Ad Hoc Expert Working Group should monitor and evaluate the implementation of the Guidelines on fair treatment of seafarers in the event of a maritime accident.
2. In doing so, the Group should take into account resolution A.987(24) adopted by the Assembly of the International Maritime Organization, as well as IMO and ILO instruments relevant to the implementation of the Guidelines.
3. The Group should make suitable recommendations to the IMO Legal Committee and the Governing Body of the ILO in relation to any appropriate action for better implementation and wider acceptance of the Guidelines.