

**FOR INFORMATION**

FIFTH ITEM ON THE AGENDA

Maritime matters

(c) Report of the 83rd session of the IMO Maritime Safety Committee and of the 93rd session of the IMO Legal Committee concerning the 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), ¹ 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. The IMO Legal Committee nominated eight member States (China, Egypt, Greece, Nigeria, Panama, Philippines, Turkey, and 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
2. The first session of the Joint Working Group took place from 17 to 19 January 2005. The Joint Working Group agreed to the adoption of a 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. Taking

¹ GB.290/8.

² GB.291/STM/4.

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.

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 document 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 2006.³ 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 93rd session (October 2007).
9. At its 298th Session (March 2007),⁴ the Governing Body of the ILO took note of the information provided and approved the revised Terms of Reference for the Joint Working Group. It further approved, subject to the IMO incorporating the additional element proposed by the Government of China, the amendment of the revised Terms of Reference.
10. The IMO Maritime Safety Committee (MSC), at its 83rd session (3–12 October 2007), in order to respect the spirit of the Guidelines, agreed to include a provision in the draft Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident creating an obligation on contracting parties to ensure that a seafarer from whom evidence is sought in a casualty investigation to “be informed, and allowed access to legal advice, regarding” the risk of self-incrimination. This decision was taken in the context of the MSC approval of the draft Code, as an amendment to the SOLAS Convention, with a view to its adoption at the MSC 84th session. The MSC requested the IMO secretariat to inform the Legal Committee and the ILO of the outcome of its consideration of this issue.
11. The IMO Legal Committee, at its 93rd session (October 2007) agreed that there was no compelling need to revise the Guidelines at that session. The Committee reiterated its

³ See attached report, document IMO LEG 92/13, pp. 25-27.

⁴ GB.298/STM/5/2(Rev.).

concern regarding the fair treatment of seafarers and agreed that it would be appropriate to gain experience with the current Guidelines before considering any revisions. The Committee also agreed that the Joint IMO/ILO Working Group should be reconvened to monitor the implementation of the Guidelines on the basis of the terms of reference approved by the ILO Governing Body, including the addition concerning the collection of information. The Committee requested the IMO and ILO secretariats to consult with a view to determining an appropriate time and place for the next meeting of the Joint IMO/ILO Working Group, and decided to retain this matter on its own work programme.

Geneva, 25 January 2008.

Submitted for information.