

International Labour Organization

International Maritime Organization

Final report

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

Geneva, 2–6 March 2009



International Labour Organization

International Maritime Organization

Final report

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

Geneva, 2–6 March 2009

Copyright © International Labour Organization 2009

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: pubdroit@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit www.ifro.org to find the reproduction rights organization in your country.

ISBN 978-92-2-122761-8 (print)

ISBN 978-92-2-122762-5 (web pdf)

First published 2009

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications and electronic products can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org.

Visit our web site: www.ilo.org/publns

Printed by the International Labour Office, Geneva, Switzerland

Opening of the session

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 Ninth Session from 2 to 6 March 2009 at the headquarters of the International Labour Organization in Geneva, Switzerland. Mr Charles Darr (Government, United States) chaired the meeting. The Shipowner spokesperson was Ms Edith Midelfart (Norway), the Seafarer spokesperson was Mr Brian Orrell (United Kingdom) and the spokesperson for the Government group was Mr Neil Frank Ferrer (Philippines). The list of participants is contained in Appendix III to this document.
2. *The terms of reference of the Joint Working Group, as endorsed by the ILO Governing Body and the IMO Legal Committee, were as follows:*
 - (I) 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.
 - (II) In doing so, 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.
 - (III) It should continue monitoring the problem of abandonment of crew members/seafarers, taking into account all relevant information including technical solutions available for financial security.
 - (IV) It should complete the discussions and agree on principles to facilitate the drafting of mandatory provisions for inclusion in an appropriate instrument or instruments.
 - (V) It should make appropriate recommendations to the IMO Legal Committee and the ILO Governing Body.
3. Ms Elizabeth Tinoco, Chief of the Sectoral Activities Branch, opened the meeting and welcomed the participants on behalf of the Director-General of the ILO. She stated that the economic crisis was affecting international shipping with more seafarers being at risk of being abandoned. The database on abandonment was being updated regularly. The more recent cases possibly reflected the downturn in shipping activities due to difficult trading conditions for shipping. At the Eighth Session, the Joint Working Group had considerably progressed on possible solutions on the issues of abandonment and compensation for claims for injury and death of seafarers' texts. She encouraged the Joint Working Group to complete its work at this session. The final report would be submitted to the November 2009 session of the Governing Body of the ILO, as well as to the October 2009 session of the IMO Legal Committee.
4. The representative of the IMO, Mr Gaetano Librando, Deputy Director, Head, Treaties and Rules Section, stated that the Joint Working Group had been established more than ten years ago, to ensure, through the operation of appropriate international instruments, the rights of seafarers to adequate compensation for loss of life or personal injury, as well as to adequate protection in cases of abandonment. He recalled that the Joint Working Group had developed the texts of two important resolutions and associated guidelines, directed at providing seafarers and their families with the protection that has been lacking in respect of these two areas of seafarers' welfare. Abandonment was unacceptable, and detrimental to the recruiting and retaining of qualified seafarers. With the current global financial crisis, there was a real risk that this would become a major issue and adequate solutions needed to be found and put into effect as quickly as possible. This Ninth Session had been agreed upon with a view to solving the final issues which were still open. He encouraged

the Joint Working Group to agree on principles which could facilitate the drafting of suitable mandatory provisions with regards to compensation for abandonment, personal injury to and death. The form of the instruments should be decided at a later stage.

5. Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department of the ILO, recalled the Terms of Reference of the Joint Working Group as approved by the IMO Legal Committee in October 2008, as well as by the ILO Governing Body in November 2008. She emphasized that the objective of the Ninth Session was to reach an agreement on the principles for future mandatory texts. She reminded the experts to focus on issues of substance, coverage and approach. She provided an overview of the documents submitted. The joint paper submitted by the International Shipping Federation (ISF) and the International Transport Workers' Federation (ITF) (IMO/ILO/WGLCCS 9/3) had been developed on the basis of a "non-paper" produced by the Governments of the United Kingdom and the United States. The Joint Secretariat had taken into account the approach in this "non-paper", as well as the views expressed in the joint ITF-ISF paper (IMO/ILO/WGLCCS 9/3) and had produced two documents (IMO/ILO/WGLCCS 9/1) and (IMO/ILO/WGLCCS 9/2) which could serve as the basis for discussion at this meeting. In addition, the ILO secretariat had prepared a paper (ILO/IMO/WGPS/9/2009/4) on the potential options for addressing the issue.
6. The Chairperson praised the social partners for their work in narrowing down their differences. He urged the meeting to concentrate on the principles. On his proposal the meeting agreed that the two papers presented by the Joint Secretariat (IMO/ILO/WGLCCS 9/1) and (IMO/ILO/WGLCCS 9/2) would serve as the basis for discussion.
7. The Shipowner spokesperson confirmed that the non-paper prepared by the United Kingdom and the United States had been the basis of the discussion and agreement between the social partners. Her group was willing to listen to and consider the suggestions by the Governments. The two papers prepared by the Joint Secretariat were very helpful. She preferred an instrument linked to the Maritime Labour Convention (MLC, 2006), rather than a stand-alone one. She recalled that the MLC, 2006, sufficiently addressed repatriation and financial security and therefore questioned the necessity of having additional provisions for abandonment. She identified a few points which needed to be resettled with regards to abandonment: tonnage limits needed to be determined in the case of a stand-alone instrument; ships engaged in the coastal trade should be excluded; and entitlements or benefits to be covered should be limited to costs of repatriation and the necessary maintenance and support from the date of abandonment, since other costs and benefits were covered by other international instruments on arrest, maritime liens and insolvency. She then strongly recommended to include a clause on subrogation for the provider of financial security and asked the observer from the International Group of P&I Clubs to comment on this issue. The Shipowner spokesperson observed that the application of the draft instrument on financial security with regard to compensation in the case of personal injury or death, was limited to contractual claims. Referring to the obligation not to exert pressure on the seafarer to accept a payment less than the contractual amount, the Shipowner spokesperson was of the opinion that there should also be an obligation not to bring undue pressure on the shipowner to compensate at a higher level than the contractual amount. Given the options available, she concluded that the use of the model receipt and release form should not be mandatory.
8. The Seafarer spokesperson regretted that an occasion for media attention to the work of the ILO had been missed by refusing a television company access to this meeting. He then placed his comments on the two documents submitted by the Joint Secretariat. Referring to the document on abandonment (IMO/ILO/WGLCCS 9/1), he pointed out that the definition of seafarer was too narrow for the purpose of abandonment; other persons such as family members and supernumeraries might also be on board ships. Wages should also

be included as an item to be provided for. The relevant period could be discussed, possibly three or four months. He felt that the proposal for a model format under point 9 was necessary. Referring to document IMO/ILO/WGLCCS 9/2, the Seafarer spokesperson pointed out that, in paragraph 3, “illness” was not mentioned in the same way as in the MLC, 2006, and needed to be included in the contractual claims. Paragraph 4 needed to indicate the person to whom the contractual claim for compensation shall be made. With regard to the attestation, he felt it should be retained in this case as well. He suggested replacing at the beginning of Guideline B4.2 the words “To the extent compatible” with “Notwithstanding”, for consistency with the resolution.

9. The representative of the Government of the United States believed that due to the current financial crisis, more shipping companies could become insolvent for various reasons. He expressed satisfaction at the support expressed for the work of this Group by the IMO Legal Committee. The current financial crisis had led to an increased awareness of the need for a mandatory instrument to be developed.
10. The representative of the Government of the Philippines commented that the two Joint Secretariat documents had well captured the arguments contained in the other papers as well as the past work of the Joint Working Group.
11. The representative of the Government of France drew attention to new cases of abandonment in the ports of his country. The problem was coming back with an increasing number of bankruptcies. He supported the position of the representative of the Government of the United States on the need to urgently agree on viable mandatory solutions.
12. The representative of the Government of the Republic of Korea believed that the work of the Joint Working Group should be in line with the resolution adopted by the International Labour Conference. He was in favour of a standard accompanied by guidelines to be included in the MLC, 2006. The MLC, 2006, was foreseen to enter into force in 2011. It would be widely ratified. Fishers should also be covered by similar measures. He suggested that the scope of application should include fishing vessels. He supported flexibility as to the form of financial security with a limitation to a reasonable level.
13. The representatives of the Governments of the United Kingdom and Cyprus stressed the urgency to conclude the work of the Joint Working Group in view of the current economic climate which had adversely affected the shipping industry.

Provision of financial security in case of abandonment of seafarers

14. A representative of the Government of the Philippines, speaking on behalf of the Government group, reported that the Government group had focused in its discussions on issues of principle and had achieved consensus on a number of important points. While there remained a few areas of disagreement, the Government group generally endorsed the paper of the Joint Secretariat. The spokesperson for the Government group elaborated on the proposed text of a draft instrument with regard to the following points:
 - *Objectives and principles, paragraph 2:* The Governments agreed with the principle that the same set of circumstances should not give rise to a dual recovery, or double indemnity. It was felt that the concept could be further strengthened by replacing the word “should” with “shall”. Since there was no strong view as to which words (“dual recovery” or “double indemnity”) should be used, the Government group decided to leave it to the industry to choose the most appropriate terminology and sought advice from the International Group of P&I Clubs.

-
- *Definition and scope, issue of extending provisions to fishing vessels:* There was consensus that fishing vessels should be excluded from the scope of application of the draft instrument because of the specificity of the industry.
 - *Definition and scope, definition of “seafarer”, in paragraph 1(b):* There was agreement to retain the definition of the term “seafarer” as it was, while noting that the Seafarers’ group considered it to be too narrow.
 - *Definition and scope, paragraph 2:* There was agreement to retain the present wording. It was considered that, if the provisions were to be included in the MLC, 2006, gross tonnage would be a non-issue and, should the provisions take the form of a stand-alone instrument, gross tonnage would be one of the last items of discussion before the relevant forum.
 - *Definition and scope, paragraph 5:* The Governments endorsed the idea of port State control and were satisfied with the formulation of the provision in the draft.
 - *Standard, paragraph 2:* There was agreement with the text of the provision, subject to replacing, for drafting purposes, the phrase “a ship flying its flag” with “a ship flying the flag of the Party”, or similar wording.
 - *Standard, paragraph 3:* There was consensus to add the following words in square brackets at the end of paragraph (c): “[... including failing to pay contractual wages for at least two months]”.
 - *Standard, paragraph 4:* Despite the view of the Seafarers’ group that “wages” should be added to the enumerated items, the Governments suggested to retain unchanged the present wording.
 - *Standard, paragraphs 5–11:* There was agreement to retain unchanged the provisions concerning the Abandonment Security Certificate, for the time being. It was considered that, while documentary evidence was useful, flexibility should be provided and the administrative burden of multiple certificates should be reduced. The Governments felt that the Abandonment Security Certificate should be integrated into the Maritime Labour Certificate. This would result in extensive modification of the relevant provisions in due time, so as to ensure consistency with the MLC, 2006.
 - *Standard, paragraph 13(a):* After extensive discussions, no consensus had been achieved. The Government group had decided to retain all square brackets in the text.
 - *Guideline, paragraph 1:* The Governments considered the provision as important and to be retained in the text. One Government suggested moving the paragraph to the Standard.

15. On behalf of the fishing industry employers in the Shipowners’ group, an Employer member reiterated their concerns about the proposal to make the draft provisions applicable to fishing vessels. First and foremost, there was the problem of representation. The ISF had clearly indicated that they did not represent the fishing industry, and fishing vessel owners would not be involved in the amendment procedure under Article XV of the MLC, 2006. Furthermore, that Convention had been designed for shipping and not the fishing industry, and the ILC had adopted a specific instrument for the fishing sector: the Work in Fishing Convention, 2007 (No. 188). The MLC, 2006, did not include definitions of the terms “fisher”, “fishing vessel owner” and “fishing vessel”, and used gross tonnage instead of length. It would thus be preferable to develop a separate instrument on the abandonment of fishers in line with Convention No. 188.

-
16. The secretary of the Seafarers' group concurred that the fishing industry had its own specific characteristics. Convention No. 188 was the outcome of three difficult Conference discussions on a complex issue. The general exclusion of fishing vessels from the MLC, 2006, and their inclusion for the issue of abandonment, could create confusion. He sought clarification as to the procedure to amend Convention No. 188 to include abandonment.
 17. The Chairperson concluded that there was consensus on not extending the proposed text on financial security in case of abandonment to fishing vessels.
 18. The Seafarer spokesperson noted that the sentence concerning dual recovery in *paragraph 2 of Objectives and principles* was confusing and welcomed clarification as to its implications in civil law. His group agreed in principle with the present definition of "seafarer" in *paragraph 1(b) of Definition and scope* but cautioned that, in case of abandonment, persons on board ship other than seafarers might also need to be repatriated, for example spouses and supernumeraries. As regards *paragraph 2 of Definition and scope*, the Seafarer spokesperson questioned the exclusion of ships below 500 gross tons. Such ships were likely to be involved in domestic trade, and in some countries abandonment in a certain port could involve a lengthy return journey. His group also questioned the implications of *paragraphs 5 and 6 of Definition and scope* on port State control and on no more favourable treatment, respectively, and commented that, if the provisions were to be included in the MLC, 2006, those paragraphs should not be retained. As regards *paragraph 4 of the Standard*, the Seafarer spokesperson could accept the text as it was, without the insertion of the word "wages", if the additional sentence to *paragraph 3(c) of the Standard* as proposed by the Government group was to be included. His group felt that *paragraphs 5–11 of the Standard* did not clearly indicate the entity responsible for issuing the Abandonment Security Certificate, that is the competent authority or the financial security provider. Referring to the tonnage application in *paragraph 5*, the Seafarer spokesperson queried whether ships below a certain tonnage, which would have no obligation to carry a certificate, would still need to provide financial security. The Seafarers expressed their deep disappointment about the decision of the Government group to keep *paragraph 13(a) of the Standard* as a whole in square brackets, since it had clearly been endorsed in previous meetings that outstanding entitlements should include accrued wages. The Seafarer spokesperson further stated that his group would accept to move *paragraph 1 of the Guideline* to the *Standard* and noted that the Government group accepted the model format in the *Appendix*.
 19. The Shipowner spokesperson stated that the definition of "seafarer" was acceptable as it was based on the MLC, 2006. They had no comment on the tonnage figure and their group accepted the document as it was. An expert of the Shipowners' group, referring to *paragraphs 5 and 6* under "Definition and scope", commented that, while *paragraph 6* was in the joint ISF–ITF paper, *paragraph 5* might not be necessary. Turning to the *Standard*, the Shipowner spokesperson then stated that *paragraphs 5–11* were not necessary, if the text was to be included in the MLC, 2006. They had no comment for *paragraph 13*, on the understanding that the wording would be finalized in another forum.
 20. The spokesperson for the Government group noted that the issue of "dual recovery" could be clarified with the Office. As for the definition of "seafarer", the term was defined in the MLC, 2006. The tonnage threshold question would resolve itself, if the text was inserted in the MLC, 2006. Governments were in favour of port State control and *paragraph 5 of "Definition and scope"* could be deleted, if the MLC, 2006, route was chosen. The link between *paragraphs 5 and 6* had not been discussed by the group. As for *paragraphs 5–11 of the Standard*, the group agreed with the principle of certification, but had not considered in detail the various paragraphs. The group had not been able to agree on removing the square brackets around *paragraph 13(a)*. Finally, the group could agree to moving *paragraph 1 of the Guidelines* to the *Standard*.

-
21. The Seafarer spokesperson said that he would withdraw his expression of disappointment on the square brackets around paragraph 13(a), if these derived from the joint ISF–ITF paper. He clarified there had been no agreement with the Shipowners as to whether this provision would refer to three or four months, hence the square brackets in the joint ISF–ITF paper. He stated that his group agreed with the definition of “seafarer”. However, it was common to have supernumeraries, such as spouses and superintendents, on board, who would also need to be repatriated.
 22. The Shipowner spokesperson stated that her group could agree with moving paragraph 1 of the Guideline to the Standard. Some arrangements for the supernumeraries would be necessary. However, for wages and other outstanding entitlements, there was a need for limitation, both in time and level. Seafarers should not delay to press for unpaid wages if they had not been paid in time. The Shipowners acknowledged the importance of repatriation. Seafarers needed to be protected from substandard employers. However, the group could not agree to the removal of the square brackets in paragraph 13(a), especially as regards the time limitation.
 23. The Seafarer spokesperson pointed out that, at the Eighth Session, the inclusion of wages and the time limitation had received overwhelming support and had been agreed upon (Final report of the Eighth Session, paragraphs 65–67).
 24. A representative of the Office clarified that the draft instrument had been developed to be either part of the MLC, 2006, or a stand-alone instrument. The Office had provided a solution for the definition of a “seafarer” based on the MLC, 2006, on the understanding that the final text would depend on discussions as to the form of the instrument. Paragraphs 5–11 also contained elements based on the MLC, 2006, and would also need to be adapted, once the decision on the form of the instrument had been made.
 25. The spokesperson for the Government group highlighted his group’s position on the following four points. Firstly, there was consensus on the linkage between paragraph 13(a) and paragraph 3(c). Secondly, an overwhelming majority was in favour of the removal of the brackets around paragraph 13(a). Thirdly, there was consensus on retaining the brackets around paragraph 13(a) as regards the limitations to three and four months. In this connection, he stated that the majority would prefer to have three months, but they would like to hear from the social partners on this. Finally, an overwhelming majority was in favour of additional text to further clarify the “outstanding contractual entitlement of the seafarer and other entitlements arising from the national law of the flag State”.
 26. The representative of the Government of Denmark reiterated his position, expressed at the Eighth Session, that he could not share the position of the overwhelming majority of Governments. His concern was that governments would have to resolve the disputes between shipowners and seafarers on wage issues. Wages should be covered in case of the shipowner’s insolvency.
 27. The Shipowner spokesperson stated that her group could not agree with the Governments, as her group did not believe there was a linkage between paragraphs 13 and 3 and wished to retain the brackets around paragraph 13(a).
 28. The Seafarer spokesperson asked the Shipowners to clarify whether their objections on wages were in relation to the three or four months’ limitation. He reminded the Shipowners of their previous commitment to inform the Seafarers of their position on this question. The Seafarers believed that paragraphs 13(a) and 3(c) were linked. In paragraph 3(c), two months would be appropriate and, in paragraph 13(a), a longer time limitation would be necessary. They agreed with the Governments on the outstanding entitlement. They preferred four months, but three months would be a minimum.

-
29. The Shipowner spokesperson stressed that the MLC, 2006, provided for wages to be paid until repatriation was effected. No other wages should be covered. The coverage of financial security had to be specific. Seafarers should not allow wages to continue to accrue and there needed to be limitations. She reiterated that there were international instruments covering areas relating to maritime liens, arrests and insolvency.
 30. The meeting then reviewed the text of the draft instrument, which would be revised accordingly by the Joint Secretariat.

Preamble

31. The Shipowner spokesperson felt that a preamble was not needed if the issue would be dealt with through a revision of the MLC, 2006.
32. The Seafarer spokesperson replied that, given the position of the Shipowners on wages, his group was not anymore convinced that inclusion of the draft instrument into the MLC, 2006, was the best way forward, in which case a preamble would be necessary.

Objectives and general principles

33. The social partners agreed that paragraph 2 needed to be clarified, in particular the expression “same set of circumstances”.
34. The representative of the Government of France suggested that the “set of circumstances” meant that the same claim should not allow for dual recovery.
35. The representative of the Government of the United States stated that financial security should not prejudice other residual rights.
36. Based on the discussion, a new formulation for the second sentence of that paragraph was provided to the Joint Working Group by the Joint Secretariat. That paragraph was worded as follows: “However, national laws and regulations may provide that any amounts payable under this [instrument] can be offset against amounts received from other sources arising from such rights, claims or remedies in relation to the abandonment incident.”
37. Following a query of the Shipowner spokesperson, there was a discussion as to whether the word “may” was appropriate in this context or whether “shall” was preferable. The Seafarers as well as several Governments, among which, France, Republic of Korea and the United States expressed their preference for “may”. The instrument should be flexible in its implementation while achieving the required objectives. It was decided to keep the word “may” in this sentence.
38. It was also decided not to place this second sentence in a separate paragraph, and to delete the word “however” at the beginning. In addition, after a question from the representative of the Government of the Bahamas, the Joint Working Group considered that the sentence adequately dealt with avoiding the possibility of “dual recovery”.
39. With those considerations, paragraph 2 was approved by the Joint Working Group.

Definition and scope

40. The Shipowner spokesperson suggested that, if the text was going to be a stand-alone document, it might be helpful to import Article II, paragraphs 2 and 5, of the MLC, 2006,

especially to ensure consultations of the social partners. The Seafarer spokesperson noted that such consultations might not be appropriate in the framework of a stand-alone instrument. The social partners did not have any special status in other organizations. If there was no agreement on the wages issue, the Seafarers would not agree that the instrument should be adopted in the ILO; hence there would be no need for the consultation provision.

41. As regards *paragraph 2*, the Seafarer spokesperson stressed that the instrument should cover ships below 500 gross tonnage, as seafarers on board such ships were equally likely to become victims of abandonment and could not be left without protection. The Shipowner spokesperson recalled that issues regarding tonnage had been agreed upon previously. With regard to the suggestion of a representative of the Office to insert a linkage with the MLC, 2006, the representative of the Government of the United States believed that the issue could be resolved without referring to the MLC, 2006, in line with the submission made by his Government at the Seventh Session. It was agreed to defer this discussion, pending the decision of the meeting as to what form the draft provisions should take.
42. The Shipowner spokesperson recommended inserting into *paragraph 3* wording similar to Article II, paragraph 4, of the MLC, 2006, expressly excluding fishing vessels from the scope of application. The Seafarer spokesperson disagreed, stating that, while the fishing industry could be excluded if the provisions were to be part of the MLC, 2006, the provisions could well cover fisheries, if the meeting decided that they should take the form of a non-ILO stand-alone instrument. The wording should not be amended, pending decision on the form of the instrument.
43. The Chairperson recalled the Government group's view that the fishing industry was a different sector that should not be the subject of this discussion. On behalf of the fishing industry employers in the Shipowners' group, an Employer member emphasized the need to address the issue of abandonment in the fishing sector. However, if shipping and fishing were dealt with in the same instrument, difficulties might arise in defining certain terms, as applicability differed considerably in the two sectors. He therefore strongly recommended a separate instrument for fishing, linked to Convention No. 188. The meeting decided that the issue needed to be revisited.
44. With reference to his previous comments on *paragraphs 5 and 6*, a Shipowner member stated that, in the case of a stand-alone instrument, the text should be revisited in order to prevent undue delay and detentions, in line with the MLC, 2006.
45. The representative of the Government of the United States recalled that his Government's submission at the Seventh Session had proposed mechanisms taken from the latest IMO Convention on the Removal of Wrecks, to ensure implementation of the responsibilities of the party on port entry. He strongly recommended following those proposals, should the draft provisions take the form of an IMO stand-alone instrument.
46. After discussion among the Officers of the meeting, the Chairperson reported that an agreement of principle on the issue of wages had been achieved. The Seafarer spokesperson explained that the disagreement on removing the square brackets around paragraph 13(a) of the Standard had led to a change of preference within his group towards a stand-alone instrument, which would have implied a renewed scrutiny of all previously discussed provisions. The resolution of the crucial issue of wages allowed the Seafarers to revert to their initial preference of the text being part of an amendment to the MLC, 2006. The Shipowner spokesperson reiterated that her group had always favoured the MLC, 2006, route. The Chairperson concluded that the paper would henceforth be discussed bearing in mind the probable inclusion of the provisions into the MLC, 2006.

Standard

47. The Joint Working Group approved *paragraph 2*, on the understanding that the minor drafting issue involving the words “a ship flying its flag” would be resolved.
48. As regards *paragraph 3*, the social partners expressed no objections to the amendment previously proposed by the Government group to add at the end of subparagraph (c) the words “including failure to pay contractual wages for a period of two months”. A representative of the Government of Denmark expressed her disagreement stating that in her Government’s view the shipowner’s failure to pay two months of salary did not constitute abandonment. The Joint Working Group approved paragraph 3 as amended.
49. In the light of previous comments on *paragraphs 5–11*, the Chairperson concluded that, should the provisions become part of an amendment to the MLC, 2006, there was an agreement of principle to integrate those provisions into the maritime labour certification process and revise them accordingly for the purposes of harmonization with the MLC, 2006. Should the provisions become a stand-alone instrument, attention would be paid to them in a different forum.
50. Concerning *paragraph 13*, the following compromise wording of subparagraph (a) had been the outcome of consultations held during the Officers’ meeting: “(a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;”.
51. A representative of the Government of Denmark reminded that the new wording did not accommodate her Government’s concerns about the wage issue. The representative of the Government of Belgium noted the linkage between paragraphs 3(c) and 13(a) of the Standard and reserved the position of his Government on the implications of the proposed wording. The representative of the Government of the Republic of Korea agreed in principle with the text, but expressed his preference for a limitation to three months instead of four, since the Protection of Workers’ Claims (Employer’s Insolvency) Convention, 1992 (No. 173), stipulated three months and the existing national legislation provided financial security for three months. He stated that the possibility of amending national legislation would be considered.
52. The Joint Working Group approved the new text of subparagraph (a) without square brackets, bearing in mind the reservations expressed by a few Governments. In addition, the Chairperson clarified that the difference between the number of months in paragraphs 3(c) and 13(a) was due to the distinct purposes of the two provisions. The purpose of paragraph 3 was to identify when abandonment occurred, while paragraph 13 defined the scope of financial security to be provided in case of abandonment. It was necessary to allow for a time lapse between the recognition of the abandonment situation and the limitation of financial security. The Joint Working Group approved subparagraphs (b) and (c) of paragraph 13 without amendment.
53. With reference to *paragraph 14*, the representative of the Government of the United States raised the concern that the stipulation of the “seafarer’s home” as the only repatriation destination could be in deviance from Standard A2.5(2)(c) of the MLC, 2006. This could complicate the process of integrating the text into the MLC, 2006, or create an impediment to using the accelerated amendment procedure under Article XV of the MLC, 2006.
54. The Shipowner and Seafarer spokespersons explained that, while seafarers normally had the right to choose among the agreed repatriation destinations, repatriation to the “seafarer’s home” (not necessarily identical to country of nationality) would be the most

appropriate destination in the specific case of abandonment, where the shipowner no longer existed. A representative of the Office confirmed that a decision, that a seafarer should be repatriated to his or her home in the unique circumstances of abandonment, would not create any impediment. Standard A2.5(2)(c) did not specify the place of repatriation, and the options of repatriation destinations were listed in the Guidelines. Paragraph 14 was adopted without amendment.

55. Furthermore, the Joint Working Group approved in principle the text on subrogation and the right of recourse submitted by the International Group of P&I Clubs, subject to further redrafting for purposes of harmonization with the relevant provisions in the MLC, 2006.

Guideline

56. The Joint Working Group agreed to keep the text of *paragraph 1* as it was and to move it to the Standard.

Appendix

57. The Joint Working Group approved the appendix as it was, with the caveat of any necessary later revision arising from the integration of the relevant provisions into the MLC, 2006, certification process.

Conclusion

58. The Joint Working Group, having reviewed the proposal of a draft text on the provision of financial security in case of abandonment of seafarers, requested the Joint Secretariat to prepare a revised document incorporating the changes agreed during the discussion.

Financial security for contractual claims arising from sickness, injury or death

59. The spokesperson for the Government group reported on the outcome of the Governments' consultations on the text concerning financial security for seafarers and their dependants with regard to contractual claims arising from sickness, injury or death. The group believed that this text should be incorporated, in due course, into the MLC, 2006. Consistency and harmonization with the existing provisions of the MLC, 2006, was therefore considered as essential. The spokesperson for the Government group further elaborated on the changes suggested by his group to the proposed text of new Standard A4.2.2 as follows:

- *Paragraph 1:* Following extensive discussions, the group agreed to keep the text as it was. The representative of the Government of Denmark had proposed to add at the end of the paragraph the following new sentence in square brackets: "If a Member has implemented the provisions on shipowners' liability in Standard A4.2.1 in such a way that the seafarers' claims can be based directly on national laws and regulations, it is the claims deriving from national laws and regulations that shall be enforced by the provisions of this Standard."
- *Paragraph 3:* The Government group agreed in principle with the wording but sought clarification as to the absence of reference to sickness or illness. One Government had proposed to insert in square brackets the words "or similar" between "interim" and "payment" in subparagraph (c), in order to take into account national legislation.

-
- *Paragraph 4:* The Governments did not reach consensus as to whether the square brackets should be retained or removed. It was suggested that it might be appropriate to include in square brackets a reference to “the next of kin” after “by the seafarer concerned”.
 - *Paragraph 5:* The Government group agreed with the principle of prior notification to the seafarer, since it was essential for the seafarer to be informed of the cancellation or non-renewal of financial security. There had been, however, extensive discussions as to who should provide such notification (e.g. financial security provider, flag State, shipowner), and no consensus had been reached.
 - *Paragraph 7:* The Government group sought clarification on the problem raised by this paragraph in square brackets.
- 60.** The Joint Working Group agreed that, as was the case for abandonment, fishers would be excluded from the scope of application of the draft text concerning contractual claims.
- 61.** As regards *paragraph 1* of the new *Standard A4.2.2*, a Shipowner member expressed concerns about the definition of “contractual claim” considering that it needed to be further harmonized with the wording of Regulation 4.2(1). The following definition was therefore proposed instead by the social partners: “For the purposes of this Standard, the term ‘contractual claim’ means any claim which relates to sickness, injury or death occurring while the seafarer is serving under a seafarers’ employment agreement or arising from their employment under such an agreement or an applicable collective bargaining agreement.” In addition, reference could be made to national laws and regulations as provided in the draft text. The Seafarer spokesperson added that the draft text lacked a reference to “death” and needed to include the words “serving under a seafarers’ employment agreement ...” as used in the Regulation. There was a need to harmonize the draft provisions with the MLC, 2006, and a repetition of the wording in Regulation 4.2 would be all the more important, given that for the first time there would be two Standards under the same Regulation. The Seafarers disagreed with the Shipowners’ suggestion to make reference to laws and regulations.
- 62.** A representative of the Office indicated that Regulation 4.2 was the overarching legal framework, and that there was no impediment to have two Standards flowing from the same Regulation where appropriate. The redrafting process would still allow for a review of this approach. She encouraged nonetheless including a reference to “death” and the words “serving under a seafarers’ employment agreement ...”, in line with the Regulation, since their omission had been an oversight.
- 63.** The representative of the Government of Norway raised a question concerning the interrelationship between the existing Standard A4.2 and the proposed Standard A4.2.2. While the existing Standard only allowed for national laws and regulations, Standard A4.2.2 as proposed by the Office, permitted national laws and regulations “or other measures implementing Standard A4.2.1”, which seemed to expand the implementation beyond the MLC, 2006. He queried whether proposed Standard A4.2.2 was complementary or alternative to the existing Standard and cautioned not to conflict with the MLC, 2006.
- 64.** A representative of the Office stated that paragraph 1 of the proposed Standard was an attempt to define, for the purposes of the following paragraph, the term “contractual claim”, as it was used for the first time. With reference to Standard A4.2(1)(b), she stressed that paragraph 1 of the proposed Standard A4.2.2 would not compromise the obligations under the existing Standard, and could be deleted if deemed unnecessary. Similarly, the representative of the Government of France felt that contractual claims could well go

beyond the shipowner's liability under existing Standard A4.2. In his view, the proposed Standard A4.2.2 was complementary to the existing Standard A4.2.

65. The representative of the Government of Denmark considered it useful to define the notion of contractual claims albeit necessary to take into consideration the existence of different systems. He requested clarification concerning the relation of the notion of contractual claims with the existing Standard A4.2. In Denmark, the concept of claims was different as a claim would not arise out of a contract but out of national legislation giving effect to this requirement. Danish legislation covered all seafarers including non-residents. Under the Danish system, all employers had to contribute to a compulsory insurance scheme which would cover any accident. Employers failing to contribute their share to this system would be fined, but this would not result in the seafarers losing their cover, as the national insurance scheme assumed this duty. Denmark needed confirmation that the text in Standard A4.2.2 did not make it mandatory for the governments to reassure claims that were based on a contract between the shipowner and the seafarer or a collective agreement with a larger coverage than the national insurance scheme that fulfilled the shipowner's liability as set out in standard A4.2 in the MLC.
66. The Seafarer spokesperson held that the draft document was envisaged to amend the MLC, 2006. The Convention's principle of substantial equivalence had been introduced to cater for a wide variety of circumstances in the member States. It would ensure that different systems in the member States could be accommodated, as long as the Member could prove that its system was substantially equivalent to the requirements of the MLC, 2006. Even if the concept of contractual claims was irrelevant in Denmark, the obligation of the Members was only to deliver, thus, it was at their discretion to choose the precise way on how they would do so. In view of Standard A2.1(4)(h) of the MLC, 2006, it was, therefore, not necessary that the definition be deleted or the current wording be made flexible enough to accommodate the system used in Denmark. The Shipowner spokesperson shared the Seafarer spokesperson's view that it should be possible to include the issue of liability not only in an employment contract or a collective bargaining agreement, but also in national legislation, which could in turn refer to the collective bargaining agreement, or contract.
67. A representative of the Office explained that Standard A2.1(4)(h) of the MLC, 2006, contained the matters seafarers' employment agreements had to include. According to existing Standard A4.2, the laws and regulations of a Member should require shipowners to assume the responsibility for providing the relevant protection to all seafarers. The proposed Standard A4.2.2 would not change the obligation of the Member to enact laws and regulations to ensure that shipowners respected the Regulation. Moreover, she concurred with the Seafarer spokesperson in that, given the flexibility of the MLC, 2006, it was sufficient that a government could prove to have a system in place that was substantially equivalent with the relevant requirements. Should Denmark implement the MLC, 2006, via the described statutory mechanism, effect would be given to the Convention through substantial equivalence. The representative of the Government of Denmark expressed his satisfaction with the fact that a statutory system could be in compliance with Title 4.2 of the MLC, 2006.
68. The Joint Working Group approved paragraph 1 as amended by the social partners.
69. Concerning *paragraph 2* of the proposed *Standard A4.2.2*, the Shipowner spokesperson was of the opinion that this provision could be deleted or amended, since it left it to the shipowners to choose measures that would ensure "impartiality" and expeditious action. The requirements as set out in paragraph 3 might be sufficient, or national laws or regulations should include additional measures.
70. The Seafarer spokesperson opposed the deletion, as it was of utmost importance that the "impartial settlement" became enshrined in national legislation. Shipowners had no perfect

arrangements in place for the settlement of disputes, and settlement took too long. Since the shipowners and not the flag State would deal with the claim, the flag State had to lay down the procedure to be followed by the shipowner. He agreed, however, to the deletion of the wording “including medical boards” at the end of the paragraph. The Chairperson recalled the Government group’s agreement to keep the text as it was.

71. The Shipowner spokesperson questioned the rationale behind leaving the definition of methods and the effective arrangement of procedures to the shipowners. Rather, it was the obligation of the flag State to pass laws ensuring that claims were handled impartially and expeditiously, as shipowners might need guidance from the flag State to ensure that they handled the cases as expected and wished for by the flag State. The representative of the Government of Norway concurred with the Shipowner spokesperson, also wondering how the shipowner could be impartial. The representative of the Government of the United States believed that the requirement to establish a procedure was not necessarily directed towards the shipowner but should be generally left to the discretion of each member State.
72. Recapitulating the discussion, the Chairperson questioned whether the social partners would agree to leaving it to the discretion of member States to determine appropriate action. The Seafarer and the Shipowner spokespersons agreed to the suggestion of the representative of the Government of the United States to delete the words “shipowners have”. The Joint Working Group approved paragraph 2, as amended, subject to any necessary redrafting for syntactical coherence.
73. Concerning *paragraph 3*, an expert of the Shipowners’ group introduced new wording to the chapeau of this paragraph, developed in conjunction with the Seafarers’ group: “National laws and regulations shall provide the financial security to assure compensation as required by Standard A4.2.1, paragraph 1(b), for valid claims and shall meet the following minimum standards:”. He also proposed that paragraph 3(a) should refer to paragraph 3(c) instead of paragraph 3(d).
74. The Seafarer spokesperson concurred with these proposals and emphasized that contractual claims included “illness”.
75. A proposal to add the words “or similar” after “interim” in paragraph 3(c) was discussed to take care of the situation in Denmark where there were monthly and not interim payments. The Joint Working Group decided to resolve this issue by inserting “interim payment or payments” to the satisfaction of the representative of the observer Government of Denmark.
76. As regards *paragraph 4*, the Seafarer spokesperson recalled that the social partners had recognized the inclusion of the words “their next of kin” in their joint submission. In addition, he clarified that any claim would be “against the financial security provider”.
77. A few alternative suggestions were made as regards “next of kin”: the Shipowners suggested the term “designated beneficiary”; the representative of the Government of Greece proposed “duly authorized persons”; and the representative of the International Group of P&I Clubs proposed an alternative text as follows, “any valid contractual claim for compensation required to be covered by the financial security system referred to in A4.2.1(1)(b) ... may be brought directly by the seafarer concerned or a representative of the seafarer, or designated beneficiary or the next of kin”.
78. The Seafarer spokesperson disagreed with those suggestions, since the term “contractual claim” was defined in paragraph 1.

-
79. The Joint Working Group decided to remove the square brackets and add the words “next of kin”. The proposal of the International Group of P&I Clubs would be included in square brackets for further discussion.
80. Concerning *paragraph 5*, the Shipowner spokesperson stated that this item was included in the joint ITF–ISF paper and accepted the principle of notifying seafarers. However, she noted that the requirement for the provider of the insurance to give notification of cancellation had been added by the Joint Secretariat. The Shipowners group felt that it might be difficult for the provider of the insurance to notify the seafarers. It was the responsibility of the shipowners to notify the seafarers and asked for the deletion of the reference to the “provider of the insurance”.
81. The Seafarer spokesperson responded that the text provided by the Office might have to be amended. However, it was important to indicate where the notification of cancellation would come from, and it should be the responsibility of the insurance providers to notify seafarers in cases of cancellation.
82. The representative of the Government of the United States noted that responsibility for notifying seafarers of the cancellation would differ according to national systems. He proposed the following text: “Each Member’s laws and regulations shall ensure that seafarers receive prior notification if a shipowner’s financial security is to be cancelled and be notified immediately if it is not to be renewed”. Thus each State would be able to assign responsibility as appropriate.
83. This proposal was supported by the Shipowners and the Seafarers as well as a number of Governments, including France, Republic of Korea and Norway.
84. The representative of the Government of Cyprus explained that flag States should be notified if there was to be a cancellation of a shipowner’s financial security. In case of cancellation, the flag State should withdraw the Maritime Labour Certificate and accordingly bring this fact to the attention of seafarers and other parties concerned.
85. Both the Shipowner and Seafarer spokespersons, as well as several representatives of Governments, among which the Bahamas, France, Norway and the Philippines, supported this conceptual proposal. The Government representative of Greece expressed some doubt as to the practicability of this suggestion. The representative of the Republic of Korea expressed his concern as to the heavy administrative burden of this proposal. He believed that although flag States needed to be notified, if there was to be a cancellation of a shipowner’s financial security, the flag State should not be required to give notification to the seafarers concerned. Such obligation should remain with the provider of financial security, and the role of the flag State should be to have a proper monitoring system on the notification activity.
86. The Joint Working Group agreed that the Joint Secretariat should provide text encapsulating these two ideas.
87. Introducing the debate on *paragraphs 6, 7 and 8*, the Chairperson referred to similar discussions on certification of financial security and stated that there was widespread support to integrate such certification within the maritime labour certification process.
88. The Shipowner and Seafarer spokespersons agreed on integrating the financial security certification in the maritime labour certification process. However, the Seafarer spokesperson stated that the square brackets around paragraph 7 indicated that there was no agreement with the Shipowners on this paragraph. The Seafarers’ group would like the brackets to be removed and the principle contained in paragraph 7 integrated elsewhere when the draft instrument would be finalized.

-
89. The Shipowner spokesperson noted that the provider might cancel the financial security before the end of the validity period. Then, the financial security would no longer be valid, and claims would no longer be covered by the financial security. However, both the Shipowner and the Seafarer spokespersons agreed that the shipowner would continue to be liable.
 90. The representative of the Government of Greece supported the deletion of paragraphs 6–8 and the consolidation of the financial security into the maritime labour certification process.
 91. The representative of the Government of France preferred separate attestation of financial security.
 92. A representative of the Office clarified that the current certificate of financial security was designed to be a stand-alone document. The Maritime Labour Certificate had a validity of five years and the financial security certificate might have a different validity period. She welcomed any suggestions on how the financial security certificate could be incorporated into the MLC, 2006.
 93. The representatives of the Governments of Cyprus and Norway agreed that the validities of the different documents would most probably be different. The shipowner had the obligation to ensure that the certificates were updated. Furthermore, if there should be a cancellation of financial security by the provider, the Maritime Labour Certificate would become invalid. Port State control should check for the validity of these certificates.
 94. The representative of the Government of the Bahamas stated that it was possible to have one umbrella certificate and other sub-certificates underneath. He also agreed that it was the responsibility of the shipowner to make sure that the certificates were kept valid.
 95. The Joint Working Group agreed to ask the Joint Secretariat to modify the text on the basis that certification for financial security would involve distinct documentation within the maritime labour certification process.
 96. Regarding *Guideline B4.2*, the Shipowner spokesperson suggested that the usage of the model receipt and release form as attached to Resolution A.931(22) should be left to the discretion of the member State and that this should be underlined by the usage of “may” instead of “should”.
 97. The Seafarer spokesperson was indifferent as this change concerned the Guidelines only. However, for the sake of consistency with the remainder of the MLC, 2006, he preferred “should”. He also preferred “Notwithstanding” rather than “To the extent compatible ...”, for consistency with the 2005 resolution on the subject.
 98. The Joint Working Group decided to replace “should” with “may” and delete the words “To the extent compatible ...”.

The form of the instrument

99. During the discussion of the principles for the provision of financial security in case of both abandonment and compensation regarding claims for death and personal injury, the Seafarers’ and Shipowners’ groups had expressed their preference for the mandatory solutions to be adopted through amendments to the MLC, 2006.

-
100. Following consultations, the representative of the Government of the Philippines, speaking on behalf of the Government group, said that a consensus had been reached among the Governments on the form which the mandatory solutions should take. The Governments agreed with the position of the Shipowners and the Seafarers that the Joint Working Group's proposals should be made mandatory through amendments to the MLC, 2006, using the accelerated procedure provided for in its Article XV. He also stated that if this route was unsuccessful, other options would be open.
101. The Shipowner and Seafarer spokespersons welcomed the Governments' endorsement of the proposal to amend the MLC, 2006.
102. The representative of the IMO stated that the Legal Committee of his Organization had the capacity to deal with the preparation of new instruments if the process through the ILO failed for any reason.
103. The Chairperson stated that, in light of this consensus, the Joint Working Group's recommendations for mandatory solutions in respect of liability and compensation regarding claims for death, personal injury and abandonment of seafarers would be through amendments of the MLC, 2006. The texts containing the principles agreed upon by the Joint Working Group should be revised accordingly.

Proposal for the text on financial security in case of abandonment of seafarers

104. A representative of the Office introduced the new draft text prepared by the Office which sought to reflect the decisions taken by the Joint Working Group at its Ninth Session. She wished to present some explanatory remarks to: (i) contextualize the evolution of the text, explaining why the Office had produced the draft text currently before the meeting; and (ii) clarify how to proceed with the integration of those draft provisions into the MLC, 2006.
105. She indicated that the draft related to the substance of an agreed proposal for an amendment to the MLC, 2006, which would follow Regulation 2.5 and the Standard and Guidelines under it. The proposed text had been developed as a proposal for development of amendments to the Code of the MLC, 2006, using the Article XV procedure. The Special Tripartite Committee to be established under the MLC, 2006, would need to give further consideration to the question of the precise placement and language of the proposed amendments to the MLC, 2006, Code. In particular, consideration would need to be given to the way in which the Standards and Guidelines under Regulation 2.5 would be numbered in the amended version of the Convention. In the proposal, the paragraph numbering had not yet been changed so as to enable the text to be more easily compared with previous drafts and to avoid mistakes in cross-referencing.
106. The representative of the Office further stated that it was understood that there was agreement that the proposed certificate would be a matter for inspection by port States as well as flag States. This could be achieved fairly simply under the MLC, 2006. The proposal for the amendment would also include a proposal for an amendment to the list of inspection areas in Appendices A5-I and A5-II of the MLC, 2006, with consequential amendments to the Appendix A5-III model documents. This would then eliminate the need for specific and perhaps confusing provisions relating to port State control. The precise wording would depend on whether the intention was to address port State control in connection with abandonment only or whether the amendment would relate to Regulation 2.5 and Standard A2.5 as a whole. There might also be an amendment proposed for Standard A2.1, paragraph 4(i), or the addition of a new provision for the seafarers'

employment agreement. The “plain language” purpose provision in connection with Regulation 2.5 might also be amended.

- 107.** She pointed out that, in paragraph 2 of the Standard (the first paragraph numbered 2 in the draft), which referred to offsetting against amounts arising from “rights, claims or remedies in relation to the abandonment of seafarers”, the words “in relation to the abandonment of seafarers” had been replaced by “that may be the subject of compensation under the present Standard”. This was because a seafarer could, in legal proceedings, be awarded moral damages or damages for pain and suffering, for instance. These damages would arise “in relation to the abandonment of seafarers”, but, under the law on dual recovery or double indemnity, which this provision sought to reflect, they would not have to be offset against amounts paid by the security fund, as those amounts would not cover the kinds of damages addressed by that proposed amendment.
- 108.** Concerning the Abandonment Security Certificate, she indicated that the draft provisions were based on the understanding that the rules in the MLC, 2006, relating to inspection and certification would apply. In other words, all ships to which that Convention applied would have to be inspected for compliance with the provisions of the new Standard, and ships which were required by the MLC, 2006, to carry a maritime labour certificate, or decided to do so, would also have to carry the Abandonment Security Certificate. Accordingly, the corresponding paragraphs (5–11 and the appendix) had been left in square brackets, subject to further harmonization and integration with the maritime labour certification process, as recommended.
- 109.** The representative of the Office proceeded by elaborating on the new draft text paragraph by paragraph:
- *Paragraphs 1 and 2 of the Standard:* These provisions corresponded to the old paragraphs 1 and 2 under “Objectives and general principles” and had remained unchanged.
 - *Paragraph 2bis of the Standard:* The second and third sentence in square brackets mirrored former paragraph 1 of the Guidelines that had been moved to the mandatory provisions as agreed. The first sentence was equivalent to old paragraph 1 of the Standard.
 - *Paragraph 2ter of the Standard* corresponded to old paragraph 2 of the Standard.
 - *Paragraph 3 of the Standard* (old paragraph 2 of the Standard) had been modified as agreed.
 - *Paragraph 4 of the Standard* had remained unchanged.
 - *Paragraphs 5–11 and 11bis of the Standard:* Since the meeting had not clearly decided whether it opted for a separate financial security certificate or rather for documentary evidence fully integrated into the maritime labour certificate, the Office provided to the meeting for decision the following two alternatives: paragraphs 5–11 as amended for the separate certificate option and paragraph 11bis for the documentary evidence option.
 - *Paragraph 12 of the Standard* had remained unchanged.
 - *Paragraph 13 of the Standard:* A reference to paragraph 14 had been included, in order to avoid repetition.
 - *Paragraph 14 of the Standard* had remained unchanged.

-
- *Paragraphs 15 and 16 of the Standard* captured the proposed text on subrogation and recovery submitted by the International Group of P&I Clubs, on which there had been an agreement of principle.
 - *Paragraph 1 of the Guideline* had become part of paragraph 2bis of the Standard.
 - *Paragraphs 2 and 3 of the Guideline* had remained unchanged.
 - *Appendix:* The Office provided to the meeting two alternatives for decision – one for the separate certificate option and one for the documentary evidence option, according to the decision taken on paragraphs 5–11.
- 110.** The Chairperson opened the debate on the new draft text, emphasizing that the interventions should be limited to the question whether the modifications made by the Office accurately reflected the deliberations of the Joint Working Group.
- 111.** Following a query of an expert of the Shipowners’ group on the wording in *paragraph 2* “... amounts received from other sources ...” as opposed to “... amounts payable from other sources ...”, it was clarified that the usage of the term “received” had been explicitly agreed upon. The meeting thus accepted paragraph 2 without amendments, noting that the substitution of “any rights” for “such rights” was of grammatical nature only.
- 112.** It was decided to remove the square brackets around the second and third sentence of *paragraph 2bis*.
- 113.** As regards *paragraphs 5–11 and 11bis*, the Shipowner spokesperson preferred to retain the brackets around both alternatives for subsequent discussion before another forum, since her group had not had sufficient time to reflect on the implications of either option.
- 114.** The Seafarer spokesperson recalled the agreement of principle that the text should be part of an amendment to the MLC, 2006, and that relevant certification provisions would be integrated within the general certification process of the MLC, 2006, and enforced through Title 5 and port State control. As paragraph 2bis allowed for a financial security system in the form of a social security scheme, it might be difficult to envisage the Abandonment Security Certificate as provided for in paragraphs 5–11. His group therefore preferred deleting paragraphs 5–11 and retaining paragraph 11bis.
- 115.** The representative of the Government of the United Kingdom shared the view of the Seafarer spokesperson to favour, if a choice had to be made, paragraph 11bis. Recognizing the concern raised by the Shipowners, he could, however, accept to keep both alternatives and retain the brackets.
- 116.** The representative of the Government of the Republic of Korea agreed with the Shipowner spokesperson in that this issue needed more time for deliberation in order not to miss any important elements. Given that the MLC, 2006, allowed for the issuance of interim certificates with a validity of six months, he expressed concern on how the Abandonment Security Certificate could be harmonized with the interim certificate. On the other hand, paragraph 11bis did not include any notification procedure in case of cancellation of the financial security. This would lead to the general problem of how to harmonize the financial security certification, which would most likely be a commercial product, with the Maritime Labour Certificate issued by the national competent authority, and thus a public entity. In response to the concern raised by the representative of the Republic of Korea regarding notification, the representative of the Government of France recalled that the representative of the Government of Cyprus had recently drawn the attention of the meeting to the lack of notification procedures. The Chairperson held that the notification

issue had been raised in the context of contractual claims and was too substantive to be dealt with at this stage.

117. The representative of the Government of Norway concurred with the view expressed by the Seafarer spokesperson. This alternative offered more flexibility, since documentary evidence could even encompass a certificate. The representative of the Government of France also favoured the retention of paragraph 11bis and the deletion of paragraphs 5–11. Similarly, the representative of the Government of the United States shared the view of the Seafarer spokesperson and suggested to include into paragraph 11bis a reference to the appendix. The representative of the Government of the Bahamas recalled that the meeting was only supposed to agree on principles and not on final text. Paragraph 11bis would suffice as far as the principles were concerned.
118. In view of the discussion, the Shipowner spokesperson agreed with the deletion of paragraphs 5–11. The Joint Working Group thus decided to retain paragraph 11bis without square brackets and to insert a reference to the appendix. It was also agreed to add a paragraph along the lines of paragraph 9 of the proposed text with regard to personal injury and death.
119. The Shipowner spokesperson suggested that, in *paragraph 13(c)*, the phrase “the seafarer’s arrival at the destination of repatriation” be replaced with “the seafarer’s arrival at home”, so as to be consistent with previous discussions and paragraph 14. The Joint Working Group agreed.
120. Concerning *paragraphs 15 and 16*, the Shipowner spokesperson objected to the word “enterprise” used at the beginning of paragraph 15 and suggested to replace it with the term “provider”. The Seafarer spokesperson sought clarification on the legal implications of the change of the words “the rights” into “all and any rights” in relation to the payment acquired by subrogation. A representative of the Office questioned the words “any payment” as being too broad. The representative of the International Group of P&I Clubs explained that most of the wording was drawn from IMO conventions, and that subrogation was certainly limited to the amount the insurer or the provider paid.
121. It was decided to replace the word “enterprise” with “provider” and the phrase “all and any rights” with “the rights”. The Joint Working Group agreed with paragraph 15 as amended, subject to any necessary redrafting by the Office to avoid text conflicting with the MLC, 2006. Paragraph 16 was accepted without square brackets.
122. As regards *paragraph 3* of the *Guideline*, the meeting had two options in order to retain paragraph 11bis as decided: either delete the entire paragraph or replace the references to the Abandonment Security Certificate with references to documentary evidence. The Joint working Group decided to delete paragraph 3.
123. Under the *Appendix*, it was agreed to delete the wording “Mandatory content of an Abandonment Security Certificate” and remove the square brackets around the alternative regarding documentary evidence.
124. All other paragraphs were not modified, and the text was adopted as contained in Appendix I.

Proposal for the text on treatment of contractual claims and financial security

125. A representative of the Office introduced a text which incorporated the earlier discussions of the meeting. She stated that the draft paper related to the substance of an agreed proposal for an amendment to the MLC, 2006, which would follow Regulation 4.2 and the Standard and Guidelines under it. She also explained the changes made in the document and highlighted the issues remaining to be discussed by the meeting, most of which were between square brackets.
126. The proposed text had been developed as a proposal for development of amendments to the Code of the MLC, 2006, using the Article XV procedure. It understood that there was agreement that this area of the MLC, 2006, would now be a matter for inspection by port States (PSC) as well as flag States. This could be achieved fairly simply under the MLC, 2006. The proposal for the amendment would also include a proposal for an amendment to the list of inspection areas in Appendices A5-I and A5-III of the MLC, 2006, with consequential amendments to the Appendix A5-II model documents. The proposed amendments would refer to the documentary evidence of financial security required under the new Standard. This would be a matter dealt with in the ship certification process and would also apply to all ships covered by the MLC, 2006; it would, in all cases, be the subject of flag State inspection. All ships irrespective of size or voyage would be required to have documentary evidence of financial security. Accordingly, the corresponding paragraphs and appendix had been modified to facilitate harmonization and integration with the MLC, 2006, certification processes, as recommended. She also recalled the distinction between putting the context and delimiting it. Paragraphs 1 and 2 prepared the ground for the financial security system in Standard A4.2.1(b). The first paragraph defined contractual claims related to the framework of Title 4.2 on occupational injury, death or disabilities. For the settlement of contractual claim, Members should put mechanisms in place.
127. As regards *paragraph 2*, the Shipowner spokesperson questioned the reference to Standard A4.2.1 and proposed that the more correct reference would be Standard A4.2.1(b) as it specifically referred to financial security in the case of long-term disability or death.
128. The Seafarer spokesperson replied that his group preferred the current text with the use of Standard A4.2.1 as the paragraph referred to contractual claims and not specifically to contractual claims in terms of financial security.
129. The representative of the Government of the United States stated that Standard A4.2.1(b) had a limited scope. Paragraph 2 discussed contractual claims and as Standard A4.2.1 contained a broader category of personal injury, the reference to Standard A4.2.1 was appropriate.
130. The representatives of the Governments of Norway, the United Kingdom and the Philippines agreed with the representative of the Government of the United States that there was a need to look at this paragraph as referring to all the issues covered in Standard A4.2.1.
131. The representative of the Government of the Bahamas felt that the difficulty might be within the proposed title “Standard A4.2.2 – Treatment of contractual claims; financial security”. The word “including” could be used to revise the title to read “Standard A4.2.2 – Treatment of contractual claims including financial security”, to solve the issue.
132. The Shipowner spokesperson asked for clarification from the Office on whether the scope of Standard A4.2.1 would be widened if it was used in paragraph 2. Within the MLC,

2006, it was understood that the shipowners' liability towards seafarers was unquestionable, but it was only under Standard A4.2.1(b) in which a specific financial security system was required.

133. A representative of the Office clarified on two points. First, that there was a semicolon (;) within the title demonstrating that there were two issues covered in the proposed Standard A4.2.2. Second, paragraphs 1 and 2 provided the base for the remaining paragraphs of the Standard. Paragraph 1 defined the term "contractual claim" and in paragraph 2 contractual claims were referred to in the broader sense; thus reference to Standard A4.2.1 in paragraph 2 would not broaden the scope of Standard A4.2.1 in the MLC, 2006. The representative of the Office stated that financial security was, however, limited by Standard 4.2.1(b).
134. Concluding the discussion on this paragraph, the Chairperson stated that paragraph 2 provided for a larger concept than the contractual claims covered by the financial security system. The Standard A4.2.1 had broader boundaries than Standard A4.2.1, paragraph 1(b), in which a specific financial security system was required.
135. As regards *paragraph 3*, the Shipowner spokesperson argued that, in the second line there should be a reference to "valid" contractual claims. While accepting the explanation from the Office that this term could not be used in the MLC, 2006, she asked whether another term like "appropriate, justified, or estimated" could be added before the term "contractual claims". The reference in subparagraph (a) should be to (c) and not to (d).
136. A representative of the Office recalled that "contractual claims" was the correct expression to be used in this paragraph and that it was directly linked to Standard A4.2.1.1(b) in this specific context.
137. The Seafarer spokesperson agreed with the Office's explanation and stated that it was a useful suggestion to replace "standards" with "requirements". The group agreed with paragraph 3.
138. Paragraph 2 was adopted with "contractual claims" considered to be the correct term and with a reference to (c) in subparagraph (a).
139. Concerning *paragraph 4*, two alternatives were proposed, namely the original text as proposed by the International Group of P&I Clubs and an Office proposal:
 4. Any [valid] contractual claim for compensation [required to be covered by the financial security system referred to in Standard A4.2.1(b)] [under this Standard] may be brought directly by the seafarer concerned, or their next of kin or a representative of the seafarer or designated beneficiary.
 4. [Office proposal: *Any contractual claim for compensation relating to compensation referred to in Standard A4.2.1 may be brought directly by the seafarer concerned, or, in accordance with national law and practice, their next of kin or a representative of the seafarer or designated beneficiary*].
140. The Shipowner spokesperson preferred the original text rather than the alternative Office proposal. The Shipowners favoured the insertion of words such as "well founded", "justified", "appropriate", or even "sound" instead of "valid". The group insisted that a legitimization of contractual claims was important, and preferred the reference to Standard A4.2.1(b) among the two possibilities in square brackets.
141. The Seafarer spokesperson stated that it was implicit that contractual claims were appropriate. Therefore, it should be "any" contractual claim. This text did not refer to a dispute procedure. In his opinion, direct access did not only apply to the financial security

system and the resolution on personal injury and death was not restricted to Standard A4.2.1(b). His group believed that the seafarer should have the ability to go directly to any insurers, and that it should be a direct access also as regards personal injury. The discussion was about contractual claims for injury and was not related only to death or disability. The group had the feeling that the proposal of the International Group of P&I Clubs narrowed the concept. The seafarers therefore preferred the Office proposal.

142. The representative of the Government of the United Kingdom agreed to remove the term “valid”, as paragraph 4 was fairly flexible, and also agreed to remove “compensation”. He reminded the Meeting that the paper submitted by the social partners (Annex 1, page 4) made a reference to Standard A4.2.1, paragraph 1(b), and expressed his surprise that there was a debate on this subject.
143. The representative of the Government of France agreed to remove the word “valid” and insisted that the Guidelines covered all injuries. Paragraph 4 provided for direct access for all contractual claims.
144. The representative of the Government of the United States also agreed to remove the word “valid”. With respect to direct access under Standard A4.2.1(1)(b), financial security was required only for claims relating to death and long-term disability. While shipowners remained liable for other types of claims under the MLC, 2006, financial security was not required for such claims. He suggested that, with respect to claims which fall outside the coverage of the financial security system, national laws and regulations could provide for direct access.
145. The Seafarer spokesperson insisted that the discussion was on personal injury, and that direct access had to be possible for a seafarer who was not getting satisfaction. His group believed that one could not confine direct access to the MLC, 2006, when this Convention did not touch upon this issue. The reference to direct access as provided for in national legislation, as proposed by the representative of the Government of the United States, was acceptable to the Seafarers’ group.
146. The representative of the Government of Belgium agreed with the submission made by the representative of the Government of the United Kingdom. Standard A4.2, paragraph 1, subparagraphs (a), (b) and (d) of the MLC, 2006, would not require having an insurance system in place. Rather, this responsibility rested with the shipowner and therefore direct access was not advisable. He affirmed the position that direct access had to be restricted to Standard A4.2, paragraph 1, subparagraph (b).
147. As it was providing for flexibility, the representatives of the Governments of the Bahamas, the Republic of Korea, Norway and the Philippines concurred with the proposal made by the representative of the Government of the United States.
148. The Joint Working Group decided to delete “valid”.
149. After consultations with his group, the spokesperson for the Government group stated that there was a consensus among Governments that direct access in relation to the security system referred to in Standard A4.2.1(b) was necessary. The group agreed that the paragraph should read as follows: “Any contractual claim for compensation required to be covered by the financial security system referred to in Standard A4.2.1(b) may be brought directly by the seafarer concerned, or their next of kin or a representative of the seafarer or designated beneficiary”. He added that his group also had consensus that there should be direct access for other claims in accordance with national laws which could be put in the guidelines rather than an additional item for the paragraph.
150. The Shipowner spokesperson supported the Government group’s proposal on paragraph 4.

-
- 151.** The Seafarer spokesperson called for it to be placed into square brackets.
- 152.** Paragraph 4 was adopted as amended by the Government group.
- 153.** Regarding *paragraph 6*, the Joint Working Group agreed to the deletion of the square brackets.
- 154.** With respect to *paragraphs 7 and 9*, the representative of the Government of Greece requested clarification as to whether the competent authority could derogate from the English language requirement in paragraph 7 based on Article II, paragraph 6, of the MLC, 2006 (e.g. for small vessels remaining in national waters). A representative of the Office explained that the MLC, 2006, applied to all seafarers but one could imagine that, in drafting the final texts, it would be possible to accommodate the needs of small vessels as regards language of documentation.
- 155.** The representative of the Government of the Republic of Korea drew the attention of the meeting to the need to make certain consequential amendments in other parts of the MLC, 2006, such as Standard A5.1.3.
- 156.** All other paragraphs were not modified, and the text was adopted as contained in Appendix II.

Adoption of the report and closing statements

- 157.** The Chair recalled the terms of reference of the Joint Working Group and congratulated the participants for their achievements at this Session. The IMO Legal Committee and the ILO Governing body would be informed of the following :
1. the Joint IMO/ILO Working Group considered that it had satisfied its remit as provided for in the Terms of Reference approved by both parent bodies.
 2. the Joint IMO/ILO Working Group made the following recommendations:
 - (a) the principles embodied in the draft texts, contained in Appendices I and II to the Joint IMO/ILO Working Group report, should be considered as a basis for finalizing a mandatory instrument or instruments;
 - (b) an amendment to the ILO Maritime Labour Convention, 2006 was the best way to create such a mandatory instrument or instruments;
 - (c) the IMO Legal Committee should remain seized of the issue and keep it under consideration in the event that amendment to the Maritime Labour Convention proves not to be feasible or timely; and
 - (d) the Joint IMO/ILO Working Group calls on the IMO and the ILO to remind Governments of IMO Resolution A.930(22) concerning guidelines on provision of financial security in case of abandonment of seafarers which should be implemented pending the adoption and entry into force of the appropriate mandatory solutions.
- 158.** The Joint Working Group then adopted the report as amended by the participants, including the appendices.
- 159.** The Shipowner spokesperson stated that the ISF and the IOE were satisfied with the outcome on both the issues. She hoped that the principles discussed would be carried

forward by the ILO and IMO. She would strongly advocate the rapid amendment of the MLC, 2006. Regarding the presence of a film crew, the ISF and IOE wished to advise that they recognized that all ILO/IMO meetings should take place “in camera”. They therefore proposed that a special session of the Joint Working Group be held without setting a precedent for any future ILO meetings.

160. The Seafarer spokesperson expressed his satisfaction regarding the successful conclusion of the meeting. He commended the governments for their political will to recommend mandatory instruments. The group had agreed on mandatory solutions on both issues. Seafarers considered that abandonment and claims for personal injury and death as having equal priority. Since the most appropriate method was through amendment of the Seafarer’s Bill of Rights, the MLC, 2006, he suggested that the ILO should set up the Special Tripartite Committee provided for under Article XIII of the Convention to handle the preparatory work. This would demonstrate the ILO’s resolve to undertake the necessary normative work. Referring to the current economic crisis, he expressed the hope that it would not last long. The seafarers wanted the mandatory provisions on abandonment and contractual claims to come into force before this crisis had begun. Taking into consideration that the normal procedures for the adoption and entry into force of new provisions would take some time, he recommended that Governments should be reminded of the relevant IMO/ILO Guidelines contained in the respective IMO Resolution.
161. The Government spokesperson congratulated the Joint Working Group for tenacity in reaching agreement on this landmark decision. He thanked all the governments for their cooperation and the social partners for their good spirit, cooperation and negotiation in good faith.
162. The representative of the Governments of Cyprus, France and the United States expressed their pride and satisfaction on the outcome of the working group. They expressed their thanks to the social partners and their fellow Government representatives.
163. The IMO representative was pleased that the session agreed upon and recommended suitable solutions for abandonment and personal injury and death of seafarers. He expressed the hope that this would be adopted as international law and put into effect as early as possible.
164. The ILO representative was excited and pleased with the achievement of the Joint Working group. The ILO stood for decent work, and if seafarers were abandoned, it was a deficit of decent work. She considered this as the beginning of a new chapter in the maritime work of the ILO and hoped that all concerned would expeditiously take forward the recommendations of the Joint Working Group.
165. The Chairperson, in his final statement, said that he believed that the progress made between the eight meeting and the ninth meeting, owed greatly to the good cooperation of the social partners who merited special acclaim. “Abandonment” and “personal injury and death” were risks for seafarers which all the tripartite partners wanted to deal with. The conclusions of the Joint Working Group were an example that tripartism does offer opportunities when all constituents of the ILO work together. He thanked all the participants and stressed that it was now important for all to remain committed to the process until the mandatory solutions were adopted and enforced.

Appendix I

Proposal for the text of an amendment to the Maritime Labour Convention, 2006,¹ to be presented to the future Special Tripartite Committee with a view to adoption in accordance with Article XV of the Maritime Labour Convention, 2006

Standard – Provision of financial security in case of abandonment of seafarers

1. This Standard establishes requirements to ensure the provision of a rapid and effective financial security system to assist seafarers in the event of abandonment.

2. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer who was employed or engaged or working in any capacity on a ship flying the flag of the Member.

5. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:

- (a) fails to cover the cost of the seafarer's repatriation; or
- (b) has left the seafarer without the necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

6. For the purposes of this Standard, necessary maintenance and support of seafarers shall include: adequate food, clothing, accommodation, necessary medical care and other reasonable costs or charges arising from the abandonment.

7. [Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, provide documentary evidence of financial security issued by the financial security provider. The documentary evidence shall be posted in a prominent position in the seafarers' accommodation. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.]

8. [The documentary evidence of financial security shall contain the information required in Appendix XX. It shall be in English or accompanied by an English translation.]

¹ The amendments would primarily consist of a new Standard and a new Guideline under Regulation 2.5 and following the present Standard and Guideline A2.5 and B2.5. The precise numbering and placement of the proposed text for Standards and Guidelines, and similar changes to transform the proposed instrument into an amendment of the MLC, 2006, would be addressed at a later stage.

9. Assistance provided by the financial security system shall be granted promptly upon request made by or on behalf of the seafarer concerned and supported by the necessary justification of entitlement in accordance with paragraph 3 above.

10. Assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation in accordance with paragraph 11; and
- (c) the cost of necessary maintenance and support from the act or omission constituting abandonment until the seafarer's arrival at home.

11. For the purposes of this Standard, the repatriation of the seafarers shall be provided by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarers from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

Guideline – Provision of financial security in case of abandonment of seafarers

1. In implementation of paragraph 9 of the Standard, if time is needed to check the validity of certain aspects of the seafarer's request, this should not prevent the seafarer or a representative from immediately receiving such part of the assistance requested as is recognized as justified.

Appendix XX

[The documentary evidence of financial security under Standard A2.5bis shall include the following information:

- (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 and address of the provider of the financial security;
- (6) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (7) name of the shipowner;
- (8) period of validity of the financial security; and
- (9) an attestation that the financial security meets the requirements of the Standard.]

Appendix II

Proposal for the text of an amendment to the Maritime Labour Convention, 2006, to be presented to the future Special Tripartite Committee with a view to adoption in accordance with Article XV of the Maritime Labour Convention, 2006

Standard A4.2.2 – Treatment of contractual claims; financial security (new)

1. For the purposes of this Standard, the term “contractual claim” means any claim which relates to sickness, injury or death occurring while the seafarer is serving under a seafarers’ employment agreement or arising from their employment under such an agreement.

2. Each Member’s laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1 through rapid and fair procedures.

3. National laws and regulations shall provide that the financial security to assure compensation as provided by Standard A4.2.1, paragraph 1(b), for contractual claims meet the following minimum requirements:

- (a) the contractual compensation, where set out in the seafarer’s employment agreement and without prejudice to (c) below, shall be paid in full and without delay;
- (b) there shall be no pressure to accept a payment less than the contractual amount;
- (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;
- (d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident.

4. [Any contractual claim for compensation required to be covered by the financial security system referred to in Standard A4.2.1 (b) may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.]

5. Each Member’s laws and regulations shall ensure that seafarers receive prior notification if a shipowner’s financial security is to be cancelled and be notified immediately if it is not to be renewed.

6. Each Member’s laws and regulations shall ensure that the flag State is notified by the provider of the insurance if a shipowner’s financial security is to be cancelled, upon cancellation and upon non-renewal.

7. Each Member shall require that ships that fly its flag provide documentary evidence of financial security issued by the financial security provider. The documentary evidence shall be posted in a prominent position in the seafarers’ accommodation. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

8. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

9. The documentary evidence of financial security shall contain the information required in Appendix 4-I. It shall be in English or accompanied by an English translation.

Guideline B4.2

10. The parties to the payment of a contractual claim may use the Model Receipt and Release Form (attached as an appendix to Assembly Resolution A.931(22) on claims for personal injury to or death of seafarers adopted on 29 November 2001).

Appendix 4-I

The documentary evidence of financial security required under Standard A4.2.2, paragraph 7, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security.

Appendix III

List of participants

Liste des participants

Lista de participantes

Chairperson

Président

Presidente

Mr Charles Darr, Attorney Advisor, Office of Maritime and International Law, United States Coast Guard,
2100 Second Street SW, Room 1416 (CG-0941), Washington, DC, 20593; tel.: +1 202 372 3791;
fax: +1 202 372 3972; email: charles.v.darr@uscg.mil

Experts nominated by governments

Experts désignés par les gouvernements

Expertos designados por los gobiernos

CYPRUS CHYPRE CHIPRE

Capt. Andreas A. Constantinou, Senior Surveyor of Cyprus Ships, Department of Merchant Shipping, Ministry of
Communications and Works, Kyllinis Street, Mesa Geitonia, CY-4007 Lemesos, PO Box 56193,
CY-3305 Lemesos; tel.: +357 25 848 100; fax: +357 25 848 200; email: aconstantinou@dms.mcw.gov.cy

FRANCE FRANCIA

Mr Fabien Joret, Mission Flotte de Commerce, Direction des Affaires Maritimes, Ministère chargé des transports,
Arche Sud, 92055 La Défense Cedex; tel.: +33 1 40 81 73 28; mobile: +33 6 77 61 64 67;
fax: +33 1 40 81 73 15; email: fabien.joret@developpement-durable.gouv.fr

GREECE GRÈCE GRECIA

Mr Nikolaos Isakoglou, Lieutenant Commander HCG, Hellenic Ministry of Mercantile Marine, the Aegean &
Island Policy, Gr Lambraki 150, Piraeus, Athens; tel.: +30 2104191108; fax: +30 2104191561;
email: dner@yen.gr

REPUBLIC OF KOREA RÉPUBLIQUE DE CORÉE REPÚBLICA DE COREA

Mr Sang Pyo Hong, Deputy Director, Seafarers and Labour Policy Division, Office of Logistic and Maritime
Affairs, Ministry of Land, Transport and Maritime Affairs, 1 Jungang-dong, Gwacheon City, Gyeonggi-do,
427-712; tel.: +82 2 2110 8574; fax: +82 2 504 2677; email: hsp1614@mltm.go.kr

Mr Yuong Shik Hwang, General Manager, Marine Affairs Team, Korea Shipowners' Association, 10th Fl. Sejong
Bldg, 100 Dangju-dong, Jongro-gu, Seoul; tel.: +82 2 739 1551; fax: +82 2 739 1562;
email: yshwang@shipowners.or.kr

Mr Yeong-Woo Jeon, Head, Ship Operation Technology Research Center, Korea Institute of Maritime
and Fisheries Technology, 123 Yong Dang-Dong, Nam-Gu, Busan; tel.: +82 51 620 5822;
fax: +82 51 624 9081; email: jyw@seaman.or.kr

PHILIPPINES FILIPINAS

Mr Neil Frank Ferrer, First Secretary and Consul and Alternate Permanent Representative of the Philippines to the IMO, Embassy of the Philippines, 6–8 Suffolk Street, London SW1Y 4HG, United Kingdom, tel.: +44 20 745 11 806; fax: +44 20 793 09 787; email: neil.ferrer@dfa.gov.ph

Mr Ramon Tionloc, Labor Attaché, Philippines Embassy, C/Alcalá, 149, 2ºB, 28009 Madrid, Spain, tel.: +34 91 781 86 24; fax: +34 91 781 86 25; email: ramonjr-tionloc@yahoo.com

UNITED KINGDOM ROYAUME-UNI REINO UNIDO

Mr David Best, Senior Policy Advisor, Department for Transport, 76 Marsham St, London, tel.: +44 207 944 4779; fax: +44 207 944 2186; email: david.best@dft.gsi.gov.uk

Mr David Bolomini, Department for Transport, 76 Marsham St, London; tel.: +44 207 944 5452; fax: +44 207 944 2186; email: david.bolomini@dft.gsi.gov.uk

Mr James Hatcher, Department for Transport, 66 Marsham St, London; tel.: +44 207 944 5452; fax: +44 207 944 2186; email: james.hatcher@dft.gsi.gov.uk

UNITED STATES ETATS-UNIS ESTADOS UNIDOS

Mr Patrick Bonner, Vice-President, Maritime Law Association, Freehill Hogan & Mahar LLP, 80 Pine Street, New York 10005; tel.: +1 212 381 3007; fax: +1 212 425 1901; email: bonner@freehill.com

Mr Joseph Cox, President, Chamber of Shipping of America, 1730 M Street, NW, Suite 407, Washington, DC, 20036; tel.: +1 202 775 4399; fax: +1 659 3795; email: jcox@knowships.org

Mr William Eglinton, Advisor, Seafarers International Union, PO Box 118, Piney Point, Maryland 20674, tel.: +1 301 994 2767; fax: +1 301 994 2705; email: beglinton@seafarers.org

Capt. Charles Michel, Chief, Office of Maritime & International Law, United States Coast Guard, 2100 Second Street, SW, Room 1416 (CG-0941), Washington, DC, 20593; tel.: +1 202 372 3785; fax: +1 202 372 3972; email: charles.d.michel@uscg.mil

Mr Douglas Stevenson, Director, Center for Seafarers' Rights, Seamen's Church Institute of NY and NJ, 241 Water Street, New York; tel.: +1 212 349 9090; fax: +1 212 349 8362; email: csr@seamenschurch.org

Ms Amber Ward, Lieutenant, Attorney Advisor, Office of Maritime & International Law, United States Coast Guard, 2100 Second Street, SW, Room 1416 (CG-0941), Washington, DC, 20593; tel.: +1 202 372 3794; fax: +1 202 372 3972; email: amber.s.ward@uscg.mil

Observers nominated by Governments

Observateurs désignés par les gouvernements

Observadores designados por los gobiernos

ANGOLA

Mr Olivio Jacinto, Maritime Advisor, Embassy of the Republic of Angola to the United Kingdom of Great Britain and Northern Ireland, Angola Permanent Representation at IMO, 22 Dorset Street, London W1U 6QY, United Kingdom; tel.: +44 20 7299 9850; fax: +44 20 7486 1632; email: admin@angolaimo.org.uk

BAHAMAS

Capt. Douglas Bell, Deputy Director, Maritime Affairs, Bahamas Maritime Authority, 120 Old Broad Street London EC2N 1AR, United Kingdom; tel.: +44 20 75621300; fax: +44 20 76140688, email: dbell@bahamasmaritime.com

BELGIUM BELGIQUE BÉLGICA

Mr Johan Van Steen, Legal Adviser, Federal Public Service Mobility Transport, Directorate General Maritime Transport, Vooruitgangstraat 56, 1210 Brussels; tel.: +32 2 277 3592; fax: +32 2 277 4051; email: johan.vansteen@mobility.fgov.be

DENMARK DANEMARK DINAMARCA

Mr Jan Gabrielsen, Head of Division, Danish Maritime Authority, Vermundsgade 38C, Copenhagen 2100, tel.: +45 39 174630; fax: +45 39 174421; email: jga@dma.dk

Ms Tina Bolbjerg Winther-Nielsen, Head of Section, Danish Maritime Authority, Vermundsgade 38C, Copenhagen 2100; tel.: +45 39 174627; fax: +45 39 174421; email: tw@dma.dk

GERMANY ALLEMAGNE ALEMANIA

Mr Friedrich Catoir, Consul General, Consul General of Germany, Chemin du Petit Saconnex 28c, 1209 Geneve, Suisse; tel.: +41 22 730 1215; fax: +41 22 734 3043; email: L-GK@genf.diplo.de

JAPAN JAPON JAPÓN

Mr Setsuo Nomura, Special Researcher, Japan Maritime Center, Kaiun Bldg 2-6-4 Hirakawa-cho, Chiyoda-ku, Tokyo 102-0093; tel.: +81 3 3263 9421; fax: +81 3 3264 5565; email: s-nomura@jpmac.or.jp

Mr Hidemi Suzuki, Special Assistant to the Director of International Planning and Coordination Office, General Affairs Division, Maritime Bureau, Ministry of Land, Infrastructure, Transport and Tourism, 2-1-3 Kasumigaseki Chiyoda-ku, Tokyo 100-8918; tel.: +81 3 5253-8656; fax: +81 3 5253-1642; email: suzuki-h2g2@mlit.go.jp

Mr Seiichi Tajima, First Secretary, Permanent Mission of Japan in Geneva, 3 Chemin des Fins, CP 337, 1211 Geneve 19, Suisse; tel.: +41 22 717 3105; fax: +41 22 717 3774; email: seiichi.tajima@ge-japan.ch

MARSHALL ISLANDS ILES MARSHALL LAS ISLAS MARSHALL

Ms Angela Plott, Deputy Commissioner of Maritime Affairs, Office of the Maritime Administrator, 11495 Commerce Park Drive, Reston VA 20191-1507; tel.: +1 703 620 4880; fax: +1 703 476 8522; email: aplott@register-iri.com

MEXICO MEXIQUE MÉXICO

Mr José Luis Herrera Vaca, Jefe de la Unidad de Asuntos Internacionales, pemex, Av. Marina Nacional n°329, Torre Ejecutiva piso 9, Col. Huasteca, CP 11311 Mexico DF; tel.: 1944 8955, ext.: 12594; fax: 1944 2500; email: jlherrera@pemex.gob.mx

NORWAY NORVÈGE NORUEGA

Ms Unn Caroline Lem, Senior Adviser, The Norwegian Maritime Directorate, Haugesund 5509, tel.: +47 52745358; fax: 47 52745013; email: ucl@sjofartsdir.no postmottak@sjofartsdir.no

Mr Terje Hernes Pettersen, Senior Adviser, Ministry of Trade and Industry, 8014 Oslo; tel.: +47 22 24 04 77; fax: +47 906 23 866; email: thp@nhd.dep.no

Mr Haakon Storhaug, Senior Adviser, Norwegian Maritime Directorate, PO Box 2222, Haugesund N-5509; tel.: +47 52 74 51 54; fax: +47 25 74 50 01; email: hst@sjofartsdir.no postmottak@sdir.no

PANAMA PANAMÁ

Ms Giovanna Villamonte Santos, Subjefa, Departamento de Asuntos Laborales Marítimos de la Autoridad Marítima de Panamá, Albrook, Edificio PanCanal Plaza, piso 2, oficina 201, Panamá, apto. postal 0816-05742; tel.: +507 501 5067; fax: +507 501 5210; email: gvillamonte@amp.gob.pa

Shipowners' representatives
Représentants des armateurs
Representantes de los armadores

- Mr James Hudson, Adviser, National Federation of Fishermen's Organization (NFFO), Fishing Vessel Owner Representative, NFFO Office, 30 Monkgate, York, YO31 7PF, United Kingdom; tel.: +44 19 04 635 430; fax: +44 77 15 635 431; mobile: +44 7715 612 485; email: jim@nffo.org.uk
- Mr Tom Mason, Carthusian Court, 12, Carthusian Street, London EC1M 6EZ, United Kingdom, tel.: +44 207 417 88 44; fax: +44 207 417 88 77; email: tony.mason@marisec.org
- Mr George Koltsidopoulos, Legal Adviser, Union of Greek Shipowners, 85 Akti Miaouli, Piraeus, Greece, tel.: +30 210 42 91 159; fax: +30 210 42 91 166; email: ugs@ath.forthnet.gr
- Ms Edith Midelfart, Attorney at law, Norwegian Shipowners' Association, PO Box 1452 Vika, 0116 Oslo, Norway; tel.: +47 22 40 15 75/22 40 15 00; fax: +47 22 40 15 15; email: edith.midelfart@rederi.no
- Capt. Paddy Mcknight, Manager, Japan Shipowners' Association, Dexter House, Royal Mint Court, London EC3N 4JR, United Kingdom; tel.: +44 207 488 0899; fax: +44 207 488 3167; email: paddymcknight@jsaldn.org.uk
- Ms Natalie Shaw, Secretary of the Shipowners' group at the ILO, International Shipping Federation, Carthusian Court, 12 Carthusian Street, London EC1M 6EZ, United Kingdom; tel.: +44 207 417 88 44; fax: +44 207 417 88 77; email: natalie.wiseman@marisec.org
- Mr Tim Springett, International Shipping Federation, Carthusian Court, 12 Carthusian Street, London EC1M 6EZ, United Kingdom; tel.: +44 207 417 28 20; fax: +44 207 417 88 77; email: tim.springett@british-shipping.org
- Mr Ment Van Der Zwan, Policy Advisor, Pelagic Freezer Trawler Association, Hermelijnvliinder 12, 1113 LH Diemen, Netherlands; tel.: +31 255 56 14 77, mobile: +31 6 204 176 44; fax: +31 255 52 21 34; email: ment@cv-ym.nl

Seafarers' representatives
Représentants des gens de mer
Representantes de la gente de mar

- Mr Jon Whitlow, Secretary of the Seafarers' group to the Joint Maritime Commission, International Transport Workers' Federation (ITF), ITF House, 49–60 Borough Road, London SE1 1DR, United Kingdom, tel.: +44 20 7940 9270; fax: +44 20 7940 9275; email: whitlow_jon@itf.org.uk
- Mr John Halas, General Secretary PNO, Pan-Hellenic Seamen's Federation, 47/49 Akti Miaouli Street, Livanos Building, Piraeus 18536, Greece; tel.: +30 210 429 2958/59/67; fax: +30 210 429 3040; email: gram@pno.gr
- Mr Agapios Tselentis, Director – International Department, Pan-Hellenic Seamen's Federation, 47/49 Akti Miaouli Street, Livanos Building, Piraeus 18536, Grèce; tel.: +30 210 429 2958/59/67; fax: +30 210 429 3040; email: gram@pno.gr
- Mr Jesus Sale, International Transport Workers' Federation (ITF), Associated Marine Officers' and Seamen's Union of the Philippines, Seamen's Centre, Corner Cabildo & St Potenciana Streets, Intramuros 1002, Manila, Philippines; tel.: +632 527 64 81/ 527 35 35; fax: +632 527 36 34/ 527 36 38; email: jojo_sc@amosup.org
- Mr Sigis Buckman, General Secretary, Ghana Merchant Navy Officers' Association, PO Box CS 8654, Tema, Ghana; tel.: +233 22 20 4422/+244 63 92 08; fax: +233 22 20 4422, email: buckman_sigis@itf.org.uk
- Mr Brian Orrell, General Secretary, NAUTILUS UK, Oceanair House, 750–760 High Road, Leytonstone, London E11 3BB, United Kingdom; tel.: +44 208 989 6677; fax: +44 208 530 1015; email: borrell@nautilusuk.org vcoates@nautilusuk.org

Representatives of non-governmental international organizations
Représentants d'organisations internationales non gouvernementales
Representantes de organizaciones internacionales no gubernamentales

International Trade Union Confederation (ITUC)

Confédération syndicale internationale

Confederación Sindical Internacional

Ms Esther Busser, ITUC Geneva Office, 46, avenue Blanc, 1202 Geneva, Switzerland; tel.: +41 22 738 42 02;
fax: +41 22 738 10 82; email: ester.busser@ituc-csi.org

International Organisation of Employers' (IOE)

Organisation internationale des employeurs

Organización Internacional de Empleadores

Mr Jean Dejardin, Adviser, IOE, 26, chemin de Joinville, 1216 Cointrin, Geneva, Switzerland,
tel.: +41 22 929 00 13; fax: +41 22 929 00 01; email: dejardin@ioe-emp.org

International Christian Maritime Association (ICMA)

Association maritime chrétienne internationale

Asociación Marítima Cristiana Internacional

Rev. Ken Peters, Director of Justice & Welfare, ICMA, the Mission to Seafarers, St Michael Paternoster,
Royal, College Hill, London EC4R 2RL, United Kingdom; tel.: +44 207 24 85 202;
email: kenpeters@missiontoseafarers.org

Mr Domingo González Joyanes, c/ Julián Hernández nº 3 b. izda, 28043 Madrid, Spain; tel.: +34 91 415 79 17;
fax: +34 91 234 22 64; email: djoyanes@hotmail.com

International Federation of Shipmasters' Association (IFSMA)

Mr Mark Dickinson, Vice-President, International Federation of Shipmasters' Association (IFSMA),
202 Lambeth Road, London SE1 7JY, United Kingdom; tel.: +44 20 7261 0450; fax: +44 20 7928 9030;
email: hq@ifsma.org

Capt. Thomas Brown, International Federation of Shipmasters' Association (IFSMA), 202 Lambeth Road,
London SE1 7JY, United Kingdom; tel.: +44 20 7261 0450; fax: +44 20 7928 9030; email: hq@ifsma.org

Mr Nicholas Maddalena, International Federation of Shipmasters' Association (IFSMA), 202 Lambeth Road,
London SE1 7JY, United Kingdom; tel.: +44 20 7261 0450; fax: +44 20 7928 9030; email: hq@ifsma.org

International Group of P&I Clubs

Mr Hugh Hurst, Legal Adviser, International Group of P&I Club, Peek House, 20 Eastcheap, London EC3M 1EB,
United Kingdom; tel.: +44 20 7929 3544; email: secretariat@internationalgroup.org.uk

Mr David Baker, Policy Adviser, International Group of P&I Club, Peek House, 20 Eastcheap, London EC3M
1EB, United Kingdom; tel.: +44 20 7929 3544; email: secretariat@internationalgroup.org.uk

International Ship Suppliers' Association (ISSA)

Mr Mark Dickinson, International Ship Suppliers Association (ISSA), the Baltic Exchange, St Mary Axe, London
EC3A 8BH, United Kingdom; tel.: +44 207 626 6236/7, mobile: +44 77 10 45 26 32;
fax: +44 207 626 6234; email: secretariat@shipsupply.org

Secretariat of the meeting
Secrétariat de la réunion
Secretaría de la reunión

International Maritime Organization

Mr Gaetano Librando, Deputy Director, Head, Treaties and Rules Section, Subdivision for Legal Affairs, Legal Affairs and External Relations Division, email: glibrando@imo.org

International Labour Office

Ms Cleopatra Doumbia-Henry, Director, International Labour Standards Department

Ms Elizabeth Tinoco, Chief, Sectoral Activities Branch

Mr Dani Appave, Senior Maritime Specialist, Sectoral Activities Branch

Mr Joachim Grimsman, Coordinator – Maritime Team, International Labour Standards Department

Mr Brandt Wagner, Senior Maritime Specialist, Sectoral Activities Branch

Ms Christine Bader, Legal Officer, International Labour Standards Department

Mr Timo Knäbe, Associate Expert, International Labour Standards Department

Mr Jérôme Blanchard, Associate Expert, International Labour Standards Department

Mr Woon-Yul Oh, Associate Expert, Sectoral Activities Branch

Mr Luc Demaret, Representative of the Bureau for Workers' Activities

Mr Christian Hess, Representative of the Bureau for Employers' Activities