

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, 21–24 July 2008





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## 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 Eighth Session from 21 to 24 July 2008 at the headquarters of the International Labour Organization in Geneva, Switzerland. Mr Jean-Marc Schindler (Government of France) chaired the meeting. The Shipowner spokesperson was Ms Edith Midelfart (Norway) and the Seafarer spokesperson was Mr Brian Orrell (United Kingdom). The list of participants is contained in Appendix III to this document.
2. Ms Elizabeth Tinoco, Chief of the Sectoral Activities Branch, welcomed the participants on behalf of the Director-General of the ILO. She recalled that in its Seventh Session, the Joint Working Group had agreed to move to a mandatory long-term solution on the issue of abandonment. The Eighth Session was agreed upon with a view to moving to a final resolution of the issues and the documents submitted would help to achieve a concrete result. She pointed out that abandonment was still an issue, with the database on abandonment being updated regularly. Although fewer cases had been received in recent months owing to the current good performance of the shipping industry, it was still important to find lasting and efficient solutions for the future to prepare for the inevitable downturn in world trade.
3. The IMO representative, Mr Gaetano Librando, Deputy Director, Head, Treaties and Rules Section, recalled the development by the Working Group of two important resolutions and related guidelines, one on provision of financial security in case of abandonment of seafarers, the other on shipowners' responsibilities in respect of contractual claims for personal injury to, or death of, seafarers as well as the establishment of the Database on Abandonment of Seafarers, developed and maintained by the ILO, in cooperation with the IMO. He recalled that, at its last session, the Group had made very good progress in the assessment of the provisions in the two resolutions and related guidelines vis-à-vis those in the Maritime Labour Convention, 2006 (MLC), and that it had agreed, in principle, on certain key points, including that there was a need for an effective security system for abandonment and that the main elements of such a system should be mandatory.
4. He invited the Joint Working Group to concentrate on the development of longer-term sustainable solutions to address the problems of liability and compensation regarding claims for death, personal injury and abandonment of seafarers, bearing in mind the outcome of the 94th (Maritime) Session of the International Labour Conference, and to decide on appropriate recommendations to be submitted to the IMO Legal Committee and the ILO Governing Body. In this connection, he recalled that the Legal Committee, at its 93rd Session (22–26 October 2007), while agreeing that the Group should focus on practical and long-term sustainable solutions, suggested particular caution when considering the adoption of mandatory instruments aimed at proposing long-term solutions. He stressed that the IMO had always acknowledged the central role of seafarers in the maritime world and their invaluable contribution to the smooth flow of international seaborne trade and the global economy and that the deliberations of this Joint Working Group were in line with the priorities of the IMO, also in view of the importance of the human element factor for the safety of navigation and the prevention of pollution of the sea.
5. The Chairperson of the Joint Working Group provided an overview of the documents submitted and suggested organizing the session into two parts: the discussion of the issue of abandonment to be concluded by the end of the first day. To achieve this, the Working Group should focus on the content of a financial security mechanism; secondly, the issue of personal injury and death. The discussion of both issues should be finished by

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Wednesday evening, to allow time for the discussion of other subjects on Thursday. He then invited the Governments to comment on submissions regarding financial security from the Governments of France, the Philippines and the United States (IMO/ILO/WGLCCS/8/2/1).

6. A representative of the Government of the United States expressed his country's continued commitment to ensuring that an adequate long-term solution to the problem of abandonment was put into effect as quickly as possible. Governments had a key interest in developing an international solution and their role was therefore crucial.
7. The representative of the Government of the Philippines expressed his delegation's high expectation for a productive discussion, and highlighted his Government's objective, namely the development of a mandatory and flexible long-term instrument. While the current number of abandonment cases was low, this could change and the need for a mandatory instrument was therefore pressing. To achieve positive results, the Working Group should avoid repeating the discussion on the pros and cons at its previous sessions.
8. The Chairperson noted that the instrument to be developed would be mandatory and outlined again the timetable of the meeting, allowing Governments to have a group meeting to discuss the International Shipping Federation (ISF) and the International Transport Workers' Federation (ITF) joint submission paper (IMO/ILO/WGLCCS/8/2/3).
9. In her opening speech, the Shipowner spokesperson congratulated Mr Schindler for continuing to chair this meeting and, in addition to the ISF/ITF joint submission paper, referred to the model receipt and release form (IMO/ILO/WGLCCS/8/2/5) and the crew claims paper (IMO/ILO/WGLCCS/8/2/4) developed by the Shipowners. The two Secretariats had produced very comprehensive documents for this session, showing that questions concerning insurance were not only in the mandate of the IMO but that the ILO was also competent in this area. It was comforting to have the joint expertise of both organizations. Her group's objective was to fill the gap between the MLC and the issues related to financial security for crew claims concerning abandonment, death and personal injury. The Shipowners understood the IMO Secretariat's paper (IMO/ILO/WGLCCS/8/2/2) as supporting an ILO-MLC-based solution, which was also favoured by her group. In the view of the Shipowners, Standards A2.5.3 and A4.2 could, after some modification, form a basis to establish a financial security instrument. Bringing the seafarer home as quickly as possible after being abandoned was of utmost importance. The form of a financial security system and its administration had to be determined and they had to be immediately available to the seafarer. For death and personal injury more traditional options could be used, taking into account all problems related to finding a sustainable financial security system.
10. The Shipowner spokesperson underlined that the common ISF/ITF paper showed progress in regard to abandonment, while two issues needed further discussion. The definition of abandonment as based on the US proposal needed some modification as it had to exclude abandonment caused by serious default (misconduct) of the seafarer. Furthermore, the responsibility to ensure the existence of a financial security system should lie with the flag State or the State in which recruitment took place. Her group requested consideration of the following points: Which protective measures should the employer have in place? What risks should be covered? To what extent could strict liability be extended without undermining the operation of ships? What areas were to be excluded? Which limitation had to be accepted? She noted that the few ratifications of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), were proof of the difficulty to establish financial security, even ashore.
11. Concerning the issue of personal injury and death, the Shipowners had submitted a separate paper (IMO/ILO/WGLCCS/8/2/4), closely linked to Regulation 4.2 and the

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related Code and model release form (IMO/ILO/WGLCCS/8/2/5) for securing partial payments until full payment was possible.

12. The secretary of the Shipowners' group observed that the Shipowner spokesperson only spoke on behalf of the Shipowners and that representatives of fishing vessel owners were also present. Governments should keep in mind that owners of fishing vessels and shipowners were two different communities and that fishing was not covered by the MLC.
13. In his statement, the Seafarer spokesperson, referring to the ISF/ITF common paper on abandonment, stated that the social partners had gone as far as they could. He invited governments to become actively involved with the subject of abandonment and personal injury and death alike. He regretted that the ISF/ITF common paper (IMO/ILO/WGLCCS/8/2/3) did not contain more common points; further comments were not necessary as the Seafarers had not changed their position and were thus consistent with previous arguments. The main differences were the Shipowners' insistence on an exclusion of outstanding wages and contractual entitlements from the instrument modelled after IMO liability Conventions. The Seafarers, however, could not accept limitation of liability or the establishment of a ceiling of liability. The Seafarers therefore hoped that the Governments would come up with solutions in their discussions.
14. The representative of the Republic of Korea recalled the eight principles of the Geneva Accord, which played a key role in the successful adoption of the MLC. These principles should also guide this Working Group in its task to develop a standard accompanied by guidelines to be included in the MLC or another existing instrument. His delegation wished for the rapid development of a mandatory instrument. The issues of liability and compensation regarding claims for death, personal injury and abandonment of seafarers were, in principle, labour issues and related to Titles 2 and 4 of the MLC. Therefore, a standard accompanied by guidelines to be included in the MLC had to be deliberated. The scope of application should include fishers on board fishing vessels engaged in international waters, while an approach similar to the one of the International Convention for the Safety of Life at Sea (SOLAS) could be tested. Although the provisions of SOLAS were generally not applicable to fishing vessels, under Chapter V, stipulating safety of navigation, an administration could exercise its discretion when determining to what extent the provisions in that chapter should apply to fishing vessels. He recommended a comparative analysis between Article II, paragraph 4, of the MLC and Chapters I and V of SOLAS. Diversity should be accommodated in respect to the form that a financial security system should take. He favoured a limitation of the financial security to be provided since a financial security without limitation would not be feasible in the market and would become a major obstacle to rapid entry into force.

## **Abandonment of seafarers**

15. A representative of the Government of the United States, speaking on behalf of the Government group, reported on the outcome of discussions within the group on document IMO/ILO/WGLCCS/8/2/3, as submitted by the ISF and the ITF, which highlighted the principles discussed, areas of agreement and any differing views of the parties concerned. The Government group focused its comments on the annex, entitled "Provision of financial security in case of abandonment of seafarers".<sup>1</sup> After the presentation, the Chairperson proposed to discuss the cover notes and the annex, both contained in

<sup>1</sup> After further discussion in a Government drafting group and another discussion within the Government group, the text of the presentation was presented to the Working Group in the form of annotations to the annex to document IMO/ILO/WGLCCS/8/2/3; it is reproduced in Appendix I.

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IMO/ILO/WGLCCS/8/2/3, in greater detail in a forthcoming session. The Government group was asked to put in writing their oral proposals, with the help of the Secretariat. A drafting group was set up, composed of representatives of the Governments of the United States, France, the United Kingdom and the Philippines.

### **Government recommendations resulting from group consultations**

16. A representative of the Government of the United States, speaking on behalf of the Government group, presented the Government recommendations resulting from group consultations, which were summarized in an annotated paper.<sup>2</sup>

#### ***Chapeau***

17. He explained that this provision was not to limit the rights of seafarers or others but to supplement existing rights. When asked by the Shipowners if this were to mean that a seafarer could thus be covered twice, he described that this provision was not meant for an additional or dual recovery.
18. After brief discussion, there was general agreement that a footnote explaining this approach was to be included in any forthcoming draft mandatory instrument on the issue.

#### ***Paragraph 1.3 – Fishing vessels***

19. The spokesperson for the Government group mentioned that this point raised several significant issues, particularly with regard to the exclusion of fishers. In view of Convention No. 188, it would seem obvious to exclude them from this discussion but to envisage a separate instrument to accompany the Convention. In the case that a stand-alone ILO or IMO instrument were decided upon, the issue would have to be revisited. Governments were unable to adopt a definitive text because it was not clear what form of instrument would be used.
20. On behalf of the fishing industry employers in the Shipowners' group, an Employer member remarked that fishers required protection along similar lines to seafarers, but there were different forms of employment relationship in fishing, and a different understanding of "international voyage" in the two subsectors. It would therefore be wise to have a separate instrument for fishing that fully addressed the financial protection required. While he acknowledged that it would not be easy to amend Convention No. 188, there could be a single-session discussion of the issue at the International Labour Conference.
21. The Seafarer spokesperson found that the reference to fishing in paragraph 1.3 covered the issue well. His group found the Governments' suggestion constructive.
22. A representative of the Office suggested that a simple Protocol to Convention No. 188 could be envisaged.

<sup>2</sup> See Appendix I.

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## **Paragraph 2 – Definitions**

23. *Paragraph 2.1.* The spokesperson for the Government group indicated that Governments found the definitions of “shipowner”, both in the guidelines and in the MLC, acceptable.
24. *Paragraph 2.2.* The Shipowner spokesperson stated that the proposed text “irrespective of nationality”, could create confusion if the text was in the MLC, as it would give the impression that the same concept would not apply elsewhere in the instrument. However, she recognized this may not be the case if an alternative instrument were used.
25. The spokesperson for the Government group remarked that the bracketed text had been carried over after the deletion of paragraph 6.2(c).
26. The Seafarer spokesperson noted that there were clear issues relating to financial security on multinational crewed vessels with regard to coverage of crew members, as well as to the issuance of one or more certificates of financial security.
27. *Paragraph 2.3 – Abandonment.* The spokesperson for the Government group suggested that in a mandatory instrument, there was a need to know how to apply and enforce a threshold. However, the Government group did not want to make the threshold too rigid and unworkable. The proposal in document IMO/ILO/WGLCCS/7/2/4 might be looked at with fresh eyes as a new starting point. The text was not a final government position.
28. The Shipowner spokesperson observed that the covering note stated that it was the Shipowners’ view that the definition of “abandonment” required clarification and should exclude wilful misconduct. She invited Governments to provide such clarification.
29. The Seafarer spokesperson had problems with the Shipowners’ view. Unilateral severance of ties could not include a seafarer having a night out on the town and then finding himself in a position of abandonment, his ship having left without him. How would “wilful misconduct” be interpreted? If seafarers were left behind because of the action of a third party, or while on legitimate shore leave, that should not be their problem. Seafarers were too often left destitute far from home with no means of supporting themselves or organizing their repatriation.
30. The representative of the Government of France believed that the Shipowners’ group had misunderstood the issue, which was covered in A2.5.3 of the MLC.
31. The representative of the Government of Norway suggested the following definition: “Abandonment means a shipowner’s unilateral cancellation of a seafarer’s obligation to work, either directly or implicitly, without providing the contractual compensation as agreed for in that situation.”
32. The representative of the Government of Greece considered that, as there was no consensus on a definition of abandonment, it was necessary to determine what constituted abandonment of seafarers (or not) on a case-by-case basis, as was practised in his country through a tripartite board.
33. The representative of the Government of Cyprus had not yet digested the Norwegian proposal, and preferred that of the United States; he did not favour a case-by-case approach. He questioned whether a vessel arrested by creditors would be considered automatically as an abandoned one.
34. The representative of the Government of Denmark felt that a very precise definition was needed for a mandatory instrument. A looser definition might suffice for a non-binding

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resolution. The Norwegian proposal might merit further consideration, but it had not yet been digested.

35. The representative of the Government of France felt that the definition in the ILO/IMO Guidelines was the best starting point. The Norwegian proposal addressed termination of employment, not abandonment.
36. The Seafarer spokesperson was grateful to the Government of France for drawing attention to A2.5.3 of the MLC, which was intended to cover individuals requiring repatriation. The Norwegian solution included the words “without providing contractual compensation”, but few shipowners provided compensation. He agreed with the Government of France that the Norwegian proposal addressed termination of employment, not abandonment.
37. The Shipowner spokesperson noted that when seafarers had left the ship when they should be on it, or had been guilty of gross misconduct, they would not recognize this as abandonment.
38. The representative of the Government of the Republic of Korea remarked that Regulation 2.5, paragraph 2, stated that seafarers should be repatriated in accordance with the Code. Financial security was guaranteed, so the abandonment definition was clear enough. He did not consider that a clearer definition was required; just a clearer understanding of the concept could serve the purpose.
39. The Shipowner spokesperson stated that seafarers who were left behind in a foreign port through their own fault should not be considered as abandoned. That would be a case of “frustration of contract”.
40. A representative of the Office suggested that there should not be any confusion between “constructive termination of employment” and “abandonment”. She referred to sections 2.1 and 2.5 of the MLC to explain that a seafarer left behind should be repatriated and the cost may be recovered under the conditions prescribed by the Convention.
41. *Paragraph 2.4.* The spokesperson for the Government group noted that the definition of a ship needed to be included.
42. The Shipowner spokesperson concurred.

### ***Paragraph 3 – Scope of application***

43. The spokesperson for the Government group noted that it may be necessary to include tonnage issues and draw distinctions between domestic and international voyages, but that these issues had not yet received thorough policy consideration.
44. The Shipowner spokesperson felt that the scope provision should be the same as in the MLC, whatever form the mandatory instrument should take.
45. The Seafarer spokesperson agreed with paragraphs 3.1 and 3.2. He noted that third party flagged ships in domestic trade and multinational crews in domestic trade presented some problems, and there would be a need for some discussion on this issue.

### ***Paragraph 4 – Responsibilities***

46. The spokesperson for the Government group noted that paragraph 4 of the Government recommendations concerning responsibilities had incorporated some text from



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paragraphs 7 and 8 in order to put all text relating to responsibilities together. Governments felt that the Shipowners' proposals were closer to theirs than were the Seafarers'. Governments held the major responsibilities, and had to ensure that the system was put in place among shipowners.

47. He affirmed that paragraph 4.1 ended with the word "flag".
48. The Seafarer spokesperson stated that his group supported all five clauses of the paragraph, and would be interested in the views of others as regards the issue of third parties, alluded to in paragraph 4.5.
49. The Shipowner spokesperson requested clarification of the meaning and intent of paragraph 4.2.
50. The spokesperson for the Government group remarked that the intention was to cover the issue of "non-party" States, and to prevent this issue from becoming a disincentive to ratification if it were not clarified. The text would help to remove some difficult issues and enjoyed government consensus.
51. *Paragraph 4.4.* The spokesperson for the Government group stated that the overwhelming view of governments was that financial security certificates should be issued on behalf of the flag States, but not by undefined third parties. It was similar to the way the environmental provisions in MARPOL worked. The Government Working Group had endeavoured to avoid being over-prescriptive in the wording.
52. The representative of the Government of the United Kingdom noted that this issue imposed an obligation on governments to issue certificates on financial security to every single eligible ship. The additional issues relating to social security would create huge problems and could be unworkable. His Government wished to place on record a reservation on this point.
53. The representative of the Government group observed that the most difficult part of the point raised by the Government of the United Kingdom was the "no more favourable treatment" problem. Governments would, as presently proposed, provide for financial security certificates to be issued on behalf of those ships flying their flag only. This was a similar point to that raised by the Government of the Republic of Korea. The intention was to make provision for the issuance of certificates or other means to non-party ships, rather than making it a requirement.
54. *Paragraph 4.5.* The Shipowner spokesperson drew the attention of the participants to the wording of (the original) paragraph 8 of the joint ISF/ITF document and highlighted the similarity between abandonment and crew claims.
55. The representative of the P&I Clubs expressed concern about the fact that, unlike IMO instruments, the proposed government text did not contain any of the standard defences against liability of financial security providers. He referred to paragraph 8 of the joint ISF/ITF document, which contained some commonly accepted defences (e.g. war, terrorism, etc.). Without such exclusions, the providers of financial security would be subject to absolute liability, and no international instrument had ever stipulated absolute liability of the shipowner or financial security provider. The reason for the exclusion of liability in the enumerated cases of war and terrorism was that the P&I Clubs (and the insurance market in general) did not provide coverage in such situations, and that in specific cases the insurance market in general does not provide coverage. This also applied to death and personal injury of seafarers.

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56. The IMO representative confirmed that the Legal Committee, at its 92nd Session (October 2007) had adopted the IMO reservation and guidelines for the implementation of the Athens Convention, which included a number of specific exclusions in the 2002 Protocol to the Athens Convention to reflect existing standards in insurance market conditions, most importantly, the Radioactive Contamination, Chemical, Biological, Biochemical and Electromagnetic Clause, Cyber Attack Exclusion and War Automatic Termination and Exclusion Clauses.
  57. The reservation and guidelines should offer a workable and pragmatic solution, ensuring that certain liabilities under article 3 and the insurance provisions under article 4bis of the 2002 Athens Convention are met. This should encourage the P&I Clubs to meet their non-war liabilities and allay some of the concerns of the Club boards about the potential effects of entry into force of the 2002 Athens Convention on market capacity. The relevant part of the report of the Legal Committee, at that session, and the IMO reservation and guidelines for the implementation of the Athens Convention were made available to the participants.
  58. The representative of the Government of Cyprus felt that there was a difference between the coverage for abandonment and the coverage for other risks. Contrary to a passenger, it was not the seafarer's choice to go to a particular place; mostly, the seafarer was not even aware of the ship's itinerary. Furthermore, coverage for abandonment was well-defined: it only included repatriation and maybe a number of months' wages.
  59. The secretary of the Shipowners' group reiterated that a coverage provider was essential, and raised the question as to who would cover the risk if the insurance market did not provide coverage in such cases.
  60. The representative of the Government of France endorsed the position of the representative of the Government of Cyprus. Terrorist acts alone did not create abandonment. Abandonment always represented a unilateral act of the shipowner. Given that there was no exception to the obligation of the shipowner to repatriate the seafarer (not even in cases of war, terrorism, etc.), abandonment was always due to the failure of shipowners to fulfil their repatriation obligation.
  61. A representative of the Government of the United Kingdom stated that, according to his knowledge, the representative of the P&I Clubs had provided valid information. Contrary to the case of death or personal injury, in case of abandonment, there was no shipowner and thus no fall-back position. He suggested deferring discussions and referring the subject to a smaller group to find a viable solution.
  62. The Seafarer spokesperson shared the views expressed by the representatives of the Governments of France and Cyprus. In any event, the exclusion would only apply to a very small percentage of abandonment cases, and insurance providers always undertook a prior risk assessment. His group was unable to understand where exactly the problem lay and continued to support paragraph 4.5 ("regardless of cause"). The position of the P&I Clubs could and should not hinder the payment of seafarers in such cases.
  63. The Shipowners' group said they had sympathy for the views explained by the Government of Cyprus. However, it was still essential to ensure that provision of insurance was possible and that for the moment that had not been confirmed.

***Paragraph 5 – Scope of financial security systems  
[for abandoned seafarers]***

64. The spokesperson for the Government group explained that the words "for abandoned seafarers" had been added to the title to avoid any ambiguity.

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65. *Paragraphs 5.1.3 and 5.1.4.* The overwhelming majority of Governments (there was not unanimity) found it difficult to understand why liability for wages was so problematic for Shipowners and felt that the approach of the Seafarers was more compelling. Thus, the proposed inclusion in paragraph 5.1.3 included not only contractual but also legal entitlements and made specific reference to accrued wages. Paragraph 5.4 had been deleted, since its main components had been incorporated into paragraph 5.1.3.
66. The Shipowner spokesperson expressed her disappointment with the government text. The Government group had touched upon important issues that had been carefully drafted together with the Seafarers. Initially, it had been foreseen that the shipowner should only provide coverage for repatriation; now Governments had included liability for wages and other contractual entitlements with minor or no limitation. If the proposed text were to be adopted, this would represent a huge problem for the maritime industry. The proposal from the Governments would constitute wider coverage than under the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), and the European Council Directive.
67. The representative of the Government of Denmark stated 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, instead of litigation. Wages should be covered in case of the shipowner's insolvency.
68. The Seafarer spokesperson referred to the right of the seafarer to be paid regularly and in full, in accordance with the employment agreement, as stipulated under Regulation 2.2 and Standard A2.2(1) of the MLC, and to the right of the seafarer to file a complaint in case of breach under Title 5 of the MLC. He did not see any reason why the seafarer should lose those rights in case of abandonment, and stressed that after several months without wages, hardly any seafarer could afford the cost to go to a tribunal. His group accepted, in a spirit of compromise, the limitation to three or four months' wages and supported point 5 in principle and in substance.
69. The Shipowner spokesperson reiterated that her group could not support point 5 and preferred the text as it was.
70. The representative of the Government of the United Kingdom strongly rejected the attempt to exclude wages and contractual claims.
71. *Paragraph 5.3.* Drafting changes to this provision as well as deletion of the last part of the sentence were noted without further discussion.

## **Paragraph 6 – Form of the financial security system**

72. *Paragraph 6.2(b).* The spokesperson for the Government group explained that Governments did not agree with the Shipowners on the deletion of the provision and preferred to keep the text as it was.
73. *Paragraph 6.2(c)* had been deleted since Governments felt that, if abandonment was to be covered by the MLC, the concept could be dealt with in the MLC definitions. Otherwise, the phrase "irrespective of nationality" was useful.
74. Under paragraph 5.1.4, most Governments were of the opinion that the guarantee should be limited to a certain degree, and suggested a limit with regard to the duration of payment (i.e. three to four months' wages). It was hoped that this might also encourage seafarers to request accrued wages much earlier.

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75. The Seafarer spokesperson supported paragraph 6 in principle and substance. He further referred to paragraph 6 of document IMO/ILO/WGLCCS/8/2/7(Rev.1), according to which workers did not pay for their own entitlements in wage guarantee institutions.
76. The Shipowner spokesperson noted that the joint ISF/ITF document did not contain any limitation to three to four months' wages. The text proposed by the Governments was contrary to the relevant EU Directive and ILO Convention No. 173, according to which benefits available should be levelled in accordance with the social objective. Her group could not accept paragraph 6.

### **Paragraph 7 – Certificates**

77. The spokesperson for the Government group explained that in addition to editorial changes, paragraph 7.1 had been moved to paragraph 4. Paragraph 7.3.6 had been replaced with wording that had been considered helpful for the seafarer; the initial content of paragraph 7.3.6 had been captured under paragraph 7.3.5. As for paragraph 7.2, clarification was requested from the IMO Secretariat as to how to address the circumstance in which a certificate lapses or is withdrawn. Paragraph 7.4 had not been considered necessary. Paragraph 8 had been moved to paragraph 4.5.
78. The Seafarer spokesperson supported paragraph 7 in principle and substance.
79. The secretary of the Shipowners' group, too, agreed on all subsections of paragraph 7. Concerning paragraph 7.3.6, she highlighted that the term "persons or entity" might not be a natural person but a call centre and that for some shipowners it might not be possible to name one person only.
80. The spokesperson for the Government group explained that this issue had been raised by the Governments during their discussions and that "person" referred to a "corporate person" rather than a "natural person". Further, he was certain that a textual clarification could be made, if believed to be helpful.

### **Paragraph 8**

81. The Chairperson remarked that this provision was already dealt with under paragraph 4.

### **Death and personal injury**

82. Following a meeting of the Government group, a Government spokesperson stated that the Government group was divided on how to regulate financial security in case of personal injury and death of seafarers. Some Governments felt that there was no need to amend the MLC or adopt a separate instrument. Some of them were prepared to go along if there was a majority in support. In that case they felt that the social partners should reach an agreement on the issues involved before they could usefully consider mandatory texts. Some other Governments felt that there were gaps in the MLC which could be addressed through a revision of the shipowners' liability provisions, arguing that public authorities could regulate more easily shipowners' liability than contractual claims which should be settled between private parties. Some Governments underlined that they had problems in dealing with contractual claims and that they would prefer to regulate shipowners' liability only. Some Governments stressed that the existing MLC text did not contain the functional criteria, including compulsory insurance, direct access to the insurer, insurance certificates and prior notification of withdrawal of cover, and therefore needed to be improved. Several Governments underlined their objection to the exclusion clause (paragraph 2.6(d)) and the absence of the right of appeal (paragraph 2.2) proposed in the ISF paper. A small group of

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Government representatives drafted a set of preliminary ideas drawn from the submissions of the ISF and the ITF (see Appendix II).

- 83.** The Shipowner spokesperson introduced documents IMO/ILO/WGLCCS/8/2/4 and 8/2/5. She focused on the proposed amendments to the MLC with a new paragraph in A4.2.2, quoted the change and stressed the importance of measuring the existence, the validity and the correct amount of a claim. She referred to the additional new paragraph A4.2.6(d) to exclude injury, sickness, etc. She mentioned that it would be useful to consult the IMO Legal Committee on these changes and also on the new paragraphs A4.2.9 and A4.2.10. She then introduced document IMO/ILO/WGLCCS/8/2/5, which was to provide the possibility to make ad hoc payments before a final assessment of the claim's validity. It was also important to state the conditions for payment and prevailing disagreement about the correct sum.
- 84.** The Seafarer spokesperson agreed that the issue should be included in the relevant sections of the MLC. He referred to document IMO/ILO/WGLCCS/8/2/4 in rejecting the proposed new paragraph A4.2.2, as the text was not clear and nor was it solving the issue at stake. He pointed out that there was a need for prompt payment and there should be no delay in waiting for a court decision. He rejected the proposed new paragraph A4.2.6(d) and stressed that there was a duty of care by the shipowner. Such kinds of exclusions could not be accepted. On A4.2.9 and A4.2.10 he asked to put this in the existing MLC paragraph.
- 85.** The Seafarer spokesperson finally expressed that he was not in agreement with the guidelines proposals, because binding instruments were needed and should be therefore in Code A of the MLC. He recalled that the model release form already existed and he could not agree with the one that was now proposed. The proposal opened opportunity to question the validity of the claim and gave flexibility where he was talking about contractual claims based on a collective agreement. He then introduced ITF document IMO/ILO/WGLCCS/8/2/6 and pointed out that the main issue was that claims should be in the mandatory part of the MLC and therefore had to be placed in Code A.
- 86.** In response to the Seafarers' comments on the ISF documents, the Shipowner spokesperson noted that in cases of injury it took time to assess the injury and the amount to be paid. This was reflected in the proposed model release form in order to offer the opportunity to pay part of the amount but not the full amount. She mentioned that the proposed model receipt was based on the fact that shipowners wanted to settle the matter speedily in case of injury, but with the payment did not want to recognize any entitlement to the claim and any later responsibility.
- 87.** With reference to the revised document concerning personal injury and death submitted by the ITF (IMO/ILO/WGLCCS/8/2/6), the Shipowner spokesperson further noted that the proposed text of Standard A4.2.1(1)(a), namely the definition of "personal injury", went way beyond the text of the MLC. The responsibility and liability of the shipowner under the proposed definition was much wider than that provided for in the MLC. Such a wide shipowner liability would make insurance more costly and difficult to find.
- 88.** The secretary of the Shipowners' group once more drew attention to the fact that, if the issue at stake was to be regulated within the framework of the MLC, fishing industry coverage would have to be discussed separately.
- 89.** The representative of the P&I Clubs informed on developments that had taken place since the last meeting. The P&I Clubs had agreed to change two rules concerning valid seafarer claims for death, injury and illness. Firstly, the "pay to be paid rule" would no longer be followed, and, secondly, the retrospective cancellation for cover in relation to claims would be prohibited as of 2009.

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90. The Seafarer spokesperson acknowledged that the MLC was achieved through good tripartism. On the issue of crew claims the Seafarers were willing to compromise but a facilitation process was necessary. One stumbling block to a solution of the issue was the exclusions in the paper presented by the Shipowners. There, injury or death caused by terrorism as well as natural occurrences were excluded from compensation. It was not acceptable for the Seafarers to have such exclusions and compensation should be provided under any circumstances. The second stumbling block was the absence of the possibility to appeal.
  91. The Shipowner spokesperson said “exclusions” were essential. She stated that the problem was not only liability, but obtaining financial security; she asked for expertise from the Governments.
  92. The Chairperson, having considered the positions of the social partners, recorded the willingness of several Governments to work on solving the issues identified. After some discussions, it was decided that a small drafting group composed of Government representatives would revise the documents submitted by the social partners and compile a text identifying elements which might be part of a future mandatory solution.
  93. The representative of the International Group of P&I Clubs explained that the policy decision on the change of two of the Club’s rules would become effective on 20 February 2009. The “pay-to-be-paid” rule required the shipowner to first pay a claim and then to recover it from a P&I Club. This rule and the rule concerning retrospective withdrawal coverage for the non-payment of premium would not be taken against members in relation to valid crew claims for death and personal injury brought by seafarers or their dependants, which are notified to Clubs after the commencement of the rule change. It would not apply to existing claims. Such claims would be subject to any limits that P&I Clubs provide for such risks, which currently amounted to US\$2 billion for passengers and US\$3 billion for passengers and crew combined. The tonnage covered by the 13 Clubs amounted to 90 per cent of the world’s ocean-going tonnage.
  94. Representatives of the IMO and of the Office welcomed this important development. Their sentiments were shared by the Seafarer spokesperson, who expressed satisfaction with this development which would bring benefits to the industry as a whole.
  95. The Seafarer spokesperson wished to obtain the Governments’ reassurance of their commitment to devising a mandatory instrument on the issue. Due to the progress made in regard to abandonment, the discussion of that item could be postponed until a common basis had been found on how to proceed with personal injury and death.
  96. The Seafarer spokesperson underlined that the importance the Seafarers attributed to such a mandatory instrument was shown in the fact that they would accept nearly any solution. Thus, an instrument under the IMO based on paper IMO/ILO/WGLCCS/8/2/2 would also be feasible. However, denying the need, as some Governments did, to create an instrument since the MLC would also cover questions of personal injury and death would be unacceptable for the Seafarers. Therefore, he asked the Governments to prepare a paper which could be similar to the “Preliminary ideas on text on provision of financial security in case of personal injury and death of seafarers prepared by the informal working group of the Government group” paper. This paper could be refined through electronic exchanges after the close of this Eighth Session.
  97. The Shipowner spokesperson explained that the Governments’ non-acceptance of their own paper would imply that even more caution had to be exercised. One of the most controversial items remained the question of insurance so, only after solving this problem, could a solution be found. She stated that the Shipowners could not agree to the Seafarers’

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proposal of a paper based on the Governments' "Preliminary ideas" referred to in the previous paragraph.

98. The representative of the Government of the United States expressed his country's continued support for a mandatory solution to the issues before the Working Group.
99. The representative of the Government of the Philippines aligned himself with the position of the Government of the United States. The significant progress made in regard to abandonment was due to the social partners' presentation of a common paper. The same should be pursued for the issue of personal injury and death, as mandatory instruments had to be developed for both questions.
100. The representative of the Government of the United Kingdom also acknowledged the relevance of both issues. He therefore requested the social partners to recognize both practical and policy issues. The mandatory instruments had to be practically feasible. To reach this outcome, investing more time in discussions was reasonable.
101. The representative of the Government of Cyprus also supported the development of mandatory texts. Both issues had to be treated as a single package by the same procedure and should not be dealt with separately.
102. The representative of the Government of Denmark did not see a compelling need to develop mandatory instruments as these issues were already covered by the MLC. As the social partners had nevertheless requested such development, his country would support that the work continue with the aim of developing commonly accepted mandatory instruments.
103. The representative of the Government of the Republic of Korea saw gaps between the MLC and the IMO/ILO Guidelines. He supported the development of a mandatory instrument for both issues.
104. The representative of the Government of Ghana stated his country's commitment to solving both issues. He requested the social partners to demonstrate the same commitment and to identify common ground.
105. The representative of the Government of the Bahamas felt that tripartite cooperation was crucial to solving this problem as was seen during the deliberations of the MLC. A solution could only be found once the social partners agreed. For him, abandonment and personal injury and death should be dealt with through the MLC's tacit amendment procedure after that Convention had entered into force.
106. The representative of the Government of Greece welcomed the significant progress made on abandonment. The discussion of personal injury and death had to continue to come up with a mandatory instrument.
107. The representative of the Government of Norway acknowledged that, while progress has been made in regard to abandonment, the need for a mandatory instrument for personal injury was not compelling. His country would, however support the development of a mandatory instrument for personal injury and death. The "Preliminary ideas" paper had good points and was helpful but did not answer all questions.
108. The representative of the Government of France also endorsed the "Preliminary ideas" paper and found the development of a mandatory instrument for the question of personal injury and death necessary. She stated that the ILO/IMO Guidelines were a suitable basis for this work.

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- 109.** The Shipowner spokesperson stated that the Working Group was apparently trapped in a catch-22 situation. The social partners had only been asked to elaborate on the issue of abandonment but not personal injury and death. However, the issue of personal injury and death was also discussed, but the social partners' positions proved to be quite divergent. At this point, the mediator role of the Governments was needed for guidance.
- 110.** The Seafarer spokesperson was on the one hand aware that non-agreement among the social partners in regard to personal injury and death would hinder the adoption of an instrument through the ILO machinery as the disagreement of one part would amount to a *de facto veto*. Nevertheless, he suggested that tripartism did not mean a permanent agreement of the social partners. Agreement of all ILO constituents, which brought about the MLC, was an exception and was due, *inter alia*, to the high level of expertise of all the actors. He identified two problematic areas for finding solutions to develop a mandatory instrument for the issue of personal injury and death. The first problem for the seafarers arose from incorporating the possibility of exclusions in such an instrument. Excluding *force majeure* and piracy was unacceptable for the Seafarers. In their opinion, the shipowner was liable for all those events. It was his duty to obtain adequate insurance cover. The second fundamental problem was seen in the barring of any appeal and delaying the payment of compensation. He also emphasized the Seafarers' need for guidance in this regard.
- 111.** The Shipowner spokesperson stressed that the question of "exclusion" was the problematic item. It was, however, the question of "financial security" which is distinct from "insurance" that proved to be controversial among the social partners. The Shipowners therefore hoped for the experts of the Government in the area of financial security to guide the social partners.

## The way forward

- 112.** The representative of the Government of the United States, speaking on behalf of the Government group, reported on the discussions held in that group with regard to the way forward for the Joint Working Group and its future terms of reference. He stated that there had been unanimous support in principle for a ninth meeting with certain qualifications in order to provide some reasonable assurance of success. There should be a sufficient interval between the Eighth and Ninth Sessions: documents for the meeting to be received in advance and on time and there should be reasonable opportunity for intersessional work. The social partners needed to make every effort to bridge existing differences. Joint documents would have to be provided by the social partners with areas of disagreements identified. The first day of the Ninth Session should be devoted to a meeting of the Government group. Governments were committed to work intersessionally, including to help resolve remaining insurance aspects. A clearer mandate is needed from the IMO Legal Committee and the ILO Governing Body and the Governments provided draft revised terms of reference for the social partners to consider. The Governments also considered the issue of exclusions within the financial security scheme. They did not support exclusions regarding abandonment and urged the social partners to continue to explore new alternatives within the commercial insurance markets. However, they were prepared to consider the issue in greater detail regarding death and personal injury and remain open to options, with commitment for intersessional cooperation. They requested that the Joint Secretariat prepare papers on the following: the historical background, consolidating the intersessional assessment of the insurance market, particularly to include viability with regard to death and injury, and also draft instrument or instruments for the meeting with appropriate commentaries.



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113. The Working Group considered these proposals presented by the Governments in an informal document, which summarized their discussions and formally endorsed them.
  114. The secretary of the Shipowners' group, recalling her remarks from the day before (23 July 2008) pointed out that the social partners also needed guidance from the Governments.
  115. A representative of the Office replied that the social partners should have intersessional meetings in which the social partners should make best efforts to bridge existing differences, to which the social partners agreed. The Governments should set up a correspondence group which could provide input to guide these meetings.
  116. The IMO representative reminded the Working Group of the rules concerning the submission of papers: six weeks for papers of six pages or less, and at least eight weeks for papers of more than six pages.
  117. The representative of the United States, speaking on behalf of the Government group pointed out that his group remained committed to work intersessionally and to coordinate internally and with the Joint Secretariat to help resolve the most critical remaining aspect – the aspect of insurance. Concerning exclusions within the financial security scheme, he recalled their opposition to exclusions regarding abandonment and urged the social partners to continue to explore new alternatives within the commercial insurance markets.
  118. The Working Group also discussed the proposal by the secretary of the Shipowners' group that the commercial insurance market also had to include other forms of financial security, e.g. public funds. It concluded that the social partners would continue to explore new alternatives within the commercial insurance markets and other forms of financial security.
  119. With regard to personal injury and death, the representative of the United States, speaking on behalf of the Government group, explained that his group was prepared to consider the issue of exclusions in greater detail and remain open to options with commitment for intersessional cooperation. His group was of the opinion that the exclusion of liability had never been considered as an item in the terms of reference proposed in the Sixth Session of the Working Group (Annex 1 to document IMO/ILO/WGLCCS/6/6). The Government group also proposed a reformulation of the fourth paragraph of the terms of reference which was recommended by the Sixth Session to read as follows: "4. It should complete the discussions and agree on principles to facilitate the drafting of mandatory provisions for inclusion in an appropriate instrument or instruments."
  120. A representative of the Office pointed out that personal injury and death would not relate to the liability of shipowners since the MLC already covered this issue in its Regulation 4.2 and the related Code. The only question at stake concerned financial security.
  121. The secretary of the Shipowners' group requested clarification if this would mean that the topic of personal injury and death would have to be dealt with under the MLC and that the language of this Convention would draw the limits of the discussion.
  122. A representative of the Office replied that this depended on the decision on the location of this instrument. First, clarity in regard to the content was needed. She outlined that the shipowner's liability provisions of the MLC covered personal injury and death and sickness. She highlighted the fact that insurance was independent of liability. Further, the MLC outlined the basis of financial security without, however, providing further details.
  123. Closing the discussion on funding between the social partners, the Shipowner spokesperson explained that the issue at stake was not the question of the source of the

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funds but rather their administration, as the State or the social partners could be charged with this.

- 124.** The Working Group requested the Joint Secretariat's assistance by providing the Working Group with papers on the historical background of the developments since the first meeting on the consolidation of the intersessional assessment of the insurance market, particularly to include viability in regard to death and injury. It further requested the Joint Secretariat to produce a draft instrument or instruments for the Ninth Session with appropriate commentaries.

## **Adoption of draft terms of reference**

- 125.** As a consequence of these discussions, the Working Group agreed on the need for a clearer mandate for its future work and approved the following new draft terms of reference:

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

1. The Joint IMO/ILO Ad Hoc Expert Working Group should continue with its examination of the issue of financial security for crew members/seafarers and their dependants with regard to compensation in cases of personal injury, death and abandonment.
2. In so doing the Joint Working Group should take account of relevant IMO and ILO instruments, including those currently under review or likely to be adopted in the near future.
3. It should continue the monitoring of the problem of abandonment of crew members/seafarers taking into account all relevant information including technical solutions available for financial security.
4. It should complete the discussions and agree on principles to facilitate the drafting of mandatory provisions for inclusion in an appropriate instrument or instruments.
5. At the next session it should make appropriate recommendations to the IMO Legal Committee and the ILO Governing Body.

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## Appendix I

### Government recommendations resulting from group consultations

(Proposals by Governments are underlined; comments by Governments are in parentheses)

### ***Provision of financial security in case of abandonment of seafarers***

[The provisions in this instrument are not intended to be exclusive or to prejudice any other available rights, claims or remedies.]

1.3 [May also apply to fishing vessels engaged in international voyages.]

*To be discussed with fishing vessel owners at meeting in July.*

(Governments recognize the vulnerability of fishers and the need to provide for protection for them. Because of particularities of the industry, however (for example, profit-sharing wage system), Governments suggest, for the time being, to leave fishers out of the present instrument. Should the instrument take the form of a stand-alone instrument, the issue would require further discussion. In the case that an MLC-amendment is envisaged, fishers would not be covered, since excluded under MLC. In that case, the subject might be dealt with under the Work in Fishing Convention, 2007 (No. 188).)

## 2. Definitions

2.1. Shipowner dependent on where this goes we can accept either definition as in A930 or MLC.

(Either definition is acceptable to Governments.)

2.2. Seafarer dependent on where this goes we can accept either definition as in A930 or MLC.

(Amend to include the phrase “irrespective of nationality”. See deletion of 6.2(c).)

2.3. Abandonment means a shipowner’s unilateral severance of ties with a seafarer or the shipowner’s failure to provide or arrange for the necessary maintenance and support of a seafarer.

*US proposal from last meeting:*

(In the time available it was not possible to arrive at a generally accepted definition. There was a strong opinion, however, that the text for this definition in a mandatory instrument should be based on previously agreed wording (e.g. Guidelines text or the US proposal).)

2.4. Definition of ship [Import definition from MLC]

## 3. Scope of application

3.1. Each Member shall ensure compliance in respect of all seagoing ships flying its flag. *(If in MLC redundant because covered in Articles).*

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3.2. This standard does not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service, unless that State decides otherwise. *(If in MLC redundant because covered in Articles).*

(Policy questions for discussion: Tonnage/domestic/international voyage/etc.)

## 4. Responsibilities

~~4.1. [Each Member shall ensure that a financial security system is arranged for ships which fly its flag that complies with this standard.] *ISF position of principle.*~~

~~4.1. [Each Member shall ensure that shipowners shall arrange a financial security system which complies with this standard ] *ITF position.*~~

[4.1. Each Member shall ensure that a financial security system required by this instrument is in place for ships which fly its flag.] (Paragraph 3 in its final form needs to be taken into consideration)

~~4.2. Each Member shall ensure that contact details of the persons or entity responsible for handling claims are displayed on board.~~

[4.2. Each Member shall implement its responsibilities under this instrument in such a way as to ensure that the ships that fly the flag of any State that has not ratified this instrument do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.]

4.3. Each Member shall ensure that in the event of abandonment the financial security system shall come into effect.

[4.4. (from 7.1) Each Member shall provide a certificate for each seagoing ship which flies its flag engaged on an international voyage verifying the existence of a financial security system in the event of abandonment of seafarers. It shall be posted in a prominent position in the seafarers' accommodation.]

[4.5 (from 8) Each Member shall ensure that the financial security provisions are complied with for seafarers on ships which fly its flag in the event of abandonment, regardless of cause.]

*(ISF position to also consider third parties).*

## 5. Scope of financial security systems [for abandoned seafarers]

5.1. The financial security system shall provide for:

5.1.1. The expenses of the repatriation of the seafarer, which are to be met without costs to the seafarer;

5.1.2. The maintenance of the seafarer from the time of abandonment to the time of arrival at the place of repatriation;

5.1.3. [the payment to the seafarer of all outstanding legal and contractual entitlements, remuneration including accrued wages, and contractual Entitlements; and]

(Overwhelming majority only)

*ITF position of principle*

*Not to be included at all – ISF position of principle*

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[5.1.4. The financial security system shall provide for not less than ~~[three]~~[four] months for accrued wages. There shall, however, be no such limitation for other outstanding legal and contractual entitlements.]

(Overwhelming majority only)

~~5.1.4. Payment to the seafarer of other reasonable costs and charges incurred during the period of abandonment arising from that abandonment. (included in revised 5.3)~~

~~5.1.5. [Ceiling of liability] **ISF position of principle to be discussed further at July meeting**~~

5.2. The financial security system shall provide for repatriation of the seafarer by appropriate and expeditious means, normally by air, and including provision for food and accommodation of the seafarer from leaving the ship until arrival at the place of repatriation, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

5.3. The maintenance of seafarers while abandoned ~~should~~ shall include: adequate food, clothing, accommodation, necessary medical care and other reasonable costs or charges arising from the abandonment ~~reasonable costs or charges arising from the abandonment.~~

~~5.4. [Payment to the seafarers of all outstanding remuneration should include accrued wages and other entitlements as provided for in the contract of employment and/or under national law (incorporated in 5.1.3)]~~

*ITF position of principle. ISF position of principle to delete.*

## **6. Form of the financial security system**

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

6.2. The financial security system in addition to the provisions of paragraph 5 shall provide the following:

- (a) a right of direct access by the seafarer to the financial security system;
- (b) [sufficient coverage in respect of the elements of abandonment contained in this standard instrument; and.]

*ITF position of principle. ISF position to delete related to limitation clause above.*

- ~~(e) the applicability of the financial security system to all seafarers irrespective of nationality. **(Recognize this may not be required if covered in the MLC).**~~

## **7. Certificates**

~~7.1. Each Member shall provide a certificate for each seagoing ship which flies its flag engaged on an international voyage verifying the existence of a financial security system in the event of abandonment of seafarers. It should be posted in a prominent position in the seafarers' accommodation.~~

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

7.3. As a minimum, the certificate required by this instrument shall include:

7.3.1. Name of the ship;

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7.3.2. Port of registry of the ship;

7.3.3. Call sign of the ship;

7.3.4. IMO number of the ship;

7.3.5. Name and address of the provider of the financial security;

7.3.6. ~~Place of business of the provider of the financial security;~~ contact details of the persons or entity responsible for handling claims.

7.3.7. Name of the shipowner;

7.3.8. The period of validity of the financial security; and

7.3.9. An attestation that the financial security meets the requirements of this standard.

[7.2. Where more than one certificate is required to cover all seafarers on board a ship, all such certificates should shall be posted.] (IMO Secretariat to examine existing instruments that may provide language to address the circumstance in which a certificate is withdrawn or otherwise lapses)

{7.4. A copy of the certificate shall be provided when required to the Port State. ~~for the purpose of informing them that the seafarers are provided with a financial security system covering their maintenance, repatriation [and payment of outstanding remuneration].~~}

*(ISF position to review where this is placed if necessary, and also to see deletion of reference to payment of outstanding remuneration)*

~~8. (Moved to 4.5) Each Member shall ensure that the financial security provisions are complied with for seafarers in the event of abandonment regardless of cause.~~

*(ISF position to also consider third parties).*

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## Appendix II

### **Preliminary ideas on text on provision of financial security in case of personal injury and death of seafarers prepared by informal working group of the Government group (22 July 2008)**

#### **1. Regulation 4.2 – Shipowners’ liability**

*Purpose:* To ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment.

1. Each Member shall ensure that measures, in accordance with the Code, are in place on ships that fly its flag to provide seafarers employed on the ships with a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers’ employment agreement or arising from their employment under such agreement.

2. This Regulation does not affect any other legal remedies that a seafarer may seek.

#### **2. Standard A4.2 – Shipowners’ liability**

1. Each Member shall adopt laws and regulations requiring that shipowners of ships that fly its flag are responsible for health protection and medical care of all seafarers working on board the ships in accordance with the following minimum standards:

- (a) shipowners shall be liable to bear the costs for seafarers working on their ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates;
- (b) [shipowners shall provide financial security to assure compensation in the event of death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers’ employment agreement or collective agreement];
- (c) shipowners shall be liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character; and
- (d) shipowners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement.

2. Subject to the liabilities established in Standard A4.2.1, payment of compensation shall be made promptly and in full. No party shall exert pressure on any other party to accept a payment. Where the extent of the personal injury is not yet fully established, the shipowner shall, at a minimum, make an interim payment to the seafarer so as to avoid undue hardship.

2bis. Without prejudice to each Member’s national laws and regulations, the parties to the payment of a contractual claim may use the model receipt and release form of the IMO Assembly Resolution A.931(22) on claims for personal injury to or death of seafarers adopted on 29 November 2001.

3. National laws or regulations may limit the liability of the shipowner to defray the expense of medical care and board and lodging to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

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4. Where the sickness or injury results in incapacity for work, the shipowner shall be liable:

- (a) to pay full wages as long as the sick or injured seafarers remain on board or until the seafarers have been repatriated in accordance with this Convention; and
- (b) to pay wages in whole or in part as prescribed by national laws or regulations or as provided for in collective agreements from the time when the seafarers are repatriated or landed until their recovery or, if earlier, until they are entitled to cash benefits under the legislation of the Member concerned.

5. National laws or regulations may limit the liability of the shipowner to pay wages in whole or in part in respect of a seafarer no longer on board to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

6. National laws or regulations may exclude the shipowner from liability in respect of:

- (a) injury incurred otherwise than in the service of the ship;
- (b) injury or sickness due to the wilful misconduct of the sick, injured or deceased, seafarer; and
- (c) sickness or infirmity intentionally concealed when the engagement is entered into.

7. National laws or regulations may exempt the shipowner from liability to defray the expense of medical care and board and lodging and burial expenses in so far as such liability is assumed by the public authorities.

8. Shipowners or their representatives shall take measures for safeguarding property left on board by sick, injured or deceased seafarers and for returning it to them or to their next of kin.

9. Shipowners shall display on board a certificate or certificates issued by the provider or providers of financial security, which shall be displayed in a prominent position in the seafarers' accommodation.

10. Each Member shall ensure that it has fair and effective procedures for the settlement of disputes.

[11.] The insurance shall provide for the payment of all claims arising during the period for which the certificate is valid.

*Note A: The compulsory insurance provisions require further consideration (e.g., direct action, the issuance of certificates and their expiry or cancellation or surrender).*

*Note B: The Working Group is invited to consider the appropriateness of time bar provisions.*

*Note C: The informal group did not consider whether it was appropriate to consider this text in the context of the MLC or whether it would be a free-standing instrument.*

### **3. Guideline B4.2 – Shipowners' liability**

#### **Guideline B4.2.1 – Shipowners' liability**

1. The payment of full wages required by Standard A4.2, paragraph 4(a), may be exclusive of bonuses.

2. National laws or regulations may provide that a shipowner shall cease to be liable to bear the costs of a sick or injured seafarer from the time at which that seafarer can claim medical benefits under a scheme of compulsory sickness insurance, compulsory accident insurance or workers' compensation for accidents.

3. National laws or regulations may provide that burial expenses paid by the shipowner shall be reimbursed by an insurance institution in cases in which funeral benefit is payable in respect of



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the deceased seafarer under laws or regulations relating to social insurance or workers' compensation.

4. The seafarer should receive prior notification from the shipowner if the financial security applicable to the ship is to be cancelled and be notified immediately if it is not to be renewed.

5. The parties to the payment of a contractual claim may use the model receipt and release form attached as an appendix to this Convention.

#### **4. Guideline B4.2.2 – Certificates**

1. As a minimum, the certificate required by Standard A4.2, paragraph 9, should include:

- (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 of the provider of the financial security;
- (f) place of business of the provider of the financial security;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the provider of the financial security that the provision meets the requirements of Standard A4.2.

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## Appendix III

### List of participants

### Liste des participants

### Lista de participantes

Chairperson

Président

Presidenta

M. Jean-Marc Schindler, Directeur du bureau d'enquêtes sur les événements de mer, ministère de l'Écologie, du Développement et de l'Aménagement durables, MEDAD, France

Experts nominated by Governments

Experts désignés par les gouvernements

Expertos designados por los gobiernos

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Ms M.A. Campbell, General Manager – Legal, Ghana Ports and Harbours Authority, Tema

Ms C. Erzuah, Director, Human Resource MGT, Ministry of Harbours and Railways

Mr S. Quaye, Deputy Director, Maritime Services Division, Ghana Maritime Authority

#### **GREECE GRÈCE GRECIA**

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*Advisers*

Mr Yeong Woo Jeon, Professor, Korea Institute of Maritime and Fisheries Technology

Mr Sae-hyun Kim, Manager, Korean Shipowners' Association

**PHILIPPINES FILIPINAS**

Mr Manuel G. Imson, Under-Secretary, Department of Labor and Employment, Labor Attaché, Philippines Mission to the UN and other international organizations

Mr Noriel P. Devanadera, Deputy Administrator, Overseas Workers' Welfare Administration and Acting Executive Director, Maritime Training Office

Mr Ramon T. Tionloc, Jr, Labor Attaché, Department of Labor and Employment, Philippines Overseas Labor Office, Embassy of the Philippines

Mr M. Portus, Office-in-Charge, Maritime Legal Affairs, Maritime Industry Authority

**UNITED KINGDOM ROYAUME-UNI REINO UNIDO**

Mr David Best, Senior Policy Adviser, Department for Transport, London

Mr David Bolomini, Head of the United Kingdom delegation, Department for Transport, London

**UNITED STATES ETATS-UNIS ESTADOS UNIDOS**

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*Advisers*

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Mr William Eglinton, Adviser, Seafarers International Union, Maryland

Mr Douglas Stevenson, Director, Center for Seafarers' Rights, Seamen's Church Institute of New York and New Jersey, New York

**Observers nominated by Governments**

**Observateurs désignés par les gouvernements**

**Observadores designados por los gobiernos**

**BAHAMAS**

Captain Doug Bell, Deputy Director, Bahamas Maritime Authority

**BELGIUM BELGIQUE BÉLGICA**

Mr Johan Van Steen, Legal Adviser, Federal Public Service Mobility & Transport, Directorate General Maritime Transport

**CHINA CHINE**

Mr Bo Li, Director Assistant, Officer of Department of Seafarers, Tianjin Maritime Safety Administration, P.R.China

Mr Lu Wang, Deputy Director, Maritime Safety Administration, P.R.China

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**DENMARK DANEMARK DINAMARCA**

Mr Jan Gabrielsen, Head of Division, Danish Maritime Authority, Copenhagen

**IRAN, ISLAMIC REPUBLIC OF IRAN, RÉPUBLIQUE ISLAMIQUE D’  
IRÁN, REPÚBLICA ISLAMICA DEL**

Mr Abbas Tavazonizadeh, Legal Adviser, Ports and Shipping Organization of Iran

**MARSHALL ISLANDS ILES MARSHALL LAS ISLAS MARSHALL**

Ms Angela Plott, Deputy Commissioner of Maritime Affairs, Office of the Maritime Administrator, Reston

**MEXICO MÉXIQUE MÉXICO**

Sr. Luis Ignacio Muriel Del Castillo, First Secretary, Mexican Embassy

Sr. F. Riverris, DGAMM

**NETHERLANDS PAYS-BAS PAISES BAJOS**

Ms Ingeborg Van Gasteren, Senior Policy Adviser, Ministry of Transport, Public Works and Water Management,  
Directorate-General for Civil Aviation and Freight Transport

**NORWAY NORVÈGE NORUEGA**

Ms Unn Caroline Lem, Senior Adviser, the Norwegian Maritime Directorate, Haugesund

Mr Haakon Storhaug, Senior Adviser, the Norwegian Maritime Directorate, Haugesund

**PANAMA PANAMÁ**

Sra. Giovanna Villamonte Santos, Subjefa, Departamento de Asuntos Laborales Marítimos de la Autoridad  
Marítima de Panamá

**Shipowner representatives**

**Représentants des armateurs**

**Representantes de los armadores**

Ms Natalie Shaw, Secretary of the Shipowners’ group, ILO, International Shipping Federation, London

Mr Tim Springett, International Shipping Federation, London

Ms Edith Midelfart, International Shipping Federation, London

Mr Ment Van Der Zwan, Policy Adviser, Pelagic Freezer Trawler Association

Mr James Hudson, National Federation of Fishermen’s Organisation (NFFO), fishing vessel owner representative

**Seafarer 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, London

Mr Agis Tselentis, Director, Department of International Relations, Pan-Hellenic Seamen’s Federation, Piraeus

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Mr Jesus. Sale, International Transport Workers' Federation, Associated Marine Officers' and Seamen's Union of the Philippines Seamen's Centre

Ms Estelle Brentnall, Assistant Secretary, Legal Department, International Transport Workers' Federation, London

Mr Sigis Buckman, General Secretary, Ghana Merchant Navy Officers' Association, Tema

Ms Katie Higginbottom, International Transport Workers' Federation, ITF House, London

Mr Brian Orrell, General Secretary, Nautilus, London

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

**International Trade Union Confederation (ITUC)**

Ms Raquel Gonzalez, Assistant Director, ITUC, Geneva

**International Federation of Shipmasters' Associations (IFSMA)**

Mr Mark Dickinson, Vice-President, International Federation of Shipmasters' Associations, London

**International Group of P&I Clubs**

Mr Hugh Hurst, Legal Adviser, International Group of P&I Clubs, London

Mr David Baker, Policy Adviser, International Group of P&I Clubs, London

**International Ship Suppliers Association (ISSA)**

Mr Spencer Eade, Secretary-General, International Ship Suppliers Association, London

**Secretariat of the meeting**

**International Maritime Organization**

Mr Gaetano Librando, Deputy Director, Head, Treaties and Rules Section, Legal Affairs and External Relations Division, International Maritime Organization, London

**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 Brandt Wagner, Senior Maritime Specialist, Sectoral Activities Branch

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

Ms Christine Bader, Legal Officer, International Labour Standards Department

Mr Timo Knäbe, Associate Expert, International Labour Standards Department

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

Ms Susan McCrory, Senior Legal Specialist, JUR Office of the Legal Adviser