



FIFTH ITEM ON THE AGENDA

**Report of the Second Session of the Joint  
IMO/ILO Ad Hoc Expert Working Group  
on Liability and Compensation regarding  
Claims for Death, Personal Injury and  
Abandonment of Seafarers**  
(London, 30 October-3 November 2000)

1. At its 277th Session (March 2000), the Governing Body considered the report of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (the Working Group).<sup>1</sup> It:
  - (a) took note of the report of the Working Group and in particular the conclusions contained in paragraphs 11.1 to 11.5 of the report;
  - (b) took note of the statement of the Joint IMO/ILO Ad Hoc Expert Working Group contained in Annex 5 of the report;
  - (c) approved the continuation of the Working Group with the proposed terms of reference contained in Annex 7 to the report and instructed the secretariats accordingly;
  - (d) requested member States and, through the secretariats, relevant institutions, to provide in due time information on issues contained in paragraph 11.2 of the report; and
  - (e) instructed the secretariats of the IMO and the ILO to compile the information received and to submit it to the next meeting of the Working Group.
2. In keeping with this decision, the Working Group met in its Second Session from 30 October to 3 November 2000 at the headquarters of the International Maritime Organization (IMO) in London. It was attended by eight Government representatives nominated by the IMO and eight ILO participants (four Shipowner and four Seafarer

<sup>1</sup> GB.277/STM/4; GB.277/14, paras. 52-57.

representatives) at no cost to the ILO (i.e., the ILO did not cover the travel and subsistence costs of the participants).

3. At its Second Session, the Working Group considered a possible two-step response to the issues discussed. The first step, or short-term approach, would be the development of one or more IMO/ILO resolutions to which would be annexed codes or guidelines concerning the provision of financial security in cases of death, personal injury and abandonment. The second step, or longer-term approach, might include the possible development of a mandatory instrument or instruments to be adopted by both Organizations.
4. In this regard, the Working Group prepared two draft resolutions for further consideration at a proposed third session to be held from 30 April to 4 May 2001. The first draft resolution concerns guidelines on the provision of financial security in cases of abandonment of seafarers; the second concerns guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers.
5. The Working Group called for the ILO and IMO secretariats to:
  - (a) ensure that the wording of the draft resolutions was consistent with the practice of the two Organizations;
  - (b) study the feasibility of combining the two draft resolutions into a single draft resolution, provided that a decision on this matter would be taken at the next session; and
  - (c) collect further information from States which had not yet responded to the law and practice questionnaire and on the financial security of contractual claims for personal injury to or death of workers in other economic sectors.

### **Views of the Joint Maritime Commission (summarized)**

6. Furthermore, in keeping with its agenda, as established by the Governing Body at its 274th Session (March 1999), the 29th Session of the Joint Maritime Commission considered the work of the Working Group (the reports of the First and Second Sessions).
7. As indicated in the report of the Joint Maritime Commission,<sup>2</sup> a representative of the International Maritime Organization noted the progress made in the two meetings. The draft resolutions and guidelines were intended to address in the short term the fact that none of the existing international instruments adequately addressed and comprehensively dealt with the problems relating to personal injury, death and abandonment of seafarers. The resolutions needed finalization before submission to the IMO and ILO governing bodies for approval and adoption. In the IMO, these would be submitted to the Legal Committee in October 2001, for adoption by the 22nd Session of the IMO Assembly in November 2001.
8. During the discussion of the Joint Maritime Commission, the Seafarer members emphasized the seriousness of the issues. They referred to the conclusions of the Working Group and the significant progress that it had made. They pointed out that this

<sup>2</sup> JMC/29/2001/14, paras. 85-89.

demonstrated how such cooperation between the two United Nations agencies, IMO and ILO, could be successful.

9. The Shipowner members of the Joint Maritime Commission endorsed the findings of the Working Group. In the absence of specific international standards, they said that IMO and ILO had made a good start in dealing with these issues. Many of these had not previously been covered by IMO or other United Nations Conventions. They looked forward to the next session of the Working Group, which should make further proposals on these questions.
10. *The Committee on Sectoral and Technical Meetings and Related Issues is invited to take note of the report of the Second Session of the Working Group, as well as the related views of the Joint Maritime Commission, and may wish to recommend that the Governing Body approve the holding of a third session of the Working Group, with participation by the eight ILO (four Shipowner and four Seafarer) representatives, at no cost to the ILO, from 30 April to 4 May 2001 at IMO headquarters in London.*

Geneva, 13 February 2001.

*Point for decision:* Paragraph 10.

# Appendix

INTERNATIONAL MARITIME ORGANIZATION

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## IMO

Joint IMO/ILO Ad Hoc Expert Working Group on  
Liability and Compensation regarding Claims for Death,  
Personal Injury and Abandonment of Seafarers  
Second Session  
Agenda item 11

IMO/ILO/WGLCCS 2/11  
3 November 2000  
Original: ENGLISH

## Report of the Working Group

### 1. Opening of the session

1.1. The Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers held its second session from 30 October to 3 November 2000 at the Headquarters of the International Maritime Organization (IMO). The list of participants is given at annex 6 of this document.

1.2. In welcoming the participants Dr. Rosalie P. Balkin, Director, Legal Affairs and External Relations Division (IMO), recalled that the Joint Working Group had been established under the provisions of the Agreement of co-operation between the two Organizations in order to ensure, through the operation of appropriate international instruments, the right of seafarers and their dependants to adequate compensation for loss of life, personal injury and abandonment. At its first session in October 1999, the Group had examined the issues of financial security for seafarers and their dependants with regard to payment of compensation in cases of death, personal injury and abandonment. This was done in the light of relevant IMO instruments, including those elaborated under the joint auspices of the United Nations and IMO, and the relevant ILO instruments. The Legal Committee, when considering the report of the Group at its eighty-first session in March 2000, acknowledged the excellent work done by the Group in assessing and evaluating the extent of the problem and the adequacy and effectiveness of existing international instruments. The Committee noted that the problem had a human and social dimension and agreed that further information was required to address a number of subjects, including the reasons for the low rate of ratification of the relevant international instruments and national schemes dealing with the problems of abandonment, death and personal injury. The Group now had the important task of considering the information collected by the Secretariat and evaluating possible approaches for dealing with the issues in question. The Group was also expected to formulate suitable recommendations to the Legal Committee at its 83rd session in October 2001 and to the ILO Governing Body at its 279th session in March 2001.

1.3. Mrs. Doumbia-Henry, Deputy Director, Sectoral Activities Department, welcomed the participants on behalf of the ILO Director-General, Mr. Juan Somavia. She stated that at its 277th Session in March 2000, the ILO Governing Body considered the report of the Joint Working Group. Both the Employers' and the Workers' Groups had highlighted the importance of the issues being examined and had underlined the complexity of the issues involved. The Governing Body had taken note of the report and had approved the recommendations of the Joint Working Group. The Governing Body had authorized the continuation of the Working Group with its present Shipowner and Seafarer representatives. She recalled that the Joint Working Group had requested the Joint Secretariat to collect further information on national law and practice in respect of abandonment and personal injury and death, and identified the elements on the basis of which such information should

be collected. In order to give effect to this recommendation, the Joint Secretariat elaborated a questionnaire, which was sent to all IMO and ILO Member States requesting them to consult with the employers' and workers' organizations before elaborating their replies. At the date of finalizing the report, 25 September 2000, replies had been received from 49 member States of the 151 States to which it had been sent. Since the finalization of the report, replies had been received from two States, Cyprus and Togo. The Joint Secretariat thanked those members which had responded to the questionnaire. The replies to the questionnaire reflected the complexity of the issues and problems to be addressed and involved, in most instances, inter-ministerial coordination. In addition, she emphasized that the task of the Working Group went to the heart of the Decent Work programme of the ILO, launched by the ILO Director-General last year and which had received the full endorsement of all of ILO constituents (Governments, Employers and Workers) at the 1999 International Labour Conference. Decent work meant work which was carried out in conditions of freedom, equity, security and human dignity. The problem was not simply to find work for people, but for them to work in conditions of dignity and security. Abandonment of seafarers or non-payment of their claims for death and injury were negations of the tenets of decent work. The reports of both meetings of the Working Group would be submitted to the ILO Joint Maritime Commission, a standing bipartite body of the ILO, at its 29th session in January 2001. The second report would also be submitted to the ILO Governing Body at its 279th Session in March 2001.

## **2. Election of the Chairperson and two Vice-Chairpersons**

2.1. Mr. Jean-Marc Schindler (Government Member - France) was re-elected as Chairperson, and Captain K. Akatsuka (Shipowner representative) and Mr. B. Orrell (Seafarer representative) were re-elected as Vice-Chairpersons of the Joint Ad Hoc Expert Working Group, hereinafter referred to as the "Working Group". It was also agreed that they would continue to hold these positions for the duration of the Working Group.

2.2. The Chairperson thanked the IMO and ILO Secretariats for elaborating the law and practice questionnaire sent to IMO and ILO member States and for analyzing the replies received. He also expressed appreciation to those countries which responded and provided useful information and to the International Shipping Federation (ISF), International Transport Workers' Federation (ITF) and International Group of P&I Clubs for meeting to discuss the issue of non-payment of claims for personal injury and death of seafarers and for producing a report of their discussions.

## **3. Adoption of the agenda**

3.1. The Working Group adopted the provisional agenda contained in document IMO/ILO/WGLCCS 2/1. It was agreed that agenda item 10, "Any other business", would also include a discussion of the future work of the Working Group.

## **4. Opening views of the IMO and ILO participants**

4.1. The Shipowners drew attention to the report of the last meeting. As concerns the issue of abandonment, this group had no change in the views they expressed at the first session of the Working Group. However, with regard to the issue of non-payment of personal injury and death claims of seafarers, his group was now questioning the validity of the cases of non-payment brought to the attention of the Working Group at its first session. This had come about in response to investigations carried out by the P&I Clubs on the cases of non-payment (and other issues) reported by the ITF. Perhaps the problem was not as great as they had been initially led to believe. Concerning the information contained in the report prepared by the Secretariats, the questions arose as to whether it was fully representative of the industry, and the reasons for non-response of some major maritime States.

4.2. The Seafarers noted the positive discussions at the first session of the Working Group, the conclusions adopted, and that agreement had been reached on the need to examine and evaluate new approaches to the problems of abandonment and non-payment of personal injury and death

claims based on information collected by the two Secretariats. With respect to abandonment, the Working Group had agreed to examine national funds, an international fund, compulsory insurance, systems based on bank guarantees and similar mechanisms, and other proposals. In the case of non-payment of personal injury and death claims, it had agreed to examine compulsory insurance, personal accident insurance, national funds, an international fund and other proposals. The Seafarers, he said, would like to thank the Secretariats for the excellent work done. The first session of the Working Group had agreed that the problems before it were real and serious and reflected a human and social dimension. The recent collapse of a cruise line had led to a large number of cases of abandonment which added further to the international list of abandonment cases. While his group was hopeful concerning future developments, it regretted that further progress had not been made in the discussions with the P&I Clubs, which had not taken up any of the pragmatic solutions offered by the Seafarers, nor had they offered any solutions of their own. Finally, his group was keen that governments should play an active role in the debate of the Working Group.

4.3. The delegation of Cyprus considered the statements of the Seafarers and Shipowners as positive. He regretted that the discussions with the P&I Clubs had not been fruitful. The government members, he said, were looking for pragmatic short-term and long-term solutions.

4.4. The delegation of Greece said that, taking into account all available information, his government would revise its views on the framework of the work to be done by the Working Group. Both the Governing Body of the ILO and the Legal Committee of the IMO had reconfirmed the importance of the task. These were serious problems of a human and social nature, requiring serious action. There was no doubt of the commitment of the Working Group to solve the problems and that the parent bodies expected it to recommend solutions. He underlined that the primary obligations lay with shipowners. The majority of States would be reluctant to accept that civil obligations of shipowners should be transferred to States. States had an obligation to protect their citizens and to apply a "no more favourable treatment clause" when addressing these problems in relation to other States.

4.5. The delegation of the United States looked forward to working with the other delegations to identify and implement effective solutions to the problems of abandonment and non-payment of personal injury and death claims. The United States recognized that seafarers were abandoned, injured or died every year in ports far from their native countries. There were too many instances where seafarers had been left in precarious situations without having been paid or provided food, medical care or other essentials and with no means to return home. This also had a detrimental effect on their families. The United States had dealt with such problems on a case by case basis without an adequate mechanism to address abandonment of foreign seafarers. The United States strongly supported the decisions by the ILO and IMO to continue the Working Group. It had submitted an extensive response to the questionnaire, and looked forward to examining and analyzing the report on information collected by the ILO and IMO Secretariats as well as the report of the discussions between the ITF, ISF and the P&I Clubs. The Working Group, he said, should continue to develop and analyze recommendations to improve the international regime to protect financially vulnerable seafarers. The work to date had built a foundation to address these issues, but a great deal remained to be done. The Working Group should bear in mind that this was primarily a human element of a problem with serious economic burdens for port States. The United States looked forward to a productive second session that would advance the progress made and lead to a fair and equitable solution.

4.6. The delegation of France noted that the information collected by the ILO and IMO Secretariats confirmed that many States, shipowners and manning agencies had adequate financial security to cover claims arising from death, injury or abandonment, but that some States, shipowners and manning agencies had no such provisions. Often, only nationals of the flag State were covered. Bearing this in mind, the Working Group should aim in the long term for a solution which did not duplicate cover and lead to unjustified costs for those already covered, but which was sufficiently comprehensive and enforceable to bring cover to those who had none and who were likely to remain without cover if no action was taken.

4.7. The Chairperson, summing up the interventions, noted that everyone who had spoken had recognized the important work of the first session as well as the intersessional work of the social partners. He observed that there was a great deal of willingness to continue and to look

deeply into possible solutions. One possible conclusion was the need for flexibility. The international maritime community was watching.

## **5. Report on information collected by the IMO and ILO Secretariats on the issues of abandonment and financial security for personal injury and death of crew members**

5.1. At the invitation of the Chairperson, a representative of the ILO Secretariat (Mr. K. Schindler) introduced document IMO/ILO/WGLCCS 2/5 containing information collected by the IMO and ILO Secretariats on the issues of abandonment and financial security for personal injury and death of crew members. The problems regarding crew claims both for abandonment and injury and death of seafarers had their roots in contract law and often raised the most complex legal questions when litigation was brought in a foreign jurisdiction. While both problems shared common roots in law, the social and human consequences of abandonment were to a large extent reparable when remuneration was paid and repatriation was undertaken. The consequences of injury or death of the seafarer, however, were more far-reaching and irreversible, affecting entire families for their lifetime. The special conditions of maritime employment – where the seafarer was usually abroad and wholly dependent on the employer for his vital needs – made it difficult for the worker to take action when the employer failed to perform. Determination of the exact point at which the breach of contract occurred, and thus when remedies could be sought, was often difficult to ascertain in the maritime context.

### ***Abandonment***

There was no accepted legal definition of the constitutive elements of abandonment. Some replies referred to the loss of a link between the worker and the employer, while others referred to distressed seafarers and seafarers left behind -- demonstrating some confusion as to the collective concept of abandonment of crew and ship, as opposed to leaving behind an individual and continuing the voyage. It was the breach of the employment contract which resulted in abandonment and distress. Replies to the questionnaire showed that litigation in a foreign forum was generally not a viable option in order to recover remuneration. In many cases the cost of litigation was prohibitive. While no State indicated that its legal system categorically barred claims from foreign citizens, in practice the obstacles were considerable: posting of bonds or security in order to bring an action, courts declining jurisdictional competence, the cost of legal counsel and lack of legal aid, were but a few of the practical problems in gaining access to a foreign legal system. In some States where lawyers were allowed to accept cases on a contingency-fee basis (i.e., the lawyer's fee was based on a percentage of any recovery), this was reported as a means for plaintiffs without resources to gain access to the legal system. Moreover, no State indicated that the existence of a pending civil claim affected the abandoned seafarer's immigration status, (which did not entitle him to remain), although it was observed that physical presence was not indispensable in order to pursue a claim. In practice, seafarers unions and charitable organizations were the only recourse available to the seafarer: the interest for port States to intervene in what were essentially regarded as labour disputes on foreign vessels did not appear compelling. The result was that the abandoned seafarer became the proverbial "stranger in a strange land." Not surprisingly, the most meaningful help to safeguard the seafarer's interests was legislative or regulatory. In terms of securing payment of remuneration and alleviating immediate need, subrogation arrangements, whereby the State or a designated legal entity indemnified the seafarer in exchange for assignment of the debt, appeared to be efficient and effective. In this way the seafarer was indemnified quickly, leaving recovery either to the State or to a body with resources to pursue the claim. Likewise, a mandatory bank guarantee as a condition of ship registration was a means of securing payment of remuneration, however, in one case it was noted that funds from the bank guarantee were not released unless and until the employer filed for bankruptcy, which did little to meet the seafarer's immediate needs. Some States indicated they had legislation requiring employment contracts with foreign principals to be approved by the Ministry of Labour, with a security payment to be made in an escrow account. In practice, however, unless there was legislation regulating recruitment and placement, the seafarer would often be instructed to report to a third country for signature of the articles of agreement, thus effectively circumventing legislation which would provide protection, if it were applied.

## Immigration and repatriation

Information obtained on law and practice regarding the immigration status and repatriation of abandoned seafarers was inter-related and needed to be considered together. Replies to the questionnaire showed that identity documents issued by States which had ratified ILO Convention No. 108 on Seafarers' Identity Documents were recognized and well-accepted, even by States which had not ratified the Convention. The international legal status of the seafarer was an important question which came to the fore especially but not exclusively in cases of abandonment. In some States once an abandoned seafarer left the ship he was considered an illegal alien subject to detention and deportation. Deportation, often accompanied by a prohibition on future entry, was noted in the seafarer's documents and would likely affect future employment prospects.

The Vienna Convention on Consular Relations, 1963 addressed the question of the consular protection and assistance available to ships' crews, which included both assistance in legal and administrative matters with the authorities of the port State, as well as repatriation. Clearly, no State wanted to undertake to organize and pay for (or advance) the expense of repatriating citizens when this was the responsibility of the employer or, alternatively, the flag State. However, ILO Convention No. 166 provided the mechanism for recovery of these expenses. The Vienna Convention had universal acceptance (163 ratifications) and the Working Group might wish to examine the obligations set forth in this instrument and the protection afforded to seafarers in their personal and professional capacities. Repatriation available under the terms of the Vienna Convention was based on consular practice and not contractual rights. Therefore, in the case of consular repatriation, the seafarer would not have the choice of return destination (country of residence, State where engaged) as under ILO Convention No. 166, but would be repatriated by the consul to the country of which he was a national. In one reply it was mentioned that the repatriation of abandoned seafarers might depend on whether the port State authorities allowed repatriation of all or part of the crew because of the safety of the ship in port. When the crew had been abandoned, that is to say the employment contract had been breached, it was not clear what labour relationship applied to these seafarers and under what conditions they were obliged to remain.

## ***Personal injury and death***

The information obtained concerning personal injury and death also drew to a large extent on contract law and practice as it related to filing claims and entitlement to benefits. At least as important as the law itself was how the legal obligation was understood by the layperson claimant or beneficiary. Replying to the question of after-the-event renegotiation of contractually set damages, both a common law and a civil law State said that this would probably be contrary to general principles of contract law as well as principles of public order. Here the distinction must be made between that which was illegal and that which was unenforceable at law. The same principles which applied to renegotiation applied to linking payment of contractual entitlement to waiving additional remedies which might be available in tort. In many jurisdictions such waivers, if challenged in court, would be declared null and void: the court would refuse to enforce them. Information obtained, however, confirmed the perception that once some form of payment had been made and a legal looking release form had been signed, claimants believed that no further action could be pursued. Insurance coverage provided under national social security regimes, whether of general application including seafarers, or specifically for seafarers, was shown in summary form in the chart on page 17 of the report, along with some particularities of different systems.

## Obstacles to ratification

With regard to obstacles to ratification of ILO/IMO/UN instruments, many States did not reply at all to this part of the questionnaire; for those that did, the reasons set forth in the report stood on their own. Concerning ILO instruments, both developing and developed countries cited the cost of implementing these standards as an obstacle to ratification. It was also reported that in some cases national legislation contained provisions which were higher than the ILO standards in the instruments in question and for this reason the ILO instrument was not ratified. In this respect, it should be recalled that ILO standards were intended to be minimum standards which could be universally acceptable. Article 19, paragraph 8 of the ILO Constitution states that "in no case shall the adoption of any Convention or Recommendation affect any law, award, custom or agreement



which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.” Thus, the existence in national legislation of standards higher than those in ILO instruments should facilitate rather than hinder their ratification.

5.2. The Shipowners congratulated the Secretariats for the very useful and impressive analysis of the replies to the questionnaire. His group appreciated the work which had been done in Geneva and the broad knowledge and deep-hearted approach which had been taken to the work. The shipowners had noted the importance of placing this work in the context of the ILO’s Decent Work agenda and that future work in this area would be valued against the concept of Decent Work.

5.3. The Seafarers associated themselves with the comments of the shipowners, noting the excellent work which had been done. Both Secretariats should be commended on the work produced. They had looked at the responses received from member States, and had noted that 49 States had replied before the deadline for inclusion in the report, with Togo and Cyprus also responding at a later date. Though this did not represent a statistical basis, it did provide a broad picture of the problem. They noted in particular the lack of a definition of abandonment, though they observed that abandonment was not caused by the seafarer but by the employer who had breached the employment contract by unilateral failure to perform. The replies from member States had been grouped. This provided valuable information on national legislation of various countries. On the issue of unpaid wages, his group noted that out of 49 governments which had responded, only thirteen had provided information on arrangements at the national level. These thirteen had provided for their own nationals, but not for all seafarers and this should be borne in mind. This argued for an international solution to abandonment, as has been proposed by the seafarers for years, as well as at the first session of the Working Group. The replies received indicated that most national approaches involved arrest procedures and the protection offered by maritime liens, which his group felt were unsatisfactory. He noted that Decent Work aimed to provide all workers with a basic level of social protection and to make for a more just global society. In short, while there were some national arrangements covering these issues, they were not sufficient and an international solution was needed.

5.4. The delegation of Cyprus supported the remarks made by the Seafarers and Shipowners concerning the work done and the summary which had been provided. This demonstrated the great variety of national actions and the need for action at the international level. It would be difficult for many governments to change national practice. There was a need to clearly identify which aspects of the problem to address.

5.5. The Chairperson noted the widespread gratitude to the Secretariat for its report and the oral presentation. He observed that several delegations had drawn attention to the lack of a definition of abandonment.

5.6. Replying to an inquiry by the Shipowners as to whether the Secretariats would follow up with countries which had not responded to the questionnaire, Ms. Doumbia-Henry noted that many countries had not had not been able to meet the Secretariat’s deadline because they had not had sufficient time for internal consultations with other ministries. This was also the reason why the report had been finalized and mailed so late. She agreed it would be very useful to receive additional information from key maritime States.

5.7. The delegation of Cyprus said that replies from labour supplying States and flag States were most important. A more global coverage would provide a more valuable document for use as background information to justify the need for a new instrument. The Secretariats should be instructed to collect more information to support the case of “compelling need” for any solution which could involve a proposal for a treaty before the Legal Committee met at its next session in October 2001.

5.8. The Seafarers agreed, and would like as broad a sampling as possible, but would only support the collection of additional information on the understanding that this would not delay the progress of Working Group.

5.9. Dr. Balkin, agreed that extra information would add further clarity to the information already presented and would enhance the statistical and information value of the sample response

received to date. The additional information would also help to provide a basis for answering the question of compelling need, which would be a necessary precondition to the development of any new treaty regime within IMO. In response to the question whether the Secretariat might further approach States which had not yet responded to the questionnaire, and whether this could be done in the absence of a required mandate from the IMO Legal Committee and the ILO Governing Body, it was noted that such an approach was quite possible and that there would be no need to go back to the respective governing bodies to obtain permission to do so, as this was already part of the present mandate.

5.10. Accordingly, the Secretariats were instructed by the Working Group to collect the information from States which had not responded to the questionnaire on law and practice on the subjects addressed. This information would be submitted to the next meeting of the Working Group.

## **6. Report by the ISF and ITF on informal discussions with P&I Clubs**

6.1. Following informal consultations with the groups, the Chairperson proposed that agenda items 6 and 8 be taken before item 7 and the rest of the agenda.

6.2. At the invitation of the Chairperson, the Shipowners, on behalf of the ISF and ITF, introduced document IMO/ILO/WGLCCS 2/6, Report by the ISF and ITF on Informal Discussions with the P&I Clubs.

6.3. The Shipowners noted that the ISF and ITF had met twice with the P&I Clubs. At the first meeting, the ITF had presented examples of cases where payment of uncontested claims concerning contractual compensation allegedly had been unreasonably delayed or otherwise not dealt with fairly. The P&I Clubs then carried out a lengthy investigation of these cases, the results of which were reported at the second meeting and included at annex 2 of the ISF and ITF submission. While in several cases it had not been possible to come to any conclusions as the Clubs referred to were not members of the International Group of P&I Clubs, in the cases which were investigated it did not appear that there were significant problems in the handling of claims. Nevertheless, ISF had proposed that any complaints of maladministration should be reported by the ITF to the ISF. The ISF would forward these to the International Group which had offered to raise them with the P&I Clubs to ensure that good practices were maintained by correspondents and agents. Claims which involved insurers who were not members of the P&I Clubs would be directed to these insurers directly by the ISF. However, attempts to agree a way ahead with ITF had not succeeded, to the regret of the ISF. He commended the report of the P&I Clubs on the cases raised by the ITF to the Working Group, noting that it was a well-researched document.

6.4. The Seafarers drew attention to the conclusion of the first session of the Working Group that “the problems of abandonment and claims for personal injury and death were real and serious, involving a human and social dimension and required urgent attention” (paragraph 11.5.1). Unfortunately, because the P&I Clubs felt there was no substance to the issue, the two ISF/ITF/P&I Club meetings had not been productive, except that they demonstrated that the only solution lay with the Working Group and not with industry. The ITF had put forward proposals at the two meetings, but these had been rejected in substance. The Seafarers would not be pressing this issue if it was not significant. It was true that there were many P&I Clubs which handled these issues well, but there were others that did not, and these must be addressed. The Secretariats’ paper had demonstrated the complexity of the problem. The onus was on the government members to sort out the truth and determine how to proceed.

6.5. An observer from the International Group of P&I Clubs had noted the proposals put forth by ITF, but that, as explained in detail in annex 3 of document IMO/ILO/WGLCCS 2/6, these were not practical. The International Group had thus put forward ideas on an informal procedure for addressing problems. This solution was both quick and practical, and would ensure that steps would be taken to ensure cases were handled correctly.

6.6. The delegation of Cyprus noted that the first session of the Working Group had hoped that the ISF/ITF/P&I Clubs meeting would produce a meaningful result, but that this had not

happened. He was not optimistic that a repeat of such an exercise would resolve the problems. Industry had asked governments to avoid excessive regulation, but efforts to avoid a regulatory solution had failed. Though there might be ways and means to resolve these issues, there were clearly obstacles to doing so, including an apparent unwillingness to deal with them.

6.7. The Seafarers agreed with the delegation from Cyprus. They, therefore, had decided to bring to the meeting the widows of two Polish seafarers who had been lost at sea and who had not, more than three years later, received contractual payments for the loss of their loved ones. This particular case illustrated how some P&I Club correspondents had sought to use “quit claim forms” to deny the claimants the right to pursue their claims. This was a clear violation of the human rights of these families. The lawyer representing the families would also be asked to provide his views.

6.8. The statement by the two widows, speaking on behalf of not only themselves, but also the ten other widows and eighteen children of the deceased seafarers, is given in full at annex 1. In brief, the widows described the lack of information they had received following the loss of the vessel, efforts by the shipowner and P&I Club concerned to have them accept a payment of \$30,000 for each seafarer who had lost his life and then waive other claims, and how they had been being helped by the ITF not only to pursue their claim for compensation for possible negligence by the owners but also to determine the cause of the loss of the ship and its crew. They also asked why the classification societies concerned were able to escape responsibility for alleged improper supervision of repairs which should have been made to the ship prior to its loss.

6.9. The adviser to the Seafarers delegation who is also the lawyer representing the widows added that, in his opinion, the P&I Clubs were treating cases of death and personal injury in the same way as they treated cargo claims, without any recognition of serious human rights issues. The practice of using “quit claim forms” used the vulnerability of seafarers and their families to ensure that proper claims were not pursued. This amounted to a denial of fundamental human rights, a denial of contractual rights and was economic duress. The full text of the intervention by the lawyer is attached in annex 2.

6.10. The Chairperson extended condolences and sympathy to the widows on behalf of the Working Group, and stated that the mandate of the Working Group was to find an appropriate international solution. He recalled that IMO had always given the safety of life at sea its highest priority, and this could be seen in the plans to build a memorial to seafarers and their families in the lobby of the IMO Headquarters.

6.11. The delegation from the Philippines stated that there were two professions which were regulated by international standards: airline pilots and seafarers. He noted the strict standards of the International Convention on Standards of Training and Certification of Watchkeepers, 1978, as amended in 1995 - the STCW 95 Convention, and said that the situation concerning abandonment and non-payment of personal injury and death claims did not do justice to this highly professional group of workers. The Philippines sought to balance the interest of shipowners, seafarers and their families. As was well known, the Philippines Supreme Court had recently ruled in favour of seafarers by allowing the claimant to pursue the maximum possible compensation. Much good work was being done by the Philippines consuls, by the ITF and by various charities, such as the Apostleship of the Sea, but there was still a serious problem. There seemed to be a “compelling need” to develop an international solution, and he hoped that this meeting would be able to find it.

6.12. The Shipowners expressed their condolences and sympathy to the widows of the deceased seafarers, but said that it was very difficult for them to comment on an individual case. What should happen, they said, was for the shipowner concerned to act in sympathy and with consideration for the families. They reiterated their position from the first session of the Working Group that contractual payments should be paid promptly, though such payments should be offset against the results of an action in negligence/tort. They noted that, in some circumstances, contracts provided that contractual compensation was a means to ensure quick payment and avoid the long procedure of going through the courts. This was attractive as it avoided delays, and might be seen as an acceptable alternative. This was not a denial of human rights, but simply the application of the provisions of a contract.

6.13. An observer from the International Group of P&I Clubs also expressed condolences to the widows. He echoed what the Shipowners had said concerning the attractiveness of the quit claims settlement procedures. To the International Group's knowledge there have been no cases where the "paid to be paid principle" or retrospective withdrawal of cover had been applied to personal injury or death claims. He also refuted what the lawyer, acting on behalf of the ITF said about tactics to pressure claimants to settle personal injury and death claims. He was not in a position to comment on the details of the case described by the widows of the Polish seafarers.

6.14. The Seafarers stated that the decision to bring the widows of the Polish seafarers had not been taken lightly. They had been asked to come along to illustrate, among other things, the way in which seafarers and their families were being pressured to settle claims. They cited another ongoing case involving a seafarer who had lost his leg in a mooring accident - the responsible shipowner could not be found. The issue of whether or not contractual payments could be offset against other claims depended on jurisdiction. They cited a clause in the recently negotiated ITF/IMEC Model TCC Agreement which provided as follows: "Any payment effected under this clause shall be without prejudice to a claim for compensation made in law but may be offset against any such payments." The question of offsetting could be dealt with after contractual payments had been made.

6.15. The Seafarers added that it was also necessary to take cognizance of the shipowner's responsibilities with respect to maritime claims. The issue of crew claims also raised questions; an important issue was the notification of seafarers of the withdrawal of insurance cover. These were questions of inalienable human rights, which were addressed by a rich corpus of international law. It was time to move forward on principle and to avoid what amounted to a 19th century approach on the sanctity of contracts. It was no longer possible to negate fundamental human rights through contractual clauses.

6.16. The Chairperson drew attention to the dangers of the seafaring profession. Only two sectors of professional activity had extensive international regulation: international civil aviation and seafaring. He recognized that the current situation was not adequate and a solution would need to accommodate the interests of shipowners and seafarers. Solutions were possible, but perhaps not convenient to all parties. He believed that all in the Joint Working Group shared similar concerns and that positions were not too far apart.

## **7. Examination and evaluation of possible approaches for dealing with the issues of abandonment of crew members**

7.1. The Shipowners found abandonment to be an intractable issue. It was difficult to come up with clear proposals to improve the situation and it was important not to impose measures on all shipowners that would not solve problems arising from a small minority. It was unfortunate that more governments had not been able to indicate why they had not ratified the relevant ILO Conventions. The Shipowners accepted that responsibility for the repatriation and payment of wages of seafarers lay with them. Difficulties arose mainly in cases where the shipowner had become insolvent and the crew had not been repatriated. Non-payment of wages, which was not covered by the ILO Conventions, clearly was a major issue which deterred crews from being repatriated quickly. The Shipowners had no ready answer, but thought that various measures might be taken by flag States. Perhaps an international solution could be found in the upcoming review by the ILO of its maritime labour standards, but to date governments had not ratified Convention No. 166 which placed significant obligations on them.

7.2. The Seafarers recalled that the first session of the Working Group had agreed that the issues arising from problems of abandonment included repatriation, support for crew members while stranded, immigration status and the question of the payment of outstanding remuneration. It was agreed that the flag States should establish mechanisms to meet their obligations and ensure that shipowners repatriate crew members and that the ILO should promote the ratification of Convention No. 166. The Working Group had also agreed to meet again to assess information communicated to ILO and IMO by members States. They agreed with the Shipowners that the replies to the Secretariats' questionnaire were disappointing, with many important States not

responding. The first session had agreed that political will was needed to solve the problem of abandonment. An approach was needed which did not require ratification by States, for example, the creation of an international fund linked with national funds.

7.3. The delegation of Cyprus supported compulsory insurance or other form of financial security linked to registration of ships where no national scheme addressing the issue of abandonment is in effect. Concerning the creation of an international fund, he referred to the operational and administrative difficulties of establishing such fund. The Vienna Convention on Consular Relations, 1963, might be used as a springboard for further action. Immigration issues, however, were quite complex and might require the involvement of other UN agencies. As with the issue of non-payment of personal injury and death claims, both short-term and long-term approaches were needed. One short-term solution, as agreed at the first session of the Working Group, was to adopt an IMO Assembly Resolution calling on all States to establish focal points for dealing with abandonment of seafarers. This was particularly important when considering the proliferation of new flag States, some of which appeared not to have the capacity to deal with the issue of abandonment. A longer term solution was to develop an international instrument which would require ships to carry a certificate proving their ability to repatriate crews.

7.4. The delegation of the Philippines drew attention to the responsibilities of flag States as provided for in Article 6 of ILO Convention No. 23. Despite these provisions, and despite widespread ratification of this Convention, the burden of repatriation continued to fall on the State of the seafarers' nationality. She sought more pressure by the ILO on flag States which did not live up to their obligations to repatriate abandoned or stranded seafarers.

7.5. Responding to Cyprus, the Seafarers agreed that an international fund raised administrative and other issues. It was first necessary to examine various national requirements to identify the basic elements of a satisfactory system. When such a national system did not meet certain criteria, then compulsory insurance covering abandonment should be required. Such protection existed for workers in other sectors and for other aspects of the maritime industry.

7.6. An observer from the International Group of P&I Clubs noted that costs associated with abandonment were not covered by P&I Clubs. Such insurance would not be consistent with the concept of mutuality, as the good owners would be subsidizing the bad owners.

7.7. Responding to the comments made by the observer of the P&I Clubs, the delegation of Cyprus, supported by the Seafarers, said that, if sufficient profit could be obtained, the insurance market would be willing to provide insurance cover for abandonment. This need not be limited to mutual insurance. The main issue was that the insurance should be: reasonable, affordable, available and sustainable.

7.8. The delegation of France agreed with the delegation of Cyprus and the Seafarers, adding, in response to what had been said by the P&I Club observer, that the risk of the good subsidizing the bad was inherent in all insurance. In the long run, this would help to push the worst shipowners out of the market. France also supported an effort for more widespread ratification of ILO Convention No. 166.

7.9. An observer delegation of Norway explained that, in his country, the approach had been to require a bank guarantee as opposed to compulsory insurance as no such insurance was available either on the national or international market.

7.10. The Shipowners noted that the fundamental problem with an approach involving insurance was that it was not possible to insure companies against their own insolvency, though other approaches, such as bank guarantees and subrogation of claims might be possible. They were very interested to see if lessons could be learned from a closer examination of the Vienna Convention on Consular Relations, 1963, as noted in the ILO/IMO Secretariats' paper.

7.11. Responding to the Shipowners' question concerning the provisions of the Vienna Convention, the ILO and IMO Secretariats, and the delegation of Cyprus, described the consular functions as set forth in this instrument. This discussion made it clear that even in this very broad instrument covering diplomatic and consular relations, the role of the consular authorities to assist

crew members was considered important enough to receive special attention. However, the instrument did not impose any obligation on the State concerned.

7.12. The delegation of Cyprus drew attention to recent developments related to the 1971 IOPC Fund, whereby agreement was reached for underwriters to cover the contractual obligations of States parties to the 1971 Fund Convention for the next 18 months with an option to review or extend insurance cover.

7.13. In response to a question by the delegation of the Philippines, the Seafarers said that they had not considered setting any limitation on liability in relation to their proposed international fund.

7.14. The delegation of Cyprus added that, in the case of abandonment, it would be possible to calculate a finite figure covering liability for abandonment. Liability for personal injury and death claims, however, would be a different issue as such calculations may not be possible. As concerns compulsory insurance, it would be necessary for the flag State to be informed (by the underwriter) when a shipowner's insurance lapsed. A certificate of insurance might be issued. This would lead to either prohibiting the vessel from sailing or perhaps revoking the vessels registration. To ensure that such a system functioned, the flag State would have to monitor shipowners to ensure no lapse in coverage.

7.15. The delegation of Greece observed that if the insurance was revoked and a required certificate was invalid or withdrawn, this would lead to port State control detention which, in turn, would lead to the stranding of seafarers - the very problem being addressed. This did not make sense.

7.16. The delegation of Cyprus responded that it might be possible, in a mandatory instrument, to include provisions to prevent a ship, irrespective of the flag it flies from entering a port if it did not carry compulsory insurance covering the possibility of abandonment.

7.17. A Shipowner member from Norway explained that, in her country, the shipowners association had sought to obtain insurance to cover insolvency. The P&I Clubs, major Norwegian insurers and Lloyds refused to insure against insolvency. For this reason, they went to the banks to obtain a bank guarantee, and this system had worked rather well for the past six to seven years.

7.18. Following consultations, the Working Group decided to set up a sub-group on abandonment with the following terms of reference:

1. The sub-group shall consider short-term solutions to address the issue of abandonment of seafarers: and
2. The sub-group should elaborate a preliminary draft of a resolution on abandonment with a proposed Annex containing the criteria for setting the level of insurance coverage or financial security for dealing with abandonment.

7.19. The Government representative of the Philippines, Ms. B. Piementel, was nominated as chairperson of the sub-group. In reporting back to the Working Group, she presented a draft resolution entitled "Elements of a possible draft Resolution on Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers", as set out in annex 3. She noted that the sub-group had produced elements of a draft resolution and draft Guidelines annexed to the resolution. Concerning the preambular paragraphs of the draft resolution, she pointed out that these were all in square brackets as they had only been generally discussed and then were drawn up by the Secretariat based on that discussion. She drew attention to the lack of a definition of the term "abandonment", which was, to some extent, a deliberate omission, and which needed further consideration.

The annexed draft Guidelines, she said, addressed the issues of repatriation, support for crew members while stranded, immigration status, and payment of outstanding remuneration, as raised at the first session of the Working Group. The sub-group had agreed that the shipowner had primary responsibility in cases of abandonment, but that the flag State, and then the labour supplying State

and the port State, also had responsibilities. Several of its members had also indicated that although the issue of immigration status fell outside of the mandates of the ILO and the IMO, member States, in their capacities as port States, should take account of this issue. The draft Guidelines included provisions concerning the form and adequacy of a guarantee to protect seafarers in the event of abandonment, including the possibility of requiring ships to carry certificates indicating the existence of such a guarantee. The sub-group had also recommended that the Secretariat should prepare an annex to the Guidelines providing examples of existing national guarantee schemes. An attempt had been made to provide guidance on payment of outstanding remuneration, but the sub-group had not been able to reconcile alternative Shipowner and Seafarer proposals on what aspects of remuneration should be covered.

7.20. The Shipowners drew attention to their earlier, plenary comments on the issue of abandonment. They reiterated that abandonment was a much broader issue than repatriation. They stressed that the draft resolution should only be seen as a preliminary document, though they indicated that it appeared that the various groups were not very far apart on many of the issues. The Shipowners reserved the right to suggest further changes to the draft resolution and guidelines.

7.21. The Seafarers felt the sub-group's discussion had been fruitful. They would seek several changes to the draft resolution and guidelines at the next session. In the preambular paragraphs, they wished to see a reference to the Universal Declaration on Human Rights, which they felt was directly relevant to abandonment, and to the IMO Convention on Facilitation of International Maritime Traffic, 1965. They would wish to amend subparagraph 5 of paragraph 3.2, which they thought was unclear, by deleting the words "except from a seafarer" and replacing them with the words "from the shipowner, through the flag State, at no cost to the seafarer" or similar text. They also expressed concern that the provisions concerning payment of remuneration contained in paragraph 3.5 had not been linked to the requirement for a guarantee set out in paragraph 1.1, and they suggested adding to 3.5 the sentence "Recovery of the payment of these outstanding wages should be secured through the coverage provided by the guarantee referred to in paragraph 1.1" to establish this linkage.

7.22. The Seafarers proposed that one new paragraph should be included in the preamble of the resolution as follows:

Recalling Article 19(8) of the ILO Constitution which provides that in no case shall the adoption of any Convention or Recommendation or the ratification of any Convention by any Member State be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation:

7.23. The Shipowners, noting that the Seafarers had made specific proposals to amend the text of the draft resolution and guidelines, said that, while they would not at this time offer specific changes, they did wish to draw attention to two issues covered in these drafts. First, they noted that in paragraph 2.1, the text concerning certification had been left in square brackets because, although there had been agreement on the concept of a guarantee, there was still a question of what type of documentation should be carried on the ship. Second, in the same paragraph the word "adequate" had been left in square brackets as the criteria for what should be covered by the guarantee had not yet been agreed.

7.24. The Chairperson suggested changes to sub-paragraphs 4 and 5 of paragraph 3.2, dealing with Repatriation, in order to clarify the repatriation roles of flag States, consular authorities and port States. Specifically, he suggested that the reference to the port State could be removed from subparagraph 4 and included in a new sub-paragraph 4bis, and that sub-paragraph 5 could be revised to reflect the issue of recovery of repatriation expenses.

7.25. The delegation of Cyprus added that the draft Guidelines could be amended to draw more fully upon the provisions of the ILO Repatriation of Seafarers (Revised) Convention, No. 166, and then be expanded to take into account the experiences of States regarding abandonment. He was concerned about the reference in sub-paragraph 4 of paragraph 3.2 to the role of the consular authority to arrange for repatriation of seafarers from States in which where the flag State or the State of the nationality of the seafarer did not have a consul. Furthermore, he noted that there were

common issues in both this draft resolution and the draft resolution concerning Guidelines on Shipowners' Responsibilities in Respect of Contractual Claims for Personal Injury to or Death of Seafarers, and that the two resolutions should be aligned.

7.26. The delegation of France noted that the issue of immigration status should be placed in a separate paragraph from 3.1. It should be stated explicitly in paragraph 1.1 that the guarantee provided covers repatriation, support for the crew and payment of outstanding remuneration.

7.27. An observer delegation of Norway suggested that the term "abandonment" should be removed from the proposed title of the draft resolution and guidelines, as the issue being addressed was, in fact, "financial responsibilities for seafarers' contractual rights". "Abandonment" was too focused. If there were appropriate financial security for the seafarers' remuneration and repatriation, then abandonment would not occur. He also supported the separation of the issue of immigration status from the other issues, as it was not a major problem.

7.28. The delegation of Cyprus supported the analysis by the delegation of Norway, and reiterated that the shipowner had a financial obligation to the seafarer arising out of the terms and conditions under which seafarers were employed. He also supported the statement of the delegation of France that immigration status might be placed under a separate heading or in the operative paragraphs of the adopting resolution depending on the final context of the annex.

## **8. Examination and evaluation of possible approaches for dealing with the issue of financial security for personal injury and death of crew members**

8.1. The Chairperson opened the discussion on this item by drawing the Working Group's attention to the second part of paragraph 11.3 of the report of the first session which noted that it should, in particular, examine the following solutions to this issue: compulsory insurance; personal accident insurance; national funds; an international fund; and other proposals.

8.2. The Shipowners said that their initial view was that potentially the most promising of these possible solutions was compulsory insurance. In this regard, they referred to IMO Assembly resolution A.898(21), Guidelines for Shipowners' Responsibilities in Respect of Maritime Claims, which called for insurance to cover cargo claims. They noted, however, that this Resolution was not binding, and that this was an indication of just how far the international community was willing to go to make insurance compulsory. Other proposed solutions, such as personal accident insurance, may have a place at the national level but did not support an international solution. They could not support the creation of an international fund. Along with the International Group of P&I Clubs, they felt that the overwhelming majority of cases had been dealt with properly. Problems may occur with the timely settlement of some personal injury claims as it might be necessary to wait for a medical condition to stabilize. In all claims, there was a possibility that the conclusions might be disputed. The Shipowners reiterated their support for the proposal by the International Group of P&I Clubs for an informal arrangement whereby allegations of manifestly unfair behaviour by an insurer's agents could be referred, through the ITF and ISF, to the head office of the insurer, through the International Group where that was appropriate. Finally, they reiterated that they did not believe that there was evidence that abuse was widespread, and there should not be an attempt to fix a system that was not broken.

8.3. The Seafarers had three specific proposals. The first and most immediate was to develop a model release form which would provide for the quick payment of contractual compensation without prejudicing the rights of both sides. The second, was to develop an IMO Assembly Resolution setting out the functional requirements of a realistic and equitable insurance regime for seafarers, which looked to the future and reflected applicable international law. This might be a regime which allowed, in certain circumstances, for direct action by the seafarer (or third party), which provided notice to seafarers that insurance coverage had been withdrawn, and provided coverage even when a shipowner had not paid his insurance premium. Seafarers had looked to the P&I Clubs for an industry solution, but apparently this could not be achieved. The



third and ultimate solution was the development of an IMO Convention which set out functional requirements for an effective regime for seafarers, followed by best practices and which met the expectations of civil society. He added that the ITF had suggested a form of mediation which would reduce the time before settlement, but the P&I Clubs did not think there was merit in this proposal. This indicated a need for effective compulsory insurance.

8.4. The delegation of Cyprus, supported by the delegation of France, said that the matter could be dealt with by a national scheme, but if there was no national scheme in place, there should be compulsory insurance or another form of financial security. Providing for compulsory insurance alone was not sufficient. From the discussions so far it appears that there are other peripheral activities and issues to be addressed possibly through a code of practice or other guidance. A proposal had been made for the preparation of a draft IMO Assembly resolutions, and perhaps the Working Group could at least prepare the skeleton of such an instrument. If a Convention was to be developed, it would be necessary, as required by IMO Assembly resolutions A.500, A.777 and A.900 to establish a “compelling need” and to show that this would be a long-term, sustainable solution in order to obtain a mandate from the Legal Committee to start developing an instrument. He warned, however, that it would be six to eight years for such an instrument could be developed and come into force. To ensure success, such a Convention must be developed with the cooperation and full support of the social partners. It could draw on earlier examples of IMO and ILO collaboration on the development of international instruments or codes.

8.5. The delegation of the Philippines, while agreeing that, in the long-term, compulsory insurance was a possible solution, considered that it was also necessary to develop short-term solutions.

8.6. The Shipowners supported the idea of a combined ILO/IMO instrument, citing precedents for joint Conventions. They were prepared to look constructively at all proposals, but they would have to be workable and effective to have their support. Consensus must be reached to make any instrument acceptable. They agreed that there was merit in seeking more immediate solutions than a Convention would provide.

8.7. The Seafarers said they would be pleased to see ILO and IMO cooperate on the development of a Convention concerning compulsory insurance. They also wished to pursue more immediate solutions, and offered to make available a model release form for consideration by the Working Group. The functional headings of an IMO Assembly Resolution could also be developed during this session of the Working Group.

8.8. An observer from the International Group of P&I Clubs reiterated that the vast majority of claims had been handled correctly with no element of unfairness. He again referred to annex 3 of document IMO/ILO/WGLCCS 2/6 and the statistics relating to the number and value of cases handled over the previous five years by the P&I Clubs. He believed that the present system worked well and there was no need to introduce a compulsory insurance scheme. It would be unwise to develop a Convention which would cut across domestic legislation and differing national approaches to social security thereby presenting difficulties. An effective code would be very difficult to develop and implement would be likely to give rise to disputes. A “compelling need” had not been demonstrated. He again pointed out that the P&I Clubs were not acting negatively and had proposed an informal and inexpensive procedure for dealing with “problems” cases.

8.9. The Seafarers said that while they could understand why the P&I Clubs wished to keep to their rules, if they had to, the clubs would accommodate change. Moreover, they had no confidence in the minimalist mechanism proposed. They had been disappointed by the outcome of the meetings with the P&I Clubs. Both long term and short term solutions should be pursued, starting with an IMO Assembly Resolution which set out the requirements for insurance regimes.

8.10. Referring to the remarks by the observer from the P&I Clubs, the delegation of Cyprus said that a compelling need was not simply demonstrated by statistics but by trends. These included trends in ownership, crew supply, ship management and provision of registration services. It was necessary to ensure the necessary safeguards while providing for a full and open market.

8.11. In response to a question by the Shipowners, and to the many comments concerning possible joint ILO/IMO action, the ILO Secretariat explained that there were several ways to develop guidelines and codes within the ILO system or jointly with other specialized agencies in the United Nations system. She also reminded the Working Group that the outcome of its first and second sessions would be considered by the Joint Maritime Commission when it met in January 2001.

8.12. Dr. Balkin in a similar vein, drew attention to the practicalities of preparing a draft resolution for consideration by the IMO Assembly at its next (November 2001) session. It would be possible, she said, for the draft resolution to be considered by the IMO Legal Committee in October 2001 and then be forwarded to the Assembly. As concerns the development of a Convention, this presented no problem as long as the Governing Body of the ILO and the Legal Committee of the IMO provided a mandate to undertake the work. She noted that in the IMO if a Convention was to be developed, the practice was for a group of governments to prepare the initial draft, and that such work was not done by the Secretariat.

8.13. The Chairperson suggested a two step approach: first, a short-term approach, such as the development of an IMO/ILO resolution to which a code or guidelines could be annexed; second, a longer term solution, such as the development of a mandatory instrument to be adopted by both Organizations. Clearly, the view by some that the current situation was satisfactory, did not prevent further action. He also noted that consideration should be given to the different national schemes when developing an international solution. The current session of the Working Group, he said, could focus on the short-term approach. The next session of the Group, which could be held before next October, could prepare more mature proposals for the Governing Body of the ILO and the Legal Committee of the IMO.

8.14. Commenting on this proposal, an observer from the International Group of P&I Clubs reiterated opposition to a code or guidelines (which would be attached to a proposed Assembly Resolution), or to a Convention, as the International Group saw no necessity for such steps if the facts were properly analyzed, apart from the implementation problems which had been previously referred to. What was envisaged by the Seafarers would undermine the fundamental concept of mutuality of risks and result in "good" shipowners subsidizing the not so good. He referred to Assembly resolution A.898(21), which had noted that P&I was an effective form of insurance and reflected the high standards adopted by International Group Clubs who were a force for good in the industry.

8.15. The delegation of Greece stated that it was encouraging to see light at the end of the tunnel. He suggested that a preliminary draft text of resolution could be prepared and wondered whether the Joint Maritime Commission, i.e., the social partners, could not be requested to do so at its session in January 2001.

8.16. The Shipowners said that they would work constructively towards the development of an IMO Assembly resolution and guidelines to be annexed. However, they needed to be convinced that the result would improve the present situation. They supported the timetable suggested by the Chairperson. Responding to a suggestion by the delegation of Greece that the January 2001 session of the Joint Maritime Commission might prepare a draft resolution or resolutions, he said that, while in principle this was a good idea, the heavy agenda of the Joint Maritime Commission probably did not allow for this.

8.17. The Seafarers also supported the Chairperson's proposal. They noted in particular his comment that, even if nothing was wrong with the current system, this should not stand in the way of a system aimed at addressing future problems. They agreed with the Shipowners that the Joint Maritime Commission would not have time to deal with this issue. They proposed a draft model release form for consideration by the Working Group, as a possible Annex to the proposed IMO Assembly resolution.

8.18. The Chairperson closed the debate on the model release form proposed by the seafarers' leaving the texts as preliminary drafts.

8.19. Following consultations, the Working Group decided to set up a sub-group on personal injury and death with the following terms of reference:

1. The sub-group shall consider short-term solutions to deal with the issues of claims for personal injury and death of seafarers; and
2. The sub-group should elaborate the framework for a possible draft of a resolution on the above, with an Annex containing a table of contents of a possible Code of practice to deal with the claims in question. The proposed Annex would contain an appendix with a draft of a model "Receipt and Release" form, or any other model.

8.20. The Government representative of Cyprus, Mr. Nicolas Charalambous, was nominated to chair the sub-group. In reporting back to the Joint Working Group on the work, the chairperson of the sub-group presented the draft text of the proposed resolution (annex 4) which the sub-group had elaborated as a basis for further discussion and which did not commit any of the members of the Working Group at this stage. The proposals contained elements which could form the basis on which the next meeting of the Working Group could proceed. He indicated that the sub-group had used as a starting point for its work the IMO Assembly Resolution A.898(21) on the Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims. In order to structure its work and to make progress, the sub-group had decided to separate the issues into contractual claims and tort claims and to focus during this meeting on contractual claims, leaving the subject of tort claims for the next meeting of the Working Group. Turning to the draft text of the proposed resolution and the proposed Annex with its Appendix, the chairperson of the sub-group indicated that a number of paragraphs had been retained in brackets and had either not been discussed fully, or there was not sufficient support for them at this stage, or because they contained controversial issues which would need more time for discussion. The sub-group considered that the preambular paragraphs needed to reflect both the IMO and the ILO perspectives as the resolution would be submitted to both Organizations. There was also a need to ensure consistency in the preambular paragraphs of both resolutions as some of the considerations were common to both. The text on tonnage in paragraph 2.2 of the proposed Annex had been retained in square brackets as the discussion demonstrated on the one hand the need to ensure that the Guidelines would apply to all ships and on the other, the practical difficulties in requiring very small ships to carry certificates on board. The text contained in paragraph 5 of the proposed Annex did not represent in any way a formulation on which there was consensus. It only contained a list of the elements identified and in respect of which appropriate formulation would have to be developed. It was a controversial paragraph on which both the shipowners and the seafarers had strong views. Concerning the Model Receipt and Release form contained in the proposed Appendix to the Annex, account was taken of the concern to ensure that the provisions of national law would prevail in case there was any conflict with the terms proposed in the form.

8.21. The Chairperson of the Working Group proposed that the meeting should not focus unnecessarily on the preambular paragraphs of the resolution as these would be reviewed at the next meeting.

8.22. The Seafarers proposed that two new paragraphs should be included in the preamble of the resolution as follows:

Recalling Article 19(8) of the ILO Constitution which provides that in no case shall the adoption of any Convention or Recommendation or the ratification of any Convention by any member State be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation:

Recalling the duties of the flag State to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag, as set out in Article 94 of the United Nations Convention on the Law of the Sea, 1982.

8.23. The Seafarers also considered that the words "Notwithstanding provisions of national law" in paragraph 4 of the proposed Annex should have been put into brackets, proposing instead to include similar wording at the beginning of the proposed Guidelines. This proposal was endorsed by Cyprus and the Chairperson.

8.24. The Shipowners reaffirmed the position they had already expressed on the issues and solutions proposed. While they did not consider that there was a major problem requiring the type of solutions being discussed, they had in a constructive spirit participated in the brainstorming exercise. They had not accepted any particular mechanism, but would study the various proposals. Commenting on the text, they considered that some of the bracketed paragraphs of the preamble might not be necessary and that its length should be kept to a minimum. They reiterated their reservation to paragraph 5 of the proposed Annex, listing elements of insurance cover. In particular the issue of direct accessibility went to the heart of the concept of mutuality and would undermine it. They reiterated their reservation on the concept of all settlements being without prejudice to other legal rights. They also believed that the concept of strict liability cover might have connotations and legal implications of which they were not aware. Concerning the proposed Model Receipt and Release form, they noted that the last sentence, dealing with the offsetting of payments received for contractual claims, had been kept within brackets. They considered that this sentence was necessary and noted that the formulation "payment may be offset" was not mandatory. With these various comments, they could accept that the draft resolution with the proposed Annex and Appendix would be attached to the report of the Joint Working Group.

8.25. An observer from the International Group of P & I associated themselves with the remarks of the Shipowners and reiterated their position concerning the need for such a resolution. They reaffirmed that the present system was effective and worked well. They, therefore, had strong reservations about some of the provisions of the resolution: the preamble, in particular the final paragraph concerning the need for international minimum standards; paragraph 5 of the proposed Annex, in particular, the concepts of direct access, strict liability, offsetting of payments, notification of cancellations. These concepts would undermine the operative principle of mutuality on which the Clubs were based. He referred to the position of the Clubs as set out in annex 3 of document IMO/ILO/WGLCCS 2/6. Paragraph 6 dealing with certificates was also considered to be problematic as in practice it would be difficult to implement. Concerning the proposed Model Receipt and Release form, he considered that it would conflict with domestic legislation of countries where legal provisions on compensation had been put in place.

8.26. The delegation of Cyprus could accept the inclusion of the two new paragraphs proposed by the Seafarers for inclusion in the preamble to the resolution. He considered that the resolution being proposed would serve a very useful purpose especially in view of the proliferation of new registers which were countries without a maritime tradition. The Guidelines being proposed would provide welcome guidance to these States and could be taken into account by States when updating their maritime legislation.

8.27. Dr. Balkin raised a question concerning the compatibility of the proposed Model Receipt and Release form with the wording of employment contracts. Her concern was whether the employment contract may not contain a provision which the seafarer had already agreed that payment made for contractual claims would be in full and final settlement of all claims. This should be taken into account in the formulation of the provisions of the form.

8.28. The Seafarers explained that the purpose of the receipt and release form being proposed was to prevent the abuse concerning the position of seafarers or their next of kin who had unequal bargaining power with shipowners. Reference was made to the testimony of the widows. However, no doubt the receipt and release form proposed could be developed further at the next meeting.

8.29. An observer from the International Group of P&I Clubs indicated that the point made by Dr. Balkin supported their position that such provisions could cut across and conflict with domestic legislation.

8.30. The delegation of Cyprus indicated that the text of the proposed Appendix should remain as it was, but that for the next meeting of the Working Group elements could be provided in support of positions advanced and in particular from States where there would be a problem with national legislation.

8.31. A representative from the ILO Secretariat referred to the definition of personal injury in paragraph 1 of the proposed Annex, and which had been left blank for the time being. She

indicated the expression was used in ILO Conventions and Recommendations and in ILO publications, but that it had not been defined as its meaning was considered clear. There was only a definition of the expression “occupational injury” which was defined to mean “death, any personal injury or disease resulting from an occupational accident”. She also proposed aligning the title of the proposed Model Receipt and Release form in the proposed Appendix with the subject matter of this resolution to read: “Model Receipt and Release Form for Contractual Claims”. She pointed to the extra wording which had been inserted in brackets in paragraph 6.1 of the proposed Annex with an alternative to requiring a certificate from each insurer taking into account the point made by the P&I Clubs that there might be more than one insurer for seafarers on board a ship.

8.32. In response to the explanation given and proposal made by the Secretariat, the delegation of Cyprus considered that the extra wording proposed in paragraph 6 of the proposed Annex should be retained in square brackets and preferred to leave open the issue of a definition for personal injury. He had reservations about the use of the term “occupational injury”.

8.33. The Shipowners suggested that the question of the definition of personal injury could be left open for the time being. An observer from the International Group of P & I indicated that there would be practical difficulties if different P&I Clubs were to issue certificates. He did not support either the modification of the title of the proposed Model Receipt and Release form to include the reference to contractual claims for reasons already indicated concerning problems with national legislation.

8.34. The Seafarers requested the Secretariats to examine for the next meeting the issue in the proposed preambular paragraph referring to the need for special protection for seafarers given the global nature of the shipping industry. There was a need for information on the treatment of workers in other sectors, for example, airline industry, non- transport sectors, to determine whether special treatment was really needed for seafarers, or whether it was rather a need for more equitable treatment.

## **9. Recommendations to the IMO Legal Committee and/or the Governing Body of the ILO, as appropriate**

9.1. The Chairperson summed up the consensus within the Working Group on both subjects – abandonment and death and injury – concerning a two-step approach. The first would be a resolution to be adopted as a matter of urgency. The second approach would be to consider a more complete international solution to be elaborated with a view to establishing a system of a mandatory nature where no national schemes addressing these issues are in place. On both subjects, the Working Group considered that the option of compulsory insurance or other form of financial security seemed the most appropriate. In that regard the Chairperson stated that members of the Working Group should submit their specific suggestions on the proposed resolutions before the next meeting. Accordingly, it was decided that the Group should continue to work on proposals developed at this session before it could make recommendations to the IMO Legal Committee and/or the Governing Body of the ILO.

9.2. The Working Group agreed to hold its next session from 30 April to 4 May 2001 at IMO Headquarters in London. It further agreed to the provisional draft agenda, as proposed by the Chairperson and as amended to reflect an additional agenda item proposed by the Seafarers, as set out in annex 5. The deadlines for submission of documents for consideration at the next session of the Working Group were set at: 1 March 2001 for documents containing new proposals and 30 March 2001 for other documents.

9.3. In preparation for the next session, the Working Group instructed the ILO and IMO Secretariats to:

- ensure that the wording of the draft resolutions was consistent with the practice of the two Organizations;

- study the feasibility of combining the two draft resolutions into a single draft resolution, provided that a decision on this matter would be taken at the next session;
- collect further information from States which had not yet responded to the law and practice questionnaire and on financial security of contractual claims for personal injury to or death of workers in other economic sectors.

## **10. Any other business**

The Working Group requested that organizations with consultative status at the IMO and with a possible interest in the issues being discussed, such as IUMI, be invited to attend its next meeting.

## Annex 1

### Statement of widows, as referred to in paragraph 6.8

#### ***Statement of Mrs. Urszula Miegon and Mrs Regina Szymanska of Gdynia, Poland***

1. We are Mrs Urszula Miegon and Mrs Regina Szymanska, widows of two crew members who were killed when the "LEROS STRENGTH" sank off the coast of Norway on 8 February 1997. We are pleased to make a statement to this IMO/ILO expert working group. We make this statement also on behalf of 10 other families whose loved ones died on the Leros Strength. Amongst the 12 widows we represent, we have 18 children. Since we do not speak English, we would ask that Captain Jaskiewicz read our statement in English.

2. Our husbands were professional seamen and had been employed at sea on a regular basis for 32 and 7 years respectively. Up to the time of their deaths, our husbands were the sole providers for our families. Prior to our husband's deaths, we enjoyed a moderate and comfortable lifestyle in Poland. Since their deaths, everything has changed and we now have to rely on charitable support from our families and friends for basic sustenance.

3. We first heard about our husbands' deaths through Mr Pyzik of the crew manning agency, Morska Agencia, who telephoned our homes and informed our family members that the vessel had sunk. They did not give us any information about the cause of the sinking or whether there were any survivors. After that, we did not hear from the Agency again until 2 days later, when all the widows were invited to a meeting at their offices in Gdynia to discuss compensation. All the news that we received about the sinking was from the radio and the television.

4. At the meeting with Mr Pyzik, representing the Shipowners, and Mr Lugowski, representing the P & I Club (both from Morska Agencia), we were told that we should accept a figure of US\$30,000 under our husband's contracts of employment in compensation for the deaths of our husbands. However the shipowners insisted that we accept these sums in final settlement of all claims which we might have against the various companies. We considered these amounts very low. Also after hearing the news reports, we realised that there were serious questions about the seaworthiness of the "LEROS STRENGTH" and if we accepted settlement we might never learn why our husbands died. Therefore 12 families did not accept the offer of compensation despite vigorous efforts on the part of the Owners' representatives to make us accept this sum and to sign a Deed of Release.

5. In the days immediately following the meeting at Morska Agencia, we received numerous telephone calls from Mrs Woycik of the P&I correspondent Surnave, urging us to settle our claims at the level of compensation proposed by them. We refused to accept her proposals and subsequently she told us that if we did not accept the compensation that was being offered by a certain date, we would not get any payment at all. We refused the low level of compensation and the Shipowners and the P&I Club had no further contact with us.

6. Our financial losses and hardship although very difficult to bear cannot compare with the emotional suffering we have endured and continue to endure since our husbands' deaths. At the time of the sinking, we were very upset by the conduct of the shipowners, Lamda Sea Shipping Co of Cyprus, and managers, Leros Management S.A. of Greece, and their insurers, the Liverpool & London P&I Club of England.

7. The ITF are the only people who have come forward and advised us on the cause of the sinking and the various investigations including the dive surveys. From these investigations it is clear that the vessel sank because of the shipowners' inexcusable failure to properly repair and maintain their vessel.

8. We understand from various reports we have read that the repair and maintenance of the "LEROS STRENGTH" were supposed to be supervised and monitored by the Classification Societies, ABS and RINA and serious defects discovered during various periodical surveys were not dealt with as required and were a cause of the "LEROS STRENGTH" sinking. We would like to know why the Classification Societies are not accountable to us for the negligence of their surveyors.

9. Even when we do finally obtain compensation as a result of the efforts of the ITF and their lawyers, it will be a small consolation which will never replace our loved ones. The money will probably come from the insurance company and we do not see those who are really responsible for this tragedy being punished either financially or by criminal proceedings. Surely people who can run businesses with such callous disregard for human life should be accountable for their actions?

10. Over 3 years and 9 months have now passed since the vessel's sinking, and we have still not received any compensation from the shipowners or their insurers. We do not understand why, after such a tragic accident, we have been made to wait so long for a decent offer of compensation. The only time the shipowners approached us was immediately after the sinking to persuade us to accept the very low settlement. They have since that date made no contact at all with us.

11. To this day, no explanation has been given by the shipowners as to why the ship sank and our husbands lost their lives.

12. We know from the ITF that the battle for compensation has been brought before different Courts in various countries. The shipowners seem willing to pay large sums of money to their lawyers whilst leaving us, the victims, with nothing.

13. We know that the tactics of the shipowners and the P&I club which were used against us are tactics widely used by shipowners and their insurers to avoid paying proper compensation to the widows and dependants of deceased seafarers.

14. There have been several tragic incidents since the sinking of the "LEROS STRENGTH". We know the Polish widows of the seamen onboard the "ATHENIAN FIDELITY" and the "SLETREAL" to name but a few who remain like us, without compensation. It seems to us that if we could not get help from an organisation such as the ITF that none of us would receive proper compensation or get a proper explanation of why our loved ones died.

15. Why do the Shipowners, the P&I Clubs and the Classification Societies not accept responsibility for our husbands' deaths, explain to us what happened and pay a proper level of compensation?. Why do they seek to intimidate widows and families into accepting low levels of compensation and into signing away any other rights they might have in law? We want the Shipowners and their insurers Liverpool & London to explain to us why the Leros Strength sank, and why our husbands were killed. We want to know why we have had to wait 3 years and 9 months and still we have not had a decent offer of compensation.

Thank you.

31 October 2000



## Annex 2

### Statement of lawyer representing widows, as referred to in paragraph 6.9

#### *Statement of Paul Newdick of Clyde & Co. International Law Firm*

1. I am a lawyer who has been handling injury and death claims for seafarers and their families for over 15 years.

2. I have seen the shipowners' P & I Club responses to this working party and in particular their refusal to acknowledge that their methods in dealing with the claims of seafarers and their families are in any way to be criticised.

3. The problem is that claims of seafarers are treated by P & I Clubs no differently from other claims handled by P & I Clubs, whether they be cargo claims or collision claims. However, such claims handling ignores and contravenes the fundamental human rights of the seafarer.

4. One very real way in which seafarers' human rights are abused is in the use of quit claims, where in return for the payment of the contractual entitlement as a result of death or injury, the P & I Clubs and their representatives insist on the seafarer or his family signing a full release of all claims including those in negligence. Despite the fact that the P & I Club and the shipowner have no legal right to require such a release, the practice is to withhold payment of contractual entitlements until such a release is signed. For seafarers and their families who are in a particularly vulnerable position following a serious injury or death, this behaviour amounts to economic duress.

5. In obtaining a quit claim or release from a seafarer or his family, a shipowner and P & I Club is breaching the fundamental right of access to law. This is enshrined in Article 6 of the European Convention of Human Rights. A quit claim or release form seeks to prevent a seafarer or his family pursuing any legal recourse before the Courts, thus representing a real deprivation of human rights.

6. The P & I position on "pay to be paid" could equally be used as a means of depriving seafarers of a remedy in law. The P & I Clubs say that they have not invoked pay to be paid provisions in respect of seafarers' claims but they will not give any reassurance that they will not do so in the future. Indeed, the reason the statement had been made by P & I Clubs regarding personal injury and death claims was in order to counter arguments against them in defending an attack by cargo interests against "pay to be paid" in the cases of the "FANTI" and "PADRE ISLAND" before the House of Lords in this country. Therefore, whilst it suited the P & I Clubs to make the statement regarding personal injury and death to assist them in defending pay to be paid in the context of cargo claims, P & I Clubs are prepared to go no further than to say that they have not invoked pay to be paid in death and injury cases to date. In those circumstances, there is absolutely no reason why they could not give an undertaking to IMO/ILO that they will not do so in the future. However, they have declined to do so which can only suggest that they wish to preserve the ability to argue pay to be paid when it suits them in death and injury cases.

7. The P & I Clubs have raised in the papers they have submitted various arguments in defence of their claims handling in specific cases. Whilst I am familiar with a large number of those cases and could give detailed responses to rebut the points made by the P & I Clubs, it seems to me that little purpose will be achieved in this forum if we descend into arguments over detail.

8. The above two very basic principals (quit claims and pay to be paid) could be dealt with very effectively by a code of conduct in relation to claims handling in personal injury and death cases and by use of a model release form which could achieve prompt payment of contractual entitlement, without prejudice to a seafarers' right to pursue claims of law in negligence or tort. The shipowner would be making no admission by making payment of the contractual sum and therefore

would be free to defend the case on its merits. There is no suggestion that seafarers should not have to prove negligence, merely that they must, as a fundamental human right, have the ability to take their case to law for a decision on the merits.

Paul Newdick

31 October 2000

## Annex 3

### Elements of a possible draft resolution

#### ***Guidelines on provision of financial security in cases of abandonment of seafarers***

THE ASSEMBLY,

[RECOGNIZING that abandonment of seafarers is a serious problem, involving a human and social dimension and requiring urgent attention;

RECALLING the duties of the flag State to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag, as set forth in Article 94 of the United Nations Convention on the Law of the Sea, 1982;

RECALLING the provisions of Article 5 the Vienna Convention on Consular Relations, 1963 concerning the consular function, in particular the provisions regarding consular protection and assistance to be extended to vessels and their crews;

RECALLING the relevant international labour standards applicable to maritime employment, including, the ILO Repatriation of Seafarers Convention (Revised), 1987 (No. 166);

RECALLING the Resolution concerning the Protection of Wages and Stranded Seafarers adopted by the Joint Maritime Commission of the International Labour Organization in October 1991;

AFFIRMING that payment of remuneration and provision for repatriation should form part of the seafarer's contractual and/or statutory rights, and are not affected by the failure or inability of the shipowner to perform his obligations;

RECOGNIZING that in cases where the shipowner fails to perform, flag States are called upon, and, in some cases, labour supplying States may be called upon, to intervene;]

1. ADOPTS the Guidelines \*Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers\* as set out in the annex to the present resolution;

2. URGES member States to establish an effective guarantee mechanism to protect seafarers in the event that they are abandoned \*and to report to the Organizations on the mechanisms adopted\*;

3. CALLS UPON member States without prejudice to notification required under treaty obligations, to indicate focal points responsible for dealing with cases of abandonment,

4. FURTHER URGES member States, when establishing such a system, as a minimum, to follow the principles set forth in the Guidelines;

5. REQUESTS the Legal Committee and the Governing Body of the ILO to keep the Guidelines under review and amend them as necessary.

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## Annex

### Guidelines on provision of financial security in cases of abandonment of seafarers

#### 1. Forms and adequacy of guarantee

1.1. The form an adequate guarantee could take would include, inter alia, effective insurance or other forms of financial security such as \*to be listed\* providing similar conditions of cover. (See Annex \* \* describing national schemes for providing such guarantees \*to be developed\*).

#### 2. Certification

2.1. Flag States should ensure that ships flying their flags are in a position to provide at all times a certificate as prima facie evidence of the existence of an [adequate] guarantee to protect seafarers in the event of abandonment.\*

#### 3. Components of abandonment

##### 3.1. Problems resulting from abandonment include:

- (a) repatriation;
- (b) support [maintenance of] for crew members while stranded;
- (c) immigration status; and
- (d) the question of the payment of outstanding remuneration

##### 3.2. Repatriation

1. Regardless of the circumstances giving rise to the abandonment, the cost of repatriation remains the responsibility of the shipowner.

2. It is the responsibility of the shipowner to arrange for repatriation by appropriate and expeditious means, normally by air, and includes provision for food and accommodation from leaving the ship until arrival at the repatriation destination, medical care, passage and transport of personal effects.

3. In the event the shipowner fails to fulfil the aforementioned obligations, it is the responsibility of the competent authority of the flag State to organize and advance expenses for repatriation.

4. In the event the shipowner and the flag State fail in their obligation to repatriate, the consular authority of the State of which the seafarer is a national \*or the port State\* should arrange for repatriation.

5. Repatriation, as set forth above, should be carried out without prejudice to the recovery of expenses, except from the seafarer.]

##### 3.3. Support for [Maintenance of] crew members while stranded

1. Support for [maintenance of] crew members/seafarers while stranded is understood to include: food, clothing, accommodation, medical care and other necessities. Recovery of the payment of these expenses should be secured through the coverage provided by the guarantee referred to in paragraph 1.1

3.4. Immigration status

1. [The port State should inform its immigration authority that the abandoned seafarer is covered by a guarantee system providing for repatriation costs and payment of outstanding remuneration. This should be taken into account when determining the immigration status of the abandoned seafarer.] [A link needs to be made between this provision and the certification requirement above.]

3.5. Payment of outstanding remuneration

1. Payment of outstanding remuneration should include [accrued] wages and other entitlements as provided for in the contract and under national law.

\*Footnote as proposed by Seafarers: Remuneration should be understood as including [inter alia\*]: accrued wages and overtime pay, paid leave, severance pay, social security and pension contributions.\*

\*Alternative footnote as proposed by Shipowners: Subject to national laws and regulations, remuneration may be understood to include \*inter alia\*: accrued wages and overtime pay, paid leave, severance pay, social security and pension contributions.\*

## Annex 4

### Draft resolution

#### ***Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers***

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships, and legal matters related thereto,

[RECALLING ALSO that the United Nations Universal Declaration of Human Rights sets out a common standard of inalienable human rights which apply to all persons and Article 6 provides that everyone has the right to recognition everywhere as a person before the law, that Article 7 provides that all are equal before the law and are entitled, without discrimination, to the equal protection of the law, that Article 23 provides for just and favourable conditions of work and other social protection and that Article 25 address the right to a standard of living adequate for the health and welling of the family, including the right to security in the event of disability, widowhood or other lack of livelihood circumstances beyond their control,]

[RECALLING FURTHER that these basic human rights which are relevant to crew claims for loss of life or personal injury have been complemented by a number of United Nations Instruments, including the International Covenant on Civil and Political Rights and the International Covenant in Economic, Social and Cultural Rights,]

[RECALLING ALSO the International Convention on Limitation of Liability for Maritime Claims, 1976, the International Convention on Maritime Liens and Mortgages, 1993, and the International Convention on Arrest of Ships, 1999,]

CONSIDERING that IMO Assembly Resolution A.898(21) on the Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims did not directly address contractual claims for personal injury and death of seafarers but was concerned to ensure that shipowners have effective insurance cover or another effective form of financial security for maritime claims,

CONSIDERING that the International Labour Organization (ILO), with its unique tripartite structure, its competence and its long-standing experience in the social field has an essential role to play in ensuring that seafarers like other workers enjoy adequate protection against personal injury and death arising out of their employment,

RECALLING the relevant international labour standards applicable to maritime employment and in particular Article 10 of ILO Social Security (Seafarers) Convention (Revised), 1987 (No. 165) in so far as it refers to protection effected by means of insurance for seafarers,

CONSIDERING that there is therefore a need to recommend minimum international standards for the responsibilities of shipowners in respect of contractual claims for personal injury and death of seafarers,

CONSIDERING FURTHER that these guidelines represent a valuable contribution to the Organization's objective of discouraging the operation of sub-standard and inadequately insured ships,

CONSIDERING ALSO that given the global nature of the shipping industry seafarers need special protection in ensuring that they are covered by effective insurance cover [and that their inalienable human rights need to be protected in this regard],

CONCERNED that, if shipowners do not have effective insurance cover, or another effective form of financial security, seafarers may not obtain prompt and adequate compensation,

CONSIDERING FURTHER that contractual compensation should be provided [on a strict liability basis] and should be without prejudice to any other legal rights seafarers or their next of kin may enjoy, (paragraph to be revisited),

NOTING the importance of the human element in the IMO's plan of action, [the need to promote quality shipping and the importance of being able to attract suitably qualified new entrants as professional seafarers,] and which is central to ILO's mandate,

[NOTING ALSO that there are serious and real problems in regard to the legal regime for the handling of seafarers' claims for personal injury and death which involve a human and social dimension and require urgent attention,]

CONVINCED that recommendatory guidelines are an appropriate interim means of establishing a framework to encourage all shipowners to take steps to ensure that seafarers receive contractual compensation for personal injury and death,

1. ADOPTS the Guidelines on shipowners' responsibilities in respect of contractual claims set out in the annex to the present resolution;
2. INVITES Member Governments to urge shipowners to comply with Guidelines;
3. INVITES Member Governments to communicate to the IMO and the ILO contact points dealing with issues falling within the scope of the Guidelines.
4. REQUESTS the Legal Committee and the ILO Governing Body to keep the Guidelines under review and amend them as necessary;

## Annex

### Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers

#### 1. Definitions

##### 1.1. In these Guidelines

1. Contractual claims means claims for compensation for personal injury or death at levels provided for within the terms and conditions of employment of seafarers;

2. Effective insurance means insurance [with or without deductibles] or other forms of financial security to meet contractual claims against shipowners. [The insurance may be in the form of indemnity insurance of the type currently provided by members of the International Group of P & I Clubs and other effective forms of insurance (including self-insurance) and financial security offering similar conditions of cover];

3. Insurer means any person providing insurance for a shipowner;

4. [Personal injury means .....];

5. Shipowner means the owner of a seagoing ship, or any other person or organization who or which has assumed responsibility for the operation of such a ship; and

[6. Gross tonnage is calculated according to the tonnage measurement rules contained in annex 1 of the International Convention on Tonnage Measurement of Ships, 1969].

#### 2. Scope of application

2.1. Shipowners are urged to comply with these Guidelines in respect of all seagoing ships [of at least 300 gross tonnage. Shipowners are also encouraged to comply with the Guidelines in respect of ships of less than 300 gross tonnage].

2.2. These Guidelines do 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.

#### 3. Shipowners' responsibilities

3.1. Shipowners should arrange for their ships effective insurance cover that complies with these Guidelines.

3.2. Shipowners should also take proper steps when contractual claims arise for their equitable and prompt settlement.

#### 4. Settlement of contractual claims

Notwithstanding provisions of national law, the parties to the settlement of a contractual claim are recommended to use the Model Receipt and Release Form attached as an Appendix to this Annex.

#### 5. Insurance cover

[In order to provide effective insurance, the functional criteria should include, inter alia:

1. direct accessibility;



2. financial security;
3. strict liability cover;
4. payment in full;
5. non-prejudice of other legal rights;
6. certainty; and
7. notification of cancellation]

## 6. Certificates

6.1. Shipowners should ensure that their ships have on board certificate issued by the insurer. It should be posted in a prominent position in the crew's accommodation. Where more than one insurer provides cover for contractual claims, [a single certificate confirming the identity of the main insurer is sufficient.] [certificates from each insurer are required.]

- 6.2. As a minimum, the certificate should include:
1. the name of the ship;
  2. The ship's IMO number;
  3. the name of the insurer;
  4. the place of business of the insurer;
  5. the name of the shipowner;
  6. the period of validity of the certificate;
  7. the coverage for personal injury and death; and
  8. an attestation that the insurance meets the recommended standards set out in these Guidelines regarding the risks covered by the insurer.

**Appendix**

Model receipt and release form

Vessel: .....

Incident: .....

Seafarer: .....

I, [Seafarer] [Seafarer's legal heir and/or dependant] hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Employer's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of the Seafarer's employment and I hereby release the Employer from its obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to the [Seafarers/Seafarer's legal heir and/or dependant's] right to pursue any claim at law in respect of negligence, tort or any other legal redress available and arising out of the above incident. [Such payment may be offset against any damages resulting from any such claim arising from the above incident.]

Dated .....

Signed .....

\*\*\*

## Annex 5

### Provisional agenda

Third session

Joint IMO/ILO Ad Hoc Expert Working Group

on Liability and Compensation regarding Claims

for Death, Personal Injury and Abandonment of Seafarers

to be held at IMO Headquarters, 4 Albert Embankment, London SE1 7SR,

from Monday, 30 April at 9.30 a.m. to Friday, 4 May 2001

1. Report on information prepared or collected by the ILO and IMO Secretariats
2. Finalization of the work on:
  - the resolution concerning abandonment
  - the resolution concerning death and injury
- 3a. Examination of a possible longer term solution for financial security in respect of abandonment
- 3b. Examination of a possible long term solution for financial security in respect of personal injury and death of seafarers
4. Possible revision for terms of reference to address the longer term solution
5. Recommendations to the governing bodies concerning:
  - (a) adoption of the resolutions
  - (b) future work of the Working Group
  - (c) revision of the terms of reference as appropriate
6. Adoption of the draft report.