INTERNATIONAL LABOUR OFFICE

Governing Body

GB.282/STM/5
282nd Session

Geneva, November 2001

Committee on Sectoral and Technical Meetings and Related Issues **STM**

FIFTH ITEM ON THE AGENDA

Report of the Third 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 April to 4 May 2001)

1. At its 280th Session (March 2001), 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). It approved 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 3 April to 4 May 2001 at IMO headquarters in London.

2. In keeping with the abovementioned decision, the Working Group met in its third session from 30 April to 4 May 2001, at the headquarters of the International Maritime Organization (IMO) in London (report appended).

3. At its third session, the Working Group finalized:

– a draft resolution and accompanying guidelines on provision of financial security in case of abandonment of seafarers; and

– a draft resolution and accompanying guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers.

4. As set out in paragraph 10.1 of its report, the Working Group invited the Governing Body of the International Labour Office to:

(1) approve the report of the Third 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;

(2) approve the draft resolution and guidelines on provision of financial security in case of abandonment of seafarers (see Annex 2 of the report);

(3) approve the draft resolution and guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers (see Annex 3 of the report);

(4) transmit to ILO member States and to seafarers' and shipowners' organizations the report of the Joint Working Group as well as the resolutions and guidelines referred to above; and

(5) approve the continuation of the Working Group with the proposed terms of reference contained in Annex 4 of its report.

5. As provided in Annex 4 of the report, the Working Group proposes that its fourth session should be held at IMO headquarters in London from 28 January to 1 February 2002 and that the agenda of this session should include discussion of options for longer term solutions to the problems of abandonment, personal injury and death of seafarers, including:

– monitoring of the implementation of the resolution and guidelines on provision of financial security in case of abandonment of seafarers;

– monitoring of the implementation of the resolution and guidelines on shipowners' responsibilities in respect of contractual claims for personal injury and death of seafarers;

– monitoring and assessment of the general situation with a view to determining future action, including the possible establishment of a database; and

– assessing the need for a mandatory instrument.

6. Final approval by both the ILO and IMO of the proposals set out in paragraphs 4 and 5 will be subject to decisions taken by the IMO Legal Committee in October 2001 and the IMO Assembly in November 2001.

7. ***The Committee on Sectoral and Technical Meetings and Related Issues is invited to:***

(a) take note of the report of the third session of the Working Group;

(b) approve the actions set out in paragraph 4; and

(c) recommend that the Governing Body approve the holding of a fourth session of the Working Group, with participation by the eight ILO (four Shipowner and four Seafarer) representatives, at no cost to the ILO, from 28 January to 1 February 2002, with the terms of reference provided in paragraph 5.

Geneva, 4 October 2001.

Point for decision: Paragraph 7.

INTERNATIONAL MARITIME ORGANIZATION

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LEGAL COMMITTEE
83rd session
Agenda item 4(b)

LEG 83/4/1
11 June 2001
Original: ENGLISH

PROVISION OF FINANCIAL SECURITY

Report of the third 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

Note by the IMO Secretariat

SUMMARY	
Executive summary:	Report of the third 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.
Action to be taken:	Paragraphs 10.2.1, 10.2.2, 10.2.3 and 10.2.4
Related documents:	LEG 80/11, paragraphs 67 and 68, LEG 81/5, LEG 81/11, paragraphs 147 to 150 and LEG 83/3.

1 This document contains, at annex, the report of the third 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.

2 The meeting took place from 30 April to 4 May 2001 at the Headquarters of the International Maritime Organization (IMO).

Action requested of the Legal Committee

3 The Legal Committee is invited to take note of the information contained in this document and to make such comments and recommendations as it may deem appropriate.

4 The Committee is also invited:

4.1 to approve the draft resolution and guidelines on provision of financial security in case of abandonment of seafarers (Annex 2), for submission to the IMO Assembly for adoption;

4.2 to approve the draft resolution and guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers (Annex 3), for submission to the IMO Assembly for adoption; and

4.3 to approve the contribution of the Working Group with the proposed terms of reference contained in Annex 4.

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ANNEX

INTERNATIONAL MARITIME ORGANIZATION

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JOINT IMO/ILO AD HOC EXPERT WORKING GROUP ON LIABILITY AND COMPENSATION REGARDING CLAIMS FOR DEATH, PERSONAL INJURY AND ABANDONMENT OF SEAFARERS
3rd session
Agenda item 9

IMO/ILO/WGLCCS 3/9
4 June 2001
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 (Joint Working Group) held its third session from 30 April to 4 May 2001 at the Headquarters of the International Maritime Organization (IMO). The list of participants is given at annex 5 of this document. A list of documents submitted for the purpose of this session of the Joint Working Group is given at annex 1.

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 held two sessions from 11 to 15 October 1999 and from 30 October to 3 November 2000, under the chairmanship of Mr. Jean-Marc Schindler (France). She noted that the Group, at its second session, had developed two draft resolutions and associated guidelines on provision of financial security in cases of abandoned seafarers and on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers. The draft resolution relating to abandonment (document IMO/ILO/WGLCCS 2/11, annex 3) states that payment of remuneration and provision for repatriation should form part of the seafarer's statutory or contractual rights. The related draft guidelines suggest the possibility of flag States requiring shipowners to have effective financial security to cover their contractual obligations. The draft resolution on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers (IMO/ILO/WGLCCS 2/11, annex 4), notes that there is a need to recommend minimum international standards for such responsibilities. The associated draft guidelines contain definitions, and set out the responsibility of the shipowner to arrange for effective insurance cover, the certificate of which should be carried on board. These draft resolutions and guidelines are intended to address in the short-term the fact that none of the existing international instruments adequately and comprehensively deals with the problems relating to personal injury, death and abandonment of seafarers. At this third session, if these texts are finalized, they will be submitted for approval to the eighty-third session of the Legal Committee in October this year, and thereafter for adoption to the twenty-second session of the Assembly, in November. Apart from continuing its work on the draft resolutions and guidelines, the Working Group at this session should consider the need for any future work so that a recommendation might be made to the IMO and ILO governing bodies.

1.3 Mrs. Cleopatra Doumbia-Henry, Deputy Director, Sectoral Activities Department and responsible for maritime questions (ILO), welcomed the participants on behalf of Mr. Juan Somavia, Director-General of the ILO. She noted that, at its second session, the Joint Working Group had discussed a two-step approach to address both the issues of abandonment and non-payment of death and personal injury benefits of seafarers. It had made good progress, preparing draft resolutions and guidelines on both issues. She recalled that, at the second session, she had indicated that the reports of the second and third sessions of Joint Working Group would be considered by the twenty-ninth Session of the ILO's Joint Maritime Commission when it met in Geneva in its twenty-ninth session in January 2001. At the Commission session, the Seafarers stressed the seriousness of the issue and said that this work demonstrated how cooperation between two UN agencies could be successful. They also drew attention to the relevance for the maritime sector of the ILO Declaration on Fundamental Principles and Rights at Work, the ILO Decent Work Agenda, and the work of other UN agencies. The Shipowners endorsed the findings of the Joint Working Group, noting the good start that had been made on these issues which were not covered by IMO or other UN Conventions.

1.4 She further indicated that, when considering another agenda item on the review of relevant ILO maritime instruments, the Joint Maritime Commission had adopted the "Geneva Accord", and taken the historic step of recommending that the ILO work towards the adoption of a single "framework" instrument that would consolidate the existing body of ILO maritime Conventions and Recommendations. In this way, it would provide an effective third pillar – the social pillar - to complement the safety and environmental pillars. Both the Shipowner and Seafarer members had indicated that the aim was to consolidate the provisions of the existing instruments but not to abandon their contents. Finally, she noted that, at its 280th Session (March 2001), the Governing Body had considered the reports of the second session of the Joint Working Group and had agreed to this third session, with the same composition as the previous sessions. The Governing Body had also, with minor changes concerning procedural issues, agreed to the proposal for the consolidation of ILO maritime labour standards into a single framework instrument. She concluded that if this meeting were to adopt the two resolutions under consideration, they could be submitted to the ILO Governing Body in November 2001 for approval.

1.5 In his opening comments, the Chairperson of the Joint Working Group, Mr. Jean-Marc Schindler (Government Member - France) drew attention to the important role of the Joint Working Group. The Governing Bodies of both Organizations had taken an interest in its activities. The Joint Working Group should complete the first step of the two-step approach by finalizing the draft resolutions before the end of the week. It could also make progress towards the second step by considering long term, mandatory solutions to the issue of abandonment and non-payment of death and personal injury claims.

1.6 The Shipowners looked forward to using the discussions during this session to find pragmatic solutions to the problems of abandonment and non-payment of personal injury and death claims. At its earlier sessions, the Joint Working Group had already taken useful steps towards identifying solutions and establishing a basis for its future work. They felt that the draft resolutions provided a good basis for discussion.

1.7 The Shipowners considered that a satisfactory resolution of issues arising from for personal injury and death claims was the closer of the two. So far, the Joint Working Group had the benefit of two sessions and reports of two outside, informal meetings between the ISF, ITF and the International Group of P&I Clubs. The last session of the Joint Working Group had included a brainstorming exercise, leading to a preliminary draft resolution and set of guidelines in which the shipowners had participated but had reserved their position. However, information

provided by the International Group of P&I Clubs, demonstrated that out of the 84,000 claims by its members in recent years, there were very few problem cases. The P&I Clubs had also looked into the cases raised by the ITF at the two earlier sessions, and had revealed that many of the ITF allegations concerning these cases were not well-founded. Drawing attention to the proposal contained in the submission of the International Group of P&I Clubs, the Shipowners noted that this would clarify the effect of IMO Assembly Resolution A.898(21) concerning Guidelines for Shipowners' Responsibilities in Respect of Maritime Claims. The Clubs and the ISF had also offered to establish an informal arrangement under which complaints concerning claims handling procedures could be raised and resolved, and the previous session had agreed to recommend an amended Receipt and Release Form. They preferred this approach to a massive response to a minor problem.

1.8 The Shipowners considered that the issue of abandonment was more intractable. Abandonment cases only occurred in a small minority of the world fleet. The additional information obtained from ILO and IMO member States and the legal opinion from Dr. Lowe provided by the ITF would be interesting to consider. It would not be easy to find a comprehensive and workable solution to the abandonment problem. There was a need to define abandonment, insolvency and other terms. Further progress would best be made in a small group. Nevertheless they were optimistic that it would be possible to report good progress could be reported to the ILO and IMO bodies.

1.9 The Seafarers felt that the issues identified at the previous sessions were real and serious. Positive progress had been made at the last session of the Joint Working Group. The priority at this session should be to finalize the draft resolutions and guidelines, which offered both a short and medium term solution to the issues. They were very pleased that, at the last session, the government members had played a very active role in the discussions. At that session, the view had emerged that mechanisms were needed which did not rely on voluntary action but rather on mandatory requirements. Drawing attention to papers submitted to the present session, they said that some papers were only well-rehearsed repetitions of papers submitted to previous sessions. Though some papers had tried to say that the issues were insignificant, the Seafarers could point to the executive summary of the recently published report of the International Commission on Shipping (ICONS) which had cited extensive information on abandonment of seafarers, breach of contract and other abuses relevant to the issues before the Joint Working Group. Therefore, the primary concentration this week should be on the finalization of the resolutions and guidelines.

1.10 The delegation of Cyprus expected that the two draft resolutions prepared at the last session would be finalized this week. If this was not done, the next possibility for an IMO Assembly resolution would not occur until November 2003. As concerns future work of the group, there was the question of "compelling need" for such work. In this regard, consideration should be given to future risks related to the development of new registers and other developments. It was logical to hear the views of all participants in plenary before referring the resolutions to working groups.

1.11 The delegation of the Philippines looked forward to successful conclusion of the work of the Joint Working Group and to adoption of related IMO Assembly resolutions at the end of this year. He thanked the secretariats for their work and the Joint Working Group for the progress it had made since 1999. He drew attention to the different approaches taken by different governments on the issue of financial security in cases of personal injury and death of seafarers and encouraged the Joint Working Group to adopt a resolution and guidelines which would allow for these different approaches. The issues before the Joint Working Group were a high priority concern of the Philippines, as demonstrated by the presence of the Philippines Labour Attaché in

London in his delegation. Within the IMO, there had been much discussion of crew competency as addressed by the White List under the STCW 95 Convention. It was now time to give more attention to the social issues of seafarers.

1.12 The delegation of France stated that, in addition to finalizing the draft resolutions and guidelines, the Joint Working Group should look into the contents of a possible new Convention. The matter of financial security applied to both cases, so most of this discussion should take place in plenary.

1.13 The delegation of Greece generally expressed satisfaction with the work done so far and endorsed the two-step approach. It was important, in order to ensure implementation, that any guidelines proposed be achieved through a broad consensus. He agreed with the delegation of Cyprus that it was necessary to have a plenary discussion first.

1.14 The delegation of the United Kingdom noted that good progress could be made this week as the previous sessions had already made progress on the identification of the main elements of the resolutions and guidelines. It was important that a formal international framework led to pragmatic solutions. He supported the suggestion by the delegation of Cyprus that there should first be a plenary discussion of the issues.

1.15 The delegation of Norway noted that the Joint Working Group had already at its first meeting recognized that seafarers' social and economic security in cases of abandonment, personal injury and death was insufficient. Although it was a minority of ship operators who failed to fulfil their obligations towards seafarers, the extent of the problem was such that international action was needed. As international shipping developed, it had been increasingly influenced by harmonized international standards: technical, navigational and operational requirements are regulated in detail through international agreements; seafarers' competency is regulated through international standards on qualification and training. To ensure the efficiency of these standards, supervision and inspection was carried out by flag and port State control. Such a harmonized international regime reduced the possibilities of unfair competition. Seafarers' social and economic security had not been subject to the same detailed international regulation. As a result, manning and crew expenses had become a critical area for competition. This competition itself often lead to abandonment and failure by shipowners to meet contractual obligations. A solution to these issues would contribute to the battle against substandard shipping and would benefit prudent shipowners.

1.16 The observer delegation of the Netherlands noted the two-step approach agreed at the second session of the Joint Working Group. He expressed concern whether the second step - the possible development of a comprehensive, mandatory international regime - would be the appropriate approach for the future. He said that his country made use of existing instruments to address the issues of abandonment and financial security for personal injury and death claims, for example by arresting ships in port. In the Port of Rotterdam, there existed a specific national fund for the welfare and repatriation of stranded seafarers. By making payments to seafarers, these funds operated by way of subrogation to the seafarers' claims. He concluded that a solution in the long term might be to promote existing international instruments, such as the 1993 Maritime Liens and Mortgages Convention and the 1999 Arrest of Ships Convention rather than developing new instruments.

1.17 An observer delegation from the International Group of P&I Clubs associated himself with the opening comments by the Shipowners on the matters related to death, illness and personal injury of seafarers.

1.18 The delegation of Panama conveyed the interests of Panama in the work and looked forward to its results in the form of proposals to the IMO and ILO bodies.

1.19 An observer from the International Christian Maritime Association (ICMA) said that it was not for ICMA to suggest to industry what financial protection should be provided for claims of personal injury and death and for the support of seafarers when abandoned, nor was it for ICMA to indicate what statutory arrangements needed to be implemented by regulatory regimes. It was, however, for ICMA to plead the case of seafarers. Whilst deliberations continue, real suffering was taking place. It often fell upon the charitable institutions and maritime ministries to feed and clothe abandoned seafarers and sometimes repatriate them. Whilst ICMA members would continue to provide assistance, it was in the absence of a properly established system. ICMA believed it was incumbent upon the group to make substantive progress towards the resolution of these issues.

1.20 In concluding this agenda item, the Chairperson noted that there was a consensus to begin with a plenary discussion focusing on the resolutions and guidelines. This was particularly true bearing in mind the intervention by the delegation of Cyprus concerning the deadlines which must be met to allow for discussion of these resolutions and the coming IMO Assembly session.

2 Adoption of the agenda

2.1 The Working Group adopted the provisional agenda contained in document IMO/ILO/WGLCSS 3/1.

3 Report on information prepared or collected by the ILO and IMO Secretariats

3.1 At the invitation of the Chairperson, a representative of the ILO Secretariat (Mrs. Doumbia-Henry) introduced document IMO/ILO/WGLCCS 3/3, prepared by the ILO and IMO Secretariats in accordance with the request made by the Joint Working Group in paragraph 9.3 of the report of the second session. She noted that the paper had three parts. The first part contained additional information from States in response to the law and practice questionnaire which had been sent to all IMO and ILO Member States in order to collect information on the issues of abandonment and financial security for personal injury and death claims. In this regard, she noted that the Secretariats had now received replies from a total of 57 States, including flag States with seven of the ten largest fleets. In particular, she drew attention to law and practice reported on by Denmark and Singapore regarding notification of seafarers when the shipowner's insurance was cancelled.

3.2 In Part B, the report contained very limited information concerning the issues of financial security for personal injury and death claims in other economic sectors, explaining that more time and resources would have been needed to produce a comprehensive study of this subject. Finally, she noted that Part C (see IMO/ILO/WGLCCS 3/3, Add.1) provided information on a recent conference in South Africa which had touched upon the issues of financial security for personal injury and death claims for fishermen (fishers/fishing vessel personnel), indicating that such workers suffered similar problems as seafarers.

3.3 The Shipowners, in commenting on this document, noted that it demonstrated that there was a wide range of national practices which should be taken into account when formulating approaches addressing these issues. They drew the attention of the Working Group that they did not represent the operators of fishing vessels or the employers of fishing vessel personnel.

3.4 The Seafarers welcomed the document and information provided on the protection offered to workers in other economic sectors. However, they noted that there were gaps in the information and more work had to be done to acquire the needed information. Referring to a report prepared by the ILO for the 29th Session of the Joint Maritime Commission, entitled "The Impact of Seafarers' Living and Working Conditions on Changes in the Structure of the Shipping Industry", they said that deregulation and lack of continuity of employment and employment on different flagged vessels meant that many seafarers could not participate in national social security schemes and that more consideration must be given to this issue.

3.5 They further noted that the ILO's more widely ratified Conventions on social security and other forms of protection excluded seafarers. They did not accept that it was a well settled principle of international law that seafarers are not generally considered as migrant workers. In summary, they did not believe that seafarers had the same social protection as other workers.

4 Finalization of the work on the resolution concerning abandonment and the resolution concerning death and injury

4.1 At the invitation of the Chairperson, an observer for the ICFTU/ITF introduced document IMO/ILO/WGLCCS 3/5, which contained on opinion by Professor Vaughn Lowe on International Human Rights Laws aspects of death, personal injury and abandonment of seafarers. The opinion indicated that provisions of international human rights law are applicable to the situation of seafarers and were relevant to the problems of death, personal injury and abandonment. Professor Lowe's opinion concluded that international human rights law not only may be applied but must be applied to seafarers; that international human rights law includes provisions of direct relevance to the problems of death, personal injury and abandonment of seafarers; and that certain specific and binding legal obligations attach to States, and in particular to flag States, in relation to the treatment of seafarers, and that effective procedures exist for the enforcement of those specific obligations. She refrained from going into great detail on the contents of the opinion, indicating that the ICFTU/ITF would draw attention to relevant points in the opinion at the appropriate time during the discussions.

4.2 The Shipowners said that the document described the body of human rights laws applying to all, including seafarers. Some of the instruments were truly international while others were regional. The document was not controversial and would be helpful to the debate. They further noted that the opinion pointed out the international body of law applying to seafarers. However, many of these standards had not entered into force or were not widely ratified and therefore not applied or enforced. The Joint Working Group should therefore ensure that its own proposals are practicable and enforceable.

4.3 At the invitation of the Chairperson, the delegation of Norway introduced document IMO/ILO/WGLCCS 3/5/1, Examination of a Possible Longer Term Solution for Financial Security in Respect of Abandonment, Personal Injury and Death of Seafarers. The paper provided information on mandatory rules regarding liability and compensation for crew claims related to death, personal injury and abandonment for seafarers serving on vessels registered in the Norwegian International Ship Register (NIS) (Norwegian nationals were covered by a separate national scheme). The system ensured that seafarers received compensation in cases of death or injury. Primary responsibility was placed on the shipowner. However, if the shipowner failed in its obligations, the national scheme ensures protection.

4.4 Commenting on the document, the delegation of the Republic of Korea asked the delegation of Norway whether, under the Norwegian system, P&I Clubs could be regarded as providers of compulsory insurance and whether the system provided for direct access by the

seafarer to the P&I Club. In response, the delegation from Norway said that this was possible for those P&I Clubs which were recognized by the Norwegian authorities.

4.5 The delegation of the Netherlands noted that it had set aside specific funds for the welfare of seafarers. The funds could be used for all seafarers, not only Dutch citizens and nationals of EU member States. However, the fund was only used in hardship cases. The Netherlands had attempted to establish a guarantee system with shipowners, but this had not been successful. The fund established by the government of the Netherlands, with contributions from the Government and the Municipality of Rotterdam, only applied to ships in the ports of the Netherlands. The costs of repatriating seafarers was compensated through subrogation of claims. Expenses paid by the Government was sometimes recovered by making use of the existing possibility to arrest ships.

4.6 In response to a request for clarification by the delegation of the United States, the delegation of Norway and an ILO Shipowner member from Norway gave the following explanation of the Norwegian system with regard to abandonment and financial security of personal injury and death claims:

Abandonment:

.1 All employees serving on NIS ships will in the event of the employers insolvency, have an entitlement limited to 8 week wages and repatriation;

.2 Employees covered by the Norwegian National Insurance Scheme, all EEA citizens and Norwegian residents, will get the benefits from the Scheme;

.3 For employees who are not covered by the Norwegian National Insurance Scheme, non EEA Citizens and non Norwegian residents, the employer/ shipping company will be obliged to furnish a guarantee ensuring the employee the mentioned benefits in case of the employers insolvency. See section 3 of the regulation;

.4 The guarantee is normally arranged with a bank recognised by the Norwegian Authorities. However, for vessels enlisted with the Norwegian Shipowners' Association, the Association provide a guarantee declaration to the Norwegian Authorities where part of the Association's funds is allocated for this purpose. There is a special procedure in place for monitoring the renewal of the guarantee;

.5 According to section 4 of the regulation such guarantee is a condition for entry to the NIS ship register. Entry to the register will consequently be rejected until a sufficient guarantee has been documented;

.6 If the guarantee has lapsed or is otherwise invalid and a claim is made, the Norwegian State will pay to the employee what would have been covered by a valid guarantee;

.7 The employee will have a direct access to payment in case of the employer's insolvency from the Norwegian National Insurance Scheme, the guarantee institution or the Norwegian State;

Personal injury and death:

.8 Employees covered by the Norwegian National Insurance Scheme include all EEA citizens and Norwegian residents. They are entitled to compensation from the Scheme in the event of occupational disability or death;

.9 For employees who are not covered by the Norwegian National Insurance Scheme (all non-EEA citizens and non-Norwegian residents), the employer is obliged to provide insurance cover so that the employee or survivors (spouse and children) receive compensation in the event of occupational injury leading to disability or death;

.10 If no insurance has been taken out, the shipowner will be personally liable for payment of compensation. The Ministry of Trade and Industry may also delete the ship from the ship register;

.11 The insurance shall be contracted with an insurance company recognized by the Norwegian authorities. A P & I club recognised by the Norwegian authorities would fulfil this requirement;

.12 Compensation can be paid as lump sum if this has been provided in a collective bargaining agreement (CBA). If there is no applicable CBA, compensation would be at the level set for occupational injury and death under the Norwegian National Insurance Scheme; and

.13 According to the Norwegian Insurance act section 7-6 the seafarer has a right to direct access due to the following wording: Section 7-6. (position of the injured party in case of liability insurance). If the insurance covers the insured party's liability in damages, the injured party can claim indemnity direct from the company. The company and the insured party are obliged on request to inform the injured party of whether there is liability insurance.

4.7 After hearing the above explanation, the delegation of the Philippines commented from the point of view of countries with other types of mechanisms. In the Philippines, for example, a government fund was used to cover these issues. The delegation of the Republic of Korea also had a different approach to the Norwegian approach, and it added that it had recently experienced abandonment problems related to foreign fishing vessels.

4.8 The Chair noted that there were several documents concerning the draft resolutions. He suggested that after each document introduced there should be a discussion of the document concerned. After all the relevant documents had been discussed, there would be a global discussion on the resolution concerning abandonment and then a global discussion on the resolution concerning death and injury.

Discussion of the draft resolution and guidelines concerning financial security in respect of abandonment

4.9 The Chair then invited the Seafarers to introduce document IMO/ILO/WGLCCS3, submitted by the ICFTU/ITF, concerning finalization of the work on the resolution concerning abandonment.

4.10 The Seafarers believed there was general agreement on the issue of abandonment. In the past, there had been no clear mechanism to apportion responsibilities in cases of abandonment. However, the draft resolutions and draft guidelines produced by the second session of the Joint Working Group provided an appropriate short term approach to the problem. The ICFTU/ITF paper, in particular in paragraphs 3 through 11, provided specific changes which would improve on this work. Pointing to the draft resolution itself, they drew attention to proposals to include references to the Convention on the IMO and to the ILO Constitution, to delete references to ILO instruments which were now to undergo a comprehensive review and to include references to the United Nations Universal Declaration of Human Rights, the International Convention on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The reference to the latter instruments was particularly important as serious ill treatment of seafarers was a common feature in abandonment cases. Among other things, they also proposed text calling for the communication to the IMO and ILO of focal points on abandonment and personal injury and death claims issues and for the establishment of a database on abandoned seafarers. As concerns the draft guidelines, they proposed a text allowing States several options for the method of ensuring a guarantee in relation to the components of abandonment. They proposed calling for all ships to carry a certificate as *prima facie* evidence of that guarantee. Their paper also offered a possible definition of abandonment in order to establish a common understanding of the problem to be recognized and the relief to be expected. They also offered proposals on the text of the guidelines concerning repatriation, maintenance of crew members while stranded, immigration status and payment of outstanding remuneration. On a positive note, they were encouraged by the ISF paper as concerns the issue of abandonment and by the recognition of many governments of the need to deal with this issue.

4.11 The Shipowners, commenting on the ICFTU/ITF document, said that they saw some convergence of ideas in the paper. They felt the paper was a very helpful contribution to the debate.

4.12 The Chairperson proposed that the draft resolution and guidelines adopted by the second session of the Joint Working Group should serve as the basis of discussion.

4.13 The delegation of the United Kingdom supported the suggestion by the Chairperson that the draft text of the resolutions and guidelines adopted at the second session should be the starting point for discussions. He agreed that it was important to define abandonment to ensure consistency in the application of the resolution and guidelines.

4.14 The delegation of Cyprus concurred with views of the delegation of the United Kingdom. However, it noted that there were some inconsistencies between the two resolutions (i.e. on abandonment and on personal injury and death) which must be addressed.

4.15 A representative of the IMO Secretariat (Dr. Balkin), drew attention to the proposal in the ICFTU/ITF submission for the IMO and ILO Secretariats to establish a database of abandoned seafarers as reported by member States. She requested clarification of this proposal.

4.16 A representative of the ILO Secretariat (Ms. Doumbia-Henry) indicated that the establishment of a database, once its modalities were identified, would not be a problem for the ILO, apart from the question of resources.

4.17 In responding to the question raised by the IMO Secretariat, a representative of the ICFTU/ITF said that this issue had been raised in the hope of receiving the views of the IMO and ILO Secretariats on how this might be done. He suggested that the information collected should be placed in the public domain, as this would help encourage prompt resolution of cases.

4.18 Cyprus strongly believed that the establishment of any database on abandoned seafarers must be well defined prior to any decision that is taken on its establishment. The bodies deciding on the establishment of a database must decide whether they want a database providing a monitoring tool or a co-relation database. If the intention of the database is to monitor the implementation of the guidelines the inputs to the database can be limited only to such data to provide statistics on the scale of the problem not its progress over time. On the other hand if the intention is to correlate data to the performance of flag or port in relation to the problem then the input data will be much broader. Finally Cyprus believe that without a focused and precise goal the success of the database is not guaranteed.

4.19 The Seafarers reminded the Joint Working Group that, until they had established their own database on abandonment, it had not been possible to demonstrate the extent of the problem. That was why they now sought to have such information collected and published: to monitor the number of abandonment cases. Responding to the intervention by the delegation of Cyprus on possible legal problems, an observer from the ICFTU/ITF noted that they had maintained their database for a long time without encountering any legal problems.

4.20 The representatives of the ILO and IMO Secretariats indicated that, in their view, the main question was one of ensuring that their organizations had sufficient resources to create and maintain such a database.

4.21 The Chairperson, supported by the observer delegation of the ICFTU/ITF, agreed that once the guidelines had been set out it would be necessary to monitor whether and how they were being applied, and that the database might help in this regard.

4.22 The delegation of the Philippines reiterated that the issue of defining abandonment was more important than the establishment of the database. He noted that in his country there were some circumstances which may not fall into the definition of abandonment used by other countries.

4.23 At the invitation of the Chairperson, the Shipowners introduced document IMO/ILO/WGLCCS 3/4/2 concerning finalization of the work on the resolutions concerning abandonment, death and personal injury as submitted by the International Shipping Federation. In doing so, they noted that it called for flag States to have a variety of options as to the particular guarantee mechanisms they chose to adopt. They also suggested that the draft resolutions and guidelines should avoid being too specific as to the documentation required to be carried on board ships to provide *prima facie* evidence that a guarantee system was in place to provide for the repatriation of abandoned seafarers. They also called for definitions of "abandonment" and "insolvency". As a point of principle, they requested clarification of the extent to which the resolution and guidelines should cover payment of outstanding wages. They felt that this latter issue should be optional for States, otherwise the guidelines would not be complied with. Finally, the paper called for port States to cooperate with flag States on abandonment and repatriation matters.

4.24 The Seafarers, commenting on the ISF document, noted that there was some measure of agreement. They agreed that flag States should have options with regard to guarantee mechanisms and that certificates need not contain excessive detail. Referring to their own submission, they agreed on the need for a definition of "abandonment" but felt that it was not relevant to seek a definition of the term "insolvency" since insolvency was not necessarily linked to abandonment. They believed that the issue of payment of outstanding wages was important.

4.25 The delegation of Cyprus agreed with the Seafarers. As concerns outstanding wages, it said there were two approaches: covering only the bare minimum requirements for maintenance and repatriation, or these and outstanding wages. As concerns repatriation, it noted certain provisions in ILO Convention No. 23. It was important to determine the extent of coverage for outstanding wages as this would be needed to obtain a guarantee from a bank or other institution.

4.26 The Seafarers reiterated the need to link the resolutions to widely ratified and universal international human rights instruments. In regard to the shipowners suggestion to define "insolvency" they asked whether the Shipowners were proposing to look behind one-ship companies to find the beneficial ownership and thus piercing the corporate veil.

4.27 While not disagreeing with the importance of the issue of outstanding wages, the Shipowners noted that the Joint Working Group should bear in mind the need to achieve something which could be easily and quickly accepted and applied. If flag States believe the resolution and guidelines were impractical, then they would not be effective. After considering the views expressed by the Seafarers and others on the question of defining the term "insolvency", they agreed to withdraw that proposal.

4.28 In response to an invitation by the Chairperson to introduce their document IMO/ILO/WGLCCS 3/4/3 concerning finalization of the work on the resolutions concerning abandonment, death and personal injury, the International Group of P&I Clubs responded that it was not relevant to the issue under discussion – abandonment - as this was not a risk underwritten by the Clubs.

4.29 In response to the above, the Seafarers drew attention to the report of the International Commission on Shipping (ICONS), which had, in its executive summary, recommended that the International Group of P&I Clubs might offer a bond covering seafarers in cases of abandonment. Another ICONS recommendation, it noted, included requiring port State control authorities to ensure that ships visiting their ports carried evidence of such P&I guarantees. They also noted that the full ICONS report was available on the internet at the ICONS website.

4.30 The observer from the International Group of P&I Clubs stated that, though his organization had met with ICONS, none of these issues had been discussed. However, not having seen the document and commenting only on what had been said, it would appear that the ICONS proposals were contrary to the principles under which the Clubs operated.

4.31 At the invitation of the Chairperson, Greece introduced its document IMO/ILO/WGLCCS 3/4/4 on finalization of the work on the resolutions concerning abandonment, death and personal injury. The submission drew attention to the importance of the proposals concerning the potential establishment of compulsory insurance, the most important among alternative forms of financial security.

4.32 The Chairperson suggested that the discussion now focus on the texts of the draft resolution and guidelines on abandonment. In doing so, he noted some of the issues raised in the general discussion on this issue, including the suggestion that there should be a means of monitoring the application of the resolution and guidelines, such as an abandonment database, that governments should be given several options concerning guarantee mechanisms and that documentation carried on board should not be overly detailed. There was a need for further discussion on the protection of seafarers' outstanding wages and on the role of port States and flag States. He specifically asked the group if it felt there was a need for a definition of abandonment and for their suggestions on how to proceed on this point.

4.33 After the Seafarers drew attention to an example of a definition of abandonment provided in paragraph 8 of document IMO/ILOP/WGCLCS 3/ 4, he asked if the Working Group accepted that this proposed definition might serve as the basis for discussion.

4.34 The delegation of Cyprus agreed to this proposal and pointed out that it would also be advisable to include a provision on scope of application.

4.35 The delegation of the Republic of Korea agreed in general with the delegation of Cyprus, but proposed a new definition of abandonment which began with a general definition and then incorporated the more specific provisions included in the ICFTU/ITF's proposal.

4.36 The Shipowners and the delegations of Cyprus and the United States said that there was a need for a definition clause as well as a need to identify the elements of abandonment. The definition should be very clear and capture different types of abandonment. After further interventions by the delegation of Cyprus, a representative of the ILO, the Shipowners and the Seafarers concerning whether the resolutions and guidelines should cover fishermen, seafarers on offshore support vessels, vessels under a certain tonnage and vessels operating in international trade, a small drafting group was formed, to further develop a functional definition of abandonment.

4.37 In reporting back to the Joint Working Group, the chairperson of the informal group submitted a definition for the term "Abandonment" as proposed by the group. The definition was accepted with the exception of the use of the phrase 'severance of ties' between the shipowner and the seafarer. This phrase, along with an alternative expression, 'breakdown of relations', was placed in square brackets for further consideration.

4.38 In other interventions, the delegation of Greece indicated that attention should be given to the issue of the nationality of the seafarer; the delegation of Cyprus suggested that consideration be given as to how the IMO and ILO would determine if States had applied the Guidelines; the delegation of Norway reminded the Working Group that many States had not ratified ILO Convention No. 166 on repatriation because it placed financial responsibilities not only on shipowners but also on flag States. An observer from the ICFTU/ITF reiterated the need to include reference to international human rights instruments in the resolution.

4.39 The Chairperson proposed referring to a sub-group with Ms. B. Pimentel (Philippines) as chairperson the draft Resolution and Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers. The sub-group had the following terms of reference:

.1 Definition of Abandonment and other definitions, including shipowner, seafarer/crew member;

.2 Scope of application (threshold, international nature of voyage, fishermen, certification);

.3 Monitoring of resolution and guidelines, including database;

.4 Insuring the Flag State has a number of options with respect to guarantee mechanism;

.5 Avoid being too specific on documentation required to be carried on board;

.6 Coverage of financial guarantee, especially concerning wages;

.7 Respective obligations of Port State Authorities and Flag State Authorities;

.8 The role of the State of the nationality of the seafarer should be established in the operative paragraphs; and

.9 Any other consequential or necessary changes.

4.40 In reporting back to the Joint Working Group, the chairperson of the sub-group noted that the preambular paragraphs and certain operative paragraphs of the draft resolution and the introductory paragraphs of the draft Guidelines had been prepared by the secretariat so as to ensure consistency between the draft resolutions prepared by each sub-group. While the sub-group on abandonment had reached agreement on most of the text, she noted that the text concerning the applicability of the guidelines to fishing vessels and the immigration status of seafarers required further attention. She also drew attention to reservations expressed by Cyprus over text in the draft Guidelines concerning the responsibilities of flag States, which Cyprus felt would be better placed in the draft Resolution.

4.41 Under the direction of the Chairperson, the Joint Working Group reviewed each section of the draft Resolution and Guidelines.

4.42 The Seafarers said that the views they had expressed on the preambular clause relating to the generally accepted principles of international human rights in the draft Resolution on Shipowners' Responsibilities in Respect of Contractual Claims for Personal Injury to or Death of Seafarers also applied to the draft Resolution on Abandonment.

4.43 The Working Group agreed to a recommendation by the delegation of the Netherlands that, as in the other draft Resolution, there should be a reference to the International Convention on Maritime Liens and Mortgages, 1993, and the International Convention on Arrest of Ships, 1999.

4.44 The Seafarers noted that, as the Group had had insufficient time to discuss in detail the Seafarers' proposal for a database on abandoned seafarers, and in view of the fact that the resulting text might be unclear to the Legal Committee of the IMO and Governing Body of the ILO, the operative clause in the draft Resolution concerning the database should be deleted and the matter should be deferred to the next session of the Joint Working Group and reflected in the proposed terms of reference for that session. The Group agreed to this proposal.

4.45 It was also agreed that the sentence "These Guidelines also apply to fishing vessels engaged in international voyages" should be included in the Introduction section of the draft Guidelines. With this change, it felt that paragraphs in the Definition and Scope of Application section referring to gross tonnage could be deleted.

4.46 The Group considered the text submitted by the sub-group concerning certain responsibilities, with regard to abandonment, of flag States, port States and States of which the seafarer is a national. The delegation of Cyprus, supported by the delegation of Greece, noted the draft Resolution would not be accepted by many IMO members, particularly those with Open Registers, if it imposed obligations and responsibilities on States. The delegation of the Bahamas noted that the obligations and responsibilities were inappropriate in the body of the guidelines as they fell outside the scope of application which applied the guidelines to shipowners. Accordingly, these delegations recommended that this text be shifted from the draft Guidelines, which were aimed at shipowners, to the operative clauses of the draft Resolution.

4.47 In response to this suggestion, the Shipowners pointed out that, in cases of abandonment, States did have a responsibility to come to the aid of the abandoned seafarers, and the text was therefore useful and should be kept. In their view, flag States, including Open Registries, should face their responsibilities in such cases.

4.48 The Chairperson of the sub-group explained to the Joint Working Group that the intent of this section had been to indicate the flow of activities to rescue the abandoned seafarer (namely, the establishment of a financial security system in advance by the shipowner, the role of the flag State in supervising the financial security system, the role of the flag State and, failing that, the port State and State of which the Seafarer is a national to assist the seafarer). The removal of this text to the draft Resolution would undermine that intent. This view was supported by the delegation of Panama.

4.49 The delegation of the Republic of Korea said that the issue of abandonment could not be properly addressed in the absence of an active role by flag States. This delegation supported retaining the text in the Guidelines.

4.50 The Group turned its attention to the section on Scope of Financial Security Systems. In particular, it considered a sentence providing that: "Payment of outstanding remuneration should include accrued wages or other entitlements as provided in the contract and/or under national law. Provision of financial security in this regard may be limited to such period as may be determined under national law or collective agreement."

4.51 The Seafarers opposed this text, expressing concern that it could lead to abandoned seafarers receiving far less than what was due and what was justly theirs. In response, the Chairperson of the sub-group noted that the inclusion of the second sentence which limited the period of financial security, was the result of an effort to meet the Joint Working Group's instruction to avoid text that was overly detailed and therefore not widely acceptable. The delegations of Bahamas, Norway, Republic of Korea and the United States supported retention of the text. As the delegation of Bahamas noted, this language only addressed limits of payments under the financial security system and would not prevent the seafarer from pursuing other claims against the shipowner for recovery of outstanding remuneration or undermine the seafarer's lien against the vessel. The delegation of Norway explained that it would be very difficult to purchase a guarantee from banks or other markets without setting a limit on what was to be covered.

4.52 The Seafarers reiterated their view that the obligation to compensate seafarers was vested primarily in the shipowner but that flag States had a residual responsibility in this regard. They contested the view that it was not possible to insure for all remuneration owed to the seafarer. They referred to their proposal, in IMO/ILO/WGLCCS 3/4 which had included, as outstanding remuneration, contractual and customary wages, overtime pay, paid leave, severance pay, social security contributions, pension contributions and contractual benefits in kind, as well as other entitlements as provided for in contract and under national law. They further noted that they had also proposed that, in addition to the above, the seafarer should be entitled to recover under the guarantee, remuneration at the same level for a period not less than eight weeks following the event of abandonment.

4.53 The delegation of the United States, supported by the delegation of Cyprus, proposed the deletion, in the section of the draft Guidelines concerning Immigration Status of text calling for port States to take into account, in considering the immigration status of abandoned seafarers, evidence of the coverage of an abandoned seafarer by a financial security system and stating that

the absence of a financial security system should not reflect unfavourably on the immigration status of the seafarer. In its view, these sentences should be deleted as they would impose a responsibility on immigration authorities.

4.54 The delegation of Cyprus, supported by the delegation of Greece indicated its opposition to compelling a State to issue a certificate. It preferred instead to leave the means of demonstrating evidence of financial security to the flag State. Commenting on the certification provisions, the delegation of Korea indicated that the flag State must take some role in this matter and that this should be reflected in the Guidelines, not just in the Resolution.

4.55 The Chairperson established an informal drafting group to address the issues raised. As a result of further work by the informal drafting group, the Chairperson identified a number of changes to the draft resolution contained in IMO/ILO/WGLCCS 3/WP.4, and the Working Group agreed to these changes.

4.56 The observer delegation from the International Group of P&I Clubs reiterated its statement that the P&I Clubs did not provide insurance for abandonment, nor, in their view, could any other insurer.

4.57 The delegation of Cyprus indicated that it had the impression that the shipowners would be able to provide the financial security called for in the draft resolution, and, with that understanding, Cyprus could support the resolution. This delegation recommended that the secretariats should be authorized to carry out any stylistic changes and editorial improvements that might be called for, under the guidance of the Chairperson.

4.58 The delegations of France, the Philippines and Greece supported the statement of Cyprus and said they could support the draft resolution and the guidelines.

4.59 The Shipowners and the Seafarers said they could support the resolution and the guidelines.

4.60 The Chairperson was thanked for the efforts he had made to bring about a successful outcome.

4.61 The Group adopted the resolution on guidelines on provision of financial security in case of abandonment of seafarers by consensus. The text is provided at annex 2.

Discussion of the draft resolution and guidelines concerning financial security in respect of personal injury and death of seafarers

4.62 The Chairperson then turned to a discussion on the issue of financial security for personal injury and death claims of seafarers.

4.63 At the invitation of the Chairperson, the Seafarers introduced document IMO/ILO/WGLCCS 3/4/1, prepared by the ICFTU/ITF, concerning finalization of the work on the draft guidelines and draft resolution in respect of contractual claims for personal injury and death to seafarers. They believed that the draft resolution and guidelines developed at the last session of the Working Group were the appropriate way forward. Their document contained proposals for amendments to the draft instruments and focused on direct access by seafarers or their next of kin to insurers and prompt payment of contractual claims. When identifying problems, they did not intend to single out the International Group of P&I Clubs nor paint all clubs with the same brush. They noted that the Working Group had already recognized the

seriousness of these issues. In the view of the Seafarers, contractual claims and other claims at law had the same importance but, as a first step, they would focus on the contractual claims issue. Their document offered several amendments which they submitted to the Joint Working Group for consideration.

4.64 As recommended by the delegation of Cyprus, which had drawn attention to the divergent views in the relevant ICFTU/ITF document and in the ISF document, the Chairperson invited the Shipowners to introduce document IMO/ILO/WGLCCS 3/4/2 submitted by the International Shipping Federation. Both documents could then be discussed together.

4.65 The Shipowners stated that, in principle, there was not much difference between the positions of the Shipowners and the Seafarers. The Shipowners wanted measures to ensure prompt payment of contractual claims in full. However, there was a need to convince not only participants in the Joint Working Group but also the international community as whole. To do so, it was necessary to demonstrate that the problem was significant. After several sessions of the Joint Working Group, as well as outside meetings with the P&I Clubs, it appeared that the extent of the problem was not significant. They paid tribute to the ITF, which had put enormous energy into the work of collecting information on problem cases, but noted that in all these cases, the ITF was not impartial as it was an advocate, representing the seafarers. The Working Group must determine whether this was a major issue. However, evidence provided by the P&I Clubs indicated that in most of the two dozen cases brought to the attention of the Working Group by the ITF, the International Group of P&I Clubs felt that no injustice had occurred. There was thus no major failure of the system. It was true that the International Shipping Federation and International Group of P&I Clubs held similar views on these issues as they represented essentially the same people. They noted that some provisions of the draft resolution and guidelines were not compatible with the P&I system as it went counter to the mutuality principle on which it was based. However, there were some proposals which could be accepted, such as the proposed model receipt and release form which would address unacceptable delays in payments. Furthermore, the International Group of P&I Clubs had agreed to take on cases of malpractices and inordinate delay, and the International Shipping Federation would take on those cases not under the International Group. Finally, they feared that the current approach, if taken to the Legal Committee, would not be considered acceptable and the work done would be wasted.

4.66 At the invitation of the Chairperson, the observer delegation of the International Group of P&I Clubs was invited to introduce its document IMO/ILO/WGLCCS 3/4/3. He referred to the expression, “If it ain’t broke, don’t fix it”. The International Group had investigated the cases brought to its attention by ITF. Even if these cases had presented problems, which was not the case, they were statistically negligible: .018% of all claims handled. However, those cases concerning Group Clubs had been investigated and the Clubs investigations were contained in annex 3 of the document. As could be seen from this, the complaints were in almost every case unfounded. The International Group would be willing to discuss with the ITF other cases, but it was apparent that these would still be statistically negligible. The Clubs had proposed an informed procedure for dealing with hard cases. Such a move would have an immediate impact. The *Leros Strength* case, which had been discussed at length at the last session of the Working Group, had demonstrated this. The International Group also supported the policy that contractual claims should be paid as quickly as possible and without deduction and to that end they had sent a circular concerning Group policy in this regard. A copy of this was contained in IMO/ILO/WGLCCS 3/4/3/Add.1 (annex 3). He reiterated that what the International Group was promoting was pragmatic and would have an immediate effect. He also drew attention to IMO Assembly resolution A.898(21) and to their proposal to adopt a resolution clarifying the effect of that resolution so as to extend it to claims for personal injury and death of seafarers. He did not

think the draft guidelines that had been proposed at the last session of the Working Group were necessary.

4.67 The Seafarers stated that, when considering the P&I Club submission, it was important to bear in mind the interest of the Clubs. They cited a recent article in Maritime Policy which seemed to indicate that substandard shipping may actually reduce their risks. The P&I Clubs submission, they added, should be read as reflecting the self-interest of cosy cartels which cynically sought to reduce their risks. What the Seafarers wanted was a system that was fair and protected seafarers. When the ICFTU/ITF had provided information on certain problem cases, these were not meant to show the extent of the problem but only aimed to illustrate the problem and the failure of the system to address it.

4.68 It was inappropriate to use these cases as a means of projecting the size of problem. Referring to the proposal in paragraph 17 of the International Group's submission (which concerned the establishment of an informal arrangement for the handling of allegations that manifestly unfair claims techniques were being employed), the Seafarers stated that the P&I Clubs were not acting in good faith. The arrangement they proposed was not transparent and smacked of paternalism and even colonialism. If they had been at all sincere, they would have proposed that these problems should be handled by an independent ombudsperson. The Seafarers were shocked that the Clubs had, in paragraph 21b of their document suggested that international Conventions were meaningless. These views were totally inconsistent with the legal opinion obtained by the ITF from Dr. Lowe and contained in their submission. On the other hand, the Seafarers were encouraged by certain aspects of the Group's draft release form. In paragraph 25 concerning an international mandatory system, the Group had suggested that such a system would be unnecessary or would conflict with national legislation as many of the States whose nationals had been employed at sea had introduced domestic legislation addressing the issues. The Seafarers considered that such a position sought to exonerate flag States of their responsibilities. They were also of the view that the International Group would seek to bury the UNCLOS Convention, and that such a position had profound implications for efforts to eliminate substandard shipping.

4.69 The observer from the International Group of P&I Clubs strongly objected to the statement by the Seafarers that his organization's proposal had been offered in bad faith. He questioned whether the Seafarers really wanted his organization to participate in the discussions. In reply, an observer from the ICFTU/ITF said that, contrary to what had been said by the delegation of the International Group, drawing attention to the Leros Strength case as at occurred at the last meeting, had not led to progress at the informal level but instead had had a negative effect on settling the case. The observer from the International Group of P&I Clubs contested this assertion. He pointed out that an offer to pay the contractual entitlements had been made on the 3rd November 2000 but no response had been received to this to date. Further, the Club involved had not been able to make a payment into court as the claimant's proceedings were not sufficiently advanced.

4.70 The delegations of Cyprus, France, Greece and the United Kingdom indicated they wished the Working Group to use the draft resolution and guidelines prepared at the last session as the basis for discussion. France in particular emphasized that the P&I Clubs had refused to take any significant step to meet the reasonable demands of the seafarers regarding the criteria for insurance in case of injury or death. This was the main reason why a decision had been taken during the second meeting to draft a resolution and guidelines on this matter.

4.71 Bearing in mind the wide gap between the views of the participants, the Chairperson proposed that the social partners engage in informal consultations to bridge the differences on the approach to this question.

4.72 Following informal consultations between the social partners, the Shipowners and Seafarers reported that they had agreed that a working group could be set up to continue work on this subject using annex 4 of IMO/ILO/WGLCCS 2/11 as the base document and taking into account the documents which had been submitted to the meeting containing comments on the draft resolution and guidelines as well as the understandings reached by the social partners during the informal consultations.

4.73 During this discussion, the observer from the P&I Clubs recalled that their proposal offered a practical solution to the insurance issue in document IMO/ILO/WGLCCS 3/4/3. The delegation of Cyprus suggested that the Secretariats should invite others in the insurance industry to attend the Joint Working Group's next meeting.

4.74 The observer delegation from the Netherlands suggested that the Joint Working Group should ensure that any guidance which was developed should reflect the fact that existing national schemes may adequately provide protection for seafarers, and effective existing schemes should not have to be replaced. In this regard, the Netherlands called attention to the wording in the draft guidelines on abandonment of seafarers which referred directly to national schemes and suggested such wording might appropriately be introduced into the draft resolution on injury and death.

4.75 The Seafarers indicated that there was a need to give close attention to the mechanism to be used to provide effective insurance. They offered to meet with the Shipowners and the P&I Clubs to discuss the proposal made by the Clubs, and to report back to the next meeting.

4.76 The draft resolution and guidelines concerning personal injury and death were referred to a sub-group chaired by Mr. Nicholas Charalambous (Cyprus). In reporting back to the Joint Working Group, the chairperson of the sub-group introduced the draft resolution on personal injury to and death of seafarers. The social partners expressed appreciation to the chairperson of the sub-group for his guidance and leadership.

4.77 The observer delegation from the International Group of P&I Clubs reiterated its opinion that, after an exhaustive review of the issues, the Guidelines were unnecessary. A thorough investigation had been carried out by the P&I Clubs into the cases concerning which the seafarers had made complaints. These cases represented 0.018% of the total of the 84,000 claims handled by the P&I Clubs in the relevant time period of six years. The particular cases complained of had all been exhaustively investigated, the results of which appeared in Appendix 1 to the paper submitted to the session. The International Group had concluded that there was no basis for the concern voiced by the Seafarers. Since nevertheless the IMO and ILO considered it necessary to develop Guidelines, the Clubs role was to advise on their workability. The Group's view was that the Guidelines prepared contained several provisions which would prove in practice unworkable. The Guidelines as presently drafted did not appear to be workable certainly so far as the issue of certificate by an insurer was concerned. Paragraph 7.1 required shipowners to have on board certificates issued by insurers. Paragraph 7.2.9 required an attestation that the insurance meets "recommended standards" which although not defined, presumably meant the "functional criteria" set out in paragraph 6.1 (See also the definition of "insurance" in paragraph 2.1.5.). If that was correct, then the record should show that insurers would not be able to issue a certificate that provided for seafarers receiving prior notification if the insurance is to be cancelled not renewed. He proposed that the question of notification of seafarers could be dealt with by making it a shipowners' responsibility under paragraph 4 of the draft guidelines. In addition the last five words of the second sentence of definition 2.1.5 do not seem to make sense, because of the removal of the reference to the type of insurance provided by members of the International Group of P&I Clubs as it appears in resolution A.898(21).

4.78 The Seafarers explained that paragraph 6.1.4 of the draft guidelines covered the situation in which the insurance is cancelled by the insurer itself, not by the shipowner. In such a case the insurer would have to inform the seafarers. This opinion was shared by the Shipowners who noted that the obligation to inform the seafarers was dischargeable by either the shipowner or the insurer.

4.79 The Seafarers expressed their disappointment over the rewording by the Secretariat of the third preambular paragraph of the resolution, which referred to international human rights instruments. In particular, they regretted the omission of an express reference to several of these instruments. In this connection they made the following statement:

> "The Seafarers consider that there are fundamental human rights issues relevant to the discussions of this Working Group and have submitted an authoritative opinion by Prof. V. Lowe on this issue. The opinion clearly indicates that these State obligations provide a positive duty to secure the implementation of rights, many of which are inalienable rights. These general international human rights instruments are intended to lay down standards of behaviour for States and have in a maritime context to be linked to the provisions of UNCLOS. This means that the flag State has primary responsibility for ensuring the fulfilment of human rights obligations in respect of the persons employed or engaged on board a vessel flying its flag. Flag States are, under applicable international law, bound to secure the human rights of their crews. We regret that more meaningful citations could not be adopted in the preambular text of the resolutions because we believe there is an important linkage between human rights of each and every crewmember and the right to just and safe conditions of work and respect for human dignity. This entails certain elementary duties in respect of the conditions under which seafarers work."

4.80 We therefore expect that these issues will be further discussed during the on-going work of the *Ad hoc* Working Group and believe that they must be given greater attention as the organizations seek to address the human element."

4.81 The Shipowners clarified that they did not object to the contents of the third paragraph of the preamble.

4.82 A long debate followed on whether or not the introduction of the draft guidelines should include a specific reference to applicability to fishing vessels, or to fishing vessels engaged in international navigation, in view of the fact that such ships and their personnel are usually subject to a specific international regime.

4.83 In this connection, the Group decided to maintain the sentence providing for applicability of the guidelines to fishing vessels, noting that Governments would decide on the question of its applicability.

4.84 The delegation of the United States stressed that the definition of "personal injury" was central to the Guidelines. In this connection the delegation made the following declaration:

> "Regrettably, the definition of Personal Injury in paragraph 2.1.3 erodes existing rights of seafarers under the general maritime law, United States law and laws of most maritime nations that provide the seafarers who fall sick or are injured while in the services of the ship will be provided medical care and living expenses without regard to work connection. The text dramatically departs from these ancient principles by replacing them with much more limited occupational injury or illness standards. Guidelines are the

result of tripartite efforts to improve the lot of seafarers who risk injury, illness and death in their service on ships. The Guidelines should therefore be our expression to the maritime industry and to seafarers themselves that seafarers are vitally important and that we want to protect them and preserve the laws that protect them. This delegation does not wish to send a message to the seafarers and the industry that this Working Group accepts an erosion of seafarers fundamental rights."

4.85 The Shipowners noted there was no intention to detract from existing rights of the seafarers, and that the definition of personal injury included in the draft was appropriate for the purpose of the Guidelines.

4.86 After extensive debate, the Group agreed that the definition of claim contained in the draft already covered contractual claims. The Group noted the declaration of the United States, and agreed that it might revert on the subject at its next meeting.

4.87 Before concluding its deliberations on this agenda item, the Group agreed that future work should include the determination of a mechanism for prior notification of cancellation of the insurance cover.

4.88 The Group adopted the resolution as set out in annex 3.

General observations

4.89 The Joint Working Group expressed the view that the two Resolutions and Guidelines which had been adopted recognized that a number of States may have already in place legislation and regulations giving effect to the Guidelines. The Guidelines also take into account that a body of legal and administrative decisions may exist at the national level which may need to be considered when giving effect to the Guidelines. Each State shall determine the manner in which it gives effect to the Guidelines. These Guidelines are by no means exhaustive and a State may need to supplement them, where it deems necessary, in order to adequately address specific issues. These Guidelines form the first step for the IMO and the ILO in this area. The Guidelines are intended to be revised in the light of practical experience gained from their application.

5 Examination of a possible longer term solution for financial security in respect of abandonment and personal injury and death of seafarers

5.1 The Chairperson noted that, on one hand the papers submitted at the session did not contain substantive proposals on possible longer term solutions for financial security in respect of abandonment, personal injury and death of seafarers and, on the other hand, the elaboration and finalization of the two resolutions and related guidelines took longer than expected at the beginning of the week. He therefore proposed that the long-term solution could be considered at a further meeting of the Joint Working Group, to be held at the end of the current year, or at the beginning of following year. The same session could discuss the implementation of the resolutions and the monitoring of their implementation, also in the light of the decisions of the IMO Legal Committee and the ILO Governing Body.

5.2 The delegation of Cyprus agreed with the Chairperson's proposal, including the timing for the meeting. The delegation suggested the insertion of a new paragraph in the operative part of draft resolutions calling for both Organizations to continue their work on these issues.

5.3 The Seafarers agreed with the suggestion of the Chairperson, stressing that the resolutions were only the first step toward a solution of the problems.

5.4 The Shipowners agreed that a further meeting to discuss the long-term solution and to review the impact of the resolutions would be useful. They further agreed to the proposal to hold the next session in the early part of 2002.

5.5 The Seafarers stressed that it was essential to achieve a sustainable solution. A decision on the database could only be made after knowing the views of the governing bodies on the subject. A further meeting of the social partners and the P&I Clubs could produce useful suggestions for the next session, and they would be able to submit documents on the matter.

5.6 The Joint Working Group agreed to hold another session at the beginning of 2002, from 28 January to 1 February 2002 at IMO Headquarters in London to discuss the implementation of the resolutions, the monitoring of their implementation, the options for long-term sustainable solution of the problems and the revision of the terms of reference. The Provisional Agenda is set out in annex 4. The deadlines for submission of documents for consideration at the next session of the Working Group were set at: 17 December 2001.

5.7 The P&I Clubs stated that, as would be clear from the views which they had expressed, they did not feel a longer term solution for financial security in respect of personal injury and death of seafarers was necessary.

6 Possible revision of terms of reference to address the longer term solution

6.1 The Working Group agreed to consider the possible terms of reference to address the longer term solution at its proposed next session.

7 Recommendations to the Governing Bodies concerning the adoption of the resolutions, future work of the Working Group and revision of the terms of reference as appropriate

7.1 The two resolutions and guidelines adopted would be submitted to the appropriate bodies of the two Organizations.

7.2 In reply to a questions raised by the delegation of the Philippines, the Chairperson indicated that the resolutions as adopted by the Group would, in the case of IMO, be presented first to the IMO Legal Committee in October 2001, and, if approved by that committee, would be submitted to the IMO Council and then the IMO Assembly in November 2001. If the resolutions were adopted, then they would be effective in January 2002. In the case of ILO, the resolutions would be submitted directly to the ILO Governing Body at its meeting in November 2001. It was therefore anticipated that both resolutions would be accepted by both Organizations in November of this year. The Chairperson advised the Group that the Secretariats of ILO and IMO would take steps to bring the resolutions to the attention of their respective Member Governments.

7.3 The Chairman noted that discussions on the future work of the Working Group had taken place under agenda item 6.

7.4 The Chairperson then recalled the Group's terms of reference (IMO/ILO/WGLCCS 2/11, annex 5) and suggested that the tasks remained appropriate for the Group and work would continue on these tasks at the Group's fourth meeting. Therefore, in his view, no revision was necessary. The Group concurred in this view.

8 Any other business

8.1 The delegation of Cyprus said that all insurance organizations holding consultative or observer status in IMO or ILO should be invited to the Group's next meeting, to ensure a wide industry view was available to the Group.

9 Adoption of the draft report

9.1 The report was adopted by the Joint Working Group.

10 Action requested of the two Organizations

10.1 The Governing Body of the International Labour Office is invited to:

.1 approve the report of the Third 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;

.2 approve the draft Resolution and Guidelines on provision of financial security in case of abandonment of seafarers (annex 2);

.3 approve the draft Resolution and Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers (annex 3); and

.4 transmit to ILO Member States and to seafarers and shipowners organizations, the report of the Joint Working Group as well as the resolutions and guidelines referred to above.

.5 approve the continuation of the Working Group with the proposed terms of reference contained in annex 4.

10.2 The Legal Committee of the International Maritime Organization is invited to:

.1 Note the report of the Third 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;

.2 approve the draft Resolution and Guidelines on Provision of Financial Security in case of abandonment of seafarers (annex 2) for submission to the IMO Assembly for adoption;

.3 approve the draft Resolution and Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers (annex 3) for submission to the IMO Assembly for adoption; and

.4 approve the continuation of the Working Group with the proposed terms of reference contained in annex 4.

***

ANNEX 1

List of Documents submitted for the purposes of the Joint Working Group

Document Number	Document Title
IMO/ILO/WGLCCS 3/1	Provisional Agenda
IMO/ILO/WGLCCS 3/3	Report on Information Prepared or Collection by the ILO and IMO Secretariats
IMO/ILO/WGLCCS 3/3 Add.1	Information requested of the ILO and IMO Secretariats for the Third Session of the Joint Working Group
IMO/ILO/WGLCCS 3/4	Finalization of the Work on: The resolution concerning abandonment (ICFTU/ITF)
IMO/ILO/WGLCCS 3/4/1	Finalization of the Work on: The resolution concerning abandonment, death and personal injury (ICFTU/ITF)
IMO/ILO/WGLCCS 3/4/2	Finalization of the Work on: The resolution concerning abandonment, death and personal injury (ISF)
IMO/ILO/WGLCCS 3/4/3	Finalization of the Work on: The resolution concerning abandonment, death and personal injury (P&I Clubs)
IMO/ILO/WGLCCS 3/4/3 Add.1	Finalization of the Work on: The resolution concerning abandonment, death and personal injury (P&I Clubs)
IMO/ILO/WGLCCS 3/4/4	Finalization of the Work on: The resolution concerning abandonment, death and personal injury (Greece)
IMO/ILO/WGGLCCS 3/5	Examination of a Possible Longer Term Solution for Financial Security in Respect of: abandonment, personal injury and death of seafarers (ICFTU/ITF)
IMO/ILO/WGLCCS 3/5/1	Examination of a Possible Longer Term Solution for Financial Security in Respect of: Abandonment, personal injury and death of seafarers (Norway)

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ANNEX 2

DRAFT RESOLUTION

GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT OF SEAFARERS

THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE;

NOTING the importance of the human element in International Maritime Organization's (IMO) plan of action, which is central for the promotion of quality shipping and the core mandate of the International Labour Organization (ILO) which is to promote decent work;

RECALLING the ILO Declaration on Fundamental Principles of Rights at Work and its Follow-up as well as the relevant international labour standards applicable to maritime employment;

RECALLING ALSO the generally accepted principles of international human rights applicable to all workers;

RECALLING FURTHER Article 94 of the United Nations Convention on the Law of the Sea, 1982 which requires the flag State to exercise its effective jurisdiction and control in administrative, technical and social matters over ships flying its flag;

CONSIDERING the provisions of Article 5 the Vienna Convention on Consular Relations, 1963, in particular, the extension by a State of consular protection and assistance to its nationals and to its vessels and their crews;

CONSIDERING FURTHER the International Convention on Maritime Liens and Mortgages, 1993, and the International Convention on Arrest of Ships, 1999;

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

NOTING FURTHER the Resolution concerning the Protection of Wages and Stranded Seafarers adopted by the Governing Body of the International Labour Office at its 252nd session (March 1992);

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

CONSIDERING ALSO that, given the global nature of the shipping industry, seafarers need special protection;

CONCERNED THAT, if shipowners do not have effective financial security, seafarers may not receive due remuneration or be promptly repatriated in cases of abandonment;

NOTING that the Guidelines represent a valuable contribution to the objectives of eliminating the operation of sub-standard ships and enhancing the social protection of seafarers;

RECOGNIZING ALSO that the present resolution does not call for the adoption of additional mechanisms where national legislation already meets or exceeds the provisions of the Guidelines;

AFFIRMING that provision for repatriation, maintenance while abandoned, and payment of remuneration 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 its obligations;

RECOGNIZING FURTHER that in cases where the shipowner fails to meet its obligations, the flag State may be called upon, and, in some cases, the State of which the seafarer is a national or the port State may be called upon, to intervene;

CONVINCED that the adoption of guidelines is an appropriate interim measure to ensure provision of financial security in case of abandonment of seafarers;

1. ADOPT the Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers, set out in the Annex to the present resolution;

2. REQUEST Member Governments to bring this resolution and Guidelines to the attention of shipowners and seafarers and their respective organizations;

3. URGE Member Governments, when discharging their obligation as flag States:

.1 to ensure that shipowners comply with the Guidelines;

.2 to ensure that seafarers employed or engaged on ships flying their flag are protected, in case of abandonment, by a financial security system;

.3 to have in place, as a contingency, arrangements for the maintenance and repatriation of seafarers employed or engaged on ships flying their flag, in cases of abandonment;

4 URGE ALSO Member Governments, where seafarers have been abandoned within their jurisdiction, to inform the flag State of the ship and the States of which the seafarers are nationals about the event, and, to cooperate and assist each other in the speedy resolution of the situation;

5 INVITE Member Governments to recognise that, in accordance with the relevant international labour standards, when the shipowner has not fulfilled its international obligations and the financial security system or the flag State fails to repatriate abandoned seafarers, the port State or the States of which the seafarers are nationals may undertake the repatriation without prejudice as to the recovery of the costs;

6 RECOMMEND that Member Governments:

.1 draw the attention of their immigration authorities to the benefits provided to abandoned seafarers covered by a financial security system;

.2 consider that the absence of a financial security system should not prejudice the immigration status of abandoned seafarers;

7. CALL UPON Member Governments, without prejudice to notification requirements under applicable international instruments, to communicate to the Secretary-General of the IMO or the Director General of the ILO, for the purpose of disseminating the information widely, national focal points responsible for dealing with cases of abandonment and with other issues falling within the scope of the Guidelines;

8. INVITE Member Governments and non-governmental organizations with consultative or observer status in the IMO or the ILO, as appropriate, to record instances of abandoned seafarers and to provide data to the IMO or the ILO whenever requested;

9 REQUEST the Assembly of the IMO and the Governing Body of the ILO to keep the problem of abandonment under review and to periodically assess the scale of the problem;

10. INVITE the IMO Assembly and the ILO Governing Body to consider other appropriate action for longer-term sustainable solutions to address the problems covered by these Guidelines;

11 REQUEST the IMO Assembly and the ILO Governing Body to keep the Guidelines under review and to amend them as necessary; and

12 INVITE Member Governments to note that these Guidelines will take effect on 1 January 2002.

ANNEX

GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT OF SEAFARERS

1 INTRODUCTION

1.1 The purpose of the Guidelines is to assist States, when establishing their national requirements, to identify the most crucial issues relating to financial security in case of abandonment of seafarers.

1.2 The Guidelines recommend measures to be implemented by shipowners to ensure the provision of an adequate financial security system for seafarers in case of abandonment. The Guidelines set out the main features and scope of coverage of the financial security system and also contain recommendations for certification of the financial security system.

1.3 These Guidelines also apply to fishing vessels engaged in international voyages.

2 DEFINITIONS

2.1 For the purpose of these Guidelines unless expressly provided otherwise:

.1 *Shipowner* means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities;[*]

.2 *Seafarer* means any person who is employed or engaged in any capacity on board a seagoing ship; and

.3 *Abandonment* is characterised by the severance of ties between the shipowner and the seafarer. Abandonment occurs when the shipowner fails to fulfil certain fundamental obligations to the seafarer relating to timely repatriation and payment of outstanding remuneration; provision of the basic necessities of life, *inter alia*, adequate food, accommodation and medical care. Abandonment will have occurred when the master of the ship has been left without any financial means in respect of ship operation;

3 SCOPE OF APPLICATION

3.1 Shipowners are urged to comply with these Guidelines in respect of all seagoing ships.

3.2 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.

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[*] Article 1(c) of the Recruitment and Placement of Seafarers Convention 1996 (No.179) and Regulation IX/1.2 of SOLAS 1974 as amended.

4 SHIPOWNERS' RESPONSIBILITIES

4.1 Shipowners should arrange a financial security system which complies with these Guidelines.

4.2 Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these Guidelines.

5 SCOPE OF FINANCIAL SECURITY SYSTEMS

5.1 The financial security system should provide for:

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

.2 the maintenance of the seafarers from the time of abandonment to the time of arrival at the place of repatriation;

.3 the payment to the seafarers of all outstanding remuneration and contractual entitlements; and

.4 the payment to the seafarers of other expenses incurred by them during the period of abandonment arising from the abandonment.

5.2 In the event the shipowner fails to fulfil its responsibilities, the financial security system should provide for repatriation of the seafarer by appropriate and expeditious means, normally by air, and including provision for food and accommodation of the seafarer from leaving the ship until arrival at the place of repatriation, medical care, passage and transport of personal effects and any other reasonable charges.

5.3 The maintenance of seafarers while abandoned should include: adequate food, clothing, accommodation, medical care and other basic necessities of life.

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

5.5 In the event that the seafarer incurs any other reasonable expenses during the period of abandonment, the seafarer should be entitled to recover such expenses from the financial security system.

6 FORM OF THE FINANCIAL SECURITY SYSTEM

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

6.2 The financial security system in addition to the provisions of paragraph 5.1 should provide the following:

(a) a right of direct access by the seafarer to the financial security system;

(b) sufficient coverage in respect of the elements of abandonment contained in these Guidelines; and

(c) the applicability of the financial security system to all seafarers irrespective of nationality.

7 CERTIFICATES

7.1 Shipowners should ensure that their seagoing ships engaged on international voyages have on board a certificate attesting to the existence of a financial security system in the event of abandonment of seafarers. It should be posted in a prominent position in the seafarers' accommodation.

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

7.3 As a minimum, the certificate should include:

.1 name of the ship;
.2 port of registry of the ship;
.3 call sign of the ship;
.4 IMO Number of the ship;
.5 name of the provider of the financial security;
.6 place of business of the provider of the financial security;
.7 name of the shipowner;
.8 the period of validity of the financial security; and
.9 an attestation that the financial security meets the recommended standards set out in these Guidelines.

7.4 A copy of the certificate should be provided when required to the immigration authorities for purpose of informing them that the seafarers are provided with a financial security system covering their maintenance, repatriation and payment of outstanding remuneration.

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ANNEX 3

DRAFT RESOLUTION

GUIDELINES ON SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO OR DEATH OF SEAFARERS

THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANISATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE,

NOTING the importance of the human element in International Maritime Organization's (IMO) plan of action, which is central for the promotion of quality shipping and the core mandate of the International Labour Organization (ILO) which is to promote decent work,

RECALLING the ILO Declaration on Fundamental Principles of Rights at Work and its Follow-up as well as the relevant international labour standards applicable to maritime employment,

RECALLING ALSO the generally accepted principles of international human rights applicable to all workers,

NOTING the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended, the International Convention on Maritime Liens and Mortgages, 1993, and the International Convention on Arrest of Ships, 1999,

NOTING ALSO that in a significant number of cases, there are the serious and real problems in regard to the handling of seafarers' claims for personal injury and death which involve a human and social dimension,

RECOGNIZING that there is 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 that shipowners, in discharging their responsibilities to provide for safe and decent working conditions, should have effective arrangements for the payment of compensation for death or personal injury,

CONSIDERING ALSO that, given the global nature of the shipping industry, seafarers need special protection,

CONSIDERING FURTHER that full and prompt contractual compensation should be paid without prejudice to any other legal rights seafarers or their next of kin may have,

CONCERNED that, if shipowners do not have effective insurance cover, or other effective forms of financial security, seafarers are most unlikely to obtain full and prompt compensation,

NOTING that the Guidelines represent a valuable contribution to the objectives of eliminating the operation of sub-standard ships and enhancing the social protection of seafarers,

RECOGNIZING also that the present resolution does not call for the adoption of additional mechanisms where national law already meets or exceeds the provisions of the Guidelines,

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 other effective forms of financial security for maritime claims,

CONVINCED that the adoption of guidelines is an appropriate interim measure to ensure payment of compensation for personal injury to and death of seafarers,

1. ADOPT the Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers set out in the Annex to the present resolution;

2. REQUEST Member Governments to bring this resolution and Guidelines to the attention of shipowners and seafarers and their respective organizations;

3. INVITE Member Governments to ensure that shipowners comply with the Guidelines;

4. INVITE the IMO Assembly and the ILO Governing Body to consider other appropriate action for longer-term sustainable solutions to address the problems covered by these Guidelines;

5. REQUEST the IMO Assembly and the ILO Governing Body to keep the Guidelines under review and amend them as necessary; and

6. INVITE Member Governments to note that these Guidelines will take effect on 1 January 2002.

ANNEX

GUIDELINES ON SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO OR DEATH OF SEAFARERS

1. INTRODUCTION

1.1 The purpose of the Guidelines is to assist States, when establishing their national requirements, to identify the most crucial issues relating to the payment to seafarers of contractual claims for personal injury or death.

1.2 The Guidelines recommend measures to be implemented by shipowners to ensure that there is an effective insurance cover or other financial security to provide full and prompt payment of such claims. The Guidelines also contain recommendations for certification and provide a model receipt and release form for such claims.

1.3 These Guidelines are also suitable for fishing vessels.

2. DEFINITIONS

2.1 For the purposes of these Guidelines unless expressly provided otherwise:

.1 *Shipowner* means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities;[*]

.2 *Seafarer* means any person who is employed or engaged in any capacity on board a seagoing ship;

.3 *Personal injury* means any disease or impairment of a seafarer's physical or mental condition arising out of or in connection with employment of the seafarer;

.4 C*laims* means valid contractual claims for compensation for personal injury or death at levels provided for within the terms and conditions of employment of seafarers;

.5 *Insurance* means effective insurance or other forms of financial security to meet claims against shipowners which comply with the functional criteria set out in these Guidelines; and

.6 *Insurer* means any person or entity providing insurance for a shipowner.

[*] Article 1(c) of the Recruitment and Placement of Seafarers Convention 1996 (No.179) and Regulation IX/1.2 of SOLAS 1974 as amended.

3. SCOPE OF APPLICATION

3.1 Shipowners are urged to comply with these Guidelines in respect of all seagoing ships.

3.2 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.

4. SHIPOWNERS' RESPONSIBILITIES

4.1 Shipowners, in discharging their responsibilities to provide for safe and decent working conditions, should have effective arrangements for the payment of compensation for death or personal injury. Shipowners should arrange for their ships effective insurance cover that complies with these Guidelines.

4.2 Shipowners should take steps, when a claim arises, for its prompt payment. Shipowners should also ensure that all valid contractual claims should be paid in full. There should be no pressure, by their representative or by the representative of their insurers, for a payment less than the contractual amount or for a payment which in any way conflicts with these Guidelines.

4.3 Where the nature of the personal injury makes it difficult for the Shipowner to make a full payment of a claim an interim payment should be made to the seafarer so as to avoid undue hardship.

4.4 Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these Guidelines.

5. PAYMENT OF CLAIMS

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

6. INSURANCE COVER

6.1 The functional criteria for insurance for claims should include, *inter alia* that:

.1 the contractual compensation, as provided by the contract of employment and without prejudice to (2) below, should be paid in full and without delay;

.2 the seafarer should receive payment without prejudice to other legal rights, but such payment may be offset against any damages resulting from any action in tort arising from the same incident;

.3 the shipowner should ensure that a certificate is provided indicating the period of cover of the insurance;

.4 the seafarers should receive prior notification if the insurance is to be cancelled and be notified immediately if it is not to be renewed; and

.5 the insurance should provide for the payment of all claims arising during the period for which the certificate is valid.

7. CERTIFICATES

7.1 Shipowners should ensure that their ships have on board a certificate issued by the insurer. It should be posted in a prominent position in the seafarers' accommodation.

7.1.1 Where more than one insurer provides cover for claims, certificate from each insurer is required.

7.2 As a minimum, the certificate should include:

.1 name of the ship;

.2 port of registry of the ship;

.3 call sign of the ship;

.4 IMO number of the ship;

.5 name of the provider or the financial security;

.6 place of business of the provider of the financial security;

.7 name of the shipowner;

.8 period of validity of the financial security; and

.9 an attestation that the financial security meets the recommended standards set out in these Guidelines.

APPENDIX

MODEL RECEIPT AND RELEASE FORM

FOR CONTRACTUAL CLAIMS

Ship: .....….....

Incident: .....…….....….

Seafarer/Legal heir and/or Dependant: ….....….....

Shipowner …….....

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

Dated: ..... ….....

Seafarer/Legal heir and/or Dependant: ….....

Signed: ..... ….....

For acknowledgement:

Shipowner/Shipowner representative: Signed .....

Insurer/Insurer representative: Signed .....

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[*] delete as appropriate

ANNEX 4

PROVISIONAL AGENDA

Fourth 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 28 January to 1 February 2001

1. Adoption of the Agenda

2. Discussion of options for longer-term solutions to the problems of abandonment, personal injury and death of seafarers, including:

- monitoring of the implementation of the Resolution and Guidelines on provision of financial security in case of abandonment of seafarers;

- monitoring of the implementation of the Resolution and Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers;

- monitoring and assessment of the general situation with a view to determining future action, including the possible establishment of a database; and

- assessing the need for a mandatory instrument

3. Possible revision of the Working Group's terms of reference

4. Any other business

5. Adoption of the draft report

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ANNEX 5

LIST OF PARTICIPANTS

Chairman:	Mr. J.-M. Schindler (Member Government - France)
Vice-Chairmen:	Captain K. Akatsuka (Shipowner representative)
	Mr. B. Orrell (Seafarer representative)

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