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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
6th session
Agenda item 3

IMO/ILO/WGLCCS 6/3/5
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**EXAMINATION OF THE ISSUE OF FINANCIAL SECURITY FOR CREW
MEMBERS/SEAFARERS AND THEIR DEPENDANTS WITH REGARD TO
COMPENSATION IN CASES OF PERSONAL INJURY, DEATH AND
ABANDONMENT, TAKING INTO ACCOUNT THE RELEVANT IMO AND ILO
INSTRUMENTS, INCLUDING THOSE CURRENTLY UNDER REVIEW OR LIKELY
TO BE ADOPTED IN THE NEAR FUTURE**

Abandonment of crew members

**Submitted by the International Transport Workers' Federation (ITF) and the
International Confederation of Free Trade Unions (ICFTU)**

SUMMARY

- Executive summary:*** This document contains a discussion on options for a longer term sustainable solution to address the problem of financial security with regard to cases of abandonment of crew members
- Action to be taken:*** Paragraphs 18 to 21
- Related documents:*** IMO/ILO/WGLSCCS 5/3, resolution A.930(22) and associated guidelines; IMO/ILO/WGLCC 6/INF.2

1 This document is submitted following discussions at the fifth session of the IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, which took place at IMO Headquarters from 12 to 14 January 2004.

Longer term sustainable solution for the provision of financial security with regard to abandonment of crew members

Background

2 Pursuant to its mandate, the Working Group prepared a short-term response in the form of a draft resolution and related guidelines on the provision of financial security in cases of abandonment of crew members. This followed an agreement that there were no international

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instruments that adequately and comprehensively addressed the problem relating to abandonment of crew members.

3 The draft resolution was approved by the Legal Committee and adopted by the IMO Assembly at its twenty-second session in November 2001 by resolution A.930(22). The draft resolution was then also adopted by the Governing Body of ILO at its 282nd session, also in November 2001. The resolution and associated guidelines took effect on 1 January 2002.

4 The IMO and ILO Secretariats sent Circular letter No.2457 entitled "Circulation of Questionnaires", dated 27 February 2003 and Circular letter No.2486, entitled "Reporting on Incidents of Abandonment", dated 18 September 2003, to Member States of both organizations in order to gather information on the implementation of the resolution and associated guidelines, and on the extent of the ongoing problem.

5 The Working Group, at its fifth session, noted that there was insufficient information regarding whether the resolution and the associated guidelines had had any impact in Member States, as there had been a limited response to the issued circular letters. Therefore, it agreed to recommend to the IMO Legal Committee and the ILO Governing Body to resend the letters, emphasizing to Member States the importance of a rapid and comprehensive answer.

6 The Working Group further agreed, at its next meeting, to review preliminary determinations regarding the implementation of the resolution and associated guidelines in light of all the answers to the questionnaire and data relating to abandonment, in order to make appropriate recommendations to the IMO Legal Committee and the ILO Governing Body. A representative of ILO also informed the Working Group that the organization had decided to host the database on incidents of abandonment, the establishment of which had been decided by the Group at its fourth session.

7 The IMO Legal Committee at its eighty-eighth session and the ILO Governing Body at its 289th session agreed that the circulars be resent. The ILO Governing Body further noted the adoption by the International Labour Conference of a resolution concerning decent work for seafarers, a group of workers who required special protection.

8 The IMO and the ILO Secretariats subsequently sent Circular letter No.2531 on Monitoring the Implementation of the Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers, adopted by resolution A.930(22) and Circular letter No.2532 on Reporting on Cases of Abandonment, dated 16 March 2004, to Member States of both organizations.

9 The IMO Legal Committee at its ninetieth session was informed by a representative of ILO that the database on incidents of abandonment was already on non-public testing phase.

General comments

10 It is an unacceptable state of affairs in the modern maritime industry that crew members can be abandoned in foreign ports without financial resources to get home, with no guarantee of payment of their wages and without means of subsistence for themselves and their families. Whilst there are a limited number of regimes operating at national levels which provide some relief to abandoned crew, in the majority, abandoned crew members are assisted by parties other than those legally responsible for their welfare. In these circumstances, the current system not only fails crew members but also encourages the perpetuation of the problem. There is, therefore, a compelling need to implement a system that will not only deter instances of

abandonment but will also provide adequate and efficient relief to crew members who are victims of abandonment.

11 The ease with which a shipowner can abandon his crew members without certain consequences is in sharp contrast with existing legislation, both at the national and the regional levels, for the protection of employees in the event of the insolvency of their employer, including payment of wages in arrears. Unfortunately, this protection is generally only provided to land-based workers and, in many cases, explicitly excludes seafarers. Moreover, the abandonment of crew members is not always the result of the insolvency of the shipowner, but merely a decision of the shipowner, and thus any solution to the problem of abandonment needs to include an element of deterrence. The plight of abandoned crew also creates a serious negative image of the shipping industry affecting possible new recruits and the quality of new entrants.

12 It is generally accepted that shipping economics are cyclic in nature. Most recently, the market has been buoyant and experiencing an exceptional boom, which has already resulted in great numbers of new ships being built and full order books for shipyards. The substantial orderbook goes, as always, hand in hand with a reduction in the numbers of old ships being scrapped. Unfortunately, peaks in shipping activity are generally followed by troughs; and in view of the current peak, the expectation of a slump in the near future is not unrealistic. This downturn could herald large numbers of ships and crew members being abandoned throughout the world. An international solution for the protection of abandoned crew members should be in place before this happens, and the current health of the shipping market should not stand in the way of a system aimed at addressing future abandonment problems.

13 The welfare of the crew is the responsibility of the shipowner and, as such, ITF/ICFTU believe that shipowners should be required to maintain proof that they can meet their responsibilities towards their crew members under any circumstances. It has been extensively argued that the present system of P&I insurance does not cover the abandonment of crew members, however there is no reason why this should have a limiting effect since there are other forms of financial security and companies in the insurance market which would consider providing suitable cover in a situation of abandonment of crew members (see, for example, document IMO/ILO/WGLCC 6/INF.2 submitted by the United Kingdom).

14 Thus, ITF/ICFTU consider that the only way to eradicate the problem of the abandonment of crew members is by means of a mandatory instrument by which shipowners are required to provide a system of financial security allowing quick and easy access to funds for the payment of repatriation, wages, maintenance and other expenses related to the situation of abandonment.

15 ITF/ICFTU are of the opinion that the protection of crew members from abandonment will result in enhanced safety on board insofar as crew members will feel more secure in their employment if they are protected against the risk of abandonment. Furthermore, the provision of effective arrangements for the payment and repatriation of crew members in the event of abandonment is consistent with good management practices and therefore the ISM Code.

Longer term sustainable solution

16 There are only two types of appropriate mandatory instrument under IMO which could be used to establish a system of financial security: a mandatory code or a convention. A mandatory instrument providing a system of financial security for crew members in the event of abandonment could be incorporated with a mandatory instrument providing financial security

with regard to cases of personal injury to or death of crew members. This is discussed in the associated paper from ITF/ICFTU (document IMO/ILO/WGLCCS 6/3/6).

17 ITF/ICFTU believe that the following principles should be part of the eventual mandatory instrument providing financial security in cases of abandonment of crew members. It is recalled that the Working Group has previously decided that neither the resolution nor the guidelines should prejudice, serve as a precedent or constrain a solution of an eventual mandatory instrument:

(i) **Application**

The mandatory instrument should cover all shipowners in respect of all seagoing ships, including fishing vessels on international voyages. It should not diminish any rights or remedies crew members may enjoy under an existing legal framework.

(ii) **Responsibility of the shipowner**

The welfare of crew members is the responsibility of the shipowner. Therefore shipowners must afford crew members a financial security system providing prompt and effective relief from a situation of abandonment. It should be the responsibility of the shipowner to inform the crew members of such arrangements and to provide them with the specific details of the scheme. The mandatory instrument should also allow for the personal liability of the shipowner for any failure to provide his crew members with proper cover.

(iii) **Responsibility of the flag State**

Flag States have a responsibility in law for the repatriation of crew members on board vessels flying their flags when the shipowner fails to do so. Being responsible for social matters on board their ships, flag States also have a residual responsibility for the payment of wages to those crew members. Therefore a mandatory instrument should include the responsibility of flag States to ensure that shipowners with vessels flying their flag have in place at all times a system of financial security that provides prompt relief to crew members in the event of abandonment. The mandatory instrument should allow for the flag State to approve and verify the financial security system, and for flag States to be informed of changes to the financial security system on board which may affect the effective cover of the crew members, for example, cancellation or failure to renew the cover. It should also make the flag State responsible for the payment of the relief afforded under the financial security system if the guarantee has lapsed or is otherwise invalid and a valid claim is made. If the system fails and relief is finally provided by a third party, for example consular authorities, the mandatory instrument should allow the recovery of costs by that third party directly from the shipowner and/or the flag State.

(iv) **Responsibility of the port State**

The mandatory instrument should allow port States to check that ships entering their ports are covered by a system of financial security that provides crew members on board with protection in the eventuality of abandonment.

(v) **Scope of the financial security system**

A financial security system under a mandatory instrument offering relief in the event of abandonment of crew members should include, *inter alia*, the following elements without cost to the seafarer:

- (a) wages, including contractual and customary wages, overtime pay, paid leave, severance pay, social security contributions, pension contributions, unemployment benefits and contractual benefits in kind;
- (b) maintenance from the time of abandonment to the time of arrival at place of repatriation;
- (c) medical care;
- (d) reimbursement of expenses incurred arising from the abandonment; and
- (e) repatriation, including provision of food and accommodation from leaving the ship until arrival at place of repatriation.

(vi) **Direct access**

In order to guarantee the prompt relief for crew members facing an abandonment situation, any system of financial security afforded under a mandatory instrument should incorporate the right of direct access of crew members to that system.

(vii) **Notification**

Crew members have the right to know at all times whether they are protected against the eventuality of abandonment. Therefore, the financial security arrangements under the mandatory instrument should provide for prior notification to the crew members on board of the withdrawal of coverage. Consideration should also be given to the inclusion of a provision to the effect that the withdrawal of coverage should constitute a breach of duty on the part of the shipowner and entitle the seafarer to seek repatriation at the shipowner's expense.

(viii) **Certification**

The mandatory instrument should provide for the issuing of certificates of financial security demonstrating that the vessel has the means to meet the crew members' entitlements in the event of abandonment. The certification could be issued by the provider but should be endorsed by the administration of the flag State, or an organization recognized by that administration. A copy of the certificate should be posted on board for verification by authorities and crew members.

(ix) **Enforcement**

In order to guarantee the effectiveness of the system, it is essential that it is enforceable. Thus the mandatory instrument should allow for flag States to prevent vessels sailing without a financial security system in place for the protection of the crew members in cases of abandonment. The mandatory instrument should also allow for port States to detain a vessel or prevent a ship from entering port if it does not have appropriate effective arrangements in place.

Action requested of the Working Group

18 The Working Group is invited to note the contents of this proposal suggested by ITF/ICFTU for a solution to the problem of abandonment of seafarers.

19 In order to make progress in this matter, the Working Group is further invited to agree that it is time to move for a mandatory instrument and to recommend the form that the mandatory instrument should take.

20 The Working Group is also invited to recommend the formation of a correspondence group to begin the drafting process, and therefore the Group should agree terms of reference for the correspondence group.

21 The Working Group is also invited to discuss the elements that should be included in the mandatory instrument in order to facilitate the work of the correspondence group, and to discuss its relationship with a mandatory instrument for personal injury to or death of crew members.
