



IMO



**JOINT IMO/ILO AD HOC EXPERT WORKING GROUP
ON LIABILITY AND COMPENSATION REGARDING CLAIMS FOR DEATH,
PERSONAL INJURY AND ABANDONMENT OF SEAFARERS**

**Seventh session
Agenda item 2**

**IMO/ILO/WGLCCS 7/2/2
Geneva, 10 January 2008
ENGLISH ONLY**

**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**

Submitted by the International Transport Workers' Federation (ITF)

SUMMARY

Executive summary: This document contains proposals for a practical and long-term solution to address the problem of financial security with regard to compensation in cases of death, personal injury and abandonment of seafarers

Action to be taken: Paragraphs 6, 7 and 8

Related documents: LEG 93/4; LEG 93/WP 2, Paragraphs 4.1-4.8; LEG 92/5/1, LEG 92/13, Paragraphs 5.1- 5.13; LEG 91/4; IMO/ILO/WGLCCS 6/3/5; IMO/ILO/WGLCCS 6/3/6; resolution A.930(22) and associated Guidelines; resolution A.931(22) and associated Guidelines; resolution concerning the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers; Maritime Labour Convention, regulations 2.5 and 4.2

1 This document is submitted following the invitation of the IMO Legal Committee, at its ninety-second session, to reconvene the Joint IMO/ILO Ad Hoc Expert Working Group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers to proceed with the development of longer-term sustainable solutions to address the problems of liability and compensation regarding claims for death, personal injury and abandonment of seafarers, bearing in mind the outcome of the ninety-fourth (Maritime) session of the International Labour Conference.

2 The Committee, at its ninety-second session, noted the adoption of the Maritime Labour Convention 2006, by the ninety-fourth (Maritime) session of the International Labour Conference (ILO, Geneva, 7-23 February 2006), together with a number of resolutions dealing with issues of common interest to the two Organizations.

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

3 In particular, the Committee noted that one of these resolutions entitled: “Resolution concerning the joint IMO/ILO Ad Hoc Expert Working Group on liability and compensation regarding claims for death, personal injury and abandonment of seafarers”, affirmed that the Joint Working Group should continue its work and recommended that both organizations develop a standard, accompanied by guidelines, which could be included in the Maritime Labour Convention, or another existing instrument.

General comments

4 In this context, the ITF believes that the text of the existing IMO/ILO guidelines on respectively provision of financial security in case of abandonment of seafarers (resolution A.930(22)) and shipowners’ responsibilities in respect of contractual claims for personal injury to or death of seafarers (resolution A.931(22)) constitutes an appropriate basis for establishing mandatory provisions which should be included in the Maritime Labour Convention, or another existing instrument.

5 The ITF suggests that the decision to select one alternative, i.e. the Maritime Labour Convention or another existing instrument, should be deferred at this stage. In particular, the ITF notes that the existing IMO/ILO guidelines also apply to fishing vessels engaged in international voyages. In determining the appropriate instrument in which to include these provisions, the working group should be cautious not to discriminate against a group of workers who face the same serious problems. For the purpose of facilitating discussions and as an initial stage, the ITF has drafted two proposals, transforming the agreed IMO/ILO Guidelines into a standard accompanied by guidelines, as follows:

Abandonment of crewmembers

6 The ITF’s proposal is hereby attached for the consideration of the Group (annex 1).

Personal injury to or death of crewmembers

7 The ITF’s proposal is hereby attached for the consideration of the Group (annex 2).

Action requested of the Group

8 The Group is invited to take into account the proposals contained in the annexes and to comment and decide as appropriate.

ANNEX 1

Standard – Provision of financial security systems in case of abandonment

- 1 For the purpose of this standard, 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 and to 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.
- 2 Each Member shall ensure, for the ships that fly its flag, there is provision of an adequate financial security system for seafarers in case of abandonment and to display on board contact details of the persons or entity responsible for handling claims of abandonment.
- 3 Each Member shall ensure that there are appropriate provisions in its laws and regulations prescribing that the financial security shall provide for:
 - (a) the expenses of the repatriation of the seafarer, which are to be met without costs to the seafarer;
 - (b) the maintenance of the seafarer from the time of abandonment to the time of arrival at home;
 - (c) the payment to the seafarer of all outstanding remuneration and contractual entitlements; and
 - (d) the payment to the seafarer of other expenses incurred during the period of abandonment arising from the abandonment.
- 4 The financial security system shall also provide:
 - (e) a right of direct access by the seafarer to the financial security system;
 - (f) sufficient coverage in respect of the elements of abandonment contained in this Standard; and
 - (g) the applicability of the financial security system to all seafarers irrespective of nationality.
- 5 In the event that the shipowner fails to fulfil its responsibilities, the financial security system shall provide for repatriation of the seafarer by appropriate and expeditious means, normally by air, and including provision of food and accommodation for the seafarer from leaving the ship until arrival at home, medical care, passage and transport of personal effects and any other reasonable charges.
- 6 The maintenance of seafarers while abandoned shall include: adequate food, clothing, accommodation, medical care and other basic necessities of life.
- 7 Payment to the seafarers of all outstanding remuneration shall include accrued wages and other entitlements as provided for in the contract of employment and/or under national law.

- 8 In the event that the seafarer incurs any other reasonable expenses during the period of abandonment, the seafarer shall be entitled to recover such expenses from the financial security system.
- 9 Each Member shall require that shipowners 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. The certificate shall be posted in a prominent position in the seafarers' accommodation.
- 10 Where more than one certificate is required to cover all seafarers on board a ship, all such certificates shall be posted.
- 11 As a minimum, the certificate shall include:
 - (a) name of the ship;
 - (b) port of registry of the ship;
 - (c) call sign of the ship;
 - (d) IMO number of the ship;
 - (e) name of the provider of the financial security;
 - (f) place of business of the provider of the financial security;
 - (g) name of the shipowner;
 - (h) period of validity of the financial security; and
 - (i) an attestation that the financial security meets the required measures as set out in this Standard.

Guidelines – Form of the financial security and certificates in case of abandonment.

- 12 Without prejudice to national laws and regulations, 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.
- 13 Each Member should take measures so that a copy of the certificate would be provided when required to the competent Authorities for the purpose of informing them that the seafarers are provided with a financial security system covering their maintenance, repatriation and payment of outstanding remuneration.

ANNEX 2

Standard – Provision of financial security in respect of contractual claims for personal injury to or death of seafarer

- 1 For the purpose of this Standard:
 - (a) personal injury means any disease or impairment of a seafarer's physical or mental condition arising from or in connection with the employment of the seafarer;
 - (b) claims means valid contractual claims for compensation for personal injury or death at levels provided for within the terms and conditions of employment of seafarers;
 - (c) insurance means effective insurance or other forms of financial security to meet claims against shipowners which comply with the functional criteria set out in this Standard and related Guideline; and
 - (d) insurer means any person or entity providing insurance for a shipowner.

- 2 Each Member shall adopt laws and regulations requiring that shipowners of ships that fly its flag ensure that there is an effective insurance cover or other financial security to provide full and prompt payment of contractual claims for personal injury or death:
 - (a) shipowners, in discharging their responsibilities to provide for safe and decent working conditions, shall have effective arrangements for the payment of compensation for death or personal injury. Shipowners shall arrange for their ships effective insurance cover that complies with this Standard and related Guidelines.
 - (b) shipowners shall take steps, when a claim arises, for its prompt payment. Shipowners shall also ensure that all valid contractual claims shall be paid in full. There shall 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 this Standard and related Guideline.
 - (c) where the nature of the personal injury makes it difficult for the shipowner to make a full payment of a claim, an interim payment shall be made to the seafarer so as to avoid undue hardship.
 - (d) shipowners shall display on board contact details of the persons or entity responsible for handling claims covered by this Standard and related Guideline.

- 3 National laws and regulations shall provide that the functional criteria for insurance for claims shall include, *inter alia*, that:
 - (a) the contractual compensation, as provided by the contract of employment and without prejudice to (b) below, shall be paid in full and without delay;
 - (b) the seafarer shall 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;
 - (c) shipowners shall ensure that a certificate is provided indicating the period of cover of the insurance;
 - (d) the seafarer shall receive prior notification if the insurance is to be cancelled and be notified immediately if it is not to be renewed; and

- (e) the insurance shall provide for the payment of all claims arising during the period for which the certificate is valid.
- 4 Shipowners shall ensure that their ships have on board a certificate issued by the insurer. It shall be posted in a prominent position in the seafarers' accommodation.
- 5 Where more than one insurer provides cover for claims, certificates from each insurer shall be required to be posted.
- 6 As a minimum, the certificate shall include:
- (a) name of the ship;
 - (b) port of registry of the ship;
 - (c) call sign of the ship;
 - (d) IMO number of the ship;
 - (e) name of the provider of the financial security;
 - (f) place of business of the provider of the financial security;
 - (g) name of the shipowner;
 - (h) period of validity of the financial security; and
 - (i) an attestation that the financial security meets the required measures set out in this Standard.

Guideline – Provision of financial security in respect of contractual claims for personal injury to or death of seafarer

- 7 Without prejudice to each Member's national laws and regulations, the parties to the payment of a contractual claim may use the Model Receipt and Release Form of the IMO Assembly resolution A.931(22) on claims for personal injury to or death of seafarers adopted on 29 November 2001.
-