



IMO



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

Eighth session
Agenda item 2

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ENGLISH ONLY

PROVISION OF FINANCIAL SECURITY FOR ABANDONMENT OF SEAFARERS

**Submitted by the International Shipping Federation (ISF) and the
International Transport Workers' Federation (ITF)**

SUMMARY

<i>Executive summary:</i>	This document reports on the outcome of the meeting between the Social Partners. The annex to this document contains a document highlighting the principles discussed, areas of agreement and areas which have been identified as a concern by one or other party
<i>Strategic direction:</i>	1 and 1.1
<i>High-level action:</i>	1.1.2
<i>Planned output:</i>	1.1.2.3
<i>Action to be taken:</i>	Paragraph 5
<i>Related documents:</i>	Resolution A.930(22) and related Guidelines

ISF and ITF covering note regarding abandonment

Background

1 The Social Partners met in London in June 2008 to discuss the issues relating to abandonment as requested by the Joint IMO/ ILO *Ad Hoc* Expert working Group at its last session in February 2008. Whilst agreement was reached on a number of principles, there are still points of principle on both sides which impact upon the whole text and need to be discussed further with the Governments.

2 The aim of this document is to highlight the points of difference between the two parties and to explain the reasons for this, with the aim of assisting Governments to consider these issues prior to the next meeting. We attach a copy of a document entitled "Provision of Financial Security in Case of Abandonment of Seafarers". This highlights the principles discussed, areas of

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agreement and areas which have been identified as a concern by one or other party. The Seafarers confirm that this draft document by the Shipowners reflects the discussions.

Presentation of “Principles” document

3 The numbers used in the document “Provision of Financial Security in Case of Abandonment of Seafarers” are related to the numbers within the Guidelines adopted by Resolution A.930(22) relating to abandonment, for ease of cross reference. There may be additional sub-points added under specific sections and these have been given additional numbering. Where text numbers in the guidelines are not referred to, it is because the Social Partners do not believe that these need to be included.

Commentary on “Principles” document

4 We will now elaborate on each point where we believe further explanation is required:

1.3 As has been pointed out at previous meetings the Shipowners Group does not have the mandate to act on behalf of the fishing community. We understand that it will be represented at the July meeting and have asked that it be involved in any determination relating to its sector. Therefore the scope for fishing was not agreed or discussed amongst the Social Partners.

2.3 The definition of abandonment as outlined by the US was considered potentially suitable by both parties. However, the Shipowners Group has done this under the understanding that should a seafarer be left behind as a result of willful misconduct, or his/her breach of their employment contract, or simply due to the seafarer’s own fault that this does not constitute abandonment as per the US definition. The Shipowners Group would like confirmation that its understanding is correct and that if a seafarer was left behind in such circumstances, that it would be wholly up to the Member to finance bringing the seafarer home. The definition might need to be expanded to make this clear.

3.1 and 3.2 As a final decision has not yet been taken as to the instrument which will be used, these clauses are maintained. However both Social Partners believe that these will become redundant if incorporated into the Maritime Labour Convention 2006 as they are both already covered by the Articles.

4.1 There are fundamental differences between the Social Partners with regard to who is responsible to ensure that the financial security system is in place. The Shipowner’s Group maintains that this is a Government responsibility since the Guidelines provide that the financial security system can be delivered by a variety of means, some of which are beyond the control of the shipowner, such as a social welfare fund or other similar State-administered system. The Seafarers however believe that it is the responsibility of the Shipowner. The Shipowners believe that since there is a variety of different systems possible, it is the Governments’ responsibility to have in place necessary laws and procedures to identify and control the applicable system and believe it is illogical to state that it is the responsibility of the Shipowner because other parts of the instrument leave open how the security will be arranged.

5.1.3 and 5.4. There are fundamental differences between the Social Partners with regard to payment to the seafarer of all outstanding remuneration and contractual entitlements. At the last Joint Working Group meeting Mrs. Doumbia Henry made it clear that payments to the seafarer would be covered by other parts of the Maritime Labour Convention 2006. The Shipowners Group also believes that such claims are provided for by way of maritime liens and other international, national, and regional regimes in place. The Shipowners Group believes that the key point of an instrument dealing with abandonment is to ensure that the seafarer is repatriated expeditiously and that the related costs are met by the financial security. Finally, the Shipowners would wish to point out that the particular concern underlined in the resolution from the ILO conference in February 2006, was to cover the possible "gap" existing between the IMO/ILO guidelines and the MLC. The only existing gap is a financial security for travelling expenses.

5.1.5 The Shipowners Group wishes to insert a new element into the text relating to a ceiling for liability. This is not supported by the Seafarers. The reason for the Shipowners' position is to ensure that where the system of financial security is arranged through insurance, that the instrument enables insurers to provide it. It is known that insurers will not accept an unlimited liability. Therefore, the instrument needs to include a limitation of liability provision to ensure that coverage is available in the market. This is also likely to be an obstacle for a State based system since many existing systems for financial security in the event of the employer's insolvency have a limitation clause.

6.2 For the reasons stated under point 5.1.5 the Shipowners Group requests deletion of point 6.2 b unless a specific limitation clause is incorporated. The Shipowners Group feels it is necessary for this matter to be drawn to the particular attention of the IMO Legal Committee.

6.2c Both parties accept this principle, but it is recognized that this may become redundant if the text is incorporated into the Maritime Labour Convention 2006.

7.1 The Shipowners Group believes that it would be necessary for the State certificate to specify what system is in place for financial security and if it is insurance, the requirement on shipowners would be to ensure that the certificate of entry is placed on board the ship. The Shipowner Group believes that the certificate of entry could either be provided by the flag State or the labour supply State. Again the Shipowners Group believes that the assistance of the IMO Legal Committee would be helpful in this regard, to find an appropriate system. Shipowners stress however that the circumstances here are quite different from that under the IMO regimes since the Guidelines do envisage a number of different systems and this has to be reflected in the final instrument and it is possible that this may mean that the State certificate is not in the same form as in the IMO regimes. Shipowners have also not discounted the possibility that where the provider is an insurance company, the insurance policy certificate or certificate of entry, may be acceptable as this will cause the least possible administrative burden on states.

7.4 There are two issues here for the Shipowners Group. The first merely relates to where this should be most appropriately placed and the assistance of the Working Group in this regard would be considered helpful. The second set of square brackets regarding payment of outstanding remuneration would be need to be removed for the same reasons as stated with relation to points 5.1.3 and 5.4.

8 The Shipowners Group is aware that there are discussions within IMO under liability and compensation conventions with regard to the exclusion for war, terrorism, cyber, nuclear, bio-chemical and exceptional natural phenomena or acts wholly caused by the intentional act of a third party which may need to be looked into in this regard. The Shipowners Group believes that this is the responsibility of the flag State to secure a solution if a ship has been abandoned in such a situation and to take responsibility as outlined under point 2.3, where the definition of abandonment does not cover the seafarer concerned.

Action requested of the Joint Working Group

5 The Joint Working Group is invited to take note of the information contained in this document and at annex, and to make such comments and recommendations as it may deem appropriate.

ANNEX

**PROVISION OF FINANCIAL SECURITY IN CASE OF
ABANDONMENT OF SEAFARERS**

- 1.3 [May also apply to fishing vessels engaged in international voyages]
To be discussed with Fishing Vessel Owners at Meeting in July.

2 DEFINITIONS

- 2.1 Shipowner dependent on where this goes we can accept either definition as in A930 or MLC.
- 2.2 Seafarer dependent on where this goes we can accept either definition as in A930 or MLC.
- 2.3 Abandonment means a shipowner's unilateral severance of ties with a seafarer or the shipowner's failure to provide or arrange for the necessary maintenance and support of a seafarer.

US proposal from last meeting

3 SCOPE OF APPLICATION

- 3.1 Each Member shall ensure compliance in respect of all seagoing ships flying its flag. *(If in MLC redundant because covered in Articles).*
- 3.2 This standard does not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise. *(If in MLC redundant because covered in Articles).*

4 RESPONSIBILITIES

- 4.1 [Each Member shall ensure that a financial security system is arranged for ships which fly its flag that complies with this standard.] *ISF position of principle.*
- 4.1 [Each Member shall ensure that shipowners shall arrange a financial security system which complies with this standard] *ITF position.*
- 4.2 Each Member shall ensure that contact details of the persons or entity responsible for handling claims are displayed on board.
- 4.3 In the event of abandonment the financial security system shall come into effect.

5 SCOPE OF FINANCIAL SECURITY SYSTEMS

5.1 The financial security system shall provide for:

- 5.1.1 The expenses of the repatriation of the seafarer, which are to be met without costs to the seafarer;
- 5.1.2 The maintenance of the seafarer from the time of abandonment to the time of arrival at the place of repatriation;
- 5.1.3 [the payment to the seafarer of all outstanding remuneration and contractual entitlements; and] *ITF Position of Principle*

Not to be included at all – ISF Position of Principle

- 5.1.4 Payment to the seafarer of other reasonable costs and charges incurred during the period of abandonment arising from that abandonment.
- 5.1.5 [Ceiling of Liability] *ISF position of principle to be discussed further at July meeting*
- 5.2 The financial security system shall provide for repatriation of the seafarer by appropriate and expeditious means, normally by air, and including provision for food and accommodation of the seafarer from leaving the ship until arrival at the place of repatriation, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.
- 5.3 The maintenance of seafarers while abandoned should include: adequate food, clothing, accommodation, necessary medical care and other reasonable costs or charges arising from the abandonment reasonable costs or charges arising from the abandonment.
- 5.4 [Payment to the seafarers of all outstanding remuneration should include accrued wages and other entitlements as provided for in the contract of employment and/or under national law.]

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

6 FORM OF THE FINANCIAL SECURITY SYSTEM

- 6.1 The financial security system may be in the form of, inter alia, social security schemes, insurance, a national fund, or other forms of financial security.
- 6.2 The financial security system in addition to the provisions of paragraph 5 shall provide the following:
 - (a) a right of direct access by the seafarer to the financial security system;
 - (b) [sufficient coverage in respect of the elements of abandonment contained in this standard; and]

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

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

7 CERTIFICATES

- 7.1 Each Member shall provide a certificate for each seagoing ship which flies its flag engaged on an international voyage verifying the existence of a financial security system in the event of abandonment of seafarers. It should be posted in a prominent position in the seafarers' accommodation.
- 7.2 Where more than one certificate is required to cover all seafarers on board a ship, all such certificates should be posted.
- 7.3 As a minimum, the certificate shall include:
- 7.3.1 name of the ship;
- 7.3.2 port of registry of the ship;
- 7.3.3 call sign of the ship;
- 7.3.4 IMO Number of the ship;
- 7.3.5 name of the provider of the financial security;
- 7.3.6 place of business of the provider of the financial security;
- 7.3.7 name of the shipowner;
- 7.3.8 the period of validity of the financial security; and
- 7.3.9 an attestation that the financial security meets the requirements of this standard.
- [7.4 A copy of the certificate shall be provided when required to the Port State for the purpose of informing them that the seafarers are provided with a financial security system covering their maintenance, repatriation [and payment of outstanding remuneration].]

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

- 8** Each Member shall ensure that the financial security provisions are complied with for seafarers in the event of abandonment regardless of cause.
(ISF position to also consider third parties.)