DRAFT REPORT OF THE WORKING GROUP  
(continued)

Personal injury or death of seafarers

3.67 The Shipowners’ representative referred to her earlier comments on IMO/ILO/WGLCCS 6/3. The issue under discussion was well covered by the provisions in the draft Consolidated Maritime Labour Standards Convention. IMO/ILO/WGLCCS 6/3/3 provided further clarification.

3.68 The Seafarers’ representative noted that these arguments had been put forward already at earlier sessions of the Joint Working Group, which at its last meeting, came to the view that it should be progressing towards a mandatory solution. This agreement had been reflected in the decisions of the ILO Governing Body and the IMO Legal Committee who had charged the Joint Working Group with drawing up an instrument to address this issue. The argument brought forward by the Shipowners that new developments put these decisions into question was not substantiated, as these bodies had been well aware of the developments in the draft Consolidated Maritime Labour Standards Convention and had factored them into their decisions. In order to advance the discussion, the Joint Working Group should focus on providing guidance to the Secretariat so that it could provide a draft to be discussed in the next session of the Joint Working Group. To this effect, the Seafarers had submitted IMO/ILO/WGLCCS 6/6/3, which outlined in its paragraphs 10 to 12 important elements to be included. Paragraphs 13 to 15 contained recommendations on actions that would allow the Joint Working Group to progress further, e.g., by forming a correspondence group.
3.69 The Shipowners’ representative referred to the report of the Joint Working Group’s fifth session and pointed out that in the discussions on the Joint Working Group’s mandate, it had been said that a mandatory solution did not necessarily require creating an independent instrument, but could also take the form of additional provisions in the draft Consolidated Maritime Labour Standards Convention. At the forthcoming International Labour Conference (Maritime Session) in February 2006, these issues should be discussed and dealt with accordingly, since it was a labour issue. She added that simply pasting the Guidelines into the Consolidated Maritime Labour Standards Convention would not be possible; it had been agreed earlier that they should not be inserted. The possibility to deal with financial consequences under Title 4 needed to be taken up, since her group believed that the Consolidated Maritime Labour Standards Convention was the right place to deal with this issue.

3.70 The representative of the International Group of P&I Clubs noted that the Legal Committee at its 88th session had left open the question whether the solution should be mandatory.

3.71 The observer delegation of the Russian Federation insisted on the necessity of developing a mandatory solution.

3.72 The Seafarers’ representative stressed that the decision had already been taken and that the decisions of the IMO Legal Committee and the ILO Governing Body had been clear. The Joint Working Group’s recommendation to proceed with the development of a mandatory instrument had been endorsed.

3.73 The delegation of France suggested that the Joint Working Group should start working at the content of the perspective binding instrument, based on the principles contained in document IMO/ILO/WGLCCS/6/3/5, submitted by ITF/ICFTU.

3.74 The Shipowners’ representative pointed out that when the Guidelines were submitted to the IMO Legal Committee, several governments had made statements that they did not intend to implement them. The existing national rules were very diverse; moreover, the criticism of the P&I Clubs was not justified, since her group saw many reasons for believing that P&I Clubs provided a good solution to the problem. Already at the last meeting, her group had stressed that
it was not necessary to create a new instrument and had suggested amending the Consolidated Maritime Labour Standards Convention.

3.75 The representative of the International Group of P&I Clubs stressed that the International Group had actively participated in the work of the Joint Working Group. In this connection, he mentioned the documents submitted at previous sessions. He warned a mandatory solution could be in conflict with the work done at ILO.

3.76 The Chairperson stated that the Social Partners had a common interest in solving the problem. Far from being in conflict, the work carried out at IMO and ILO was complementary. He invited the Joint Working Group to reflect on the work to be done and to give appropriate guidance to the Secretariats to enable them to produce a document at the next session. This could be done pending the outcome of the work at ILO.

3.77 This statement was supported by the delegations of France, the Philippines and the United States. The Seafarers, together with the observer delegations of Brazil, Norway and Russian Federation also supported the Chairman’s statement.

3.78 Replying to a question from the Shipowners, the Chairperson clarified that, for the next session, the Secretariat would prepare a document containing elements for discussion and possible inclusion in a longer term sustainable solution.

Discussion on the database

3.79 The Chairperson reverted to the discussion regarding the Database as outlined in document IMO/ILO/WGLCCS WP.2.

3.80 The Shipowners’ representative requested clarification on the expressions “appropriate organisation” and “interested parties”. She also advised that a delay of less than 15 working days in indent 4 was not acceptable. Moreover, she was of the opinion that the role devoted to the reporting organisation gave it too strong a position. Time was needed for the assessment of a report, or even for the reasons of its inclusion as a case.
3.81 The Shipowners’ representative requested an explanation as to what would happen if a disagreement were to occur. She also proposed to limit the understanding of “appropriate organisations” to ICMA and Apostleship of the Sea. After explanations by the representative of the ILO, she agreed that other organisations involved in seafarers’ welfare might also be included.

3.82 The Seafarers’ representative agreed that WP.2 was acceptable to his group, adding that different points of view should be reflected in the database. He suggested that “all interested parties” should be understood as all organisations holding a recognised status at the ILO and at the IMO.

3.83 The Shipowners’ representative agreed with the seafarers’ representative on this last issue.

3.84 The delegation of Greece requested information as to how interested parties might know when the ten days period would start. The Secretariat responded that it would inform interested parties by appropriate means.

3.85 The Shipowners’ representative reiterated their view that the period allocated to check the information to be kept at a maximum of fifteen days and that this was motivated by practical reasons, namely, availability of personnel. This was opposed by the Seafarers’ group on the basis that this period was far too long, considering that the suffering of crews had to be alleviated as soon as possible. The Shipowners’ representative explained that these 15 working days represented a maximum which would not always be used.

3.86 The delegation of Cyprus was of the opinion that one or two days should be sufficient.

3.87 The Seafarers’ representative recalled that the IMO had other databases where the ICS and BIMCO regularly made entries, and never had expressed a need for such delays. Ten working days were sufficient.

3.88 The delegation of the Philippines observed that they would like to have the information provided made public immediately, but that, in a gesture of good will in this debate, they were ready to accept a maximum delay of ten working days.
3.89 The Chairperson of the Working Group summed up the debate as follows:

3.90 Regarding the suggested procedure to be followed for the operation of the database on reported incidents of abandonment of seafarers, after discussion of IMO/ILO/WGLCCS 6/WP.2, the following procedure would be adopted, subject to revision at the next meeting of the Working Group, in the light of the experience gained.

1. a Member State or an organization accredited to ILO or IMO sends information to ILO regarding abandonment case(s), using the form described in document IMO/ILO/WGLCCS 5/3, page 4, as hyperlinked in the home page of the Database;

2. ILO sends this information for verification to IMO, which checks the information given on the IMO number, flag, type of vessel, company and registered owner;

3. IMO sends (modified as necessary) the information back to ILO; and

4. following consultations between IMO and ILO, the information is entered on a restricted, i.e. non public and password-restricted website. Interested parties are then notified of new entries and would then have an opportunity to provide further information within 10 working days, after which time the information would be released for public access. If necessary, different points of view would be reflected.

3.91 The procedure was agreed, after acceptance of a proposal by the Shipowners’ representative that complementary relevant information received after the ten working days would go on the public website.

3.92 The debate then passed to the consideration of expression “resolved case” in the Abandonment Database.

3.93 The Greek delegation requested explanations of the expression “representative organisations”.
3.94 The Seafarers’ representative expressed difficulties with paragraph 2. iii) of the Annex to document IMO/ILO/WGLCCS 6/3/4, and was of the opinion that it should be deleted. The expression “wage arrears” could usefully be completed by reference to other terms such as those contained in Resolution A.930 (22), or by an expression such as “and any contractually accrued”.

3.95 The Shipowners’ representative suggested the use of the term “remuneration” and that the Secretariat might further refine the concept by reference to the Guidelines.

3.96 The Shipowners’ representative objected to this on the basis that the Guidelines would then be considered to be part of the database. The delegations of France and the USA observed that the Guidelines had been previously adopted, not only by the Working Group but also by IMO and ILO.

3.97 The Chairperson clarified that, though the Guidelines were not mandatory, the wording they contained could, however, be used.

3.98 The Shipowners’ representative then remarked that, in her opinion, issues related to the Consolidated Convention had been “sneaked into” the present text, to which the seafarers’ representative assured the meeting that he was not pursuing any ulterior motive when referring to the Guidelines.

3.99 The Chairperson, regarding the expression “resolved case” in the Abandonment Database, summed up the debate as follows:

3.100 A case of abandonment would be considered as resolved if, and only if, ILO has received clear advice from the Member State or organization having originally provided the information that:

(i) the totality of the crew has been successfully repatriated; and

(ii) the totality of all outstanding remuneration and contractual entitlements have been paid and duly received by all the crew members.
3.101 The Group then debated the method of displaying “resolved cases”, as opposed to “unresolved cases”.

3.102 The Shipowners’ representative requested that disputed cases should be readily identifiable, for instance, by using a different colour.

3.103 The Seafarers’ representative recalled the necessity to realise searches easily.

3.104 In the discussion that ensued, the delegation of Greece, as well as the social partners made various practical suggestions.

3.105 Regarding the proposed method of displaying “resolved cases”, as opposed to “unresolved cases”, the Chairperson summed up as follows:

3.106 The Secretariat would ensure that the information displayed would clearly distinguish between “resolved cases” as opposed to “unresolved cases” and that a third category of cases would be added, namely, “disputed cases”, which would also be clearly identified.

3.107 The Group then discussed a possible date for the deletion of information following the resolution of a case.

3.108 The Shipowners’ representative remarked that she had no major problem, as long as disputed and resolved cases were clearly identified.

3.109 The Seafarers’ representative said that he did not see any necessity for the deletion of this kind of data. This view was supported by the delegations of France and Cyprus, on the basis that this information constituted a public record.

3.110 To the question of the Shipowners’ representative regarding possible changes of ownership of the vessel, the delegation of Cyprus expressed the opinion that the owner’s name, rather than the name of the vessel, was the important issue.
3.111 Regarding the date of the deletion of information following the resolution of a case, the Chairperson summed up as follows:

3.112 It was decided that, at this stage, no information should be deleted following the resolution of a case and that this issue would be reassessed by the Working Group at the next session in the light of experience gained.

3.113 This concluded the debate on the database.

**Personal injury to or death of seafarers**

3.114 The Joint Working Group then reverted to the consideration of the elements in a document to be prepared by the Secretariat containing elements for possible inclusion in a sustainable long term solution to the problems of personal injury to or death of seafarers.

3.115 The Shipowners’ representative stressed that her group did not want to have fishing vessels included in the sustainable solution. She explained that her group did not represent fishing vessel owners and could not speak for the fishing industry or be held accountable for it. If fishing vessels were to be included, the International Organization of Employers (IOE) needed to be part of the debate.

3.116 The Seafarers’ representative reminded the Joint Working Group of the decision reached at its last meeting. In order to allow the Joint Working Group to proceed, his group had listed elements of importance in paragraph 12 of IMO/ILO/WGLCCS 6/3/6. He encouraged Government members to voice their opinions, since their views on these matters were very important.

3.117 The delegation of France commented that it was also necessary to decide whether the longer term sustainable solution should be inserted in the proposed ILO Consolidated Maritime Labour Standards Convention, in a new IMO treaty, or in an existing one. Notification of withdrawal of coverage, no retroactive cancellation of cover, direct action and prompt payment were among the main elements to be considered.
3.118 The observer delegation of Norway commented that the longer term solution should promote good practices. He suggested to add certification to the elements mentioned in the French intervention.

3.119 The delegation of the Philippines supported the previous speakers and informed that its national Law also covered fishing vessels on international voyages.

3.120 The delegation of the United States stated that, in accordance with the Working Group’s Terms of Reference, it was essential that existing schemes were not compromised by any future longer term solution. This statement was supported by the observer delegation of the Netherlands.

3.121 The Shipowners’ representative warned the Government members that the requirements proposed by the Seafarers would have the effect of excluding P&I Club coverage as possible solutions. They had been working well for years; their track record was very good. The list of elements in IMO/ILO/WGLCCS 6/3/6 consisted of the most difficult issues to deal with in this field and required intimate knowledge of insurance. Most shipowners would face considerable problems, if P&I coverage would no longer be an option – the Seafarers’ suggestions would, however, lead to just this situation. Other insurers would also run into the same problems. Interim payments were, e.g., always problematic; even for “normal” insurers. In her experience, insurance companies had often taken lengthy periods to deal with claims resulting from injury in order to determine the validity of the claim and the amount to be paid. Similarly, the concept of direct action was problematic, since it excluded collective coverage. Instead agreements between the shipping company and the insurance company to the benefit of a third party should be possible. De facto, differences between P&I cover and that provided by a normal insurer were not so great. This also extended to the cases that the Seafarers were trying to address by introducing a notification requirement – in comparison with a “normal” insurance, P&I cover was more robust. Also the requirement to produce certification was something that was normally not part of common practice of insurers and generally not done in regard to collective arrangements. It seemed to her that Seafarers and Governments were overestimating the advantages of a “normal” insurance in comparison to P&I cover. The overall experience demonstrated that P&I Clubs were reliable and widely used in the industry, since they ensured speedy handling and created far less problems than “normal” insurers.
3.122 Another Shipowners’ representative added that the Joint Working Group should always ask itself who the insurer and the insured would be. If it was not clear that the seafarer was the beneficiary, he would encounter the same legal problems, independent of whether P&I cover or a “normal” insurance had been chosen. The underlying problem was that the Seafarers were not satisfied with the time required for the P&I Clubs to validate claims; they did not, however, realise that this time would also be required if “normal” insurance cover had been chosen instead. Referring to the presentation by Seacurus Ltd, he pointed out that the mechanism proposed (premiums to be paid annually and in advance) could easily run into similar problems. In cases where a seafarer joined a vessel at the midlife of an insurance policy and continue to stay on board, he would not be covered if the policy was not renewed for the next year.

3.123 The delegation of France informed the Working Group that, under French Law, direct action against liability insurance was permissible.

3.124 The representative of the International Group of P&I Clubs, reiterated that, over the years, the Clubs had been paying compensation for thousands of claims and that in no case the rules had been used to avoid paying claims. Rules were not there for preventing payment. However the P&I Clubs were a mutual organization and the rules were aimed at maintaining high standards. Because the Clubs were insurers and not shipowners it would not be possible to them to comply with any requirement to notify each and every seafarer on board a ship.

3.125 The observer delegation of the Russian Federation informed the Working Group that, since the liberalization of Russian economy in 1998, all employers registered in the Russian Federation contribute to a national fund, which is part of the social security and which actually pays compensation in case of an accident. He suggested that the Russian system could be used as a model for an international solution.

3.126 The observer delegation of Brazil stated that a mandatory solution to provide financial security to seafarers in case of an accident was necessary and that it should be contained in an IMO instrument.

3.127 The Seafarers’ representative stressed that he had heard the arguments put forward by the International Group before. In other cases, however, all the problems that were now made to seem insurmountable had been resolved before. IMO had prior experience with direct liability to
cover oil spills, passengers and luggage and the elements in IMO/ILO/WGLCCS 6/3/6 were found in these instruments. He, therefore, suggested that, at the next session, IMO should provide the Joint Working Group with a brief overview on how these issues had been addressed in existing IMO instruments.

3.128 The Shipowners’ representative agreed with the Seafarers’ perception that all these arguments had been discussed in earlier sessions. This demonstrated that a difference in opinion existed on how best to resolve the issue. When preparing a document for the next session on elements for inclusion in a longer term sustainable solution, the Secretariat should, therefore, concentrate on listing only the points raised in the discussion.

3.129 The Seafarers’ representative said that the Shipowners’ defence of the P&I Clubs had been unnecessary, since IMO/ILO/WGLCCS 6/3/6 had not been drafted to criticise the clubs. His group had simply tried to outline on what elements should be contained in a sustainable solution. His group had not suggested that the clubs did not provide a valuable service to the shipping community. But since the Joint Working Group was dealing with a particular niche and it had been it had been indicated in the fifth session that either rules needed to be changed or others would need to fill the gap. The presentation by Seacurus Ltd. had suggested that this was an option; moreover, it had been the Seafarers’ experience that, when put to the test, the P&I Clubs had delivered. His group did not prefer one provider to the other, but wanted to ensure that the resulting solution was acceptable. The discussion of whether P&I Clubs would be able to comply with the elements put forward in IMO/ILO/WGLCCS 6/3/6 was beside the point and not helpful. He noted that, so far, no Government had taken a position on this issue and suggested that the Joint Working Group should focus on the issue of enforcement.

3.130 The Joint Working Group requested the Secretariat to prepare for its next session a document listing the elements to be included in a long term solution and another document listing the elements in existing liability and compensation regimes developed by IMO.

Possible revision of the Joint Working Group’s terms of reference

4 The Joint Working Group agreed to revise its terms of reference, the text of which is contained in Annex 1 to this report.

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ANNEX 1

REVISED TERMS OF REFERENCE FOR FURTHER WORK OF THE JOINT IMO/ILO AD HOC EXPERT WORKING GROUP ON LIABILITY AND COMPENSATION REGARDING CLAIMS FOR DEATH, PERSONAL INJURY AND ABANDONMENT OF SEAFARERS

1. The Joint IMO/ILO Ad Hoc Expert Working Group should continue with its 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.

2. In so doing the Joint Working Group should take account of relevant IMO and ILO instruments, including those currently under review or likely to be adopted in the near future.

3. It should continue the monitoring of the problem of abandonment of crew members/seafarers taking into account all relevant information including technical solutions available for financial security.

4. It should develop longer-term sustainable solutions to address the problem of financial security with regard to the compensation in cases of death or personal injury [and abandonment.]

5. At the next session it should make appropriate recommendations to the IMO Legal Committee and the ILO Governing Body.