



SIXTH ITEM ON THE AGENDA

Other questions**Report of the Joint ILO/IMO Ad Hoc Expert Working Group on the Fair Treatment Of Seafarers in the Event of a Maritime Accident**

1. At its 290th Session (June 2004), the Governing Body approved the establishment of a Joint ILO/IMO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident (Joint Working Group), composed of eight Government experts nominated by the International Maritime Organization (IMO) as well as four Shipowner and four Seafarer experts to be nominated by the ILO after consultations with the secretariats of their respective groups. The IMO Legal Committee nominated eight member States (China, Egypt, Greece, Nigeria, Panama, the Philippines, Turkey, and the United States) with the proviso that any other government could attend the meeting as an observer. The first session of the Working Group was scheduled for 17-19 January 2005.
2. The terms of reference of the Joint Working Group were submitted to and approved at the 291st Session of the ILO Governing Body (November 2004) and by the Legal Committee of the IMO at its 89th Session (25-29 October 2004). According to the terms of reference, the Joint Working Group should prepare suitable recommendations for consideration by the IMO Legal Committee and the ILO Governing Body, including draft guidelines on the fair treatment of seafarers in the event of a maritime accident.
3. The first session of the Joint Working Group took place from 17-19 January 2005. It considered that it was premature to envisage producing valid guidelines during its first meeting. However, it agreed on the adoption of a resolution that would stress the concern of the entire maritime industry on the matter. The draft resolution is appended to this document (see Appendix II) for consideration and adoption. This draft resolution requests the ILO Governing Body and the IMO Legal Committee to authorize the promulgation of the guidelines as soon as they are finalized, and to keep the problem under review, and to assess its extent periodically.

4. *The Committee on Sectoral and Technical Meetings and Related Issues may wish to recommend that the Governing Body:*

- (a) take note of the information provided; and*
- (b) approve the terms of the draft resolution proposed at the first session of the Joint ILO/IMO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident.*

Geneva, 1 February 2005.

Point for decision: Paragraph 4.

Appendix I

Terms of reference for the Joint IMO/ILO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident

The Joint IMO/ILO Ad Hoc Expert Working Group should examine the issue of the fair treatment of seafarers in the event of a maritime accident.

In doing so, the Group should take account of relevant international instruments, including:

- the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as other internationally recognized standards, guidelines, practices and procedures relating to the rights of those who may be detained for the purpose of assisting in the investigation of a crime, a civil offence, or a maritime casualty or incident;
- the United Nations Convention on the Law of the Sea;
- pertinent IMO and ILO instruments, including MARPOL 73/78 and the ILO Declaration on Fundamental Principles and Rights at Work, 1998; and
- internationally recognized standards and guidelines on settlement of disputes, including various liability and compensation regimes.

The Group should prepare suitable recommendations for consideration by the IMO Legal Committee and the ILO Governing Body, including draft guidelines on the fair treatment of seafarers in the event of a maritime accident.

Appendix II

Draft guidelines on fair treatment of seafarers in the event of a maritime accident

Draft resolution

Fair treatment of seafarers in the
event of a maritime accident

Submitted by the secretariats

The Assembly of the International Maritime Organization and the Governing Body of the International Labour Office,

Aware of a number of recent incidents in which seafarers on ships which have been involved in maritime accidents have been detained for prolonged periods,

Seriously concerned of the need to ensure the fair treatment of seafarers in view of the growing use of criminal proceedings against seafarers after a maritime accident,

Aware further that seafarers may not be familiar with the law and processes of a port or coastal State and the impact those national laws may have on them,

Convinced that seafarers should not be held hostage pending the resolution of a financial dispute,

Concerned that in some cases the grounds for such detentions have not been clear to the seafarers being detained or to the international maritime community,

Also concerned that in some cases the detained seafarers have been subject to conditions in which their basic human rights appear not to have been fully respected,

Further concerned that these cases have an adverse impact on the morale of seafarers, on the attraction and recruitment of young people into the seafaring profession, and on retention of current seafarers in the profession,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR),

Recalling also the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and the generally accepted principles of international human rights applicable to all workers,

Recalling further the United Nations Convention on the Law of the Sea, 1982, in particular Article 292 concerning the prompt release of vessels and crews, and Article 230 on monetary penalties and the observance of recognized rights of the accused,

Noting that MARPOL 73/78 provides in Annex I, Regulation 11, and in Annex II, Regulation 6, that certain discharges are not violations of MARPOL, specifically those resulting from damage to a ship or its equipment: provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge; and except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result,

Noting also the relevant international labour standards applicable to repatriation of seafarers, in particular the ILO Convention on the Repatriation of Seafarers Convention (Revised), 1987 (No. 166),

Noting further the IMO Code for the Investigation of Marine Casualties and Incidents (resolution A.849(20) as amended by resolution A.884(21)),

Recognizing the established rights of States to prosecute or extradite in accordance with international law those accused of criminal behaviour,

Recognizing further that States should conduct investigations into maritime accidents,

Recognizing also that the issue of fair treatment of seafarers is the direct responsibility of the port or coastal States, flag States, the state of the nationality of the seafarer, shipowners and seafarers,

Convinced that recommendatory guidelines are an appropriate means of establishing a framework of legal certainty and consistent good practice to ensure that, in connection with maritime accidents, seafarers are fairly treated and their rights are not violated,

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

Further convinced that the protection of the rights of seafarers through the application of the guidelines referred to above is necessary to avoid the financial, physical and emotional burden which prolonged detention inflicts on seafarers and their families,

Consider that the adoption of guidelines which will facilitate the fair treatment of seafarers in the event of a maritime accident should be finalized as a matter of urgency,

Having considered the recommendations made by the Legal Committee at its 90th session, as endorsed by the ILO Governing Body at its 292nd Session:

1. urge all States to respect the basic human rights of seafarers involved in maritime accidents;
2. urge all States expeditiously to investigate maritime accidents to avoid any unfair treatment of seafarers;
3. urge all States to adopt procedures to allow the prompt repatriation or re-embarkation of seafarers following maritime accidents;
4. invite member Governments and non-governmental organizations with consultative or observer status in IMO or ILO, as appropriate, to record instances of unfair treatment of seafarers in the event of maritime accidents and to provide data to IMO or ILO whenever requested;
5. agree to adopt guidelines as a matter of priority and to this end request the Joint IMO/ILO Ad Hoc Expert Working Group on Fair Treatment of Seafarers to finalize its work expeditiously;
6. authorize the IMO Legal Committee and the ILO Governing Body to promulgate, once finalized, the said guidelines by appropriate means and to report to the 25th regular session of the IMO Assembly and to the 295th Session of the ILO Governing Body, accordingly,
7. request the IMO Legal Committee and the ILO Governing Body to keep the problem of unfair treatment of seafarers in the event of maritime accidents under review and to assess periodically the scale of the problem; and
8. request member Governments to bring this resolution to the attention of shipowners and seafarers and their respective organizations as well as any government officials who may be involved in decisions and procedures affecting the treatment of seafarers who are involved in maritime accidents.