

ANNEX 1

RESOLUTION LEG.6(110) ADOPTED ON 31 MARCH 2023

GUIDELINES ON HOW TO DEAL WITH SEAFARER ABANDONMENT CASES

THE LEGAL COMMITTEE OF THE INTERNATIONAL MARITIME ORGANIZATION,

RECALLING Article 33 of the Convention on the International Maritime Organization regarding the functions of the Committee,

RECALLING ALSO resolution A.930(22) of 29 November 2001 on Guidelines for the Provision of Financial Security in the Case of Abandonment of Seafarers,

RECALLING FURTHER the Maritime Labour Convention, 2006, in particular Regulation 2.5 and its associated standards and guidelines,

BEARING IN MIND the Vienna Convention on Consular Relations, 1963, in particular, Article 5 concerning the extension by a State of consular protection and assistance to its nationals and to its vessels and their crews,

BEARING IN MIND ALSO the United Nations Convention on the Law of the Sea, 1982, in particular article 94 which requires the flag State to exercise its effective jurisdiction and control in administrative, technical and social matters over ships flying its flag, and of the customary international law of the sea,

RECOGNIZING, at its 107th session, the need for additional guidelines for flag States, port States and seafarer supply States to address cases of abandonment of seafarers, and appreciating the work of the Correspondence Group, under the coordination of Indonesia, in developing such guidelines,

NOTING WITH SATISFACTION the decision of the ILO Governing Body at its 343rd session, to form the Joint IMO/ILO Tripartite Working Group to Address Seafarers Issues and the Human Element, (JTWG) as endorsed by the IMO Council at its 126th session, and recalling the decision of the Committee at its 109th session to forward the aforementioned guidelines for consideration and adoption by ILO;

HAVING considered the Guidelines as adopted by JTWG at its first session in December 2022,

1 ADOPTS the Guidelines on how to deal with seafarer abandonment cases set out in the annex to the present resolution;

2 INVITES all flag States, port States and seafarer supply States to implement the guidelines in future abandonment cases;

3 ENCOURAGES Member Governments and non-governmental organizations in consultative status with IMO and ILO to circulate the Guidelines as widely as possible in order to ensure their widespread promulgation and implementation;

4 INVITES Member Governments to consider amending their national legislation as appropriate, to give full and complete effect to the Guidelines;

5 AGREES to keep the Guidelines under review.



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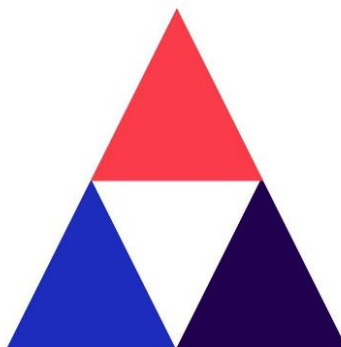


INTERNATIONAL
MARITIME
ORGANIZATION

▶ TWGSHE/2022/7

▶ Guidelines on how to deal with seafarer abandonment cases^{*}

First Meeting of the Joint ILO–IMO Tripartite Working Group to identify and address seafarers' issues and the human element
(Geneva, 13–15 December 2022)



Sectoral Policies Department
Geneva, 2022

^{*} In accordance with established procedures, these guidelines will be submitted to the 347th Session (March 2023) of the Governing Body of the ILO for its consideration.

► Introduction

1. The majority of the shipping industry operates without the menace of abandonment. However, the issue is a growing problem, with cases of seafarer abandonment reported to the ILO/IMO Database on reported incidents of abandonment of seafarers, established in 2004, increasing from a range of 12 to 19 cases from 2011 to 2016, to 40 in 2019, 85 in 2020, 95 in 2021, and 119 in 2022. Abandonment has a traumatic impact on the seafarers and families concerned and is a blight on the image of the shipping industry. More determined action is needed by all concerned; flag States, port States, States of which seafarers are nationals or are resident or are otherwise domiciled in their territory, and the States in which relevant recruitment and placement services operate, to resolve expeditiously cases of seafarer abandonment and to prevent future cases arising.
2. The International Maritime Organization (IMO) Legal Committee, at its 107th session (November–December 2020), agreed to develop guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases through an intersessional correspondence group to progress the work. At its 343rd Session (November 2021), the Governing Body of the International Labour Organization (ILO) approved the establishment of a Joint ILO–IMO Tripartite Working Group to identify and address seafarers' issues and the human element (JTWG), with a composition of eight Governments nominated by IMO, and eight Shipowner representatives and eight Seafarer representatives to be appointed by the Workers' and Employers' groups of the Governing Body of the ILO. The 109th session of the Legal Committee (March 2022), endorsed the draft Guidelines developed by the IMO correspondence group for consideration by the JTWG.¹ At its 345th Session (June 2022), the Governing Body of the ILO decided that the first meeting of the Joint Tripartite Working Group would be held from 13 to 15 December 2022 and that the purpose of the first meeting would be to discuss and adopt guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases. The IMO Council, at its 127th session (July 2022), endorsed the establishment of the Joint Tripartite Working Group and the Legal Committee's decisions.
3. The present Guidelines are addressed to all States, and primarily to port States, flag States and States of which seafarers are nationals or are resident or are otherwise domiciled in their territory. They are intended to be a reference tool of principles that can be reflected in the design and implementation of policies, strategies, programmes, legislation, administrative measures and social dialogue mechanisms on the resolution of cases of abandonment of seafarers.
4. The Guidelines draw on: (i) relevant ILO international labour standards, notably the Maritime Labour Convention, 2006, as amended (MLC, 2006), including the relevant amendments adopted by the Special Tripartite Committee of the MLC, 2006, in 2022, and IMO Assembly resolution A.930(22); (ii) relevant IMO international frameworks, agreements and Assembly resolutions; and (iii) relevant trends and developments in regional and national law and practice. They are also consistent with the ILO Guidelines for port State control officers carrying out inspections under the MLC, 2006, as amended, and the ILO Guidelines for flag State inspections under the MLC, 2006, as amended.
5. Nothing set out in these Guidelines should be understood as lowering the protection afforded by existing international labour standards and other standards. The present Guidelines are not legally binding. They are not subject to ratification or supervisory mechanisms established under the ILO's international labour standards. They expand on principles laid down in international labour standards and IMO international frameworks and agreements, all the while recognizing that they can be adapted to different national systems and circumstances.
6. The Guidelines are based on and to be read in line with the full principles, rights and obligations set out in the MLC, 2006. A brief history of the development of the provisions of the MLC, 2006, that have a bearing on the issue of abandonment and the most relevant provisions of the MLC, 2006, concerning abandonment, up to the 2022 amendments, have been included in Annexes I and II. All ILO Members are encouraged to ratify and effectively implement the MLC, 2006.

¹ Report of the Legal Committee on the work of its 109th Session: LEG 109/16/1, para. 4(d).6.

7. All ILO Members, even if they have not ratified the fundamental ILO Conventions, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation; and (e) a safe and healthy working environment.²
8. All States should strengthen systems of inspection of seafarers' labour conditions within their respective framework to ensure full compliance with relevant laws and regulations and access by seafarers to appropriate and effective remedy and complaints mechanisms.
9. All States should engage in social dialogue with representative organizations of shipowners and seafarers. Social dialogue is defined by the ILO to include all types of negotiation, consultation or exchange of information between, or among, representatives of governments, employers and workers on issues of common interest relating to economic and social policy. The main goal of social dialogue, based on the respect of freedom of association and the effective recognition of the right to collective bargaining, is to promote consensus-building and democratic involvement among the main stakeholders in the world of work. As such, it has a key role in the design and implementation of effective policies on how to deal with seafarer abandonment cases.

Purpose

10. These Guidelines facilitate the development and implementation of practical steps to expeditiously and effectively resolve cases of abandonment of seafarers³.

International framework and resources

11. The international framework and resources consist of:
 - (a) Maritime Labour Convention, 2006, as amended, in particular Article V, paragraph 7;⁴
 - (b) IMO Convention on the Facilitation of International Maritime Traffic, 1965 (FAL Convention);
 - (c) ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up; adopted at the 86th Session of the International Labour Conference (1998) and amended at the 110th Session (2022);
 - (d) ILO Forced Labour Convention, 1930 (No. 29), and the Protocol of 2014 to the Forced Labour Convention, 1930;
 - (e) IMO resolution A.930(22) on Guidelines on provision of financial security in case of abandonment of seafarers;⁵
 - (f) ILO Guidelines for port State control officers carrying out inspections under the MLC, 2006, as amended (Second revised edition, 2021);
 - (g) ILO Guidelines for flag State inspections under the MLC, 2006, as amended (Second revised edition, 2021);
 - (h) Frequently asked questions (FAQ), Maritime Labour Convention, 2006 (MLC, 2006) as amended.⁶

² ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted at the 86th Session of the International Labour Conference (1998) and amended at the 110th Session (2022).

³ For the purposes of these Guidelines, the term "seafarer" is as defined in Art. II, para. 1(f), of the MLC, 2006.

⁴ As well as MLC, 2006, Regulation 2.5 and Standard A2.5, in particular Standard A2.5.1, paras 5–8, and Standard A2.5.2; Art. III; and Standard A1.4, para. 5(c)(vi).

⁵ See Annex III.

⁶ The MLC FAQ are not legally binding. It must be noted that the answers provided in the FAQ cannot in themselves be cited as authoritative legal opinions. This is because the precise requirements of the Convention are those contained in the national laws or regulations or other measures adopted by each country to implement the MLC, 2006. The answers in the FAQ are intended to provide information in the form of brief explanations referring to the Convention and other reference materials. They are not legal opinions or legal advice as to the meaning of a requirement in the Convention or its application to an individual situation. Such opinions can be provided by the ILO to governments and shipowners' and seafarers'

Application

12. These Guidelines are addressed to:
- (a) shipowners;
 - (b) those who provide financial security related to shipowner obligations ;
 - (c) all flag States, including those which are responsible for ensuring that shipowners of ships flying their flag comply with the MLC, 2006;
 - (d) all port States, including those which are responsible for ensuring compliance with relevant provisions of the MLC, 2006, on board ships calling at their ports or which are in their territory;
 - (e) all States of which abandoned seafarers are nationals or are resident or are otherwise domiciled in their territory, which should endeavour to facilitate repatriation, including as required by the MLC, 2006;
 - (f) recruitment and placement services responsible for placing seafarers on board ships and the States in which they operate;
 - (g) seafarers, representatives of seafarers' and shipowners' organizations concerned and other stakeholders who are able to contribute to the resolution of seafarer abandonment cases.

Definition

13. The MLC, 2006⁷ states that "a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:
- (a) fails to cover the cost of the seafarer's repatriation; or
 - (b) has left the seafarer without the necessary maintenance and support; or
 - (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months."⁸

Principles and responsibilities

14. The shipowner is liable for arranging for and covering the cost of repatriation, outstanding wages and other entitlements due to the seafarers under their seafarer employment agreements or contracts of employment, as well as provision of essential needs, including medical care.
15. The MLC, 2006, requires that flag States ensure that a financial security system meeting the requirements of the Convention is in place for ships flying their flag. Flag States are encouraged to verify, on at least an annual basis, the validity of the required financial security, in particular when notified of the cessation of the financial security as described in MLC, 2006, Standard A2.5.2, paragraph 11. The IMO Assembly resolution A.930(22) recommends that flag States ensure that there is a financial security system in place as described by the operative text of the resolution. Port States are encouraged to pay particular attention to the validity of the financial security when checking the relevant documents during inspections, in accordance with MLC, 2006, Appendix A2-I and the ILO Guidelines for port State control officers carrying out inspections under the MLC, 2006 (Second revised edition, 2021).
16. The States in which the relevant recruitment and placement services operate are reminded of their obligation to regularly verify that the system of protection carried by the recruitment and placement services concerned is still in place.

organizations, in particular, upon request and on the understanding that only the International Court of Justice is competent to give authoritative interpretations of international labour Conventions. The FAQ is intended to help persons engaged in the study or application of the MLC, 2006.

⁷ Standard A2.5.2, para. 2.

⁸ The use of the definition from the MLC, 2006, in these Guidelines implies that that definition is recognized and applies regardless of whether the States have ratified the MLC, 2006.

17. In cases where the shipowner does not fulfil the obligations set out in paragraph 14, the following principles and responsibilities should be followed:
- (a) The flag State should take steps to ascertain whether there is valid financial security in place and make the seafarers and/or the seafarers' representative aware of the details of the financial security provider and of their entitlement to directly apply for assistance.
 - (b) When dealing with cases of abandonment of seafarers,⁹ the flag State should make arrangements for the maintenance¹⁰ and repatriation¹¹ of seafarers. In addition, the flag State may request assistance from the port State and from the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, when needed, and to assist the abandoned seafarers in any way.
 - (c) When dealing with cases of abandonment of seafarers, the port State should facilitate the resolution of cases by taking, at a minimum, the following actions:
 - (i) facilitate, and not refuse, the expeditious repatriation of seafarers, as well as their replacement on board, utilizing local custodians or guardians as necessary;
 - (ii) facilitate the payment of wages, including from the financial security provider, to the seafarers;
 - (iii) facilitate the provision of necessary maintenance and support, including adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care;
 - (iv) immediately inform the flag State of the ship and the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, and the States in which the relevant recruitment and placement services operate, about the event, and to cooperate and assist each other in the speedy resolution of the situation;
 - (v) facilitate access to consular services, seafarers' organizations, seafarer welfare organizations and adequate communication to allow seafarers to contact their families;
 - (vi) in cases of assumption or detection of forced or compulsory labour, ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation; and
 - (vii) ensure that seafarers retain identification documents, including passports and seafarers' identity documents (SIDs).
18. Port States, flag States, States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, and States in which the relevant recruitment and placement services operate, should cooperate to ensure that seafarers engaged on a ship to replace seafarers who have been abandoned in their territory, or on a ship flying their flag, shall be accorded their rights and entitlements including under the MLC, 2006.¹²

Procedure

General procedure

19. Upon discovery of a case of abandonment of seafarers, the port State control officer or other stakeholders should immediately report the case to the competent authority in the port State where the abandonment incident occurred and to the ILO for inclusion in the ILO/IMO Database on reported incidents of abandonment of seafarers. The competent authority in the port State should then carry out an investigation and necessary coordination work with relevant agencies within the port State. The competent authority in the port State should at the same time notify the flag State and the stakeholders concerned, such as the shipowner, States of which

⁹ MLC, 2006, Standard A2.5.2, paras 2 and 5.

¹⁰ MLC, 2006, Standard A2.5.2, para. 5.

¹¹ MLC, 2006, Standard A2.5.2, para. 10.

¹² As provided in the second sentence of the new para. 9 of Standard A2.5.1, from the 2022 amendment to the Code relating to Regulation 2.5 – Repatriation Standard A2.5.1 – Repatriation.

the seafarers are nationals or are resident or are otherwise domiciled in their territory, the States in which the relevant recruitment and placement services operate, the representatives of seafarers' and shipowners' organizations concerned and relevant seafarer welfare organizations, about the case of abandonment of seafarers through any appropriate channel.

20. Upon receiving notification of a case of abandonment of seafarers, the flag State authority should compel the shipowner and financial security providers to fulfil their responsibilities by setting an expeditious time frame, taking into account the precarious situation of the seafarers and the well-being of their families.
21. If the shipowner fails to undertake its responsibilities within the expeditious time frame referred to in paragraph 20, the flag State authority should take the lead and coordinate with the relevant stakeholders to resolve the case of abandonment of seafarers.
22. If the shipowner and the flag State fail to undertake their responsibilities, the competent authority in the port State should take the lead and coordinate with all relevant stakeholders to resolve the case of abandonment of seafarers.
23. If the shipowner, the flag State and the port State fail to undertake their responsibilities, the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, should take the lead and coordinate with all relevant stakeholders to resolve the case of abandonment of seafarers.
24. At the same time, where there is a document providing evidence of financial security, the entities leading on resolving abandonment cases should provide seafarers with assistance in contacting the financial security provider to access prompt and effective financial assistance. The flag State authority and/or the port State authority and/or the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory should facilitate the provision of the required assistance by the financial security provider.
25. In cases where there is no financial security or the financial security has ceased, repatriation of the seafarer should be arranged by the flag State, or if they fail to do so, by the port State, or if both flag and port State fail to do so, by the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory.
26. In cases in which the financial security is not sufficient to cover all of the wages owed to the seafarer (i.e. the seafarer is owed more than four months wages), the flag State, port State, States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, and States in which the relevant recruitment and placement services operate, having regard to any systems of protection that may be in place,¹³ will coordinate with local relevant government agencies and/or stakeholders, such as the representatives of seafarers' and shipowners' organizations concerned and seafarer recruitment and placement services, to resolve the abandonment case together.
27. All States, in their capacity as flag States, port States and States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, should develop in consultation with seafarers' and shipowners' representatives a national Standard Operating Procedure (SOP). Such a procedure should explicitly define the liabilities and obligations of the competent authority and the roles to be played by the various national stakeholders including the relevant national seafarers' welfare board, shipping agency, representatives of seafarers' and shipowners' organizations concerned, seafarer welfare organizations, seafarer recruitment and placement services and other stakeholders involved, referring to the international framework as necessary (set out in paragraph 11).
28. A case is considered resolved if, and only if, the ILO has received clear advice from the Member State or organization having originally provided the information that: (i) all seafarers who have expressed the desire to be repatriated has been successfully repatriated; and (ii) the totality of all outstanding remuneration and contractual entitlements has been paid and duly received by all seafarers.
29. Should judicial proceedings be required to resolve an abandonment case, the flag State and port State will continue to coordinate with other relevant agencies to offer humanitarian assistance and provide support for the repatriation of seafarers. However, for the health and safety and well-being of the abandoned seafarers, the

¹³ MLC Standard A1.4 para. 5(c)(vi).

competent authority should cooperate with the relevant institutions to facilitate repatriation while the judicial process continues. Abandoned seafarers should not be prevented from being repatriated during the judicial process.

30. In the event of an emergency in which the health or safety or well-being of the abandoned seafarers is in jeopardy, the competent authority in the port State should coordinate with the stakeholders involved to implement mitigation measures, including but not limited to rescue, investigation, information dissemination, and consideration of the safety of the seafarers.
31. The flag State, the port State, the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, or the States in which the relevant recruitment and placement services operate, should assist the abandoned seafarers in any follow-up process to fully resolve their cases.

Post-resolution

32. Following the resolution of a case of abandonment of seafarers, the States involved may consider, after consultation with the shipowners' and seafarers' organizations concerned, appropriate further mechanisms to prevent any reoccurrence of such cases by the same shipowner where breaches of applicable law occur, without prejudice to and in accordance with their national applicable law.
33. The flag State, the port State, the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, and the States in which the relevant recruitment and placement services operate, involved in the resolution of cases of abandonment of seafarers should carefully analyse, summarize and evaluate the performance of their duties in handling the abandonment, and share pertinent information and knowledge with relevant stakeholders.
34. [The ILO/IMO Database on reported incidents of abandonment of seafarers](#) should be expeditiously updated, particularly when cases are resolved.
35. The resolution of a case in the database is not intended to have any impact or prejudice to the recovery rights as afforded under MLC, 2006, Standard A2.5.1, paragraph 5(a) and (b).

► Annex I

The MLC, 2006, and the issue of abandonment of seafarers

1. Five years after the adoption in 2001 by the IMO and the ILO of resolution A.930(22) on Guidelines on provision of financial security in case of abandonment of seafarers, the adoption of the Maritime Labour Convention, 2006, (MLC, 2006) was a major step forward in helping to achieve decent work for all seafarers.
2. The MLC, 2006, requires ratifying States to satisfy themselves that the provisions of their laws and regulations respect, in the context of this Convention, the fundamental rights in Article III, and sets out seafarers' employment and social rights in Article IV.
3. The original version of the MLC, 2006, includes Regulation 2.5 – Repatriation – which aims to “ensure that seafarers are able to return home” and requires ships flying the flag of a ratifying State to provide financial security to ensure that seafarers are duly repatriated. While these provisions are relevant to the issue of abandonment, they did not contain sufficient detail with respect to the issue of abandonment.
4. The original version of the MLC, 2006, includes other provisions that are relevant to resolving cases of abandonment. For example, Standard A1.4 – Recruitment and placement – in paragraph 5(c)(vi), provides that a ratifying State “shall, in its laws and regulations or other measures ... ensure that seafarer recruitment and placement services operating in its territory ... establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them”.

2014 amendments to the MLC, 2006

5. In 2014, the ILO adopted amendments to the Code implementing Regulation 2.5. They included the addition of a new Standard, A2.5.2, which clearly defines abandonment and requires flag States to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event that they are abandoned. Financial security for repatriation was added to the list of items to be inspected by both flag and port States.

2022 amendments to the MLC, 2006

6. In 2022, the Special Tripartite Committee of the MLC, 2006, adopted at its Fourth Session (Part II) another set of amendments, including one to strengthen the existing provisions on abandonment. A new paragraph 9 to Standard A2.5.1 – Repatriation – provides that:

Members shall facilitate the prompt repatriation of seafarers, including when they are deemed abandoned within the meaning of Standard A2.5.2, paragraph 2. Port States, flag States and labour-supplying States shall cooperate to ensure that seafarers engaged on a ship to replace seafarers who have been abandoned in their territory, or on a ship flying their flag, shall be accorded their rights and entitlements under this Convention.
7. The amendments of 2022 are expected to enter into force by 23 December 2024.

► Annex II

Most relevant provisions of the MLC, 2006, pertaining to abandonment

Regulation 2.5 – Repatriation and related Standards Guidelines and Appendices (up until the 2018 amendments)

Regulation 2.5 – Repatriation

Purpose: To ensure that seafarers are able to return home

1. Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code.
2. Each Member shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.

Standard A2.5.1 – Repatriation

1. Each Member shall ensure that seafarers on ships that fly its flag are entitled to repatriation in the following circumstances:
 - (a) if the seafarers' employment agreement expires while they are abroad;
 - (b) when the seafarers' employment agreement is terminated:
 - (i) by the shipowner; or
 - (ii) by the seafarer for justified reasons; and also
 - (c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.
2. Each Member shall ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargaining agreements, prescribing:
 - (a) the circumstances in which seafarers are entitled to repatriation in accordance with paragraph 1(b) and (c) of this Standard;
 - (b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation – such periods to be less than 12 months; and
 - (c) the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.
3. Each Member shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations.
4. National laws and regulations shall not prejudice any right of the shipowner to recover the cost of repatriation under third-party contractual arrangements.
5. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:
 - (a) the competent authority of the Member whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State

- of which they are a national may arrange for their repatriation and recover the cost from the Member whose flag the ship flies;
- (b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member whose flag the ship flies;
 - (c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 3 of this Standard.
6. Taking into account applicable international instruments, including the International Convention on Arrest of Ships, 1999, a Member which has paid the cost of repatriation pursuant to this Code may detain, or request the detention of, the ships of the shipowner concerned until the reimbursement has been made in accordance with paragraph 5 of this Standard.
 7. Each Member shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board.
 8. In particular, a Member shall not refuse the right of repatriation to any seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace a seafarer.
 9. Each Member shall require that ships that fly its flag carry and make available to seafarers a copy of the applicable national provisions regarding repatriation written in an appropriate language.

Standard A2.5.2 – Financial security

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.
2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:
 - (a) fails to cover the cost of the seafarer's repatriation; or
 - (b) has left the seafarer without the necessary maintenance and support; or
 - (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.
3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.
4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member.
5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.
6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.
7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.
8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:
 - (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
 - (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
 - (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.
10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.
11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.
12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.
13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.
14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

Guideline B2.5 – Repatriation

Guideline B2.5.1 – Entitlement

1. Seafarers should be entitled to repatriation:
 - (a) in the case covered by Standard A2.5, paragraph 1(a), upon the expiry of the period of notice given in accordance with the provisions of the seafarers' employment agreement;
 - (b) in the cases covered by Standard A2.5, paragraph 1(b) and (c):
 - (i) in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;
 - (ii) in the event of shipwreck;
 - (iii) in the event of the shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of the seafarers by reason of insolvency, sale of ship, change of ship's registration or any other similar reason;
 - (iv) in the event of a ship being bound for a war zone, as defined by national laws or regulations or seafarers' employment agreements, to which the seafarer does not consent to go; and
 - (v) in the event of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason.

2. In determining the maximum duration of service periods on board following which a seafarer is entitled to repatriation, in accordance with this Code, account should be taken of factors affecting the seafarers' working environment. Each Member should seek, wherever possible, to reduce these periods in the light of technological changes and developments and might be guided by any recommendations made on the matter by the Joint Maritime Commission.
3. The costs to be borne by the shipowner for repatriation under Standard A2.5 should include at least the following:
 - (a) passage to the destination selected for repatriation in accordance with paragraph 6 of this Guideline;
 - (b) accommodation and food from the moment the seafarers leave the ship until they reach the repatriation destination;
 - (c) pay and allowances from the moment the seafarers leave the ship until they reach the repatriation destination, if provided for by national laws or regulations or collective agreements;
 - (d) transportation of 30kg of the seafarers' personal luggage to the repatriation destination; and
 - (e) medical treatment when necessary until the seafarers are medically fit to travel to the repatriation destination.
4. Time spent awaiting repatriation and repatriation travel time should not be deducted from paid leave accrued to the seafarers.
5. Shipowners should be required to continue to cover the costs of repatriation until the seafarers concerned are landed at a destination prescribed pursuant to this Code or are provided with suitable employment on board a ship proceeding to one of those destinations.
6. Each Member should require that shipowners take responsibility for repatriation arrangements by appropriate and expeditious means. The normal mode of transport should be by air. The Member should prescribe the destinations to which seafarers may be repatriated. The destinations should include the countries with which seafarers may be deemed to have a substantial connection including:
 - (a) the place at which the seafarer agreed to enter into the engagement;
 - (b) the place stipulated by collective agreement;
 - (c) the seafarer's country of residence; or
 - (d) such other place as may be mutually agreed at the time of engagement.
7. Seafarers should have the right to choose from among the prescribed destinations the place to which they are to be repatriated.
8. The entitlement to repatriation may lapse if the seafarers concerned do not claim it within a reasonable period of time to be defined by national laws or regulations or collective agreements, except where they are held captive on or off the ship as a result of acts of piracy or armed robbery against ships. The terms *piracy and armed robbery against ships* shall have the same meaning as in Standard A2.1, paragraph 7.

Guideline B2.5.2 – Implementation by Members

1. Every possible practical assistance should be given to a seafarer stranded in a foreign port pending repatriation and in the event of delay in the repatriation of the seafarer, the competent authority in the foreign port should ensure that the consular or local representative of the flag State and the seafarer's State of nationality or State of residence, as appropriate, is informed immediately.
2. Each Member should have regard to whether proper provision is made:
 - (a) for the return of seafarers employed on a ship that flies the flag of a foreign country who are put ashore in a foreign port for reasons for which they are not responsible:
 - (i) to the port at which the seafarer concerned was engaged; or
 - (ii) to a port in the seafarer's State of nationality or State of residence, as appropriate; or

- (iii) to another port agreed upon between the seafarer and the master or shipowner, with the approval of the competent authority or under other appropriate safeguards;
 - (b) for medical care and maintenance of seafarers employed on a ship that flies the flag of a foreign country who are put ashore in a foreign port in consequence of sickness or injury incurred in the service of the ship and not due to their own wilful misconduct.
- 3. If, after young seafarers under the age of 18 have served on a ship for at least four months during their first foreign-going voyage, it becomes apparent that they are unsuited to life at sea, they should be given the opportunity of being repatriated at no expense to themselves from the first suitable port of call in which there are consular services of the flag State, or the State of nationality or residence of the young seafarer. Notification of any such repatriation, with the reasons therefor, should be given to the authority which issued the papers enabling the young seafarers concerned to take up seagoing employment.

Guideline B2.5.3 – Financial security

- 1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer's nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.

Standard A1.4 – Recruitment and placement

(...)

- 5. A Member adopting a system referred to in paragraph 2 of this Standard shall, in its laws and regulations or other measures, at a minimum:
 - (...)
 - (c) ensure that seafarer recruitment and placement services operating in its territory:
 - (...)
 - (vi) establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.
- 6. The competent authority shall closely supervise and control all seafarer recruitment and placement services operating in the territory of the Member concerned. Any licences or certificates or similar authorizations for the operation of private services in the territory are granted or renewed only after verification that the seafarer recruitment and placement service concerned meets the requirements of national laws and regulations.

Appendix A2-I

Evidence of financial security under Regulation 2.5, paragraph 2

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

- (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 and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner ;¹
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

¹This was amended in 2022 by the MLC, 2006 Special Tripartite Committee as follows: "(g) name of the shipowner, or of the registered owner if different from the shipowner;". The amendment is expected to enter into force on 23 December 2024.

Appendix A5-I

The working and living conditions of seafarers that must be inspected and approved by the flag State before certifying a ship in accordance with Standard A5.1.3, paragraph 1:

- Minimum age
- Medical certification
- Qualifications of seafarers
- Seafarers' employment agreements
- Use of any licensed or certified or regulated private recruitment and placement service
- Hours of work or rest
- Manning levels for the ship
- Accommodation
- On-board recreational facilities
- Food and catering
- Health and safety and accident prevention
- On-board medical care
- On-board complaint procedures
- Payment of wages
- Financial security for repatriation
- Financial security relating to shipowners' liability.

Appendix A5-III

General areas that are subject to a detailed inspection by an authorized officer in a port of a Member carrying out a port State inspection pursuant to Standard A5.2.1:

- Minimum age
- Medical certification
- Qualifications of seafarers
- Seafarers' employment agreements
- Use of any licensed or certified or regulated private recruitment and placement service
- Hours of work or rest
- Manning levels for the ship
- Accommodation
- On-board recreational facilities
- Food and catering
- Health and safety and accident prevention
- On-board medical care
- On-board complaint procedures
- Payment of wages
- Financial security for repatriation
- Financial security relating to shipowners' liability.

► **Annex III**

Resolution A.930(22), Adopted on 29 November 2001

Guidelines on provision of financial security in case of abandonment of seafarers

Resolution A.930(22)
Adopted on 29 November 2001 (Agenda item 10)
GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN CASE OF
ABANDONMENT OF SEAFARERS

INTERNATIONAL MARITIME ORGANIZATION



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ASSEMBLY
22nd session
Agenda item 10

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Resolution A.930(22)

*Adopted on 29 November 2001
(Agenda item 10)*

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

THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE,

NOTING the importance in the plan of action of the International Maritime Organization (IMO) of the human element, which is central for the promotion of quality shipping, and the core mandate of the International Labour Organization (ILO), which is to promote decent conditions of work,

RECALLING the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up as well as the relevant international labour standards applicable to maritime employment;

RECALLING ALSO the generally accepted principles of international human rights applicable to all workers;

RECALLING FURTHER Article 94 of the United Nations Convention on the Law of the Sea, 1982, which requires the flag State to exercise its effective jurisdiction and control in administrative, technical and social matters over ships flying its flag;

CONSIDERING the provisions of Article 5 of the Vienna Convention on Consular Relations, 1963, in particular the extension by a State of consular protection and assistance to its nationals and to its vessels and their crews;

CONSIDERING FURTHER the International Convention on Maritime Liens and Mortgages, 1993, and the International Convention on Arrest of Ships, 1999;

NOTING the relevant international labour standards applicable to maritime employment, in particular the ILO Repatriation of Seafarers Convention (Revised), 1987 (No. 166);

NOTING FURTHER the Resolution concerning the Protection of Wages and Stranded Seafarers adopted by the Governing Body of the International Labour Office at its 252nd session (March 1992);

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ABANDONMENT OF SEAFARERS

RECOGNIZING that abandonment of seafarers is a serious problem, involving a human and social dimension;

CONSIDERING ALSO that, given the global nature of the shipping industry, seafarers need special protection;

CONCERNED THAT, if shipowners do not have effective financial security, seafarers may not receive due remuneration or be promptly repatriated in cases of abandonment;

NOTING that the Guidelines represent a valuable contribution to the objectives of eliminating the operation of sub-standard ships and enhancing the social protection of seafarers;

RECOGNIZING ALSO that the present resolution does not call for the adoption of additional mechanisms where national legislation already meets or exceeds the provisions of the Guidelines;

AFFIRMING that provision for repatriation, maintenance while abandoned, and payment of remuneration should form part of the seafarer's contractual and/or statutory rights, and are not affected by the failure or inability of the shipowner to perform its obligations;

RECOGNIZING FURTHER that in cases where the shipowner fails to meet its obligations, the flag State may be called upon, and in some cases the State of which the seafarer is a national or the port State may be called upon, to intervene;

CONVINCED that the adoption of guidelines is an appropriate interim measure to ensure provision of financial security in case of abandonment of seafarers;

1 ADOPT the Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers, set out in the annex to the present resolution;

2 REQUEST Member Governments to bring this resolution and Guidelines to the attention of shipowners and seafarers and their respective organizations;

3 URGE Member Governments, when discharging their obligation as flag States:

- .1 to ensure that shipowners comply with the Guidelines;
- .2 to ensure that seafarers employed or engaged on ships flying their flag are protected, in case of abandonment, by a financial security system;
- .3 to have in place, as a contingency, arrangements for the maintenance and repatriation of seafarers employed or engaged on ships flying their flag, in case of abandonment;

4 URGE ALSO Member Governments, where seafarers have been abandoned within their jurisdiction, to inform the flag State of the ship and the States of which the seafarers are nationals about the event, and to cooperate and assist each other in the speedy resolution of the situation;

5 INVITE Member Governments to recognise that, in accordance with the relevant international labour standards, when the shipowner has not fulfilled its international obligations and the financial security system or the flag State fails to repatriate abandoned seafarers, the port State or the States of which the seafarers are nationals may undertake the repatriation without prejudice as to the recovery of the costs;

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- 6 RECOMMEND that Member Governments:
- .1 draw the attention of their immigration authorities to the benefits provided to abandoned seafarers covered by a financial security system;
 - .2 consider that the absence of a financial security system should not prejudice the immigration status of abandoned seafarers;
- 7 CALL UPON Member Governments, without prejudice to notification requirements under applicable international instruments, to communicate to the Secretary-General of the IMO or the Director General of the ILO, for the purpose of disseminating the information widely, national focal points responsible for dealing with cases of abandonment and with other issues falling within the scope of the Guidelines;
- 8 INVITE Member Governments and non-governmental organizations with consultative or observer status in the IMO or the ILO, as appropriate, to record instances of abandoned seafarers and to provide data to the IMO or the ILO whenever requested;
- 9 REQUEST the Assembly of the IMO and the Governing Body of the ILO to keep the problem of abandonment under review and to assess periodically the scale of the problem;
- 10 INVITE the IMO Assembly and the ILO Governing Body to consider other appropriate action for longer-term sustainable solutions to address the problems covered by these Guidelines;
- 11 REQUEST the IMO Assembly and the ILO Governing Body to keep the Guidelines under review and to amend them as necessary; and
- 12 INVITE Member Governments to note that these Guidelines will take effect on 1 January 2002.

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ANNEX

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

1 INTRODUCTION

1.1 The purpose of the Guidelines is to assist States, when establishing their national requirements, to identify the most crucial issues relating to financial security in case of abandonment of seafarers.

1.2 The Guidelines recommend measures to be implemented by shipowners to ensure the provision of an adequate financial security system for seafarers in case of abandonment. The Guidelines set out the main features and scope of coverage of the financial security system and also contain recommendations for certification of the financial security system.

1.3 These Guidelines also apply to fishing vessels engaged in international voyages.

2 DEFINITIONS

2.1 For the purpose of these Guidelines, unless expressly provided otherwise:

- .1 *Shipowner* means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities;^{*}
- .2 *Seafarer* means any person who is employed or engaged in any capacity on board a seagoing ship; and
- .3 *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;

3 SCOPE OF APPLICATION

3.1 Shipowners are urged to comply with these Guidelines in respect of all seagoing ships.

3.2 These Guidelines do 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.

^{*} Article 1(c) of the Recruitment and Placement of Seafarers Convention 1996 (No.179) and Regulation IX/1.2 of SOLAS 1974 as amended.

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4 SHIPOWNERS' RESPONSIBILITIES

- 4.1 Shipowners should arrange a financial security system which complies with these Guidelines.
- 4.2 Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these Guidelines.

5 SCOPE OF FINANCIAL SECURITY SYSTEMS

- 5.1 The financial security system should provide for:
 - .1 the expenses of the repatriation of the seafarer, which are to be met without costs to the seafarer;
 - .2 the maintenance of the seafarer from the time of abandonment to the time of arrival at the place of repatriation;
 - .3 payment to the seafarer of all outstanding remuneration and contractual entitlements; and
 - .4 payment to the seafarer of other expenses incurred during the period of abandonment arising from the abandonment.
- 5.2 In the event that the shipowner fails to fulfil its responsibilities, the financial security system should 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 the place of repatriation, medical care, passage and transport of personal effects and any other reasonable charges.
- 5.3 The maintenance of seafarers while abandoned should include: adequate food, clothing, accommodation, medical care and other basic necessities of life.
- 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.
- 5.5 In the event that the seafarer incurs any other reasonable expenses during the period of abandonment, the seafarer should be entitled to recover such expenses from the financial security system.

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 5.1 should provide the following:
 - .1 a right of direct access by the seafarer to the financial security system;
 - .2 sufficient coverage in respect of the elements of abandonment contained in these Guidelines; and

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- .3 the applicability of the financial security system to all seafarers irrespective of nationality.

7 CERTIFICATES

7.1 Shipowners should 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. 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 should include:

- .1 name of the ship;
- .2 port of registry of the ship;
- .3 call sign of the ship;
- .4 IMO Number of the ship;
- .5 name of the provider of the financial security;
- .6 place of business of the provider of the financial security;
- .7 name of the shipowner;
- .8 period of validity of the financial security; and
- .9 an attestation that the financial security meets the recommended standards set out in these Guidelines.

7.4 A copy of the certificate should be provided when required to the immigration 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.
