



JOINT IMO/ILO *AD HOC* EXPERT
WORKING GROUP ON FAIR TREATMENT
OF SEAFARERS
1st session
Agenda item 11

IMO/ILO/WGFTS 1/11
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REPORT OF THE WORKING GROUP

1 Opening of the session

1.1 The Joint IMO/ILO *Ad Hoc* Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident met from 17 to 19 January 2005 at the Headquarters of the International Maritime Organization (IMO). The list of participants is given at annex 1.

1.2 In welcoming participants on behalf of the Secretary-General of IMO, who was on mission abroad, Dr. Rosalie Balkin, Director, Legal Affairs and External Relations Division (IMO) extended a special welcome to those attending a meeting at IMO for the first time, and wished all a happy and successful New Year.

1.3 At the specific request of the Secretary-General, she invited participants to reflect for a moment on recent events in South East Asia. At the previous week's meeting of the IMO Sub-Committee on Standards of Training and Watchkeeping (STW), the Secretary-General had informed the Sub-Committee of actions taken to assess the situation in the region affected and provide a meaningful response from the maritime community. He had underlined the need for IMO, on a priority basis, to add its contribution to the concerted effort undertaken worldwide to start the reconstruction and rehabilitation of South Asia by, first of all, assessing the situation *vis-à-vis* aids to navigation and other maritime facilities and infrastructure in the region affected, to enable not only aid to reach the countries concerned safely by sea, but also shipping to continue to serve the seaborne trade safely and effectively. IMO's technical Divisions and its Technical Co-operation Division were already acting to this effect. The support and co-operation of specialized organizations and associations and the maritime community as a whole in the achievement of these goals would be greatly appreciated.

1.4 Dr. Balkin informed participants that the Secretary-General had established a special *ad hoc* fund – the Tsunami Maritime Relief Fund – for the deposit of any contributions from volunteering organizations and individuals. Participants who wished to do so could add their contributions by making use of the boxes installed at the two entrances to the meeting room.

1.5 Turning to the immediate purpose of the meeting, Dr. Balkin drew attention to the number of cases, some high profile, others hardly reported in the news media, of ships' masters and seafarers being detained ashore following incidents which had occurred on ships on which they served. She also drew attention to the recent case in which not only the master and some of the officers and crew, but also the salvage master sent to the scene to try to address the situation,

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had been detained. Happily, that incident had been resolved and the seafarers and salvage master had returned to their homes and careers. But general concerns remained, and these incidents had provided the background to the decision by the IMO Legal Committee and the ILO Governing Body to establish this important Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers.

1.6 Dr. Balkin noted that the Secretary-General had stated before that not only should we say we care about seafarers, but we should mean it and show that we do, so that seafarers themselves from all over the world would know that the maritime community as a whole recognized and appreciated their contribution, cared about them and was there to look after them in times of need.

1.7 Everyone was concerned about the impact a prolonged detention could have on the morale of the seafarers under detention and also about seafarers of the world as a whole, who might justifiably fear for their future livelihoods following an accident involving the ships on which they served. There were also concerns in other areas: the impact an act of detention might have on the global campaign to attract youngsters to the maritime profession, particularly at a time when there was a shortage of quality officers and a strong possibility of a shortage of ratings in the not-too-distant future; the prospect that a prolonged detention would discourage seafarers from actively, openly and fully co-operating with casualty investigators trying to identify causes and explanations for the casualty; and the international repercussions arising from the wide degree of legal uncertainty regarding the status of any such detainees and the preservation of basic human rights involving their welfare.

1.8 The Joint *Ad Hoc* Expert Working Group's task in developing the guidelines was not an easy one. Everyone recognized the complexity of the issue and had every sympathy for all those who had been the victims of accidents, in particular, serious pollution incidents. Furthermore, everyone understood and fully respected the independence of the judiciary in countries that had suffered in many ways as a result of such accidents. But everyone was also collectively concerned about the treatment of the innocent seafarers who were detained in the aftermath of such events. Their fundamental human rights, including protection against arbitrary interference with their right to liberty, must be respected.

1.9 Dr. Balkin concluded by wishing the Joint *Ad Hoc* Expert Working Group, on behalf of the Secretary-General, every success in its deliberations at this first session.

1.10 Mr. Jean-Yves Legouas, Senior Maritime Specialist, International Labour Standards and Maritime Activities Department, International Labour Office (ILO), welcomed participants to the session on behalf of ILO and, in particular, Mrs. Cleopatra Doumbia-Henry, Director of the International Labour Standards and Maritime Activities Department, who could not be present due to pressing engagements in Geneva.

1.11 Mr. Legouas informed participants that the ILO and its constituents had been aware, for a number of years, of the painful problem created by the arrest or detention of seafarers in the aftermath of a maritime accident and of the necessity to co-ordinate ILO's efforts with those of other UN agencies and, more generally, with people of good will as a whole, to find an appropriate solution to this issue.

1.12 The twenty-ninth session of the Joint Maritime Committee (JMC), in January 2001, had noted with deep concern that, in the event of maritime accidents, some administrations had

placed seafarers, in particular the master, under arrest, before any investigation had taken place

and while the seafarers concerned were still in a state of deep distress. The JMC had expressed its preoccupation about this and requested the Director-General of ILO to bring the issue to the attention of Member States and advise the Secretary-General of IMO of the action taken. The Governing Body of ILO, at its 280th session in March 2001, had endorsed these requests.

1.13 More recently, the High-Level Tripartite Working Group on Maritime Labour Standards, during its fourth session, held in Nantes (France) in January 2004, in view of another specific case, had drafted a declaration expressing its sympathy for the victims of the accidental grounding of the vessel, as well as its conviction that the crew members of the ship were also victims. It had expressed the hope that the national authorities involved could release the crew members and allow their repatriation. It had also requested the Director-General of ILO to raise this issue with the Government involved in this affair, as well as, more generally, to raise the issue of the growing problem of criminalization of seafarers following a maritime casualty with the Secretary-General of IMO, with a view to promoting an appropriate response. Fortunately, in this case, the Government concerned took the necessary measures to secure the release of the crew. The Governing Body of ILO was informed of the declaration and of the Office's actions in this respect at its 289th session in March 2004. The Government concerned also informed ILO of the measures it had taken in response to the request of ILO.

1.14 Mr. Legouas concluded by stating that the task of the Joint *Ad Hoc* Expert Working Group for the seafaring industry was therefore a very important one, although it would probably not be an easy one, even though the proposed goal was clear and entirely within the scope of the activities and responsibilities of both IMO and ILO.

1.15 A number of documents had been received and would be presented and examined during this first session. ILO had prepared a working paper on some relevant provisions that could be found in the existing corpus of International Maritime Labour instruments. The Joint *Ad Hoc* Expert Working Group would have to rapidly identify all appropriate sources relevant to the problem and, in performing that task, it might find it necessary to undertake more in-depth research activity.

1.16 Dr. Balkin then recalled that the IMO Council, at its ninety-second session, had approved this new item on the Legal Committee's work programme to develop guidelines on fair treatment of seafarers and agreed that a Joint IMO/ILO Working Group should be established. The ILO Governing Body, at its 290th session (June 2004), had similarly approved the establishment of a Joint IMO/ILO *Ad Hoc* Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident, as a tripartite body.

1.17 The Legal Committee of IMO, at its eighty-ninth session, had agreed to the terms of reference and had also agreed to appoint the following eight countries to represent the Organization on the Joint *Ad Hoc* Expert Working Group: China, Egypt, Greece, Nigeria, Panama, Philippines, Turkey and the United States. The Committee had also agreed that other delegations might attend meetings of the Joint *Ad Hoc* Expert Working Group as observers. Dr. Balkin stressed that, in accordance with the terms of reference for the Joint *Ad Hoc* Expert Working Group, as approved by the IMO Legal Committee and the ILO Governing Body, the Group had an important task to perform in assessing and evaluating the extent of the potential problems relating to fair treatment of seafarers, as well as the adequacy and effectiveness of existing applicable international instruments. The Joint *Ad Hoc* Expert Working Group should also formulate suitable recommendations to the IMO Legal Committee and the ILO Governing Body, as appropriate. Noting that during the current year the Legal Committee would only have

a two-week meeting from 18 to 29 April 2005, she concluded by stressing the importance of a concrete outcome of the current session, so that the proposals of the Joint *Ad Hoc* Expert Working Group could be submitted to the Legal Committee for consideration before being submitted to the Assembly in November 2005.

2 Election of the Chairperson and two Vice-Chairpersons

2.1 Ms. Liliana Fernandez (Member Government – Panama) was elected as Chairperson and Mr. Joe Cox (Shipowner representative) and Mr. Brian Orrell (Seafarer representative) were elected as Vice-Chairpersons of the Joint *Ad Hoc* Expert Working Group, hereinafter referred to as the “Working Group”. It was agreed that the elected Officers would serve in that capacity for the duration of the Group’s existence.

3 Adoption of the Agenda

3.1 The Working Group adopted the provisional agenda contained in document IMO/ILO/WGFTS 1/3 and decided to discuss items 7 and 8 together. The agenda for the session is given at annex 2.

4 Opening views of IMO and ILO participants

4.1 In his opening speech, the Shipowners’ representative thanked both the IMO and ILO Secretariats for convening this important meeting of the Joint *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident. He also expressed his thanks to the Seafarers for proposing his nomination as Vice-Chairperson. He thanked Dr. Balkin for reminding the Group of the impact of unfair treatment in terms of the difficulties it was causing in attracting potential entrants to the industry at a time when it was struggling to recruit officers and when there was likely to be a shortfall of ratings. He commented that the seafaring profession looked considerably less attractive to prospective entrants now than when he had embarked on his own seagoing career. He cited the case of overreaction by officials in one instance to a “spill drill” and questioned the outcome had it not been a drill. He reiterated that the fair treatment of seafarers in the event of a maritime casualty was very important and suggested that the Working Group needed to produce a concrete proposal at the end of this session to present to the next session of the IMO Legal Committee to progress the issue in time before the IMO Assembly in November 2005.

4.2 In his opening speech, the Seafarers’ representative expressed his appreciation to both IMO and ILO for the establishment of the Joint *Ad Hoc* Expert Working Group. The criminalization of seafarers was a source of great concern and the fact that two United Nations agencies were involved in this work was a timely recognition of the problem. This was an area where there seemed to be little difference between the Seafarers and the Shipowners, who had worked together to secure the release of Captain Mangouras and to defeat the proposed European Union directive which would have criminalized accidental or non-intentional pollution. He also expressed the Seafarers’ appreciation to the Secretary-General of IMO for all the initiatives he had taken in the case of Captain Mangouras and the Karachi eight.

4.3 Seafarers, he said, should be treated in the same way as any other professionals and this meant that accidental or non-intentional pollution should not be criminalized. This did not preclude the application of civil liability, where gross negligence had been established by a court of law, or the application of appropriate professional sanctions.

4.4 Many measures had made the seafaring profession less attractive than it had previously been and compensations had been removed. There was now a growing shortage of suitably qualified seafarers and a desperate need both to attract new entrants and retain existing seafarers. He hoped that the work of the Working Group would go some way to removing the problems of the criminalization of seafarers.

4.5 He considered that the terms of reference, which in their current form related to a maritime accident, should be widened to address the related issues of the detention of innocent seafarers, who were not themselves implicated in the commission of a criminal or intentional act but who were detained for long periods of time as part of a judicial process to enable them to give evidence against others. Insufficient consideration had been given, in these cases, to the problem of maintaining the subsistence of these seafarers and their families. This was a priority issue for which, he hoped, both short and long-term solutions could be expeditiously found.

4.6 The delegation of Greece stated that it was among the sponsors of the document proposing the production of guidelines, or other appropriate measures on the fair treatment of seafarers, that would highlight the plight of the individuals involved and illustrate the expectations of the international maritime community with regard to such cases.

4.7 The delegation expressed its thanks to the IMO Legal Committee and the ILO Governing Body that had approved the establishment of the Joint *Ad Hoc* Expert Working Group and affirmed its dedication to achieving a result which would reflect the expectations of the maritime community on this issue.

4.8 The delegation noted that Greece had had the recent and bitter experiences of the **Prestige** and the **Tasman Spirit** cases, which had involved seafarers of Greek nationality, but nonetheless realized that although the maritime industry was regulated by a broad framework of international conventions, recommendations and resolutions, none of these directly addressed the fair treatment of seafarers involved in a maritime accident. For Greece, a major flag State but also a State with a large number of seafarers working primarily on board ships flying the Greek flag, it was an issue of great importance and Greece was prepared to do its best to avoid a repetition of such events in the future.

4.9 The international nature of sea transport meant that ships and seafarers, by the very nature of their business, fell under the jurisdiction of several States. The differences between the judicial systems of the various States was another problem, and it was difficult, if not impossible, to harmonize those differences.

4.10 A realistic approach to a problem which involved the flag State, the port State, the seafarer's State of nationality, the shipowner and the seafarers, was necessary. Greece agreed with the opinion expressed by the International Confederation of Free Trade Unions (ICFTU) in document IMO/ILO/WGFTS 1/6/1, which pointed out that the first target should be an IMO Assembly resolution. Greece shared ICFTU's optimism that such a resolution, which would contain guidelines, would be adopted at the next session of the Assembly in November 2005.

4.11 When formulating the guidelines, the following axioms should be taken into serious account: that everyone has the right to life, liberty and security of person; that no-one shall be subjected to arbitrary arrest or detention; and that everyone has the right to be presumed innocent until proven guilty.

4.12 The delegation of Greece closed by thanking and congratulating the joint Secretariats for the documents they had prepared and looked forward to their contributions in the conclusion of the Working Group's task.

4.13 The delegation of the Philippines drew attention to the fact that the Philippines was a major source of seafarers working on ocean-going vessels. This being the case, there was always a likelihood that any major maritime accident or incident might involve a Filipino. In recent years, when such accidents or incidents had occurred, the master or other crew members had been criminally charged and detained for long periods of time without the benefit of due process or trial. These incidents had been a major concern for the Philippines, since the Government is eager to promote social justice and human rights among Filipino seafarers as well as upholding the democratic rights of every seafarer with regard to their working and living conditions, remuneration and benefits in accordance with internationally-accepted standards.

4.14 To date, a number of Filipino seafarers had been detained in the United States for alleged marine pollution cases, including seafarers who were held as material witnesses to a case. These seafarers had been employed on board the **MV Katerina**, the **MV Kent Navigator** and the **MV Friendship**. The principal concern of the Philippines in the detention of these seafarers had been the cessation of payment of wages and consequent loss of income for the seafarers and their families while they were under detention. This was one concern, in the view of this delegation, that should be addressed at the current session.

4.15 The Philippines, as a State Party to the UN Convention on Migrant Workers, recognized that the human rights of those who had been accused should be observed in the conduct of proceedings and prolonged detention should not be allowed. Unwarranted detentions were a humanitarian issue and must be seen as such. Unjustified detention of seafarers was a clear breach of human rights.

4.16 On the occasion of this Joint *Ad Hoc* Expert Working Group, the delegation of the Philippines also called on ILO to consider including a Regulation in Title 4 of the Draft Consolidated Maritime Labour Convention that would deal with the matter of fair treatment of seafarers. The delegation believed that Guideline B.4.4.6 – Seafarers in a Foreign Port – contained in the said draft document, was not sufficient to cover cases of that nature and therefore a stronger provision was needed to ensure the welfare and well-being of seafarers.

4.17 The delegation of the United States, in response to the statement by the delegation of the Philippines, underlined the necessity of having a careful understanding of the facts. It was very important to note that all the cases in the United States mentioned by the delegation of the Philippines actually involved violations of law that occurred in United States waters. While the delegation of the United States was quite prepared and willing to discuss the particulars of any case of concern, it felt that this should be done outside the present meeting, since cases where criminal intent was present were not within the Working Group's mandate.

4.18 The delegation of the United States of America agreed that the fair treatment of seafarers following maritime accidents was an important concern and that guidelines in that regard were necessary.

4.19 As had been noted already, seafarers, due to the nature of their employment were vulnerable and deserved adequate protection. Everyone was aware of maritime accidents following which seafarers had been detained for lengthy periods for purposes that many would question, some recent examples in this regard being:

- one incident where, following a grounding, the authorities retained the crew's passports until the ship's owner provided an undertaking to finance the cost of salvaging the vessel; and
- another incident where, after a vessel sank, the authorities detained the vessel's master and crew and demanded a multi-million dollar surety as a condition of their release.

4.20 However, this delegation continued, all could agree that seafarers should also be entitled to have full, fair and thorough accident investigations conducted on their behalf to promote maritime safety. These investigations were used to determine the cause of workplace accidents that often resulted in injuries or death of seafarers. Casualty investigations had been the primary engine for international improvements in equipment standards and seafarer safety. They had worked historically to the benefit of all seafarers and all responsible shipowners. It should be borne in mind during the week's deliberations that there were important legitimate interests in investigating maritime accidents. Therefore the ability of Governments to conduct investigations should be considered and preserved for the benefit of all seafarers.

4.21 The delegation of the United States did not agree with the suggestion made by some other parties to broaden the scope of the Working Group beyond the subject of maritime accidents. In the opinion of this delegation, the Working Group had been given a mandate to address maritime accidents and this specifically did not include acts or incidents committed with criminal intent. That task was sufficient for the Working Group during this week; the broader issues of what constituted a crime under national domestic law, what constituted criminal intent or how investigations into criminal acts should be conducted were important, but were beyond the Working Group's mandate. Their inclusion was likely to interfere with the Working Group's ability to address the core issue and undermine the legitimacy of whatever guidelines it produced.

4.22 The delegation of Nigeria stated that it was proud to be involved with this epoch-making event. The discussion and comments made so far by delegates reflected the importance, complexity and sensitive nature of the issues at stake. The importance of the Working Group and its task – the fair treatment of seafarers in the event of a maritime accident - could not be over-emphasized and was evidenced by the sheer number of participants from the various sectors of the industry.

4.23 The Working Group's job was by no means an easy one: principal among the tasks to be accomplished was the harmonization of national legislations relating to the issues of arrest and detention of seafarers and balancing these legislations with international conventions and covenants on human rights. This was critical to the development of guidelines.

4.24 The delegation of China also expressed its appreciation for the establishment of the Working Group. As a State with a large fleet and hundreds of thousands of seafarers, the issue of their fair treatment in the event of a maritime accident was of great importance to China. The delegation associated itself with the sentiments which had been expressed before, and hoped that

the outcome of this meeting would provide clear guidance on the issue of fair treatment of seafarers in the event of a maritime accident.

4.25 The observer delegation of Spain recognized the importance of the Working Group and made a number of comments in connection with aspects that could be treated by the Working Group that had already been raised by previous speakers.

4.26 Firstly, Spain underlined the complexity of the issue, especially due to the fact that in every country a different criminal law applied. In this observer delegation's opinion, national criminal laws were not ordinarily regulated by international *fora* and the independence of the judicial authorities of each country should be safeguarded.

4.27 Secondly, in connection with the so-called principle of the presumption of innocence that other delegations had raised, Spain pointed out that in certain cases it was not clear whether the master or the seafarers were responsible or not for the transgression they were accused of and the judicial authorities might conclude that there is enough evidence to assume that they should be detained. The Working Group should bear in mind that it is usually the judicial authorities, rather than the coastal State's maritime administration that decide whether a seafarer should be imprisoned or not.

4.28 Thirdly, the Working Group should take a general approach with regard to the terms of reference, rather than basing the debate on particular cases. Issues should be discussed which affect the fair treatment of seafarers before the occurrence of an accident, since that, in some cases, may be the origin of the accident itself. As previous speakers had already stated, seafarers are also victims. In the opinion of this observer delegation, seafarers might be victims of their working conditions (lack of appropriate training, poor support from the flag State, etc.), before they are victims of the coastal States. This could also lead to negligent behaviour on the part of seafarers and, as a consequence, to their detention, as many States consider negligence to be a criminal offence.

4.29 The representative of the International Federation of Shipmasters' Associations (IFSMA) stated that incidents are not to be confused with criminal intent and that investigations must not be a pretext to detain seafarers. The definition of "accident" should encompass all maritime incidents (with the exception of the plainly criminal ones) not only oil spills.

4.30 The paper submitted by IFSMA to the eighty-ninth session of the Legal Committee (document LEG 89/9) asked for prompt release. All subsequent procedures to get the seafarer back to his own country should be included in the guidelines.

5 Review of the terms of reference

5.1 The Working Group noted the terms of reference as set out in document IMO/ILO/WGFTS 1/5. They are attached at annex 3.

6 Assessment of the extent of the problem

6.1 Document IMO/ILO/WGFTS 1/6 contained three documents at annex, submitted by Brazil, India and IFSMA, which had been referred to the Group by the IMO Legal Committee at its eighty-ninth session.

6.2 The delegation of Brazil, in document LEG 89/9/2, drew attention to cases of abandonment when the master of the ship had been left without any financial means in respect of ship operations and possible criminalization of seafarers serving on board an abandoned ship that

might cause damage to persons, property or to the marine environment. Brazil suggested that when the conditions to achieve the objectives under the current regulations were not fulfilled by the third parties, neither the captain nor the crew should be penalized for third-parties' non-compliance with the regulations. Brazil also suggested that the development of an international instrument with appropriate legislation for fair treatment of seafarers, as well as the development of guidelines to this end, should also include consideration of the situation of seafarers serving on board an abandoned ship.

6.3 In the absence of the delegation of India, the Secretariat introduced document C 92/6/1. In so doing, it noted that the document dealt with the matter of implication of seafarers in maritime incidents including pollution incidents even when they had not committed any crime directly attributable to them. The seafarers needed certainty in their profession and they should not face ill treatment. In this regard, the document urged the creation of an international instrument.

6.4 The delegation of the Philippines, one of the co-sponsors of document LEG 88/12 submitted to the eighty-eighth session of the Legal Committee, suggested that the guidelines should include the following basic principles:

- the fundamental human rights of seafarers should be considered at every stage of any proceedings in incidents arising out of the alleged violation of anti-pollution instruments.
- seafarers should not be unduly detained and, if initially detained, should be released promptly, unless charges of wilful misconduct or criminal negligence can be substantiated.
- particular regard should be given to the provisions of UNCLOS with respect to monetary penalties and the need for the prompt release of seafarers once security, such as a bond, has been lodged. Reference should also be made to other IMO instruments including MARPOL and the various liability and compensation conventions.
- the opportunity to resort to international arbitration or other dispute settlement mechanisms, including the International Tribunal on the Law of the Sea, should be mentioned.

6.5 In introducing document IMO/ILO/WGFTS 1/6/1, the representative of ICFTU suggested that the proposed guidelines should include a summary of applicable law; identify the criteria for a criminal act; distinguish between international damage, which involved knowledge and intent accidental damage; distinguish the various sanctions which could be imposed in terms of criminal sanctions, civil liability and administrative or professional sanctions.; and include practical guidance directed to port or coastal States, flag States, shipowners and seafarers.

6.6 In introducing document IMO/ILO/WGFTS 1/6/3, the delegation of the United States suggested that, during development of these guidelines, the Working Group should consider the following important concepts:

- mariners are entitled to have a full, fair and thorough marine accident investigation conducted on their behalf to promote maritime safety by determining the cause of workplace accidents that often result in worker injuries and death. Marine casualty investigations have been the primary engine for international

improvements in maritime equipment standards and workplace safety standards such as SOLAS and STCW.

- clear guidelines describing principles of good management of marine accident investigations which incorporate concepts of fundamental fairness will aid nations in managing their marine casualty investigations in ways that adhere to the fair treatment of mariners.
- the guidelines should acknowledge the general principle that nations will, from time to time, have legitimate (warranted) reasons for detaining seafarers associated with a maritime accident.
- the guidelines should recognize that maritime accidents vary significantly in complexity and that proper response to, and investigation of, such incidents may vary considerably.

6.7 The Seafarers' representative was pleased to note that the United States supported the concept of affording all seafarers fair treatment in the event of a maritime accident because seafarers felt persecuted and oppressed by the United States in many other areas.

6.8 He criticized the United States' visa regime, denial of shore leave, and the over-zealous application of immigration policy which had the consequence that a seafarer who walked onto the dock to phone home would be deported and would lose his profession. He also criticized the over-zealous application of the ISPS Code and noted the case of the **Katerina**, where innocent seafarers had been treated worse than in the case of the **Tasman Spirit**. There had also been attempts to board ships at sea and interrogate seafarers in the search for weapons of mass destruction.

6.9 He further pointed out that the **Katerina** case concerned an alleged oil pollution case, far from United States waters, and the 13 crew who initially brought the matter to the attention of the United States Coast Guard were being held to give evidence. Since the shipowner stopped paying their wages and hotel accommodation, they had been reliant on the charity of seafarers and dockers, seafarers' welfare organisations and the Philippines Consulate. When the shipowners ceased paying the hotel, the "material witnesses" were taken to court in handcuffs and leg-irons before being bailed to sleep on a floor in the Seamen's Church Institute. They were now resident in a house, which was made freely available by a well-wisher through the Philippines Consulate.

6.10 He further informed the Working Group that it was hard to assess the impact of this situation, which had started in September 2004 and continued with no end in sight, on the seafarers and their families. The United States authorities had made no direct provision for the welfare of the seafarers and their families. He hoped that the families were able to maintain their homes and were able to feed themselves and their children, to send the children to school and to pay any medical costs which may have arisen. This situation was worse than that of the **Tasman Spirit** as in that case the wages had been paid and the families were, therefore, supported in their basic needs.

6.11 In view of the gravity of this situation, the Seafarers' representative expressed the view that the guidelines should also cover the treatment of innocent seafarers whose freedom to leave the country was restricted to ensure their availability to testify. Port States should be required

provide reasonable lodging, subsistence and medical care, and the continuation of wages so that they were able to support their families during the period they were under the jurisdiction of the port State courts. This would ensure that the port State had a reasonable incentive to expedite the process and also ensure, in practice, that the seafarers' welfare and subsistence were provided for and that their families did not suffer any resulting hardship. Seafarers were deeply concerned that cases like the **Katerina** could result in families suffering or family members even dying for want of the money necessary to meet medical bills. The Seafarers wanted to see some obligation placed on the flag State which, in the case of the **Katerina**, was Malta.

6.12 The delegation of United States suggested that time and distance from the incident made it difficult to receive accurate information. Some of the descriptions of cases mentioned by the Seafarers' representative were actually inaccurate. All crimes involved and for which charges had been laid were actually committed in the waters of the United States. In the case that had been mentioned by the Seafarers' representative, there had, in fact, been an orchestrated plan to deceive and lie to the United States authorities. The United States had had adequate surety provisions that would have guaranteed the seafarers' contractual rights, but it was the understanding of the United States that the crewmembers voluntarily waived those rights to settle their wage claims. The delegation of the United States did not support including the topics 'criminal acts' and 'sanctions' in the ICFTU document within the draft guidelines for the Working Group. To attempt to discuss such complex and controversial legal topics in this Group would make it virtually impossible to satisfy the Group's mandate. To analyze the relative merits of particular criminal acts and imposition of sanctions was beyond the Group's terms of reference.

6.13 The delegation of Greece noted that the incidents under scrutiny should be considered as problems *per se* and irrespective of the frequency with which they might occur.

6.14 The Shipowners' representative pointed out that the list of responsibilities in the IMO/ILO/WGFTS 1/6/1 was very helpful. In certain cases, abandonment could lead to maritime accidents and needed to be addressed by other parties, including the coastal State. States' views on what constituted a criminal act differed, particularly on questions of negligence. In principle, however, maritime accidents should not be considered criminal acts.

7 and 8 Examination of relevant IMO, ILO and other applicable international instruments (including those elaborated under the joint auspices of the United Nations and IMO)/Evaluation of their adequacy and effectiveness

7.1 In accordance with the agreement reached concerning the agenda under item 3, the Working Group discussed items 7 and 8 simultaneously and accordingly the discussion on these items is reflected below.

7.2 At the invitation of the Chairperson, a representative of the IMO Secretariat (Dr. R. P. Balkin) introduced documents IMO/ILO/WGFTS 1/7 and 1/7/Add.1, containing extracts from a number of international instruments which were considered to be pertinent to the work of the Working Group. It was noted that the Legal Committee, at its eighty-ninth session, had requested the IMO/ILO Secretariats to provide, as background material, texts from the instruments referred to in the Working Group's terms of reference.

7.3 In making the selections from the international instruments referred to in the terms of reference, the Secretariats had employed a broad test of relevance to the work of the

Working Group. For example, the concept of “fair treatment” was assumed to include not only a legal right to due process, but also other aspects of fairness, such as a right to adequate access to provisions to meet basic physical needs and a right to be treated in a non-discriminatory manner. The Secretariats had taken into account the view of the Legal Committee (document LEG 89/16, paragraph 195) that the terms of reference did not extend to treatment of seafarers following incidents committed with criminal intent. However, in some cases, references to penal offences were retained in connection with a right to due process. The selections made by the Secretariats were not intended to impose a priority on the instruments cited, or to suggest that other provisions in those instruments, as well as other international instruments, could not be relevant to the Working Group’s work.

7.4 Extracts from the following instruments were contained in the annex to documents IMO/ILO/WGFTS 1/7 and 1/7/Add.1:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- IMO Code for the Investigation of Marine Casualties and Incidents
- United Nations Convention on the Law of the Sea, 1982 (it was noted that, in addition to Article 292 on the prompt release of vessels and crews, and Article 287 on settlement of disputes, Article 230 on monetary penalties and the observance of recognized rights of the accused should have been included in the annex to document IMO/ILO/WGFTS 1/7)
- International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)
- International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC)
- International Convention on Maritime Liens and Mortgages, 1993
- International Convention relating to the Arrest of Sea-Going Ships, 1999
- Vienna Convention on Consular Relations (particularly Article 36 on communication and contact with nationals of the sending State).
- Declaration on Fundamental Principles and Rights at Work, 1998 which was introduced by a representative from the ILO Secretariat (Mr. Jean-Yves Legouas).

7.5 The delegation of the Philippines suggested that, in addition to the instruments contained in IMO/ILO/WGFTS 1/7 and IMO/ILO/WGFTS 1/7/Add.1, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, also needed to be considered by the Working Group.

7.6 A Seafarers’ representative noted that while it appeared that adequate provisions existed under international law, they were not effective. It was therefore not sufficient to refer to them in

the abstract. One of the main problems was that they required transposition into national law, which allowed States to interpret them freely according to their own volition. The Working Group, therefore, needed to consider whether it should not go further than grouping international instruments in a document.

7.7 The delegation of Nigeria shared the concerns of the Seafarers and suggested that the Working Group needed to look deeper in the issues to identify a means of ensuring the effectiveness of the Working Group's outcomes.

7.8 The observer delegation of IFSMA suggested that the Working Group should concentrate on Articles 11 and 12 of the International Covenant of Civil and Political Rights. These provisions were sufficient for the purpose of this session and should form the basis of the guidelines.

7.9 The delegation of Greece proposed that the Working Group should provide expertise on how to deal practically with a maritime accident. To this effect it was necessary to identify the parties involved. These were the coastal State, the flag State, the shipowners, the seafarers and, as earlier suggested by his Government, the state of the nationality of the seafarers. Moreover, the rationale behind the declaration of the High-level Tripartite Working Group on Maritime Labour Standards (found in annex 3 of IMO/ILO/WGFTS 1/WP.1), namely, that seafarers should not become economic hostages, would need to be taken into account.

7.10 The Shipowners' representative reminded the Working Group of the different interpretations that States had of the legal requirements. A list of applicable international law was not sufficient to resolve this; instead it needed to be complemented by what the world considered fair treatment. Circumstances needed to be examined and specified. Guidelines needed to be created which were instructive to States as to what the "rest of the world" considered fair treatment.

7.11 The delegation of Egypt agreed with the delegation of Greece.

7.12 The observer delegation of IFSMA stressed that the main criterion of fair treatment was the prompt release of the seafarer. The Working Group needed to look into this issue instead of trying to reach an agreement on what was or was not a criminal act. Such a task would be impossible to deal with in the current context. The Working Group should concentrate on endorsing guidelines for a quick release instead.

7.13 The delegation of Nigeria said that the Working Group needed to focus on whether actions were fair to seafarers. This did not automatically mean, however, that a definition of fair treatment was needed. The Working Group had to decide, therefore, on whether it required to formulate such a definition.

7.14 The Seafarers' representative pointed out that the suggestion by the Shipowners would more likely lead to a political than to a practical instrument. Practical aspects needed to be addressed, such as the termination of seafarers' contracts, in the event they were forced to stay in a coastal State as witnesses. The Guidelines should therefore list the responsibilities of all parties, what actions they needed to take and to determine what constituted fair treatment. The Guidelines would complement existing instruments with an element of common sense.

7.15 The delegation of the Philippines agreed that the guidelines should build on the existing

instruments, but additionally provide a concept of what constituted fair treatment of seafarers.

7.16 The delegation of Nigeria referred to paragraph 2 of document IMO/ILO/WGFTS 1/7 and agreed with the assumption therein that fair treatment went further than just the right to due process and also included other aspects of fairness. The submission by ICFTU/ITF, in document IMO/ILO/WGFTS 1/6/1, contained a very useful format that could be used for the formulation of the guidelines. Finally, the delegation agreed with the suggestion by the delegation of Greece to include the seafarer's State of Nationality.

7.17 The delegation of the United States agreed that many portions of document IMO/ILO/WGFTS 1/6/1 were helpful as practical guidance, but urged the Working Group not to attempt to define criminal acts. The Working Group should focus on the different parties' responsibilities.

7.18 The delegation of Greece said that the aim of the Working Group should be to safeguard the fair treatment of seafarers. While a definition of the "fair treatment" would be ideal, the Working Group should not try to find one, but rather try to formulate guidelines, taking into account how parties should react.

7.19 The Shipowners' representative stressed that no party should have to be held liable for another party's action. Should, therefore, coastal States hold seafarers under the pretext of a criminal prosecution, they should be held liable for any resulting expenses.

7.20 The observer delegation of IFSMA stated that the only party at the first stage was the coastal State. Therefore, the guidelines proposed in document IMO/ILO/WGFTS 1/6 needed to concentrate on the release and the detention of seafarers. While the other parties might become involved, the coastal State was the main party and the quick release of seafarers needed to be ensured.

7.21 The delegation of Greece agreed with the observer delegation of IFSMA on the primary role of the coastal State, but added that the next step was a thorough and fast investigation. He referred to paragraph 9.3 of the IMO Code for the Investigation of Marine Casualties and Incidents, which provided that States should help to facilitate the availability of the crew in the investigation and encourage the crew to co-operate with the State conducting the investigation.

7.22 The delegation of the United States informed the Working Group of pending work on the issue of crimes at sea. The coastal State investigations were very important and necessary in order that these States did not unfairly assume that seafarers were guilty. These investigations however, did not relieve other parties from their responsibilities.

7.23 The Seafarers' representative stressed that the responsibilities of all parties needed to be included.

7.24 The representative of ILO introduced IMO/ILO/WGFTS 1/WP.1. This working paper provided an overview of provisions found in International Labour Standards relevant to the issues under scrutiny and included relevant provisions of the Seamen's Articles of Agreement Convention, 1926 (No.22), the Seafarers' Annual Leave with Pay Convention, 1976 (No.146), the Merchant Shipping (Minimum Standards) Convention, 1976 (No.147) and the Repatriation of Seafarers Convention (Revised), 1987 (No.166) as well as other related ILO documents.

7.25 The delegation of the United States proposed the following responsibilities be included as responsibilities of the flag State:

- co-operate with all States, shipowners, and individual seafarers involved in the investigation;
- participate directly, under appropriate internationally recognized standards, in any casualty investigation;
- assist in ensuring that shipowners honour obligations to seafarers involved in a maritime accident or any subsequent investigation;
- assist in ensuring that shipowners honour obligations to co-operate in any subsequent investigation following a maritime accident; and
- fund the repatriation of seafarers of their nationality following the aftermath of a maritime accident in instances where shipowners fail to fulfil their responsibility to repatriate.

7.26 The delegation of Greece proposed as an additional flag State responsibility:

- the consideration of inclusion of paragraph 9.3 of resolution of A.849(20), which provided for flag State assistance; and
- the inclusion of article 36(1)(c) of the Vienna Convention Consular Relations, relating to the right of visit of consular officers to persons who are in prison, custody or detention and the right to arrange for that person's legal representation.

7.27 The Seafarers' representative recognized that the primary responsibility for an investigation lay with the flag State and, accordingly, that the term "co-operate" used by the delegation of the United States (see first bullet point in paragraph 7.25) was not strong enough. He also recognized the importance of flag State jurisdiction on social matters and observed that seafarers were in that case entitled to diplomatic protection. He drew the attention of the meeting to the importance of article 292 of UNCLOS (prompt release of vessel and crew) and also to article 94 of UNCLOS (duties of flag States).

7.28 The delegation of the United States proposed the following responsibilities be included as responsibilities of the seafarer State:

- co-operate with all States, shipowners, and individual seafarers involved in the investigation;
- monitor the well-being and treatment of seafarers of their nationality involved in a maritime accident, including any associated investigations;
- fund the repatriation of seafarers of their nationality following the aftermath of a maritime accident in instances where shipowners and flag State fail to fulfil their responsibility to repatriate; and

- assist in the service of process and return to a coastal State of seafarers of their nationality who are needed solely as witnesses in any proceeding following a maritime accident.

7.29 The Shipowners' representative remarked that there was an issue regarding legal representation and if this was not supplied by the flag States, then the State of nationality of the seafarer should ensure this, giving due consideration to language and the legal regime.

7.30 The delegation of the United States proposed the following responsibilities be included as responsibilities of the shipowners:

- co-operate with all States, shipowners, and individual seafarers involved in the investigation;
- continue the employment of any seafarers affected by a maritime accident, including time required for the seafarers to participate in an associated investigation;
- provide for the accommodation and subsistence of seafarers in the aftermath of a maritime accident, including during participation in any associated investigations; and
- provide for the prompt repatriation of seafarers involved in a maritime accident, if unable to continue service on their vessel, including instances in which seafarers remain temporarily in the coastal State during any associated investigation.

7.31 The Shipowners' representative remarked that collective bargaining agreements existed for payment of wages when employment could not be continued and that, accordingly, the Shipowners could not accept what they regarded as a shifting of responsibility from the coastal State to themselves. Shipowners should not be required to assist in the funding of investigations, particularly lengthy ones.

7.32 The observer delegation of IFSMA opposed any idea of shipowner responsibility and remarked that the Guidelines should deal with the protection of seafarers and concentrate exclusively on their prompt release.

7.33 The Seafarers' representative remarked that seafarers should not be held responsible for accidents caused by sub-standard vessels on which they were obliged to serve and therefore in no circumstances should they suffer economic loss. He then observed that whenever the coastal State bears the cost of the seafarers' detention, this might positively affect the duration of the detention period.

7.34 The Shipowners' representative stressed that employment agreements have to take priority and that shipowner responsibility should be limited in accordance with the terms of that agreement.

7.35 The delegation of the United States noted that, in many cases, the coastal States were obliged to investigate the circumstances of the accident. He added that coastal States were generally motivated to gather evidence and conclude their investigations as soon as possible.

7.36 The observer delegation of Liberia supported the declaration made by the Shipowners and the United States delegation.

7.37 The observer delegation of IFSMA remarked that investigations lay within the province of flag States while the coastal States had only to determine the possible existence of a *prima facie* case against the seafarer. In the absence of such a case, the coastal State needed to release the seafarer.

7.38 The Shipowners' representative noted that shipowners could not agree to be held financially responsible for coastal States' investigations.

7.39 The Seafarers' representative agreed with the Shipowners on this point. He referred to MARPOL 73/78 which applied only to intentional acts committed recklessly and with knowledge that damage would probably result. Given that different States criminalized different types of conduct, the object of the guidelines should be to reduce criminalization.

7.40 The delegation of the United States pointed out that resolution A.849(20) obliges coastal States to investigate accidents in certain circumstances taking place in their coastal areas.

7.41 The Shipowners' representative remarked that it was often the environmental authorities that were taking the initiative to investigate rather than the maritime authorities. He then suggested a return to this topic at a later stage, if necessary.

7.42 The delegation of the United States proposed that seafarers be requested to co-operate with all States and shipowners involved in the investigation, giving due regard to the rights to which they are legally entitled.

7.43 The Seafarers' representative suggested that seafarers should refuse to co-operate until provided with free legal representation and advice, in the language of their choice, concerning the types and purpose of the investigation, and their rights. They should also be provided with free access to their employers, flag State authorities, consulates and Trade Union representatives. He suggested the guidelines should include sanctions to be applied to all those who failed to discharge their responsibilities.

7.44 The delegation of Greece was unsure as to whether the sanctions should be included in the guidelines and suggested that a mechanism to resolve disputes relating to these guidelines should involve IMO and ILO in some way.

7.45 The delegation of the United States remarked that very few accidents resulted in criminal prosecutions and it might cause more harm than good for the guidelines to create a perception that all accidents invariably result in detention.

7.46 The Seafarers' spokesperson remarked that his perception was rather different from that of the United States delegation and that article 232 of UNCLOS, which relates to the liability of States arising from enforcement measures, provided adequate guidance. This suggestion was supported by the delegation of the United States.

7.47 The Seafarers' representative returned to the issue of the need to include sanctions in the guidelines and, in this respect, he noted that international law, specifically paragraph 5 of Article 9 of the International Covenant on Civil and Political Rights provides that anyone who has been the victim of unlawful arrest or detention shall have a right to compensation.

7.48 The Working Group considered the list of bullet points contained in paragraph 7.30 of document IMO/ILO/WGFTS 1/WP.5, presenting a summary of the shipowners' responsibilities based on earlier discussions. Due consideration was given to the second bullet point of this paragraph.

7.49 The Shipowners' representative and the delegation of Egypt voiced their disagreement with this second bullet point.

7.50 The Seafarers' representative remarked that no decision had been taken on this bullet point and that there was no time to include guidelines in the draft resolution. Discussion on this issue should take place in Plenary but might require more than one session.

7.51 The observer delegation of IFSMA supported the Seafarers' position and remarked that there was too much disagreement in the Working Group for possible guidelines to be accepted by the Legal Committee. The speaker disagreed with the concept currently envisaged and suggested that the guidelines should not form a mere lecture on the obligations of Member States.

7.52 The delegation of the United States remarked that too many items had not received agreement in the Drafting Group and that it was unlikely that such agreement would be reached regarding the responsibilities of all parties.

7.53 The observer delegation of Liberia supported the position of the Seafarers, IFSMA and the United States but thought that the second bullet point should be retained as an integral part of the concept of fair treatment.

7.54 The Shipowners' representative, considering that the development of the guidelines might require more time, stressed that the Working Group needed to show to the maritime community that it considered fair treatment of seafarers to be a very serious issue. To that end he suggested that an appropriate resolution should be drafted. This could be modelled on resolution A.930(22) and should contain appropriate operative paragraphs.

7.55 The Seafarers, the delegation of Greece, the delegation of the Philippines, the delegation of the United States and the observer delegation of IFSMA supported the drafting of the resolution.

7.56 The Plenary considered a draft resolution on fair treatment of seafarers in the event of a maritime accident for the consideration of the Assembly of IMO and of the Governing Body of ILO. The paragraphs of the draft resolution appear in bold type below.

AWARE of the growing criminalization of seafarers and the need to ensure the fair treatment of seafarers

7.57 The Shipowners' representative suggested replacing the term "criminalization" with the term "situation of seafarers being unnecessarily detained sometimes for long period of time".

7.58 This view was shared by the delegations of Egypt and the United States.

7.59 This was opposed by the Seafarers' representative, the delegations of Greece, Nigeria, the Philippines, and the observer delegations of Brazil and IFSMA.

7.60 The observer delegation of Liberia suggested replacing the term “criminalization” with the words “undue detention and/or criminalization”.

7.61 The delegation of the United States suggested that the third paragraph of the draft resolution should be moved to the beginning of the resolution, since issues of criminal law were not part of the Working Group’s mandate and because it felt that the term “criminalization” would lead to a further negative impact on the morale of seafarers. This was supported by the observer delegation of Liberia and the Shipowners’ representative.

7.62 The Seafarers’ representative, remarking that the use of the term “accident” in the terms of reference of the Working Group could be considered as restricting its scope, quoted an extract from the Cadwallader keynote address recently given by the Secretary-General of IMO, related to the criminalization of seafarers, which was not limited to the concept of accidents.

7.63 The delegation of Egypt remarked that document LEG 89/9 did not include any wording related to criminalization.

7.64 The Shipowners’ representative agreed replacing the text in the present paragraph by the introductory sentence of the keynote address given by the Secretary-General of IMO could be a solution.

7.65 The observer delegation of Liberia explained that it is not necessary to be a criminal in order to be criminalized. This position was supported by the observer delegation of IFSMA.

7.66 Considering that no agreement appeared presently possible on this paragraph, the Chairperson decided to send it back to a small group of interested delegations for resolution.

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

7.67 This paragraph was adopted by the Working Group after having agreed with the suggestion of the delegation of the United States to replace the expression “will not be” by “may not be”.

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 in the territory of a State other than the flag State of the ship or the State of citizenship of the seafarers involved

7.68 The observer delegation of Liberia suggested deleting the reference to the flag States and the State of nationality of the seafarer. This was opposed by the Seafarers’ representative on the grounds that they wanted to keep reference to these States’ jurisdiction over seafarers. The Working Group considered, however, that this was not indispensable and decided to delete any reference to the coastal State as well as flag State and the State of nationality of the seafarer.

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

7.69 This paragraph was adopted as such by the Working Group.

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

7.70 This paragraph was adopted as such by the Working Group.

FURTHER CONCERNED that these cases may be having an adverse impact on the morale of seafarers and on the recruitment of young people into the seafaring profession

7.71 The Shipowners' representative suggested the inclusion of the words "and the retention of those currently in the seafaring profession" at the end of this paragraph.

7.72 The Seafarers' representative suggested replacing the words "may be having" by "have". Additionally the delegation of Greece suggested that the word "attraction" should be added before the term "recruitment".

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)

7.73 This paragraph was adopted as such by the Working Group.

RECALLING ALSO the ILO Declaration on Fundamental Principles and Rights at Work, 1998 and its follow-up and the generally accepted principles of international human rights applicable to all workers

7.74 The Shipowners' representative, having requested explanations on the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 1998, suggested deletion of the expression "and its follow-up". This was agreed by the Working Group.

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

7.75 This paragraph was adopted as such by the Working Group.

NOTING THAT MARPOL 73/78 provides that sanctions will not be applied to the discharge into the sea of oil or oily mixtures resulting from damage to a ship or its equipment except where the owner or master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result

7.76 The delegation of Greece suggested including a reference to the Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk since it was identical with the relevant provisions in MARPOL 73/78. The delegation of the United States felt that the summary of Regulation 11 of MARPOL 73/78 left out some important aspects and suggested that this paragraph be considered by a small group of interested delegations.

NOTING FURTHER the IMO Code for the Investigation of Maritime Casualties and Incidents (resolution A.849(20) as amended by resolution A.884(21))

7.77 This paragraph was adopted as such by the Working Group.

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

7.78 The delegation of Egypt suggested that this paragraph was not necessary. This position was supported by the delegation of China, and the observer delegation of Liberia.

7.79 The delegation of the United States objected that the contents of this paragraph depended on the final drafting of the first paragraph of the draft resolution and suggested that those two paragraphs needed to be dealt with in conjunction.

7.80 The Shipowners' representative remarked that this paragraph constrained Member States to act in accordance with international law. This position was supported by the Seafarers' representative, who favoured the retention of this paragraph. The delegation of the United States agreed with the position to retain the paragraph.

RECOGNIZING FURTHER the rights of States to conduct investigations of maritime accidents with the aim of learning the causes and identifying those responsible

7.81 The Shipowners' representative observed that the present drafting of this paragraph presupposed the existence of a party responsible for every accident and suggested deleting the wording "and identifying those responsible". This position was supported by the delegation of the United States and the observer delegation of Liberia. This was opposed by the observer delegation of IFSMA on the basis that it was essential for the conduct of an investigation that investigators could point out those responsible.

7.82 The delegation of Greece said that the conduct of investigations of maritime accidents did not constitute a right but an obligation of States. As a consequence, he suggested replacing the words "the rights of States to conduct investigations" by the words "States should conduct investigations".

7.83 The Seafarers' representative agreed with the proposal of the delegation of Greece, whilst observing that the question of whether this constituted a right or an obligation depended on the roles of the States involved.

CONVINCED that recommendatory guidelines are 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 by prolonged detention

7.84 The delegation of Greece suggested inserting the expression "*inter alia*" between "not violated" and "by prolonged detention", since seafarers rights could also be violated by other means.

7.85 The observer delegation of Liberia agreed to this suggestion and further suggested the deletion of the word "prolonged". The delegation of Nigeria observed that it was indeed difficult to quantify the detention.

CONSIDERING that, given the global nature of the shipping industry, seafarers need special protection (resolution A.930(22) and resolution A.931(22))

7.86 The observer delegation of IFSMA suggested adding resolution A.443(XI) to the references in this paragraph. The Seafarers' representative advised that the references were added to provide information on the source of the text and that the identical text may be found in a SOLAS Conference resolution (resolution 11 of the Conference of Contracting Governments to the Safety of Life at Sea, 1974, adopted on 12 December 2002). Therefore, it might be appropriate not to retain the references to the resolutions. This was accepted by the Working Group.

FURTHER CONVINCED that the protection of the rights of seafarers through the application of the guidelines will avoid the financial burden which prolonged detention inflicts on seafarers and their families, as well as on shipowners

7.87 The Shipowners' representative suggested replacing the term "avoid" by "lessen the impact" and replacing the term "application" by the word "provision". The observer delegation of ICMA was of the view that if guidelines are provided but ignored, then the fair treatment of seafarers will not be assured. It is in the application of the guidelines that seafarers are treated fairly. The suggestion to replace the word "avoid" was opposed by the Seafarers' representative who emphasized that it was necessary to secure the financial status of the seafarer. He suggested the insertion of appropriate wording.

7.88 The observer delegation of Liberia suggested deleting reference to seafarers' families, because the paragraph did not portray the true and ultimate mental, physical and psychological impact. This was opposed by the delegations of Greece and the Philippines who considered that prolonged detention had severe impacts not only on seafarers but also on their families. The delegation of the Philippines suggested that a reference should therefore be included not only alluding to the financial burden of detention, but also to physical, psychological and emotional effects. The Seafarers' representative agreed with the delegations of Greece and the Philippines.

7.89 The delegation of the United States remarked that all the additions proposed would lead to complications and suggested redrafting this paragraph in its entirety. This was agreed to by the Working Group.

CONSIDERS that the adoption of meaningful guidelines which will facilitate the fair treatment of seafarers should be finalized as a matter of urgency

7.90 The delegation of Greece suggested deleting the word "meaningful". This was accepted. The delegation of the United States suggested inserting the words "in the event of a maritime accident" after the words "fair treatment of seafarers".

HAVING CONSIDERED the recommendations made by the Legal Committee at its ninetieth session, as endorsed by the ILO Governing Body at its 292nd session

URGE all States to respect the basic human rights of seafarers involved in maritime accidents

7.91 The Working Group agreed on the wording suggested in the draft.

URGE all States to adopt speedy procedures to ensure the prompt repatriation of seafarers in the aftermath of maritime accidents

7.92 The Shipowners' representative suggested replacing the expression "in the aftermath of maritime accidents" by the expression "following a maritime accident", since the word aftermath suggested a long period of time.

7.93 The delegation of the United States suggested redrafting this paragraph and inserting wording that would focus on minimizing detention and facilitating repatriation. The current draft wording was too specific, since it referred only to repatriation. This was not advisable since, in many cases, re-embarkation and not repatriation would often follow release. The delegations of Greece and the Philippines and the observer delegation of Liberia agreed. This was opposed to by the Seafarers' representative who felt that the new wording tried to legitimise detention. The delegation of the Philippines suggested that a provision be included on the rights to compensation in the case of unlawful detention.

7.94 Following discussion in the Working Group, the delegation of the United States suggested that the paragraph should be replaced by the following: "URGE all States to adopt procedures to ensure that any investigation following a maritime accident is conducted in an expeditious manner, to minimize any impacts on seafarers;"

7.95 The Seafarers' representative suggested to amend the text to read "URGE all States to investigate maritime accidents expeditiously to avoid hardships to seafarers". Additional text should be introduced as follows: "URGE all States to adopt speedy procedures to ensure the prompt repatriation of seafarers or permit the vessel to sail". This suggestion was supported by the delegation of the United States which suggested also that a reference to re-embarkation be included and that the words "following a maritime accident" be added. Following a discussion of the term "hardship" the Working Group agreed with the Shipowners' representative's suggestion to replace this term with "prolonged detention". The Seafarers' representative also suggested adding the words "to avoid any unfair treatment of seafarers" in the first paragraph discussed. These amendments were supported by the Working Group.

INVITE Member Governments and non-governmental organizations with consultative or observer status in IMO or ILO, as appropriate, to record instances of [unfair treatment] [detention] of seafarers in the event of maritime accidents and to provide data to IMO or ILO whenever requested

7.96 The Seafarers' representative raised doubts about the criteria that would need to be complied in connection with reporting. So far, the scope of what should be reported was not sufficiently clear. He therefore considered a possible deletion of this paragraph. The Shipowners' representative pointed out that this provision allowed their organizations, which were considered non-governmental organizations in the context of IMO, to directly report to the Organization. This was important because the social partners were in a better position to report on these cases. The delegation of Greece suggested that, if the Working Group should decide to delete this paragraph, it should, however, be included in the guidelines. Following this suggestion, the Seafarers' representative agreed to maintain the paragraph and suggested that more precise determination of the reporting criteria could be left to the discussion of the guidelines. This was agreed to by the delegations of France, Nigeria and the Philippines. The Working Group also agreed to delete the word "detention" and retain the words "unfair treatment".

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

7.97 The draft text was supported by the Working Group.

REQUEST the IMO Assembly and the ILO Governing Body 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 continue its work to ensure that seafarers involved in maritime accidents are treated fairly and with full respect for their basic human rights

7.98 In response to a request for clarification, a representative of IMO (Dr. Rosalie Balkin) explained that the Working Group's terms of reference currently foresaw that the Working Group needed to develop guidelines. Once this had been completed, its mission would have been achieved. However, should both Organizations decide that the issue of fair treatment required further attention, the Working Group could be reinstated. In view of this explanation, the delegation of the United States suggested that the request to the IMO Assembly and the ILO Governing Body was not necessary and related wording should therefore be deleted. The Working Group agreed with this suggestion.

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

7.99 This paragraph was adopted by the Working Group.

Discussion of additional paragraphs

7.100 The delegation of the Philippines suggested the addition of a further paragraph as follows:

“NOTING the relevant international labour standards applicable to repatriation of seafarers, in particular the ILO Convention on the Repatriation of Seafarers, Revised, 1987 (no.166),”

7.101 The Working Group agreed to the inclusion of this text, following a clarification by the representative of ILO (Mr J.Y. Legouas) who explained that reference could be made to this Convention, since it was in force. Future developments in the context of the consolidation of maritime labour standards could likely lead to its revision. At the present time, however, given the current stage of this process, a reference to ILO Convention No. 166 was correct.

7.102 The delegation of Greece suggested adding further paragraphs as follows:

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

RECOGNIZING that the issue of fair treatment of seafarers involves the port or coastal States, flag State, seafarer State, shipowners and seafarers.”

7.103 The delegation of Greece explained that the first paragraph was based on the High-level Tripartite Working Group on Maritime Labour Standards' declaration, adopted in January 2004

(contained in annex 3 of document IMO/ILO/WGFTS 1/WP.1). The second paragraph was suggested to include reference to all main parties, as identified by the Working Group.

7.104 Following a discussion on the Seafarers' representative's suggestion also to include reference to an investigation in the first paragraph, the Working Group agreed with the delegation of the United States, the Shipowners' representative and the observer delegation of IFSMA and decided to not include any such reference.

7.105 The suggestion of the Seafarers' representative not to restrict those involved in the issue of fair treatment was not agreed upon. The Working Group agreed that the issue was of everyone's concern. To this effect the Shipowners' representative proposed that the paragraph needed to be amended by replacing the word "involves" with the expression "is the direct responsibility of". The Working Group agreed to this paragraph as amended.

7.106 A member of the delegation of the United States, who had chaired the Drafting Group, introduced documents IMO/ILO/WGFTS 1/WP.2 and WP.3. He outlined the discussions in the Group and stated that agreement had not been reached on those parts containing bracketed texts. Some paragraphs without bracket had also been opposed by one or two members of the Drafting Group but had been agreed upon by the majority. The issues discussed were important and complex and required further serious discussion. In his view, the Working Group needed to reach agreement on these issues since an omission of essential points would most likely prejudice the operation of the guidelines. In the absence of time to discuss the outcome of the Drafting Group's work, it was decided that the texts in documents IMO/ILO/WGFTS 1/WP.2 and WP.3 would be attached at annex to this report (see annex 4), solely for information purposes and to assist the Working Group in its future deliberations.

8 Formulation of suitable recommendations to the IMO Legal Committee and/or the ILO Governing Body as appropriate

8.1 The Shipowners' representative explained that he considered it inappropriate and unnecessary to reopen the debate regarding the terms of reference of the Working Group. These had been jointly proposed and accepted by both the IMO Legal Committee and ILO Governing Body. Accordingly, reopening the debate would jeopardize the work which had been conducted to date as that work had been conducted on the clear understanding that the terms related to maritime accidents. If these were changed, the decisions reached so far would require revisiting or would be lost.

8.2 The Seafarers' representative did not suggest a change to the terms of reference, but suggested that there was need for clarification of the terms of reference. However, he noted that doubts existed among seafarers as to precisely what constituted a maritime accident and that there was a need for clarification of the terms of reference. Therefore, he suggested that the IMO Legal Committee and the ILO Governing Body should be asked for advice on whether the terms of reference were deliberately narrow or whether the definition of "maritime accident" was left to the discretion of the Working Group. The Seafarers' understanding was that the terms of reference were wider than suggested by the Shipowners' representative. This was supported by the fact that the submissions by the Governments of Brazil and India and the observer delegation of IFSMA had been forwarded to the Working Group. It was necessary for the Working Group to deal with any situation involving the detention of seafarers and hardship that might result.

8.3 The observer delegation of IFSMA agreed that the Working Group's mandate should be wide.

8.4 The observer delegation of Cyprus agreed with the Seafarers' suggestion and proposed additionally that a determination be made as to how many sessions the Working Group required to complete its work.

8.5 The delegation of Greece agreed that clarification on the scope of the Working Group's work was needed, but suggested that the report would reflect the discussions on this point and that this would allow the IMO Legal Committee and the ILO Governing Body to provide guidance, if they so wished. If required, the IMO Legal Committee might then also amend the terms of reference accordingly. The observer delegation of Brazil shared this view.

8.6 The Shipowners' representative reiterated the position of his group in this regard and stated that the Shipowners did not think it was appropriate that either the IMO Legal Committee or the ILO Governing Body be asked to reconsider the terms of reference. It had been clearly stated that the remit of the Working Group was to explore fair treatment of seafarers following a maritime accident and this should remain.

8.7 The delegation of the United States pointed out that a change to the terms of reference could also be detrimental to the acceptance of the draft resolution, which in its title contained the term "maritime accident". Although it was possible to include wording that requested clarification, it was not necessary.

8.8 It was agreed that the Working Group's discussion needed to be noted so that the IMO Legal Committee and the ILO Governing Body could act on this if they deemed it necessary.

9 Formulation of suitable recommendations to the IMO Legal Committee and/or the ILO Governing Body, as appropriate

9.1 The Working Group continued its consideration of the draft resolution on the basis of the text contained in document IMO/ILO/WGFTS 1/WP.4. This document included the outcome of informal consultations in square brackets.

9.2 With respect to the first set of brackets ("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"), the Working Group agreed to include this text in the draft resolution.

9.3 The Working Group also agreed to include in the draft resolution the text contained in the second set of brackets ("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").

9.4 With regard to the third set of brackets ("RECOGNIZING the established rights of States to prosecute or extradite those accused of criminal behaviour in accordance with international law"), the delegation of Egypt expressed the view that international law does not define criminal behaviour. Leaving this paragraph as it stood raised queries about the definition of criminal

behaviour in accordance with international law. Also, with regard to the procedures and rules to prosecute or extradite any person, both national and international law were applicable. Therefore, Egypt was concerned about retaining this paragraph. The observer delegation of Liberia suggested that a reference to prosecution was not consistent with the overall objective of addressing fair treatment of seafarers. The Chairperson noted that the text had been included in those which had been referred as a package to the informal consultations. The Working Group agreed to include this text in the draft resolution.

9.5 With regard to the fourth set of brackets (“FURTHER CONVINCED that the protection of the rights of seafarers through the application of the guidelines is necessary to avoid the financial, physical and emotional burden which prolonged detention inflicts on seafarers and their families”), the Working Group agreed to include this text in the draft resolution.

9.6 The delegation of Nigeria asked whether the wording of the clause concerning the conduct of investigations (“RECOGNIZING FURTHER that States should conduct investigations into maritime accidents”) should be worded as “shall conduct”. The Chairperson said the text was intended to cover cases where the coastal State had discretion over whether or not to conduct an investigation. The Working Group agreed to leave the text unchanged.

9.7 The delegation of Greece noted that the Working Group had already agreed not to include the last part of operative paragraph 5 as it was presented in IMO/ILO/WGFTS 1/WP.4, and the Working Group agreed the paragraph should read as follows: “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 expeditiously to continue its work”. Subsequently, the Group, at the suggestion of the IMO Secretariat agreed to emphasize the need to finalize its work and promulgate guidelines by adding a new paragraph 5bis, as follows:

“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 twenty-fifth regular session of the IMO Assembly and to the 295th session of the ILO Governing Body accordingly”.

9.8 The Working Group adopted the draft resolution, as revised (contained in document IMO/ILO/WGFTS 1/WP.6), for submission to the IMO Legal Committee and the ILO Governing Body. The text is contained in annex 5 to this report.

10 Any other business

10.1 No new items were discussed under this agenda item. However, the Working Group discussed its future working arrangements.

10.2 The Chairperson advised the Working Group that the IMO and ILO Secretariats had been in consultation regarding the timing for the next session. She noted that there was already a full programme of meetings in 2005.

10.3 The observer delegation of IFSMA said it was important for the momentum to be maintained perhaps through an informal group with a central focal point and periodic meetings. He said IFSMA facilities could be made available for such meetings.

10.4 The Chairperson thanked the observer delegation of IFSMA for its offer, and then suggested the next meeting of the Working Group might need to be scheduled for five days.

10.5 The Shipowners' representative said that discussions during the current session indicated that there were concerns regarding the terms of reference which could be an impediment to progress unless clearer instructions were issued by the parent bodies. With regard to the offer from the observer delegation of IFSMA, the representative said it would be more appropriate for one of the two international organizations to act as the focal point rather than a non-governmental organization.

10.6 The Chairperson said the terms of reference could be discussed by the IMO Legal Committee in April and by the ILO Governing Body in November 2005.

10.7 The IMO Secretariat outlined the process for an informal correspondence group and noted that it was normal practice for a delegation to offer to act as the leader, and this had been found to be a useful method for exchanging views and furthering the work that remained to be done.

10.8 The ILO Secretariat advised the Working Group that the draft resolution would be presented in three languages to the upcoming meeting of the ILO Governing Body in March, along with the report in English. It was possible, he said, that questions regarding the terms of reference could arise at that meeting.

10.9 The Seafarers' representative said the Working Group would need a full week at its next session. He agreed with the Shipowners' representative that the Secretariat, rather than a non-governmental organization, should act as the focal point. He also said that there were fundamental issues which had to be addressed before the next meeting and invited the Joint Secretariat to offer solutions for consideration. One of the issues which had to be addressed, he said, was whether the terms of reference were to be read narrowly (with a focus on maritime accidents) or broadly (to encompass causalities, incidents, mishaps etc). The Seafarers favoured a wider interpretation but would accept the direction of the parent bodies. The Seafarers would cooperate with the Shipowners to develop a joint paper for discussion at the next meeting of the Working Group, and he hoped such a paper could be circulated earlier than November 2005.

10.10 The Shipowners' representative welcomed the proposal from the Seafarers' representative to cooperate on a joint paper to assist in structuring the discussions. He said it was also important for the Governments to be involved in any informal correspondence group.

10.11 The Chairperson said this approach was positive and would allow the issues to be explored intersessionally.

10.12 The observer delegation of Liberia said the offer from IFSMA should be explored unless a Government offered to act as the focal point. In his view, three days would be sufficient for the next meeting of the Working Group.

10.13 The observer delegation of IFSMA expressed confidence that a cooperative effort would result in clarification of the scope and form of the guidelines.

10.14 The Seafarers' representative expressed the view that three days would not be sufficient for the Working Group's next meeting. He said he would value input from IFSMA but he invited the Chairperson herself to consider acting as the focal point for the informal correspondence group.

10.15 The Shipowners' representative endorsed this proposal and noted that the Chairperson was from a major maritime country.

10.16 The delegation of Greece also endorsed the proposal and urged the Chairperson to accept this role.

10.17 The Chairperson agreed to lead the informal correspondence group and to do whatever necessary to facilitate progress. She requested all those who wished to be included in the group's deliberations to provide their e-mail address to her. Her details are as follows:

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Permanent Representative of Panama
to the International Maritime Organization
Panama House
40 Hertford Street
London W1J 7SH

E-mail: lfernandez@panamauk.org

Tel: +44-207-409 2255

10.18 The observer delegation of Spain welcomed this initiative and asked that observers also be permitted to participate. He suggested that others not present should also be informed of the informal correspondence group.

10.19 The Chairperson confirmed that the informal correspondence group would be open to participation by all observers and said the information would be in the Working Group's report to its parent bodies.

10.20 The delegation of the Philippines thanked the Chairperson for accepting the role as leader of the informal correspondence group and asked whether terms of reference were needed for such a group.

10.21 The Chairperson said no special terms of reference were needed for the group.

10.22 The Working Group agreed to the formation of an informal correspondence group.

10.23 The Chairperson advised the Working Group that the next session would probably be in January 2006. Interim progress, she said, could be reported to the Legal Committee at its meeting in April.

10.24 The delegation of the United States suggested that the Working Group report could state that, unless the parent bodies made changes to the terms of reference, then the Group would assume the focus of its work would be on maritime accidents. This delegation agreed that the Working Group would need five days for its next meeting.

10.25 The Chairperson said the Working Group's report would contain a discussion of the issues raised by the terms of reference and the IMO Legal Committee and the ILO Governing Body would act as they considered appropriate.

10.26 The observer delegation of Spain agreed with the Chairperson and said it expected a debate on the terms of reference to take place in the Legal Committee where all members could participate.

10.27 The Chairperson noted that this item was already on the agenda of the upcoming meeting of the Legal Committee (in April) and documents could be submitted by any delegation, in addition to the Working Group's report.

ANNEX 1

LIST OF PARTICIPANTS

Chairman:	Ms. Liliana Fernández (Member Government – Panama)
1st Vice Chairman:	Mr. Joseph J. Cox (Shipowners Representative)
2nd Vice Chairman:	Mr. Brian Orrell (Seafarers Representative)

ILO PARTICIPANTS

SHIPOWNERS' MEMBERS

Mr. Joseph J. Cox, President, Chamber of Shipping of America (ISF)

Mr. Thomas Kazakos, General Secretary, Cyprus Shipping Council (ISF)

Mr. Georgios Koltsidopoulos, Legal Adviser, Union of Greek Shipowners (ISF)

Mr. Tim Springett, United Kingdom Chamber of Shipping (ISF)

SEAFARERS' MEMBERS

Mr. Brian Orrell, NUMAST United Kingdom (ICFTU)

Mr. Marcos Castro, President, CCUOMM, Argentina (ICFTU)

Mr. Gregorio Oca, AMOSUP, Philippines (ICFTU)

Mr. Agis Tselentis, PNO, Greece (ICFTU)

IMO PARTICIPANTS

MEMBER GOVERNMENTS

CHINA

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Mr. Ru Xing Cheng, Deputy General Manager, Cosco Manning Co-operation

Mr. Zhang Xiaojie, Director, Department of International Co-operation, Ministry of Communications

Mr. Li Zhonghua, Director, Department of Seafarers, China Maritime Safety Administration

Mr. Xiaoming Wang, Official, Ministry of Foreign Affairs

Mr. Siguang Qu, Deputy Manager, Safety Management Division, China Shipping Group Company Ltd.

Mr. Hui Xie, Third Secretary (Maritime), Embassy of the People's Republic of China, London

EGYPT

Mrs. Numira Negm, First Secretary, Ministry of Foreign Affairs

Mr. Abou Ela Mahmoud Aboul Ela, Head of Central Department of Maritime Affairs, Egyptian Authority for Maritime Safety

GREECE

Commander (HCG) George Boumpopoulos, Ministry of Mercantile Marine

NIGERIA

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Ms. Liliana Fernández, Permanent Representative of Panama to the IMO, Permanent Mission of Panama to IMO, London

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Mr. Douglas Rabe, Chief, Office of Investigations and Analysis, United States Coast Guard

Mr. Charles Darr, United States Coast Guard, Office of Maritime and International Law

Mr. Christopher E. Krusa, Maritime Training Specialist, Maritime Administration, Department of Transportation

Mr. William Storz, Associate Counsel, Military Sealift Command

Mr. Douglas Stevenson, Director, Center for Seafarers' Rights, Seamen's Church Institute

Mr. Daniel Fitzgerald, Attorney Adviser, Office of Compliance, United States Coast Guard

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Captain Fazlur R. Chowdury, Deputy Director, Bahamas Maritime Authority

Miss Bryinda Carroll, Bahamas High Commission, London

BRAZIL

Captain Darlei Santos Pinheiro, Brazilian Merchant Marine, Brazilian Permanent Representation to IMO

Mrs. Marcia Silcock, Mission Officer, Permanent Representative of Brazil to IMO

CYPRUS

Mr. George Demetriades, Counsellor (Maritime Affairs), Cyprus High Commission, London

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Amiral (Affaires Maritimes) Gérard Gasc, Conseiller Maritime, Représentant Permanent de la France auprès de l'OMI, Ambassade de France, Londres

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M. Romain Chatard

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D. Juan Solano, Jefe Area Marítima Internacional, Dirección General Marina Mercante

Dña. Andrea R. García García, Consejería de Transportes, Embajada de España en Londres

Dña. María José Cano Olmos, Consejería de Transportes, Embajada de España en Londres

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Miss Natalie Wiseman, Secretary

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Mr. Jon Whitlow, Secretary, Seafarers Section, ITF

Mr. George Arthur Quick, Vice-President, IOMMP

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The Reverend Canon Ken Peters, Justice and Welfare Secretary, The Mission to Seafarers

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IMO

Mr. E.E. Mitropoulos, Secretary-General

Dr. R.P. Balkin, Director, Legal Affairs and External Relations Division

Mr. A. Blanco-Bazán, Senior Deputy Director, Sub-Division for Legal Affairs, Legal Affairs and External Relations Division

Mr. G. Librando, Head, Treaties and Rules Section, Legal Affairs and External Relations Division

Mr. C. Young, Head, International Maritime Law and Technical Co-operation Section, Legal Affairs and External Relations Division

Miss G. Gibson, Senior Depositary and Administrative Officer, Treaties and Rules Section, Legal Affairs and External Relations Division

Ms. N. Ünlü, Legal Officer, International Maritime Law and Technical Co-operation Section, Legal Affairs and External Relations Division

Mrs. M.N. Mbanefo, Director, Conference Division

Mr. A. Garofalo, Deputy Director/Head, Conference Section, Conference Division

Mr. F. van Tongerlooy, Head, Documents Section, Conference Division

ANNEX 2

AGENDA FOR THE FIRST SESSION

- 1 Opening of the session
- 2 Election of the Chairperson and two Vice-Chairpersons
- 3 Adoption of the agenda
- 4 Opening views of IMO and ILO participants
- 5 Review of the terms of reference
- 6 Assessment of the extent of the problem
- 7 Examination of relevant IMO, ILO and other applicable international instruments (including those elaborated under the joint auspices of the United Nations and IMO)
- 8 Evaluation of the adequacy and effectiveness of the above
- 9 Formulation of suitable recommendations to the IMO Legal Committee and/or the ILO Governing Body, as appropriate
- 10 Any other business
- 11 Adoption of the report to the IMO Legal Committee and the ILO Governing Body

ANNEX 3**TERMS OF REFERENCE OF THE JOINT WORKING GROUP
(AS EXTRACTED FROM DOCUMENT IMO/ILO/WGFTS 1/5)**

The Legal Committee of IMO at its eighty-ninth session, approved the following terms of reference for the Joint Working Group:

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.

ANNEX 4

This annex contains sections of the draft guidelines on fair treatment of seafarers in the event of a maritime accident as provided by the Drafting Group, which was established during the first session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers. They are provided for information only.

DRAFT GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

Responsibilities of the Port or Coastal State¹

- .1 Ensure that any investigation to determine the cause of the accident is conducted in an expeditious manner;
- .2 Co-operate and communicate with all substantially interested States, shipowners, and seafarers involved in the investigation;
- .3 Ensure that all obligations under international law pertaining to human rights of involved seafarers are fulfilled at all times;
- .4 Ensure that adequate measures are taken to preserve the economic and human rights of detained seafarers;
- .5 [Ensure/verify that adequate provisions are in place to provide for the immediate subsistence of each seafarer [and his or her family]];
- .6 Ensure that due process protections are provided to all seafarers in a non-discriminatory manner;
- .7 [Ensure seafarers are provided with independent legal advice [and are advised as to any risk of self-incrimination and of any right to remain silent];] OR [Ensure that seafarers involved in coastal State investigations² following a maritime accident are adequately informed of their rights of access to independent counsel and against self-incrimination as provided by national law;]
- .8 Ensure that involved seafarers are informed of the basis on which the investigation is being conducted (i.e., whether it is in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents (resolution A.849(20) as amended by resolution A.884(21), or pursuant to other national legal procedures);
- .9 Ensure that the obligations of the Vienna Convention on Consular Relations are promptly fulfilled and that the State(s) of the nationality of all seafarers concerned are notified of the status of such seafarers as required;

¹ Text inside square brackets requires decision by the Joint Expert Working Group.

² The Drafting Group agreed there remains a need to include, in the guidelines, some discussion of a coastal State's authority to conduct an investigation (as in the case of a maritime accident on the high seas).

- .10 Use all available means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
- .11 [Ensure decisions taken pursuant to the International Convention on Prevention of Pollution from Ships (MARPOL 73/78) are consistent with the provisions of Annex 1 (Regulations for the prevention of pollution by oil), regulation 11 (exceptions) which provides that requirements for control of operational pollution [and therefore sanctions for such pollution] will not apply to “the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment ... except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result”.³]
- .12 Promptly conduct interviews of seafarers, when done for a coastal State investigation following a maritime accident, taking into account their physical and mental condition resulting from the accident;
- .13 Ensure that seafarers, once interviewed or otherwise not required for a coastal State investigation following a maritime accident, are permitted to be re-embarked or repatriated without undue delay;
- .14 Promptly charge seafarers suspected of criminal actions and ensure that due process protections are provided to all seafarers subsequent to any such charge;
- .15 [Insofar as national laws allow, ensure that a process is available to the seafarer to post a reasonable bond or other financial security to allow for release and repatriation of the seafarer pending resolution of any investigatory or judicial process;] OR [To the extent permitted under national law, provide seafarers detained in conjunction with a coastal State investigation following a maritime accident access to bond or surety processes pending resolution of any investigatory or judicial process;] and
- .16 [Ensure decisions taken are consistent with the United Nations Convention on the Law of the Sea, 1982, in particular Article 292 on the prompt release of vessels and seafarers and Article 230 on monetary penalties and the observance of recognized rights of the accused [ALSO: Article 228 on suspension and restrictions on institution of proceedings; and Article 232 on liability of States arising from enforcement measures.]] OR [Ensure that decisions taken are consistent with applicable coastal State obligations under UNCLOS, in particular Article 292 on the prompt release of vessels and seafarers and Article 230 on monetary penalties and the observance of recognized rights of the accused.]

Responsibilities of the Flag State

- .1 Co-operate with all substantially interested States, shipowners, and seafarers involved in the investigation;

³ **Note:** Regulation 6 of Annex II on Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk has an identical provision on the subject matter.

- .2 Where appropriate, participate directly, under the IMO Code for the Investigation of Maritime Casualties and Incidents (IMO Assembly resolution A.849(20) as amended by resolution A.884(21), in any casualty investigation;
- .3 [Assist in ensuring that shipowners honour obligations to seafarers involved in a maritime accident or any investigation;]
- .4 Ensure that shipowners honour obligations to co-operate in any investigation following a maritime accident;
- .5 Assist seafarers and shipowners in the event of an investigation by a port or coastal State;
- .6 [Fund the repatriation of seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners fail to fulfil their responsibility to repatriate;]
- .7 [Assist in the service of process and the return to a coastal State of seafarers [of their nationality⁴] who are needed solely as witnesses in any proceeding following a maritime accident;]
- .8 [Ensure that consular officers of the Flag State are permitted access to the involved seafarer;] and
- .9 [Additional proposal by Seafarers: The flag State should take all necessary measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying their flag. This may include utilizing the provision of 292 of UNCLOS, which provides for the prompt release of vessels and crews upon the posting of a reasonable bond or financial security.]

Responsibilities of the Seafarer State

- .1 Co-operate with all substantially interested States, shipowners, and seafarers involved in the investigation;
- .2 Monitor the physical and mental well-being and treatment of seafarers [of their nationality⁵] involved in a maritime accident, including any associated investigations;
- .3 Fund the repatriation of the seafarer, where necessary, to the State [of which he or she is a national⁶] following the aftermath of a maritime accident in instances where shipowners and the flag State fail to fulfil their responsibility to repatriate;

⁴ It was suggested that 'of nationality' may not be the correct wording. Reference was made to ILO Convention No.166, Convention Concerning the Repatriation of Seafarers, particularly article 5(a) which includes the expression: "... the State of which he or she is a national ..."

⁵ See footnote 4.

⁶ See footnote 4.

- .4 [Assist in the service of process and the return to a coastal State of seafarers [of their nationality⁷] who are needed solely as witnesses in any proceeding following a maritime accidents;] and
- .5 [Ensure that consular officers of the seafarer's State are permitted access to the involved seafarer.]

⁷ See footnote 4.

ANNEX 5

**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**

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, Revised 1987 (No. 166),

NOTING FURTHER the IMO Code for the Investigation of Maritime 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,

CONSIDERS 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 ninetieth 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 twenty-fifth 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.

ANNEX 6

LIST OF DOCUMENTS SUBMITTED FOR THE PURPOSES OF THE
WORKING GROUP

1	Opening of the session		
	No document submitted		
2	Election of the Chairperson and two Vice-Chairpersons		
	No document submitted		
3	Adoption of the Agenda		
	IMO/ILO/WGFTS/1/3	IMO and ILO Secretariats	Provisional Agenda
4	Opening views of IMO and ILO participants		
	No document submitted		
5	Review of the terms of reference		
	IMO/ILO/WGFTS 1/5	IMO and ILO Secretariats	Contains information on the background leading to the establishment of the Working Group, in particular, the terms of reference of the Group
6	Assessment of the extent of the problem		
	IMO/ILO/WGFTS/1/6	IMO Secretariat	Contains, at annex, three documents referred to the Working Group by the IMO Legal Committee
	IMO/ILO/WGFTS/1/6/1	International Confederation of Free Trade Unions (ICFTU)	Contains a possible long and short-term approach to the issue and a suggested format for guidelines for adoption by the IMO Assembly (2005)
	IMO/ILO/WGFTS/1/6/2	IMO Secretariat	Contains, at annex, a background document submitted to the eighty-eighth session of the IMO Legal Committee

	IMO.ILO/WGFTS/1/6/3	United States	Proposes concepts that should be taken into account by the Working Group in the development of guidelines
7	Examination of relevant IMO, ILO and other applicable international instruments (including those elaborated under the joint auspices of the United Nations and IMO)		
	IMO/ILO/WGFTS/1/7	IMO and ILO Secretariats	Provides extracts from a number of international instruments pertinent to the work of the Working Group
	IMO/ILO/WGFTS/1/7/Add.1	IMO and ILO Secretariats	Provides an extract from the Vienna Convention on Consular Relations pertinent to the deliberations of the Working Group
	IMO/ILO/WGFTS 1/WP.1	ILO Secretariat	Gives an overview of provisions found in ILO standards relevant to the fair treatment of seafarers in the event of a maritime accident
8	Evaluation and effectiveness of the above		
	No document submitted		
9	Formulation of suitable recommendations to the IMO Legal Committee and/or the ILO Governing Body, as appropriate		
	IMO/ILO/WGFTS 1/WP.2	Prepared by the Drafting Group	Contains draft guidelines on fair treatment of seafarers in event of a maritime accident
	IMO/ILO/WGFTS 1/WP.3	Prepared by the Drafting Group	Contains an amended version of the draft guidelines following discussion by the Working Group
	IMO/ILO/WGFTS 1/WP.4	IMO and ILO Secretariats	Contains the draft text of the draft resolution on fair treatment seafarers in the event of a maritime accident

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| | IMO/ILO/WGFTS 1/WP.6 | IMO and ILO Secretariats | Contains the text of the draft resolution on fair treatment of seafarers in the event of a maritime accident |
| 10 | Any other business | | |
| | No document submitted | | |
| 11 | Adoption of the report to the IMO Legal Committee and the ILO Governing Body | | |
| | IMO/ILO/WGFTS 1/WP.5 and Add.1-3 | IMO and ILO Secretariats | Draft report of the Working Group |
| | IMO/ILO/WGFTS 1/11 | IMO and ILO Secretariats | Report of the Working Group |
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