

**FOR DECISION**

## FIFTH ITEM ON THE AGENDA

**Report of the Director-General****First report: Report of the Joint ILO/IMO  
Ad Hoc Expert Working Group on the  
Fair Treatment of Seafarers in the  
Event of a Maritime Accident**

1. At its 290th (June 2004) Session, the Governing Body approved the establishment of a Joint ILO/IMO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident (Joint Working Group), composed of eight Government experts to be nominated by the International Maritime Organization (IMO) as well as four Shipowner and four Seafarer experts to be nominated by the ILO after consultations with the secretariats of their respective groups. The IMO Legal Committee nominated eight member States (China, Egypt, Greece, Nigeria, Panama, Philippines, Turkey and the United States) with the proviso that any other government could attend the meeting as an observer. The terms of reference of the Joint Working Group were submitted to and approved by the 291st (November 2004) Session of the ILO Governing Body (November 2004) and the Legal Committee of the IMO at its 89th Session (25-29 October 2004).
2. The first session of the Joint Working Group took place from 17 to 19 January 2005. It considered that it was premature to envisage producing valid guidelines during its first meeting. However, it agreed on the adoption of a resolution that would stress the concern of the entire maritime industry on the matter. The ILO Governing Body approved this resolution at its 292nd (March 2005) Session. The IMO Legal Committee also approved this resolution.
3. The second session of the Joint Working Group took place at the IMO, in London, on 13-17 March 2006. It drafted detailed guidelines, together with a draft resolution (see IMO document LEG 91/5, Appendix I). The report of the meeting (IMO document LEG 91/5/1) is appended to the present document in Appendix II.
4. Taking into account the constant increase in the number of cases of criminalization of seafarers, the Joint Working Group has suggested that the guidelines, if adopted, should be promulgated by both the ILO and the IMO as of 1 July 2006.
5. The IMO Legal Committee approved the resolution and the guidelines at its 91st session, held in London on 24-28 April 2006. It also decided to postpone to its next session (16-20 October 2006) the consideration of the draft terms of reference for the continuation of the Joint Working Group.

(16-20 October 2006) the consideration of the draft terms of reference for the continuation of the Joint Working Group.

**6. *The Governing Body may wish to:***

- (i) take note of the information provided;***
- (ii) approve the draft guidelines and authorize their dissemination by the ILO as of 1 July 2006;***
- (iii) approve the terms of the draft resolution proposed by the second session of the Joint ILO/IMO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident; and***
- (iv) defer the approval of the revised Terms of Reference for the Joint Working Group, as contained in Annex 5 of the report of the meeting (LEG 91/5/1) until its 297th (November 2006) Session.***

Geneva, 9 June 2006.

*Point for decision:* Paragraph 6.

## **Appendix I**

**Document LEG 91/5**



IMO

**E**

LEGAL COMMITTEE  
91st session  
Agenda item 5

LEG 91/5  
22 March 2006  
Original: ENGLISH

**FAIR TREATMENT OF SEAFARERS: PROGRESS REPORT ON THE WORK OF  
THE JOINT IMO/ILO *AD HOC* EXPERT WORKING GROUP  
ON FAIR TREATMENT OF SEAFARERS (13 TO 17 MARCH 2006)**

**Note by the IMO Secretariat**

**SUMMARY**

***Executive summary:*** The second session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers, which met from 13 to 17 March 2006, approved a draft resolution for adoption by the Committee to promulgate guidelines on fair treatment of seafarers in the event of a maritime accident. This document provides the text of the draft resolution and guidelines for the Committee's consideration

***Action to be taken:*** Paragraph 3

***Related documents:*** LEG 91/5/1 attaching document IMO/ILO/WGFTS 2/6, Assembly resolution A.987(24), LEG 90/15 (paragraphs 366 to 383 and annex 7), LEG 89/16 (paragraphs 193 to 200 and annex 6), and LEG 88/13 (paragraph 192)

1 The Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers held its second session from 13 to 17 March 2006 and prepared a draft resolution, with guidelines, on fair treatment of seafarers in the event of a maritime accident for the Committee's consideration. The full report of the meeting (document IMO/ILO/WGFTS 2/6) will be brought to the attention of the Committee under cover of a separate document (LEG 91/5/1). Given the importance of the guidelines and the short interval between the conclusion of the Joint Working Group meeting and this session of the Committee, the Secretariat is circulating the text of the draft resolution and guidelines in advance of the full report.

2 The Committee is invited to recall that resolution A.987(24) authorizes 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.

**Action requested of the Legal Committee**

3 The Joint Working Group invited the Committee to adopt the draft resolution and guidelines as presented in the annex. A similar invitation will be made to the ILO Governing Body.

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## ANNEX

Draft resolution and guidelines on fair treatment of seafarers  
in the event of a maritime accident as prepared by  
the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers

**Resolution LEG.3(91)  
adopted on [.....]**

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

THE LEGAL COMMITTEE OF THE INTERNATIONAL MARITIME ORGANIZATION  
AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR ORGANIZATION,

RECALLING resolution A.987(24) approved by the Assembly of IMO at its twenty-fourth regular session and the ILO Governing Body at its 292<sup>nd</sup> session, by which the IMO Assembly and the ILO Governing Body, *inter alia*, agreed to the adoption of Guidelines on fair treatment of seafarers in the event of a maritime accident as a matter of priority and authorized the IMO Legal Committee and the ILO Governing Body to promulgate the said guidelines once finalized, by appropriate means;

HAVING considered the Guidelines as prepared by the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident;

REALIZING the need to keep the Guidelines under review;

RECALLING the Vienna Convention on Consular Relations, in particular, Article 36 concerning communication and contact with nationals;

NOTING MSC/MEPC.4/Circ.1 on Retention of original records/documents on board ships dated 26 September 2005;

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, in particular articles 97, 228, 230, 232 and 292, and of the customary international law of the sea;

CONSIDERING that the Guidelines provide a code of best practice;

MINDFUL of the need to monitor the application and implementation of the Guidelines;  
and

BEARING IN MIND FURTHER, the adoption of the ILO Maritime Labour Convention on 23 February 2006; hereby,

1. ADOPT the Guidelines on fair treatment of seafarers in the event of a maritime accident set out in the annex to the present resolution;
2. INVITE Member Governments to implement these Guidelines as from 1 July 2006;

3. INVITE ALSO Member Governments and non-governmental organizations in consultative status with IMO and ILO to circulate the Guidelines as widely as possible in order to ensure their widespread promulgation and implementation;
4. INVITE, where appropriate, Member Governments to consider amending their national legislation to give full and complete effect to the Guidelines;
5. INVITE FURTHER Member Governments to take note of the principles contained in these Guidelines when considering fair treatment of seafarers in other circumstances where innocent seafarers might be detained; and
6. AGREE on the need to keep the Guidelines under review.

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ANNEX

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

**I INTRODUCTION**

1 It is recommended that these Guidelines be observed in all instances where seafarers may be detained by public authorities in the event of a maritime accident.

2 Seafarers are recognized as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions that they may be brought into contact with, need special protection, especially in relation to contacts with public authorities. The objective of these Guidelines is to ensure that seafarers are treated fairly following a maritime accident and during any investigation and detention by public authorities and that detention is for no longer than necessary.

3 These Guidelines have been prepared in accordance with resolution A.987(24)\* on Guidelines on fair treatment of seafarers in the event of a maritime accident adopted on 1 December 2005 by the Assembly of the International Maritime Organization. This resolution is attached at annex to these Guidelines.

4 These Guidelines do not seek to interfere with any State's domestic, criminal, or civil law processes nor the full enjoyment of the basic rights of seafarers, including those provided by international human rights instruments, and the seafarers' right to humane treatment at all times.

5 Seafarers are entitled to protection against coercion and intimidation from any source during or after any investigation into a maritime accident.

6 The investigation of a maritime accident should not prejudice the seafarer in terms of repatriation, lodgings, subsistence, payment of wages and other benefits and medical care. These should be provided at no cost to the seafarer by the shipowner, the detaining State or an appropriate State.

7 These Guidelines do not apply to warships or naval auxiliaries.

**II DEFINITIONS**

8 For the purposes of these Guidelines,

“seafarer” means any person who is employed or engaged or works in any capacity on board a ship;

“shipowner” means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such

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\* Not included in this document

responsibility, has agreed to take over the duties and responsibilities of the shipowner, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner;

“maritime accident” means any unforeseen occurrence or physical event connected to the navigation, operations, manoeuvring or handling of ships, or the machinery, equipment, material, or cargo on board such ships which may result in the detention of seafarers;

“investigation” means an investigation into a maritime accident;

“detention” means any restriction on the movement of seafarers by public authorities, imposed as a result of a maritime accident, including preventing them leaving the territory of a State other than the seafarer's country of nationality or residence.

### **III Guidelines for the port or coastal State**

9 The port or coastal State should:

- .1 take steps so that any investigation they conduct to determine the cause of a maritime accident that occurs within their jurisdiction is conducted in a fair and expeditious manner;
- .2 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations in the port or coastal State with access to seafarers;
- .3 take steps to ensure that adequate measures are taken to preserve human rights of seafarers at all times, and the economic rights of detained seafarers;
- .4 ensure that seafarers are treated in a manner which preserves their basic human dignity at all times;
- .5 take steps to ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer including, as appropriate, wages, suitable accommodation, food and medical care;
- .6 ensure that due process protections are provided to all seafarers in a non-discriminatory manner;
- .7 ensure that seafarers are, where necessary, provided interpretation services, and are advised of their right to independent legal advice, are provided access to independent legal advice, are advised of their right not to incriminate themselves and their right to remain silent, and, in the case of seafarers who have been taken into custody, ensure that independent legal advice is provided;

- .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 as subsequently amended), or pursuant to other national legal procedures);
- .9 ensure that the obligations of the Vienna Convention on Consular Relations, including those relating to access, 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, and also allow access to the seafarers by consular officers of the flag State;
- .10 ensure that all seafarers detained are provided with the means to communicate privately with all of the following parties:
  - family members;
  - welfare organizations;
  - the shipowner;
  - trade unions;
  - the Embassy or Consulate of the flag State and of their country of residence or nationality; and
  - legal representatives;
- .11 use all available means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
- .12 ensure decisions taken pursuant to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) are consistent with the provisions of Annex 1 (Regulations for the prevention of pollution by oil), Regulation 11;
- .13 promptly conduct interviews with seafarers, when done for a coastal State investigation following a maritime accident, taking into account their physical and mental condition resulting from the accident;
- .14 take steps to 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;
- .15 consider non-custodial alternatives to pre-trial detention (including detention as witnesses), particularly where it is evident that the seafarer concerned is employed in a regular shipping service to the detaining port or coastal State;

- .16 promptly conclude its investigation and, if necessary, charge seafarers suspected of criminal actions and ensure that due process protections are provided to all seafarers subsequent to any such charge;
- .17 have in place procedures so that any damage, harm or loss incurred by the detained seafarer or by the shipowner, in relation to the detention of that particular seafarer, attributable to the wrongful, unreasonable or unjustified acts or omissions of the detaining port or coastal State are promptly and fully compensated;
- .18 insofar as national laws allow, ensure that a process is available for posting a reasonable bond or other financial security to allow for release and repatriation of the detained seafarer pending resolution of any investigatory or judicial process;
- .19 take steps to ensure that any court hearing, when seafarers are detained, takes place as expeditiously as possible;
- .20 take steps to ensure decisions taken are consistent with generally applicable provisions of the law of the sea;
- .21 take steps to respect the generally accepted provisions of international maritime law regarding the principle of exclusive flag State jurisdiction in matters of collision or other incidents of navigation; and
- .22 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

#### **IV Guidelines for the flag State**

10 The flag State should:

- .1 take steps to ensure that any investigation to determine the cause of a maritime accident is conducted in a fair and expeditious manner;
- .2 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- .3 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) and as may be subsequently amended), in any casualty investigation;
- .4 assist in ensuring that shipowners honour obligations to seafarers involved in a maritime accident or any investigation;
- .5 ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer, including, as appropriate, wages, suitable accommodation, food and medical care;

- .6 ensure that shipowners honour obligations to co-operate in any flag, coastal or port State investigation following a maritime accident;
- .7 assist seafarers to secure fair treatment, and assist shipowners in the event of an investigation by a port or coastal State;
- .8 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;
- .9 assist, as provided for in national law, in the issuance and service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
- .10 take steps to ensure that its consular officers are permitted access to the involved seafarers, irrespective of their nationality;
- .11 take all necessary measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying its flag. This may ultimately include utilizing international dispute resolution mechanisms, which can secure the prompt release of vessels and crews upon the posting of a reasonable bond or financial security; and
- .12 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

## **V Guidelines for the seafarer State**

- 11 The seafarer State should:
  - .1 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
  - .2 monitor the physical and mental well-being and treatment of seafarers of their nationality involved in a maritime accident, including any associated investigations;
  - .3 fund the repatriation of their national seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners and the flag State fail to fulfil their responsibility to repatriate;
  - .4 assist, as provided for in national law, in the service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
  - .5 take steps to ensure that its consular officers are permitted access to the involved seafarers;

- .6 take steps to provide support and assistance, to facilitate the fair treatment of nationals of the seafarer State and the expeditious handling of the investigation;
- .7 take steps to ensure that all funds remitted by shipowners, the detaining State, or any other State for detained seafarers, or for support of those seafarers' families, are delivered for the intended purposes; and
- .8 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

## **VI Guidelines for shipowners**

12 With regard to investigations, shipowners have an overriding duty to protect the rights of the seafarers employed or engaged, including the right to avoid self-incrimination and to take steps to ensure their fair treatment, and should:

- .1 take all available measures to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations and take steps to ensure that such conduct by other entities is not tolerated;
- .2 co-operate and communicate with all substantially interested States, other shipowners, as appropriate, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- .3 take action to expedite the efforts of a port, coastal, or flag State investigation;
- .4 take steps to encourage seafarers and others under their employment, with due regard to any applicable rights, to co-operate with any investigation;
- .5 use all reasonable means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
- .6 fulfil their obligation in relation to the repatriation of, or take steps to re-embark, the seafarers; and
- .7 ensure/verify that adequate provisions are in place to provide for the subsistence of each seafarer, including, as appropriate, wages, suitable accommodation, food and medical care.

## **VII Guidelines for seafarers**

13 Seafarers should:

- .1 take steps to ensure, if necessary, that they have appropriate interpretation services;
- .2 take steps to ensure that they fully understand their right not to self-incriminate, and that they fully understand that when statements are made to port, coastal or flag State investigators, these may potentially be used in a future criminal prosecution;

- .3 take steps to ensure, if they consider it necessary, that they have arrangements for access to legal advice prior to deciding whether to give statements to port, coastal or flag State investigators; and
  - .4 participate in an investigation, to the extent possible, having regard to their right not to self-incriminate, with port, coastal or flag State investigators, by providing truthful information to the best of their knowledge and belief.
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IMO

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LEGAL COMMITTEE  
91st session  
Agenda item 5

LEG 91/5/1  
24 March 2006  
Original: ENGLISH

**FAIR TREATMENT OF SEAFARERS: PROGRESS REPORT ON THE WORK OF  
THE JOINT IMO/ILO *AD HOC* EXPERT WORKING GROUP  
ON FAIR TREATMENT OF SEAFARERS**

**Note by the IMO Secretariat**

**SUMMARY**

- Executive summary:*** Attached at annex is the report of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers which met from 13 to 17 March 2006 at the Headquarters of the International Maritime Organization (IMO)
- Action to be taken:*** Paragraph 4
- Related documents:*** LEG 91/5, Assembly resolution A.987(24), LEG 90/15 (paragraphs 366 to 383 and annex 7), LEG 89/16 (paragraphs 193 to 200 and annex 6), and LEG 88/13 (paragraph 192)

1 This document brings to the Committee's attention the outcome of the second session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers which met from 13 to 17 March 2006. The report of the meeting (document IMO/ILO/WGFTS 2/6) is attached at annex.

2 The Working Group adopted a draft resolution with guidelines on fair treatment of seafarers in the event of a maritime accident, for submission to the Committee for consideration and its adoption, and for adoption by the ILO Governing Body (document IMO/ILO/WGFTS 2/6, paragraph 5.1). The text of the resolution and guidelines can be found in annexes 2 and 3 of the report. The resolution and guidelines have also been circulated to the Committee under cover of document LEG 91/5.

3 The Committee is invited to recall that resolution A.987(24) authorizes 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 295<sup>th</sup> session of the ILO Governing Body, accordingly.

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

**Action requested of the Legal Committee**

- 4 The Committee is invited to:
- .1 note the report of the Joint Working Group;
  - .2 adopt the draft resolution and guidelines (annexes 2 and 3 to document IMO/ILO/WGFTS 2/6, also circulated under LEG 91/5);
  - .3 approve the draft revised terms of reference (annex 5 to document IMO/ILO/WGFTS 2/6) for the continuation of the Joint Working Group to be convened as necessary; and
  - .4 instruct the Secretariat to bring the adopted guidelines to the attention of the body undertaking a review of the Code for the investigation of marine casualties and incidents in line with the decision of the Council taken at its eighty-ninth session (document C 89/D, paragraph 12.1(v)).

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## ANNEX

INTERNATIONAL MARITIME ORGANIZATION



IMO

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JOINT IMO/ILO AD HOC EXPERT  
WORKING GROUP ON FAIR TREATMENT  
OF SEAFARERS  
2nd session  
Agenda item 6

IMO/ILO/WGFTS 2/6  
24 March 2006  
Original: ENGLISH

**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 held its second session from 13 to 17 March 2006 at the Headquarters of the International Maritime Organization (IMO).

1.2 In welcoming participants on behalf of the Secretary-General of IMO, 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.

1.3 This was the first IMO/ILO meeting to be convened since the successful conclusion of the ninety-fourth (Maritime) session of the International Labour Conference and, therefore, she said, it was a fitting occasion to convey, once again, on behalf of the Secretary-General, the congratulations of IMO to ILO and the Governments, seafarers and shipowners who had worked so assiduously to ensure the adoption of the consolidated Maritime Labour Convention, 2006, at ILO Headquarters last February.

1.4 The Director-General of ILO had characterized the new Convention as a “comprehensive labour charter for the world’s 1.2 million or more seafarers”. It had also frequently been referred to as the “fourth pillar” of the international regulatory regime for quality shipping, together with three of the most important IMO Conventions, namely the International Convention for the Safety of Life at Sea, 1974, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973. The Secretary-General of IMO, when addressing the ILO Conference, had anticipated that the new ILO Convention would complement these key IMO technical treaties perfectly, by introducing the social element necessary to ensure decent working conditions for seafarers and catering for such eventualities as prevention of accidents; health protection and medical care; seafarers’ hours of work and the manning of ships; and the repatriation of seafarers. IMO was ready to assist in any way it could in achieving the objectives of the new ILO Convention.

1.5 These objectives, Dr. Balkin continued, were not unrelated to the work which the *Ad Hoc* Expert Working Group would be undertaking at this session: both IMO and ILO had repeatedly stated their serious concerns about the need to safeguard the rights of seafarers caught up in criminal proceedings in the aftermath of maritime accidents, particularly in cases where

they might be subject to unwarranted and prolonged periods of pre-trial detention. To this end, both Organizations had agreed to this issue being placed on the agenda of the IMO Legal Committee and to the establishment of the Working Group, with its mandate to develop a set of draft guidelines on fair treatment of seafarers, for adoption by both IMO and ILO.

1.6 Dr. Balkin noted that the commitment to this action had been reinforced by the adoption, on 1 December 2005, of resolution A.987(24), by the terms of which the IMO Assembly urged all States to respect the human rights of seafarers involved in maritime accidents; to investigate maritime accidents expeditiously to avoid any unfair treatment of seafarers; and to adopt the guidelines as a matter of priority. With these objectives in mind, the resolution also requested the Working Group to finalize its work as quickly as possible and authorized the IMO Legal Committee and the ILO Governing Body to promulgate the guidelines, once finalized, to enable their speedy implementation.

1.7 Should the Working Group accomplish this task at this meeting, she continued, the guidelines could be promulgated by the IMO Legal Committee at its next, ninety-first, session scheduled to be held from 24 to 28 April 2006 and the Governing Body of ILO could thereafter promulgate them at its session, to be held from 22 to 23 June 2006.

1.8 With these dates in mind, and on behalf of the Secretary-General of IMO, Dr. Balkin urged the Working Group to use its best endeavours to complete its work at this session, so that practical steps to advance the rights of seafarers caught up in such situations could be set in motion as soon as possible. It would, she said, be a very good year indeed for the protection of the rights of seafarers, if, before the summer, the adoption of the consolidated Maritime Labour Convention were to be followed by the promulgation of the guidelines on fair treatment of seafarers in the event of a maritime accident.

1.9 The task the Working Group had before it would not be an easy one. The issues to be discussed were both complex and sensitive and the need to fully respect the independence of the judiciary in countries that had suffered from damage to their environment and economies as a result of a maritime accident was understood. But at the same time, there was a collective concern about the treatment of innocent seafarers who might be detained in the aftermath of such incidents. They should, at all times, be treated with the respect and dignity they deserve, in full recognition of their vital contribution, often in difficult conditions, to maritime trade and the world economy. Their fundamental rights, including protection against arbitrary interference with their right to liberty, must be respected and the guidelines currently under preparation would help to ensure this.

1.10 She concluded by wishing the Working Group every success in its deliberations.

1.11 Mr. Jean-Yves Legouas, Senior Maritime Specialist, Sectoral Activities Department, Department, International Labour Organization (ILO), welcomed participants to the session on behalf of the Director-General of ILO, Mr. Juan Somavia, and Mrs. Cleopatra Doumbia-Henry, Director of the International Labour Standards and Maritime Activities Department.

1.12 Mr. Legouas reminded the Working Group that just over a year ago, at the opening of its first session, he had informed participants of the long-term awareness of ILO and its constituents, of the painful problem created by the arrest or detention of seafarers and of the necessity of co-ordinating ILO efforts with those of other UN agencies, to find an appropriate solution to this issue. He was pleased to see that such a large number of participants had actively joined the Correspondence Group, chaired by the representative of the Republic of Panama, thereby

demonstrating their clear assessment of the importance of the task which had been assigned to them by the respective parent bodies of IMO and ILO.

1.13 He was also pleased to report that the ILO Governing Body, at its 292<sup>nd</sup> session in March 2005, had taken note of the information provided on the meeting and had approved the terms of the draft resolution proposed at the first session of the Working Group.

1.14 As the Working Group was already aware, he continued, ILO had adopted a new Maritime Labour Convention less than three weeks ago. This would have fundamental repercussions on shipping and the day to day life of seafarers in the near future. Many participants had been present at the Conference in Geneva, including the Secretary-General of IMO. The resultant Maritime Labour Convention was of major importance to the industry and would be so for decades to come. At least two parts of the new Convention were of relevance for the Working Group: Regulation 2.5 on Repatriation, and Guideline B.4.4.6 on seafarers in a foreign port.

1.15 A number of documents had been received and would be presented and examined during the course of this second session. The Joint Secretariat had prepared a document summarizing the work of the Correspondence Group and the Working Group would have to identify rapidly all appropriate documentation relevant to the problem and, in so doing, would, it was to be hoped, find ways of combining the interesting ideas that had been aired by the various authors.

1.16 He concluded by wishing the Working Group good luck in its debates and expressed the firm hope that a constructive and realistic conclusion would be reached.

## **2 Adoption of the Agenda**

2.1 The Working Group adopted the provisional agenda contained in document IMO/ILO/WGFTS 2/3. The agenda for the session is given at annex 1. The list of documents issued for the session is given at annex 6 and the list of participants at annex 7.

## **3 Opening views of IMO and ILO participants**

3.1 In his opening speech, the Shipowners' spokesperson observed that his group was looking forward to a finalization of the issue at the present meeting. There was a risk of expanding the scope of the Working Group too far and, as a consequence, a need to stick to the agreed terms of reference. He also remarked that there was a wide recognition regarding the necessity to prevent maltreatment of seafarers worldwide.

3.2 In his opening speech, the Seafarers' spokesperson underlined the importance of the issue to the Seafarers. He noted that the Human Element Vision, Principles and Goals for the Organization, as set out in IMO Assembly resolution A.947 (23) provided that "the Organization, when developing regulations, should honour the seafarer by seeking and respecting the opinions of those that do the work at sea". IMO had, for many years, stressed the critical role of the human element and had now begun to realize the importance of the human and fundamental rights and freedoms of seafarers in this regard.

3.3 Since the last meeting, there had been an increase in the criminalization of seafarers and in the adoption of laws and regulations which suggested that such criminalization would increase. At the last meeting of the Working Group, the Seafarers had expressed grave concern over the case of the **Katarina**. They regretted that, since that meeting, other landmark cases had occurred. The case of the bulk carrier **Celine** had involved the suicide of the chief engineer,

following a United States Coast Guard intervention and the extended detention of the master, despite the serious illness of his father. In the case of the **Selendang Ayu**, the master had been prosecuted for misleading the United States National Transportation Safety Board over the precise time that the engines had been shut down, even though the timing was not material to what had happened.

3.4 The Seafarers believed that when statements given to casualty investigators could lead to criminal prosecutions, a very dangerous line was being crossed. IMO needed to urgently review the Code for the Investigation of Maritime Casualties and Incidents to ensure that the human rights of seafarers are protected. Otherwise, seafarers would be advised not to participate in such investigations until and unless they received appropriate legally-binding waivers ensuring that they did not prejudice their position and face a subsequent criminal prosecution.

3.5 The progress made by the Working Group would be critical to ensuring decent work for seafarers, and they hoped that the necessary protection would be put in place. IMO and ILO had agreed that seafarers needed special protection, and this meeting provided the opportunity to achieve it.

3.6 The Seafarers were pleased to have been able to produce a joint paper with the Shipowners. This paper should be the basis for discussion. The principles of tripartism should be respected, therefore the establishment of a drafting group should be avoided. They looked forward to a constructive meeting that would finalize the guidelines and agree what additional work should be undertaken by the Working Group.

3.7 The delegation of the United States noted the importance of this subject to the maritime community and to the global economy and hoped to produce a set of guidelines that was workable, widely implemented, and capable of improving the lives of seafarers worldwide.

3.8 This delegation stated that any guidelines the Working Group drafted this week would only be successful if they could be adopted and implemented by a wide range of Governments and respected by a broad cross-section of our societies. The delegation also expressed concern that the Working Group should not spend time producing guidelines that might be incompatible with domestic laws, or were unacceptable to a high percentage of the vast number of Governments and affected interests who were not in the meeting this week. The Working Group was representing a much larger constituency and would do well to keep that in mind.

3.9 Guidelines should take into account the Seafarers' statement on the need to ensure safe and decent work. Their statement highlighted the importance of the thousands of maritime casualty investigations that were conducted every year. In 2005, there were over 3,718 such investigations in the United States alone. This robust, efficient system was vital to ensuring a safe workplace for seafarers and creating a level playing field for the vast majority of shipowners who wanted to do the right thing, but also wanted to make sure that they had a level playing field and were not undercut by shipowners who ignore both regulations as well as their responsibilities to the seafarers they employ.

3.10 The delegation also stated that it was not particularly helpful to the Working Group to focus on specific cases raised by the Seafarers, but it addressed the comments made about one particular incident. In any discussion such as this, the facts were very important and the delegation stated some of those facts, as they were a matter of public record. In the **Selendang Ayu** matter, the master was not merely prosecuted for lying to the United States National Transportation Safety Board. In fact, he admitted to twice gathering his crew and ordering them to lie to accident investigators, who were trying to determine the causes of that

incident. Seafarers should be protected from that type of coercive influence. None of those crew members, who lied as ordered, were considered for criminal prosecution, because the United States understood that no crew member should be put in the impossible situation of having been ordered by their master to lie. Seafarers deserve to be treated more fairly than that.

3.11 The delegation suggested that, in order to complete its work successfully, the Working Group should stick to the scope of the mandate imposed on it by the IMO Legal Committee, the ILO Governing Body and the IMO Assembly. If it did not adhere to their instructions, it would be difficult to complete its work this week. Failure to adhere to the mandate would mean that any guidelines produced would face intense scepticism from Governments and others and might ultimately fail.

3.12 In this vein, the Working Group should remember that it was convened under the tripartite system because, as the Assembly resolution recognizes, social partners as well as Governments have an important responsibility in ensuring the fair treatment of seafarers.

3.13 The delegation had submitted a set of proposed guidelines that might serve as a basis for discussion and would help lead the Working Group to a successful resolution. The delegation stated that it would save any additional comments on its paper until the appropriate time. It noted that it had also produced an annotated version of those guidelines designed to explain the origin or rationale behind particular terms.

3.14 The delegation of Turkey expressed its thanks and congratulations to the International Labour Organization for the adoption of the new ILO Maritime Labour Convention. The delegation noted that this promising Convention would significantly contribute to the efforts of fair treatment of seafarers, apart from other substantial benefits, due to the progress of ratification by Member countries. The delegation also expressed its thanks to the IMO Secretariat for facilitating and organizing the Correspondence Group's work.

3.15 Regarding the terms of reference of the Working Group and philosophy and structure of the draft guidelines, the delegation believed that, to be able to enhance fair treatment of seafarers, the guidelines should be drafted as realistically and practicably as possible, in order that they might be applied by the widest range of IMO Member States rather than being idealistic paperwork which would not work in practice. Eventually, these guidelines would address not only maritime officials who were mostly aware of the seafarers' problems, but also and more importantly would address other enforcement officials and criminal court judges who may have no idea about the difficulties of seafarers' lives. Therefore, it was vital to give them clear and applicable guidelines.

3.16 The delegation of Greece stated that it was among those which had taken the initiative to address the issue of fair treatment of seafarers and, like the social partners, was keen to finalize the relevant guidelines.

3.17 Notwithstanding that the outcome would be a non-binding instrument, as guidelines were, the delegation strongly believed that their success would be evidenced by their widest possible acceptance and enforcement, and this was related to their realistic content and the substantial input of the relevant elements of the maritime industry.

3.18 The delegation suggested that, together with the terms of reference of the Working Group, resolution A.987(24) should be considered as the "road map" for the Group's work this week.

3.19 In this framework, the delegation believed that the guidelines under development should address the obligations and responsibilities of port or coastal States, flag States, the State of nationality of the seafarer, shipowners and seafarers; should not interfere with internal criminal or civil law of the States; should recognize that fair treatment is closely related to the human political, social and economic rights under the applicable international provisions; should be based on the principle of innocence until proven guilty; should be related to the uniform implementation of the maritime instruments adopted by the relevant international organizations - IMO and ILO; should focus on the principle that work is not a commodity and that seafarers, as a special category of worker, in no case should be held hostage pending the resolution of a financial dispute, and should recognize the role of IMO and ILO for the arrangement of disputes in relation to the application and enforcement of the guidelines on fair treatment.

3.20 The delegation also congratulated ISF, ICS, ICFTU, IFSMA and the United States for the hard work accomplished on the subject and felt that their submissions would facilitate the work of the Group and set the path for fruitful discussions and a productive second session.

3.21 The delegation of the Philippines stated that the Philippines was one of the biggest sources of seafarers for ocean-going ships and their sheer number made it very likely that any maritime accident would involve a Filipino.

3.22 Maritime accidents had been a major concern for the Philippines because of recent incidents which had led to unjustified detention of Filipino seafarers over a long period of time without the benefit of due process. The unwarranted detention of these seafarers, who were held as material witnesses in a maritime accident investigation, was likewise a concern.

3.23 Two maritime accident cases, the **Tasman Spirit** and the **Katerina**, in recent years, where Filipino seafarers were unjustifiably detained, would always be a reminder of the growing need to provide an instrument that would address the issue of fair treatment of seafarers in a maritime accident.

3.24 The delegation of the Philippines further stated that it had reviewed the reports and the different versions of the draft guidelines for the second session of the Working Group and was confident that the session would be productive and would result in guidelines acceptable to both the IMO and the ILO governing bodies.

3.25 The delegation believed that, in any maritime accident, the paramount objective was to determine its cause. The delegation agreed that seafarers had a responsibility in the conduct of the investigation. However, non-discriminatory due process to seafarers, irrespective of nationality, should be provided at all times in the course of the investigation.

3.26 The Philippines was ready to co-operate and assume the responsibility of a seafarer State, particularly on the matter of prompt repatriation of seafarers. The delegation indicated that its national legislation provided for a full assumption of responsibility by the Government to repatriate seafarers where necessary. However, it believed that there was need for an agreement on a timeframe for the conduct and completion of a maritime accident investigation. The proposals on this matter so far provided in the drafts had, in its view, remained vague and would have to be quantified if there was to be an effective and workable set of guidelines.

3.27 The delegation expressed its gratitude to IMO and ILO for co-ordinating the work of this Working Group. Likewise, it expressed its appreciation to the social partners and other stakeholders that had collaborated to provide a working draft of the guidelines for this meeting.

3.28 The delegation of Panama also expressed its gratitude to IMO and ILO for co-ordinating the work of this Working Group and said that they looked forward to seeing clear and balanced guidelines.

#### **4 Development of guidelines on the fair treatment of seafarers in the event of a maritime accident**

4.1 The Chairperson reminded the Working Group that, at its first session, it did not have sufficient time to complete its work on the development of guidelines. As a result, it had decided to defer this work for fuller consideration at this session. In this connection, the Chairperson invited the delegations, as a means of structuring the debate, to give a general introduction to their submissions.

4.2 The IMO Secretariat introduced document IMO/ILO/WGFTS 2/3, prepared by the Joint Secretariat, to reflect the work undertaken by the Correspondence Group. In effect, this document was a chronology of all the communications which had been exchanged from June 2005 to January 2006. For ease of reference, all comments and proposals produced for the consideration of the Correspondence Group were included in, or annexed to, this report. Annex 1 included a set of draft guidelines submitted by IFSMA in August 2005, which were now superseded by those contained in document IMO/ILO/WGFTS 2/3/2, submitted by IFSMA to the current session. Annex 4 was a table submitted by IFSMA to the Correspondence Group to identify how the sections of its proposed guidelines were linked or connected to the key words used in resolution A.987(24). IFSMA also invited the Correspondence Group to address a number of specific questions relating to its proposed guidelines. The IFSMA questions were presented in paragraph 11 of the cover note of the report. Annex 6 provided responses to these questions, as submitted by Australia.

4.3 Annex 2 contained a paper submitted to the Correspondence Group on behalf of the CMI International Working Group on the Fair Treatment of Seafarers. The annex included a questionnaire which was circulated by the CMI Working Group to CMI Member Associations. The CMI Working Group continued its work, and the issue of fair treatment of seafarers was discussed at the CMI Colloquium in Cape Town in February 2006. Annex 3 contained the MSC/MEPC circular on retention of original records and documents on board ships. This circular provided policy guidance as to when original records and documents may be removed from a ship by port and coastal State authorities when such documents or records are required as proof of compliance of the ship with international and national rules and regulations. The Maritime Safety Committee requested the Secretariat to bring this circular to the attention of the Working Group.

4.4 Annex 5 contained a set of draft guidelines submitted to the Correspondence Group jointly by ISF, ICS and ICFTU. The draft was an amended version of the guidelines initiated at the first session of the Working Group. This proposal was also separately presented to the Working Group at its current session, in document IMO/ILO/WGFTS 2/3/1.

4.5 The Shipowners' spokesperson introduced the joint ISF/ICS/ICFTU document (IMO/ILO/WGFTS 2/3/1), emphasizing the aspects related to criminalization and criminal sanctions, which he perceived as an expanding area of activity around the world. He remarked that such measures should not exist as long as a criminal activity had not been proven. More practically, he accepted that the wording in the document could be amended, if necessary; observed that it provided definitions for maritime accident and detention; and remarked that the drafters of the document had taken good note of the IFSMA document when undertaking their task.

4.6 The Seafarers' spokesperson amplified what had been said by the Shipowners' spokesperson. Commenting on an earlier remark that participants should try to avoid becoming emotional, he said that, sometimes, expressing emotion was important and he made no apologies for doing so. Referring to the case of the **Selendang Ayu**, he said that perhaps the master and crew had lied to investigators as a result of fear, stemming from the reputation of the investigating authorities. This went to the very core of the issue of fair treatment. In this regard, he drew attention to document IMO/ILO/WGFTS 2/3/4 (see below).

4.7 The Seafarers' spokesperson noted that the draft guidelines, as amended by ISF, ICF and ICFTU, provided in the annex to document IMO/ILO/WGFTS 2/3/4, also drew upon the work of others, including the commendable input of IFSMA. The paper did not include everything the Seafarers would have wanted, for example, it did not incorporate the issues of: free access to legal advice, prevention of coercion, free medical examination for detained seafarers, procedures for complaints by seafarers concerning their treatment, exchanges of persons and the costs of welfare and accommodation. However, it did address such issues as the definition of "maritime accidents" and "detention". It was also very important to protect seafarers and set out that they had rights, notwithstanding what was contained in domestic legislation. For this reason, they found reference to domestic legislation unhelpful and wanted references to international obligations. Finally, they had kept an open mind towards adding new provisions to the draft guidelines.

4.8 The Seafarers' spokesperson introduced document IMO/ILO/WGFTS 2/3/4, which contained the opinion of legal experts on the legal aspects of the fair treatment of seafarers in the event of a maritime accident and, in particular, the aspect of the right to silence and not to self-incriminate. The document drew attention to the general application of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (the ICCPR), as well as to the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR). In its conclusion, the opinion advised that the ICCPR and the ECHR:

- provide protection against arbitrary detention without charge;
- entitle any individual detained to be informed promptly of the charges against him;
- entitle that individual prompt access to a court to challenge the lawfulness of his detention;
- entitle the individual to a trial without undue delay;
- entitle an individual detained unlawfully to compensation; and
- protect a person accused of an offence from having to incriminate himself and protect his right to silence (though as has been discussed, the right to silence is not absolute).

4.9 The delegation of the United States introduced document IMO/ILO/WGFTS 2/3/3, which offered a proposal for a framework upon which the Working Group might develop a complete set of guidelines. Several key principles were presented in this paper, as follows:

- investigations of maritime accidents are critical to providing a safe work place for seafarers and to ensuring that shipowners, Government regulators, classification societies and others fulfil their obligations to those seafarers whose lives and livelihood rely upon the safety of their vessels;
- Governments must treat seafarers fairly, provide them with the same due process protections afforded to their own nationals, and respect principles of international law to which they are obligated;
- maritime accidents and the resulting investigations are a predictable consequence of the business of shipping and shipowners must plan for such contingencies. This includes the need for a shipowner to continue to provide for the needs of their employed seafarers following such an accident;
- seafarers should not take actions that increase the burdens and hardships upon other seafarers, such as obstructing and therefore delaying investigations, coercing or threatening their fellow crewmembers, or giving untruthful statements to investigators; and
- the IMO Assembly and the ILO Governing Body both adopted the resolution produced by the first session of this Working Group, which stated 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.” It is important that any solution be a collaborative solution and that the responsibilities of all parties be included. The conduct of any of these involved parties can affect the burdens and hardships suffered by seafarers following a maritime accident.

4.10 The delegation of the United States stated that the responsibilities of both seafarers and shipowners in its proposal were responsibilities owed to seafarers. They were in no way intended, or should be interpreted, as obligations to an investigating State. The delegation emphasized that this was a document on fair treatment of seafarers, not fair treatment of Governments. The delegation also pointed out that anyone familiar with these incidents knew that few things were more unfair to innocent seafarers than to have a ship’s officer, shipowner or other individual order or coerce them into lying or committing other illegal conduct during an accident investigation. And anyone familiar with these incidents knew that this unfortunate conduct happened. The delegation also underlined how much delay and additional hardship such conduct can cause. This was the reason why responsibilities for seafarers were included in its submission.

4.11 The delegation also discussed the importance of producing guidelines that could be readily adopted and implemented by a large number of States. One of the keys in accomplishing this was to recognize that States would have a wide variety of domestic legislation. Guidelines should have the flexibility to allow States to work within that important constraint.

4.12 The delegation further pointed out that its proposal also adhered to and reflected the language of the mandates it received from the IMO Legal Committee, the ILO Governing Body and the IMO Assembly. For example, other proposals would even include narcotics investigations within the scope of the proposed guidelines. This could not be what anyone intended, but emphasized the importance of staying focused upon the Working Group’s actual mandate.

4.13 Finally, the delegation concluded that, although all parties would not agree with everything in its document, it nonetheless urged the Working Group to use its proposal as the starting point for the week's deliberations; the text could always be amended or supplemented, but it must be a text providing a framework for a whole solution. This would give everyone an idea of the direction the Working Group was taking and the path it was using to get there. The delegation also pointed out that, although there were many good things in the document submitted by the social partners, certain important sections were missing altogether and it strayed far beyond the scope of the Working Group's mandate.

4.14 IFSMA briefly introduced document IMO/ILO/WGFTS 2/3/2, which contained the principles on which the guidelines could be based. The delegation stated that IFSMA represents over ten thousand serving shipmasters worldwide and it was understandably concerned with the treatment that seafarers have suffered following a maritime incident or accident in recent times.

4.15 For that reason, the delegation had submitted proposals for guidelines to ensure fair treatment for seafarers and had promulgated its ideas on its website to seek feedback. There was no doubt that a set of guidelines was greatly desired by those serving at sea, since seafarers do fear that, through no fault of their own, they may find themselves unjustly held as prisoners of misfortune.

4.16 The delegation also observed that both the delegation of the United States and the Seafarers' and Shipowners' spokespersons had presented their own set of guidelines. In both cases, IFSMA found much to agree with and also commended the straightforward layout in both submissions. However, IFSMA felt that both had some omissions.

4.17 IFSMA also stated that its own proposal was too complicated and too passionate, but was pragmatic enough to realize that, if there were to be a successful conclusion to this week's endeavours, the text of the draft guidelines used by the Working Group for its deliberations must be the one which it considered as its preferred basis on which to work. For this reason, the delegation proposed that the guidelines contained in document IMO/ILO/WGFTS 2/3/2, be used for reference only, should the Working Group wish to do so.

4.18 The delegation added that, whichever one of the remaining two was selected, IFSMA would fully support the Working Group in achieving a satisfactory conclusion.

4.19 The delegation also highlighted two key principles of importance to IFSMA:

- (a) the prompt release of seafarers and prevention of unwarranted constraints on their freedom as a consequence of a maritime incident or accident; and
- (b) that there should be shared responsibility of shipowners and States, severally and jointly, for the welfare of seafarers (and their families) involved in maritime inquiries, investigations or examinations.

4.20 Following the introduction of the documents, the Chairperson suggested that the debate should proceed in the following order:

- a discussion on the structure of the guidelines;
- a discussion on seafarers detained as witnesses;
- a discussion on the definition of accident; and

- a discussion on circular MSC-MEPC.4/Circ.1 on retention of original records/documents on board ships.

4.21 After these discussions, the Chairperson suggested proceeding on a paragraph by paragraph consideration of the guidelines.

**(a) Structure of the guidelines**

4.22 The delegation of the United States informed the Working Group that all five categories of responsibility contained in document IMO/ILO/WGFTS 2/3/3 were discussed and agreed in plenary during the Group's first session. The drafting group, at the first session, stopped its work before it reached the Shipowner and Seafarer sections. The IMO Assembly resolution, drafted by the Working Group, expressly acknowledged that both shipowner and seafarer responsibilities be included. The delegation added that to impose all of the responsibilities via Governments was problematic, since the enforcement of these provisions could create the possibility or perception of coercion by Governments attempting to impose these indirect obligations on shipowners and seafarers. For this reason, the United States' submission linked all seafarer obligations to the applicable rights to which the seafarer was entitled.

4.23 The delegation of Greece also agreed with the view of the delegation of the United States that the shipowners' and seafarers' responsibilities were missing from document IMO/ILO/WGFTS 2/3/1, submitted by ISF/ICS/ICFTU.

4.24 The Shipowners' and Seafarers' spokespersons suggested using document IMO/ILO/WGFTS 2/3/1 as a basic text. The responsibilities of shipowners and seafarers could be included within the other three categories of responsibility. This view was supported by some other delegations.

4.25 The observer delegation of Cyprus suggested that there was no need to choose one document as a basic text, since it was acceptable to work with two different documents.

4.26 Following those discussions, the Group decided to use document IMO/ILO/WGFTS 2/3/1 submitted by ISF/ICS/ICFTU as the basic text, which could be amended and expanded, as appropriate, by proposals contained in the document submitted by the United States regarding the shipowners' and seafarers' responsibilities.

**(b) Discussion on seafarers detained as witnesses**

4.27 The Chairperson drew attention to the lack of clarity in the current draft guidelines as to whether all the principles should apply to all seafarers who were detained, whether as potential witnesses or potential defendants, and invited comments on this matter.

4.28 The Seafarers' spokesperson said that potential witnesses should also be covered.

4.29 The delegation of the United States also agreed that potential witnesses should be covered, and pointed out that both documents IMO/ILO/WGFTS 2/3/1 and 2/3/3 assumed this.

4.30 The Shipowners' spokesperson referred to his earlier intervention on the issue of criminality. He could not see that, as concerns detention, a potential witness and potential defendant should be treated differently. It was therefore important that the guidelines cover all detained seafarers, and fair treatment be provided to both potential witnesses and defendants.

4.31 Seeing no opposition to the views expressed above, the Chairperson concluded that the Working Group agreed that the guidelines should apply to potential defendants and potential witnesses.

**(c) Definition of a maritime accident**

4.32 The observer delegation of Liberia remarked that the word “contingent” in the definition of a maritime accident, offered in document IMO/ILO/WGFTS 2/3/1, might be unclear. Amendments to the text were proposed by the Seafarers’ spokesperson, IFSMA and CMI, whereby the following words would be added at the end of the definition after the word “ships”: “which may result in the detention of a seafarer”, and the replacement of the word “an” by the word “any” at the beginning of the definition.

4.33 The delegation of the United States expressed concern about adding unnecessary clauses to the definition, such as those suggested in the previous interventions.

4.34 The delegations of the Philippines and the observer delegations of Brazil and the Bahamas supported the suggested amendments. The observer delegations of Spain and Liberia reiterated suggestions concerning the word “incidents”, while the observer delegation of Indonesia proposed defining “maritime crime”, and to allude to “unintentional” actions. The observer delegation of the Netherlands suggested including “maritime casualties”. It added that, since article II.1 of UNCLOS referred to incidents, some similar wording could be used here. These various attempts to introduce a reference to “maritime incidents” were, however, rejected on the basis that this was specifically excluded from the terms of reference of the Working Group.

4.35 The delegation of the United States suggested amending the last sentence of the definition of a maritime accident contained in document IMO/ILO/WGFTS 2/3/1 by adding the words “which results or potentially results in damage” at the end of the definition.

4.36 Following the discussion of document IMO/ILO/WGFTS 2/WP.1, which contained the various amendments which had been proposed to the wording of the definition of “maritime accident”, it was agreed to replace the word “an” by the word “any” and the word “contingency” by the word “occurrence”. The delegation of the United States observed that the last part of the definition “which may result in the detention of a seafarer” was not helpful for the purpose of this definition.

4.37 The delegation of Greece agreed with the suggested text, and proposed including examples, as provided in the United States’ submission, in order to clarify the definition of a maritime accident.

4.38 The Shipowners’ spokesperson remarked that listing examples would possibly reduce the scope of the definition and reiterated that the CMI definition, which was used in the joint document, had been adopted, *inter alia*, for this reason.

4.39 The Seafarers’ spokesperson agreed with this and reiterated his wish to see the wording adopted as proposed in document IMO/ILO/WGFTS 2/WP.1, without adding examples which would reduce the scope of the definition.

4.40 The delegation of the United States suggested the following text at the end of the definition: “and which results in, or has the potential to result in, damage to the ship, its cargo, or the marine environment, or injury to its crew”. This amendment was broadly supported by the

observer delegation of Cyprus, with the proviso that the words “to its crew”, be replaced by the words “to any person on board”. The CMI representative suggested a further amendment to the United States’ proposal: to replace the words “to the ship” by the words “to a ship”.

4.41 The delegation of the United States stated that it would agree to the deletion of the square brackets around the last part of the definition contained in document IMO/ILO/WGFTS 2/WP.1, provided that an allusion to “damage to property” could be included.

4.42 The issue of limitations to fair treatment having been raised, the Chairperson of the Working Group concluded, after an exchange of opinions, that fair treatment was applicable to everybody. This decision was commended by the Seafarers’ spokesperson, who remarked that criminal activities on board ships often happened without the involvement or even the knowledge of the crew. He then reiterated that the suggested text contained in document IMO/ILO/WGFTS 2/3/1, as amended, be adopted.

4.43 The observer delegation of the Bahamas suggested adopting the suggested text as a working definition. This was supported by the observer delegation of Cyprus.

4.44 The Chairperson ended this debate by concluding that the text contained in document IMO/ILO/WGFTS 2/WP.1 on the definition of a maritime accident was adopted as amended, as follows:

“Any unforeseen occurrence or physical event connected to the navigation, operations, manoeuvring or handling of ships, or the machinery, equipment, material, or cargo on board such ships, which may result in the detention of a seafarer”.

**(d) Circular MSC-MEPC.4/Circ.1 on retention of original records/documents on board ships**

4.45 The Working Group took note of circular MSC-MEPC.4/Circ.1 on retention of original records/documents on board ships (document IMO/ILO/WGFTS 2/3, annex 3 refers).

4.46 The Seafarers’ spokesperson asked whether the phrase “all the parties concerned”, in paragraph 3 of the circular, included seafarers, for the purpose of requiring agreement when original documents are to be removed from a ship. In response, the representative of the delegation of the Philippines stated that his recollection, as Chairman of the drafting group at the MSC session which had developed the circular, was that seafarers were included in this term. He also explained that original documents should only be taken from the ship in exceptional circumstances.

4.47 An ILO representative suggested that the requirements of ILO Convention No. 185 on Seafarer identity documents would preclude the use of certified copies since the biometric features could not be duplicated. For this reason, the original seafarer’s identity documents should be kept by the seafarer or on board the ship.

4.48 With regard to whether or not the circular had direct relevance to the Working Group’s present work, the representative of the observer delegation of the Netherlands suggested the scope of the circular went beyond maritime accidents.

4.49 The Chairperson of the Working Group suggested that the decision to refer to the circular within the new guidelines could be taken under an appropriate section of the draft guidelines, such as the responsibility of the detaining port or coastal State.

## **Consideration and approval of the draft guidelines paragraph by paragraph using document IMO/ILO/WGFTS 2/3/1**

### **(a) Responsibilities of the detaining port or coastal State**

#### **Title**

4.50 The observer delegation of the Bahamas stated that some of the responsibilities in the guidelines are not mandatory. Therefore the title may need to be amended and the delegation suggested changing the word “responsibilities” to “guidelines”. Several delegations expressed their support for this proposal.

#### **Paragraph 1**

4.51 The observer delegation of the Bahamas further suggested that the conduct and investigation of a maritime accident fall under the jurisdiction of the flag State and proposed that the wording of this paragraph be amended accordingly.

4.52 The delegation of the United States supported this view and suggested replacing the word “Ensure” with the wording “Take steps”.

4.53 The observer delegation of Cyprus suggested including the words “that occurs in their jurisdiction” after the words “maritime accident”.

4.54 As a result of these discussions, the Working Group amended the wording as follows:

“Take steps so that any investigation they conduct to determine the cause of a maritime accident that occurs in their jurisdiction is conducted in as expeditious a manner as possible.”.

4.55 The Working Group started to discuss paragraph 2, but decided that it would be difficult to discuss the main text of the guidelines if the definition of detention could not be agreed. The Chairperson therefore suggested that the definition of “detention” be agreed on before consideration of the main text of the guidelines.

#### **Introduction**

##### **Detention**

4.56 The delegation of the United States expressed concern that the definition of detention in document IMO/ILO/WGFTS 2/3/1 would cause confusion, since it is much broader than the generally understood meaning of the term in international instruments, which assume much greater constraints on liberty. Although the delegation wished a term other than detention could be used, it could agree with the definition of detention, but suggested adding: “any restriction on the movement of a seafarer, by public authorities, including preventing them leaving the territory of a State other than the seafarer’s country of nationality or residence, imposed as a result of a maritime accident”.

4.57 The Seafarers’ spokesperson agreed with this suggestion, with the proviso that the rest of the paragraphs in the introduction section stay as they are.

4.58 The delegation of the United States expressed concern on keeping the wording “and, in particular” in the first paragraph of the introduction, since the use of this wording would expand the scope of the mandate of the terms of reference of the Working Group. The delegation suggested deleting the wording “and, in particular”. The delegation of Greece supported the proposal and also suggested, as a solution, to include in the operative paragraphs of the guidelines all instances of detention of seafarers.

4.59 The Seafarers’ spokesperson suggested deleting the wording “and, in particular, in the event of a maritime accident” and also suggested a revised structure for the introduction section.

4.60 The Chairperson summarized the discussions and concluded that, since the Working Group could not agree on the definition of “detention” and the structure of the introductory paragraphs, it should return to discussion of these matters after its consideration of the main text of the guidelines.

4.61 There was also some discussion on whether the definitions of seafarers and shipowners proposed in document IMO/ILO/WGFTS 2/3/3, submitted by the United States, could be included in the introduction section. The Working Group agreed that definitions of “seafarers” and “shipowners” could also be included in the introduction section with some changes.

4.62 The delegation of the United States also stated that it would like to include the introduction section contained in document IMO/ILO/WGFTS 2/3/3 in the guidelines. This proposal was opposed by the Seafarers’ spokesperson who suggested that the reason for using document IMO/ILO/WGFTS 2/3/1 as the basic text was to avoid this type of intervention.

4.63 The Chairperson summarized the discussion as follows: the Working Group would return to the discussion of the introduction section and would discuss the definition of detention and some of the other definitions and, if the Working Group agreed, would also discuss the issue of whether the introduction section of the United States’ document to be included in the basic text of the guidelines at a later stage. The Chairperson also noted that the Group had agreed on the definition of “maritime accident”.

4.64 The delegation of the United States stated that there was no agreement on the definition of “maritime accident”. Therefore, the Chairperson concluded that the definition of “maritime accident” would also be reconsidered at a later stage.

## **Paragraph 2**

4.65 The delegation of the United States suggested the addition of the words “that are involved in the investigation” to clarify the parties to which the paragraph would apply. However, the Seafarers’ spokesperson did not think these additional words would be helpful since they could be interpreted to exclude a seafarer spokesperson organization which was not directly involved in a particular investigation.

4.66 The delegation of Greece, with support from the delegation of Turkey and the observer delegation of Cyprus, suggested that the paragraph should apply, for practical reasons, only to seafarer organizations in the detaining port or coastal State. The Shipowners’ and Seafarers’ spokespersons agreed to this suggestion. The representative of ILO noted that the wording of section A 5.2.1 in the new Maritime Labour Convention, 2006 referred to shipowner and seafarer organizations “in Members in which the inspection is carried out” and this might serve as a model.

4.67 The observer delegation of Liberia suggested the phrase “substantially interested” was not clear and the word “substantially” could be removed. It was noted by the delegation of the United States that this wording was used in IMO documents relating to the conduct of casualty investigations.

4.68 The delegation of the United States proposed adding words along the following lines: “Take steps to provide access to seafarer spokesperson organizations for the purpose of monitoring the welfare of the seafarers.” The Shipowners’ and Seafarers’ spokespersons supported the concept of providing access, but did not support including a limiting purpose for such access. The observer delegation of Liberia said the word “monitoring” was unclear. The representative of the CMI suggested the issue of welfare was addressed elsewhere in the proposals for this section. The observer delegation of the Bahamas said it was important to stress the obligation of the detaining State to initiate communication with the seafarer spokesperson organization, and this was different from the right of the seafarer to communicate with such an organization.

4.69 The Working Group agreed to the text provided in document IMO/ILO/WGFTS 2/WP.2: “Co-operate and communicate with all substantially interested States, shipowners and seafarers, and take steps to provide seafarers’ spokesperson organizations in the detaining State access to seafarers;”.

### **Paragraph 3**

4.70 The delegation of the United States proposed that the paragraph should be re-worded as follows: “Abide by its obligations under international law, including those pertaining to human rights.”.

4.71 The Seafarers’ spokesperson said this would appear to limit the obligation to those instruments which had been ratified by the detaining State. In his view, seafarers have international human rights whether or not they are in a port or State which is not a party to one or more of the pertinent instruments. For example, such rights might be extended under the law of the flag State. He was concerned that the guidelines might imply that a State which was not a party to an international human rights instrument had no obligation to respect seafarer rights.

4.72 The Shipowners’ spokesperson said he had some difficulty with the word “obligation”, since guidelines could not impose obligations on States, but he suggested that a foreign seafarer should be entitled to rights to the extent they were applied to the State’s own citizens. The important point, he said, was not to stress a minimum legal obligation but to identify the rights which are essential for fair and reasonable treatment of detained seafarers.

4.73 The delegation of Egypt suggested that this paragraph could be deleted if the section began with a chapeau along the following lines, based, in part, on the proposal contained in the annex to document IMO/ILO/WGFTS 2/3/3: “Each port or coastal State, in conformity with its domestic and international obligations, in particular its international human rights obligations, and with respect to all international instruments related to the fair treatment of seafarers.” This suggestion was supported by the delegations of the United States, Turkey, the observer delegation of Liberia and IFSMA.

4.74 The observer delegation of Cyprus suggested the addition of a reference to “national law” in paragraph 3.

4.75 The delegation of the United States said that a detaining State could not ensure that “all obligations under international law” were fulfilled, since a coastal State, for example, could not ensure that a flag State was fulfilling its own obligations.

4.76 The Seafarers’ spokesperson said it was not convinced by this argument. While the guidelines could not bind a State to international instruments to which it was not a party, they could nevertheless identify the rights which a seafarer should expect when detained. The word “obligation” could be avoided if the paragraph were to be worded along the following lines: “Ensure that seafarers receive all the protections afforded under the principles articulated in international law, especially those pertaining to human rights which relate to the fair and reasonable treatment of seafarers, are fulfilled at all times.” This proposal was supported by the delegation of the Philippines, the observer delegation of Indonesia and IFSMA.

4.77 The observer delegation of the Bahamas suggested that the paragraph should be divided into two parts to address national and international law separately, along the following lines:

“3 Ensure that [all] [its] obligations under international law, especially those pertaining to human rights are fulfilled at all times.

.3bis Ensure that all its obligations under national law which pertain to the fair treatment of seafarers are fulfilled at all times.”.

4.78 This proposal was supported by the delegation of the Philippines and the observer delegations of the Netherlands, Malaysia and Cyprus.

4.79 The Shipowners’ spokesperson suggested that the resolution to which the guidelines would be attached could include a paragraph recognizing the obligations States have under applicable national and international law to ensure that seafarers were treated fairly. It was important for the guidelines themselves to identify what constitutes fair treatment under the circumstances in which the seafarer is detained.

4.80 The IMO representative suggested that international law was a consensus-based system and the term “international law” should not be understood in a restrictive way as if it was limited to international instruments, since there were other sources of international law including customary international law.

4.81 The Joint Secretariat prepared document IMO/ILO/WGFTS 2/WP.3 to facilitate the Working Group’s further consideration of this paragraph.

4.82 The delegation of the United States expressed a preference for proposals 1 and 2 in document IMO/ILO/WGFTS 2/WP.3, with square brackets deleted around “all” and “its”. This view was supported by the observer delegations of Norway and the Netherlands.

4.83 The Shipowners’ spokesperson said the wording of proposals 1 and 2, pertaining to international and national law, should be identical to avoid questions about why the wording was different.

4.84 The Seafarers’ spokesperson said he could accept proposals 1 and 2, provided the word “its” was deleted. Otherwise he supported proposal 3 in document IMO/ILO/WGFTS 2/WP.3, with the deletion of the words “seafarers receive”. This view was supported by the delegations of China, the Philippines and Egypt and the observer delegations of Brazil and Indonesia.

The delegation of Turkey also supported proposal 3, with the deletion of the words “especially those” before the word “pertaining”.

4.85 The observer delegation of Liberia questioned the need for the words “at all times” in the proposed paragraphs.

4.86 The Group did not, at that stage, complete its consideration of this paragraph.

#### **Paragraph 4**

4.87 The delegation of the United States suggested beginning the paragraph with the words “Take steps to”. This was important, as the port or coastal State could not control economic rights in the seafarer’s country.

4.88 The Working Group agreed to this change, so that the paragraph read: “Take steps to ensure that adequate measures are taken to preserve the economic and human rights of seafarers at all times”.

#### **Paragraph 4bis**

4.89 The delegation of the United States suggested beginning the paragraph with the words “Take steps to”, as this was a matter under the shipowner’s control and not under the control of the detaining State.

4.90 The Seafarers’ spokesperson disagreed, saying this was something that the detaining State should do.

4.91 The Working Group did not agree to the change, and adopted the paragraph in its original form.

#### **Paragraph 5**

4.92 The delegation of Greece said that the detaining State could not deal with the matter of providing subsistence to the seafarer’s family and that the text should be so amended.

4.93 The Seafarers’ spokesperson said that this wording had been included to address the situation when the seafarer’s source of income is stopped, due to the detention. He suggested that there might be several ways that the detaining State could deal with this, including, *inter alia*, addressing the shipowner or paying the seafarer’s wages. The impact on the family could not be ignored and should be addressed in the guidelines. He suggested that the matter of subsistence for families might be dealt with in a separate paragraph.

4.94 The Shipowners’ spokesperson sympathized with the point raised by the delegation of Greece. However, he also agreed that the guidelines should express concern over the repercussions of loss of income to families.

4.95 The delegation of the Philippines noted the concern expressed by the delegation of Greece, but said that some party, perhaps the detaining State, had to ensure that such families were taken care of.

4.96 The delegation of the United States agreed on the need to separate the issue of subsistence of seafarers from subsistence of their families. He noted that the detaining State could not control all aspects of this problem. He suggested that the issue of support for families might be dealt with under paragraph 4.

4.97 The observer delegation of Norway agreed with the position of the delegation of Greece the Shipowners' spokesperson and the delegation of the United States.

4.98 The observer delegation of Liberia supported retaining the concept of providing subsistence to seafarers' families.

4.99 The Chairperson noted that there was agreement on the general principle of addressing concern over the issue of subsistence to seafarers' families in a separate paragraph, and she instructed the Secretariat to prepare the proposed text.

4.100 The Working Group agreed to the following text dividing existing paragraph 5 into a new paragraph 5 and a paragraph *5bis* as follows:

**New paragraph 5**

“Takes steps to ensure/verify that adequate provisions are in place to provide for the immediate subsistence of each seafarer including, as appropriate, suitable accommodation, food and medical care.”.

**New paragraph *5bis*:**

“Take steps to ensure that, especially in cases of prolonged detention, adequate provision is made to cater for the subsistence needs of the seafarer's family.”

**Paragraph 6**

4.101 The paragraph was agreed in its original form.

**Paragraph 7**

4.102 The delegation of the United States said that, if the intention of this paragraph was to ensure that detaining States provide independent legal counsel to seafarers whenever there was a maritime accident investigation, this could not be afforded in all legal jurisdictions. Part of the problem stemmed from how “maritime accident” had been defined. In 2005 alone, the United States had conducted 3,718 maritime investigations. Such a requirement could undermine the provision of an efficient accident investigation system. He suggested that the Working Group consider the proposal of the United States contained in document IMO/ILO/WGFTS 2/3/3, in paragraph 3.1.6.

4.103 The Seafarers' spokesperson understood the argument made by the delegation of the United States. However, he drew the attention of the Working Group to the paragraph in the Introduction that provided that seafarers are recognized as a “special category of worker” and their need for “special protection, especially in relation to contacts with public authorities”. A seafarer might not speak the language, understand the culture or have a knowledge of local laws. This was an essential matter.

4.104 The Shipowners' spokesperson noted that it might not always be necessary to provide independent legal advice. It was a matter of providing *access* to advice. In his country, in the case of a criminal arrest a person was provided with independent legal counsel – but only after arrest.

4.105 The CMI noted that question 13 of the CMI questionnaire had asked, *inter alia*, “Regardless whether your State’s investigative process utilizes the criminal justice system or any other system, will the relevant vessels crew members be detained?” and “What access to legal advice and/or defence will such personnel have available to them?” A very significant number – including those from the United States – had said that the crew members would have access to legal advice and this would be provided by the State if they could not pay.

4.106 The Seafarers' spokesperson noted that a seafarer could very well incriminate himself or herself in the absence of legal advice. If the shipowner did not pay for legal advice, it was often left to welfare groups or trade unions to come to the rescue. The Seafarers' spokesperson felt that a very straightforward form of fair treatment was access to information on rights, and this was best achieved through the provision of legal advice.

4.107 The observer delegation of the Bahamas observed that inserting “detained” in front of “seafarers” would separate the serious cases from the vast majority of maritime investigations, as detentions were involved in only a relatively few such investigations.

4.108 The Seafarers' spokesperson said he could agree to the principle that legal advice should be provided to detained seafarers, and access to legal advice provided for others involved in an investigation.

4.109 The delegation of the United States said that this depended on the breadth of the definition of “detention”, i.e., the length of the detention.

4.110 The Chairperson felt that there was sufficient agreement in the Working Group on the principles concerned for the Secretariat to draft the text. Subsequently, the Secretariat proposed the following alternative text:

“Ensure that seafarers subject to an investigation, inquiry or examination have access to independent legal advice and, where necessary, interpretation services, and are advised as to any risk of self-incrimination and of any right to remain silent. In the case of seafarers that have been detained, the detaining State should ensure that such advice and services are provided.”

### **Paragraph 8**

4.111 This paragraph was agreed as drafted, and should read: “Ensure that involved seafarers are informed on 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 as subsequently amended, or pursuant to other national legal procedures);”.

### **Paragraph 9**

4.112 The delegation of the United States suggested the wording: “Implement promptly applicable obligations under Article 36 Paragraph 1.b. of the Vienna Convention on Consular Relations, to make seafarers aware of the right to Consular notification, and/or to make Consular notification.”.

4.113 The delegation of the Philippines said that it could support such an amendment, but did not want to be limited to a particular article. The Chairperson suggested reverting to the original text, and this was accepted, reading: “Ensure that the obligations of the Vienna Convention on Consular Relations, including those relating to access, 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;”.

#### **Paragraph 9bis**

4.114 The delegation of the United States suggested replacing “in confidence” by “communicate privately”. The paragraph was agreed as amended to read: “Ensure that all seafarers detained are provided with the means to communicate privately with all of the following parties:

- family members;
- welfare organizations;
- the shipowner;
- trade unions;
- the Embassy or Consulate of the flag State and of their country of residence or nationality; and
- legal representatives;”.

#### **Paragraph 10**

4.115 This paragraph was accepted without any change, reading: “Use all available means to preserve evidence to minimize the continuing need for the physical presence of any seafarer.”.

#### **Paragraph 11**

4.116 The delegation of the United States proposed a full stop after “Regulation 11”. This was accepted, to read: “Ensure decisions taken pursuant to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) are consistent with the provisions of Annex 1 (Regulations for the prevention of pollution by oil), Regulation 11.”.

#### **Paragraph 12**

4.117 This paragraph was agreed without changes, to read: “Promptly conduct interviews with seafarers, when done for a coastal State investigation following a maritime accident, taking into account their physical and mental condition resulting from the accident.”.

#### **Paragraph 13**

4.118 This paragraph was adopted after the suggestion by the delegation of the United States to add the words “Take steps to”, reading: “Take steps to 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.”.

**Paragraph 13bis**

4.119 This paragraph was adopted without changes, reading: “Consider non-custodial alternatives to pre-trial detention (including detention as witnesses), particularly where it is evident that the seafarer concerned is employed in a regular shipping service to the detaining port or coastal State.”.

**Paragraph 14**

4.120 The delegation of the United States suggested adding the words: “Take steps to” at the beginning of the paragraph. The Shipowners’ spokesperson then proposed to replace the word “any” by the word “its”, and not to add the United States’ wording. This was agreed, and the paragraph was amended to read as follows: “Promptly conclude its investigation and, if necessary, charge seafarers suspected of criminal actions and ensure that due process protections are provided to all seafarers subsequent to any such charge.”.

**Paragraph 14bis**

4.121 The delegation of Greece remarked that juridical authorities had their own responsibilities, and suggested adding the words “Have in place procedures so that”. The delegation of the United States concurred and added that only “unreasonable and unjustified” damage should be considered here. It added that shipowners should not be included here. This was agreed by the observer delegation of the Bahamas, as not included in the terms of reference of the Working Group. The Seafarers’ spokesperson agreed that “unreasonable or unlawful” costs were the ones identified in this paragraph. The Working Group agreed the following wording: “Have in place procedures so that any unreasonable and unjustified damage, harm or loss incurred by the seafarer attributable to the acts or omissions of the detaining port or coastal State are fully compensated.”.

**Paragraph 15**

4.122 This paragraph was agreed without changes, reading: “Insofar as national laws allow, ensure that a process is available for posting a reasonable bond or other financial security to allow for release and repatriation of the seafarer pending resolution of any investigatory or judicial process.”.

**Paragraph 15bis**

4.123 The delegation of the United States remarked that the judiciary power was not controlled by the Government. The Shipowners’ spokesperson proposed bringing the guidelines to the attention of the judiciary, and adding the words “Take steps to”. The Seafarers’ spokesperson remarked that, since no period was specified, detention could be very long. After an exchange of opinions on this issue, it was suggested by the delegation of Greece to replace the phrase “within a reasonable period of time” by the word “expeditiously”. This was agreed, reading: “Take steps to ensure that any court hearing takes place expeditiously.”.

**Paragraphs 16 and 17**

4.124 The delegation of Turkey explained the difficulties of its country regarding direct and detailed allusions involving UNCLOS, though it agreed that the text of articles could be included. A discussion involving the delegations of Greece, the United States and the observer delegations of Cyprus and Liberia ensued. The IMO Secretariat explained that certain States had difficulties

with direct references to certain treaties. It was then agreed that references could be included into the text of the accompanying resolution, and that the Secretariat would redraft paragraphs 16 and 17, guided by the principles identified here.

## **Guidelines for the flag State**

### **New Paragraph 1**

4.125 The observer delegation of Cyprus suggested inserting a new paragraph, before paragraph 1, similar to the one used for the guidelines to the coastal State. This was supported by the observer delegation of the Bahamas, which added that this would reinforce the concept that the obligation to carry out an investigation rested with the flag State. This new paragraph should read: “Take steps to ensure that any investigation to determine the cause of a maritime accident is conducted in a fair and expeditious manner.”.

### **Paragraph 1**

4.126 The Shipowners’ spokesperson remarked that the rationale applicable to the preceding paragraph was different here. The Seafarers’ spokesperson suggested deleting the words “Co-operate with”. The delegation of the United States remarked on the importance of the commonality in this issue. The Chairperson suggested employing the text used in document IMO/ILO/WGFTS 2/WP.2, without the words “in the detaining State”. The Working Group finally agreed on the following wording: “Co-operate and communicate with all substantially interested States, shipowners and seafarers, and take steps to provide seafarers’ spokesperson organizations access to seafarers.”.

### **Paragraph 2**

4.127 This paragraph was agreed with the proviso, suggested by the observer delegation of the Bahamas, to take into account the current amendment procedure to the IMO Code. The Secretariat was tasked with the redrafting of this paragraph.

### **Paragraph 3**

4.128 This paragraph was agreed without changes, as follows: “Assist in ensuring that shipowners honour obligations to seafarers involved in a maritime accident or any investigation.”.

### **Paragraph 4**

4.129 The delegation of the United States suggested that the words “Take steps to” should be added. The Seafarers’ spokesperson remarked that the flag State should indeed ensure that the shipowner would honour his obligations. This was supported by the Shipowners’ spokesperson, who suggested to add “coastal or port State”. The delegations of the United States and Panama and the observer delegation of Cyprus expressed their preference for the insertion of “take steps”, while the delegation of Greece, the observer delegation of Spain and the CMI opted for the preceding suggested amendments. The observer delegation of the Netherlands remarked that two different situations were envisaged here. After discussion, it was recognized that the proposed original text was acceptable, with the insertion, proposed by the observer delegation of the Bahamas, of the words “flag, coastal or port State investigation”, thereby reading: “Ensure that shipowners honour obligations to co-operate in any flag, coastal or port State investigation following a maritime accident.”.

**Paragraph 5**

4.130 The delegation of Greece, noting the broad language used in the paragraph, questioned the kind of assistance to be given by the flag State.

4.131 The Shipowners' spokesperson suggested that, in case of an investigation, the flag State could co-operate by providing the data it holds.

4.132 The Seafarers' spokesperson stressed that seafarers have the right to expect support from their flag State. In this connection, he stated that, should the coastal State ignore the guidelines, the seafarer should be able to obtain protection from the flag State. During the investigation, the flag State should not abandon the seafarer, but should give assistance in getting fair treatment and, when necessary, meet the costs of repatriation and give financial support.

4.133 The observer delegation of Cyprus noted that the guidelines dealt with seafarers and suggested the deletion of the reference to the "shipowner".

4.134 The observer delegation of Liberia suggested that the paragraph could be deleted because it was unnecessary and overlapped with other provisions.

4.135 The observer delegation of the Bahamas noted that there are instances when the flag State has to assist the shipowner in order to assist the seafarer. This could happen for example when the flag State and the shipowner provide information on the status of a ship.

4.136 The Shipowners' spokesperson stated that the flag State and the shipowner must co-operate and be involved in the investigation from the initial stage, to the benefit of the seafarer.

4.137 The delegation of the United States noted that it was important to understand the aim of the assistance by the flag State to the shipowner and the seafarer. It then suggested that a better wording for the same provision was the one in paragraph 3.2.7 of the draft guidelines prepared by the United States, in the annex to document IMO/ILO/WGFTS 2/3/3.

4.138 The observer delegation of Cyprus insisted that the reference to the shipowner was outside the mandate of the Working Group.

4.139 The Seafarers' spokesperson agreed to the retention of the reference to assistance to the shipowner, since that could help the seafarer. He then suggested narrowing down the scope of the assistance by adding the following wording after "seafarers": "to secure fair treatment, and the shipowner".

4.140 The Shipowners' spokesperson agreed to the proposal by the Seafarers' spokesperson and reiterated that the flag State should assist from an early stage of the investigation.

4.141 The Working Group approved the paragraph as amended as proposed by the Seafarers' spokesperson, to read as follows:

“.5 Assist seafarers to secure fair treatment, and assist shipowners in the event of an investigation by a port or coastal State;”.

**Paragraph 6**

4.142 The Working Group approved this paragraph un-amended.

## Paragraph 7

4.143 The delegation of Greece commented that the provision would be better placed under the guideline for the seafarer State.

4.144 The delegation of the United States agreed with the comment by the delegation of Greece and suggested that a better wording, narrowing down the scope of the assistance by the flag State, was the one in paragraph 3.2.6 in the draft guidelines prepared by the United States, in the annex to document IMO/ILO/WGFTS 2/3/3.

4.145 The Shipowners' spokesperson, with reference to paragraph 3.2.6 of the draft guidelines prepared by the United States, suggested replacing "domestic law" with "national law".

4.146 The Seafarers' spokesperson agreed with the Shipowners' spokesperson and suggested that the two texts could be combined. He then questioned the meaning of the wording "subject to their jurisdiction" in paragraph 3.2.6 of the draft guidelines prepared by the United States.

4.147 The observer delegation of the Bahamas commented that if the coastal State has allowed the seafarer to return home, the flag State should not take care of his or her return.

4.148 Intervening in this regard, the delegation of the United States clarified that the flag State should not fund the flight of the seafarer, but it should assist in notifying the seafarer and making him available. The travel should be funded by the requesting State.

4.149 The Shipowners' spokesperson added that the flag State should facilitate the communication with the seafarer, even when the seafarer resided in a third State.

4.150 Replying to the question by the Seafarers' spokesperson, the IMO representative commented that there could be the case that a coastal State could have jurisdiction to investigate a seafarer only if he was in that State and not abroad.

4.151 The Seafarers' spokesperson noted that the wording "subject to their jurisdiction" would cover all nationalities. He also noted that the guidelines for the seafarer State contained a similar provision.

4.152 The Shipowners' spokesperson, in order to avoid ambiguity, proposed the deletion of the wording "of their nationality".

4.153 The delegation of Greece commented that the concurrent obligation by the flag State and by the seafarer State to assist, could lead to lack of co-operation.

4.154 The delegation of the Philippines suggested the deletion of the paragraph.

4.155 After debate, the Working Group approved the paragraph as amended, as proposed by the Shipowners' spokesperson, to read as follows (text edited by the Joint Secretariat):

"7 Assist, as provided for in national law, in the issuance and service of process and the return to a port or coastal State of seafarers subject to their jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;"

## Paragraph 8

4.156 The delegation of the United States indicated that paragraph 3.2.10 of the draft guidelines submitted by the United States, in the annex to document IMO/ILO/WGFTS 2/3/3, contained a better wording for the same provision.

4.157 The delegation of Greece stated that it agreed with the principle in the paragraph and wondered how it could be implemented in case of lack of co-operation by the coastal State.

4.158 The observer delegation of Cyprus suggested inserting the wording “Take steps to ensure” at the beginning of the paragraph.

4.159 The Shipowners’ spokesperson supported the principle that the flag State and the State of the seafarer should both have access to the involved seafarer, as provided in the draft guidelines.

4.160 The Seafarers’ spokesperson commented that there should be a link between the flag State and the seafarer State, irrespective of the nationality of the seafarer. In this connection, noting that 51% of ships registered in the United Kingdom do not have a British seafarer on board, he concluded that it did not mean that the United Kingdom Consular Officers should not be allowed to give assistance.

4.161 The observer delegation of the Bahamas clarified that both the flag State and the seafarer State should have the obligation to insure access, in the sense that they must provide the means to communicate with the seafarer; while the coastal State or the port State should have the responsibility of providing access to the seafarer.

4.162 The Chairperson noted that the issue was adequately covered in the Vienna Convention on Consular Relations. Several delegations concurred with her remark.

4.163 The delegation of Greece commented that cases of lack of co-operation by the coastal State should be reported to the Joint Secretariat.

4.164 The Working Group approved the paragraph as amended as proposed by the observer delegation of Cyprus, to read as follows:

“.8 **Take steps to ensure** that consular officers of the flag State are permitted access to the involved seafarer, irrespective of their nationality;”.

## Paragraph 9

4.165 The delegation of Turkey said that the financial security issue was vital and suggested incorporating the wording in article 15 of the flag State guidelines. It stated that Turkey’s position regarding the United Nations Convention on the Law of the Sea remained unchanged within the context of the guidelines on the fair treatment of seafarers in the event of a maritime accident.

4.166 The Seafarers’ spokesperson suggested adding the word “ultimately” and deleting the phrase “utilizing the provisions in Article 292 of UNCLOS, which provides for” in the second sentence.

4.167 The Working Group approved this amendment proposed by the Seafarers' spokesperson. The amended text reads as follows:

“Take all necessary measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying their flag. This may ultimately include the prompt release of vessels and crews upon the posting of a reasonable bond or financial security;”.

4.168 Following completion of paragraph 9, the delegation of the United States suggested that there was a major subject missing from the discussion, regarding retaliation or discrimination against seafarers because of their co-operation with the investigation. Due to fear of blacklisting or other forms of retaliation against their livelihoods and families, many seafarers were compelled to hide critical facts, to cover up unsafe conditions or the unlawful conduct of others, lie to investigators, or even coerce other seafarers to do so. These actions delay investigations, impose unfair burdens on other seafarers and cover up dangerous working conditions which might imperil the lives of seafarers. Therefore the delegation of the United States suggested including paragraph 3.2.8 of document IMO/ILO/WGTS 2/3/3 as a separate paragraph which could prevent all forms of retaliation, and that similar provisions be included in other sections.

4.169 The Shipowners' spokesperson suggested that if it was agreed to include this paragraph in the guidelines for the flag State, then it should also be included in the guidelines for the coastal State.

4.170 The Seafarers' spokesperson suggested adding the words “Take steps to” at the beginning of the sentence and deleting the words “to the extent permitted under its domestic law”.

4.171 The Working Group agreed to include paragraph 3.2.8 of document IMO/ILO/WGFTS 2/3/3 in both the guidelines for the port/coastal State and the flag State, as a separate paragraph with the following amendments:

“Take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their co-operation during investigations.”.

## **Guidelines for the seafarer State**

### **Paragraph 1**

4.172 The Working Group decided to amend the wording of paragraph 1 as follows:

“Co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' spokesperson organizations with access to seafarers.”.

### **Paragraph 2**

4.173 The Working Group agreed to maintain the text of paragraph 2 without change.

### **Paragraph 3**

4.174 The Working Group agreed to maintain the text of paragraph 3 without change.

**Paragraph 4**

4.175 The Seafarers' spokesperson suggested deleting the words "their nationality" and including the words "subject to their jurisdiction". The Working Group agreed to these amendments. The amended text reads as follows:

"Assist, as provided for in national law, in the service of process and the return to a port or coastal State of seafarers subject to their jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;"

**Paragraph 5**

4.176 The delegation of Greece suggested adding the words "Take steps to" at the beginning of the sentence. It also suggested adding the words "under its jurisdiction" at the end of the sentence, since seafarers could be non-nationals, such as immigrants or asylum seekers.

4.177 The observer delegation of the Bahamas suggested including "nationality" or "residence" at the end of the sentence.

4.178 The Working Group decided not to include any of these proposals, except for the inclusion of the words "Take steps to" at the beginning of the sentence. The amended sentence reads as follows:

"Take steps to ensure that consular officers of the seafarer's State are permitted access to the involved seafarer;"

**Paragraph 6**

4.179 The Working Group decided to include an amended version of paragraph 3.3.5 of document IMO/ILO/WGFTS 2/3/3 as a new paragraph. The Seafarers' spokesperson suggested rephrasing the paragraph and the Shipowners' spokesperson suggested deleting the phrase "as provided for in its domestic law". The amended version of the paragraph reads as follows:

"Take steps to provide support and assistance, to facilitate the fair treatment of nationals of the seafarer State and the expeditious handling of the investigation;"

**Paragraph 7**

4.180 The Working Group decided to include an amended version of paragraph 3.3.6 of document IMO/ILO/WGFTS 2/3/3 as a new paragraph. The amended version reads as follows:

"Take steps to ensure that funds remitted by shipowners as wages for involved seafarers, or for support of those seafarers' families, are delivered for the intended purposes;"

**Paragraph 8**

4.181 The Working Group decided to include an amended version of paragraph 3.3.7 of document IMO/ILO/WGFTS 2/3/3 as a new paragraph. The amended version reads as follows:

"Take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their co-operation during investigations;"

## **Additional sections**

4.182 The delegation of the United States proposed that the guidelines should include separate sections on shipowners and seafarers. In this regard, it invited the Working Group to consider the proposed text contained in sections 3.4 and 3.5 of the annex to document IMO/ILO/WGFTS 2/3/3. The Shipowners' and Seafarers' spokespersons both noted that their joint submission, contained in document IMO/ILO/WGFTS 2/3/1, did not include separate sections with guidelines for shipowners and seafarers. In their view, the roles to be played by the shipowner and the seafarer were addressed adequately in other sections.

## **Guidelines for shipowners**

### **Paragraph 1**

4.183 The Working Group amended the paragraph as follows:

“Co-operate and communicate with all substantially interested States, shipowners and seafarers, and take steps to provide seafarers' spokesperson organizations with access to seafarers;”.

### **Paragraph 2**

4.184 The Shipowners' spokesperson pointed out that taking no action to facilitate the investigation would probably be illegal. Therefore, he suggested either changing this paragraph in a positive way, or deleting it. This suggestion was supported by the delegation of Greece.

4.185 The delegation of the United States, therefore, suggested deleting the words “delay or frustrate” and adding the words “expedite and co-operate”. The Shipowners' spokesperson agreed with the inclusion of “expedite” but not “co-operate”.

4.186 The observer delegation of Cyprus suggested adding the words “in order to facilitate the fair treatment of seafarers” at the end of this sentence. Shipowners' and Seafarers' spokespersons did not agree with this suggestion, since this phrase was not included in the responsibilities of the flag State and port/coastal State.

4.187 Following discussions, the Group agreed the following amended text:

“Take action to expedite the efforts of a port, coastal, or flag State investigation.”.

### **Paragraph 3**

4.188 The Shipowners' spokesperson suggested that the word “coercion” was not appropriate. The shipowners had a legal right to encourage seafarers to participate in the investigation. Including the word “coercion” could have negative implications. This view was also supported by the Seafarers' spokesperson, who pointed out that what the seafarers needed was legal advice if there was a coercion process. The Seafarers' spokesperson suggested deleting this sentence.

4.189 The delegation of the United States pointed out that including the word “coercion” was to protect seafarers from being forced by shipowners to waive their rights against self-incrimination and should and should not be understood in a negative context.

4.190 Following these discussions, the Working Group decided to delete the word “coercion” and suggested the following wording:

“Take steps to encourage seafarers and others under their employment, with due regard to any applicable rights, to co-operate with any investigation.”.

4.191 During consideration of this paragraph, the Shipowners’ and Seafarers’ spokespersons submitted a joint proposal for new paragraphs to replace all the paragraphs proposed by the United States in sections 3.4 and 3.5 of the annex to document IMO/ILO/WGFTS 2/3/3. The proposed new paragraphs were distributed to the Working Group for consideration in document IMO/ILO/WGFTS 2/WP.5.

4.192 The delegation of the United States said the Working Group had already decided to proceed with its consideration of the proposals contained in sections 3.4 and 3.5 of the annex to document IMO/ILO/WGFTS 2/3/3. Consequently, it was opposed to setting those proposals aside to focus on document IMO/ILO/WGFTS 2/WP.5. The guidelines, in the view of this delegation, would be incomplete without an enumeration of shipowner and seafarer duties. This view was supported by a number of delegations or observer delegations, including Cyprus, Norway, the Bahamas, the Philippines, Panama, Turkey, Egypt, the Netherlands and IFSMA.

4.193 The Shipowners’ spokesperson replied that the Working Group had agreed to use the annex to document IMO/ILO/WGFTS 2/3/1 as the base document, and the proposals in document IMO/ILO/WGFTS 2/WP.5 were additions to that base document. He said the new proposal was to introduce an overriding duty on shipowners in the context of the potential detention of seafarers. The observer delegation of Brazil supported this view.

4.194 The Shipowners’ spokesperson also said that the Working Group had to proceed with caution since some of the proposals were sensitive, and had been the subject of careful negotiation over many years, or involved long-standing arrangements between shipowners and seafarers.

4.195 The Seafarers’ spokesperson agreed with this view. He reminded the Working Group that he had expressed a number of reservations concerning any new sections on guidelines for shipowners or seafarers, and the proposals contained in document IMO/ILO/WGFTS 2/WP.5 were an attempt to introduce simplified sections if they were found to be necessary. After further discussion, the Chairperson concluded that the Working Group would continue proceeding on a paragraph by paragraph basis through the proposals in sections 3.4 and 3.5 of the annex to document IMO/ILO/WGFTS 2/3/3, and thereafter consider document IMO/ILO/WGFTS 2/WP.5 as an additional proposal.

4.196 Before the Working Group proceeded to consider paragraph .4, the observer delegation of the Bahamas suggested that the first proposal in document IMO/ILO/WGFTS 2/WP.5 could be divided into parts, and the first sentence (i.e., “With regard to investigations, shipowners have an overriding duty to protect the rights of the seafarers employed or engaged, including the right to avoid self-incrimination and to take steps to ensure their fair treatment.”) could be introduced in the new guidelines.

4.197 In response to a question from IFSMA regarding the source of the shipowner’s duty to protect the interests of seafarers, the Seafarers’ spokesperson said that the shipowner and the seafarer were linked through employment contracts, and they had obligations to each other when accidents occurred in the workplace.

4.198 The delegation of the United States proposed adding the following words to the proposed new sentence: “and to facilitate their co-operation in any investigation.”.

4.199 The Shipowners’ spokesperson said that co-operation was already covered by paragraph .1, and the term “facilitate” could extend well beyond the practical level of such matters as adjusting a work schedule to areas which were the subject of long-standing agreements in the industry.

4.200 The Seafarers’ spokesperson agreed that the word “facilitate” should be avoided.

4.201 The delegation of the United States suggested alternative words, such as “encourage” or “support”.

4.202 The Working Group agreed to include the first sentence of the first paragraph in document IMO/ILO/WGFTS 2/WP.5 in the section on guidelines for shipowners.

#### **Paragraph 4**

4.203 The Shipowners’ spokesperson stated that he agreed in principle with the content of the paragraph. He also suggested deleting the remainder of the sentence after the words “to preserve the evidence”.

4.204 The delegation of the United States noted that the requirement was intended to complement the port or coastal State guideline regarding the need to use all available means to minimize the continuing need for the physical presence of a seafarer and that the shipowners’ language did not do so.

4.205 The Seafarers’ spokesperson noted that the wording “reasonable means” could have a different meaning in different legal systems. In this connection, the Shipowners’ spokesperson agreed that the wording needed improvement.

4.206 The delegation of the United States indicated that the wording on page 2, paragraph .10, of the annex to document IMO/ILO/WGFTS 2/3/1, submitted by the United States, could well be used to express the need to expedite the travelling of the seafarer and minimize the need for a continuous and prolonged physical presence for the purpose of giving evidence for the investigation.

4.207 The Seafarers’ spokesperson proposed replacing the wording “in all reasonable means” with the wording “and agree”. As a consequence, the paragraph would read:

“Co-operate and agree to preserve evidence to expedite the investigation.”.

4.208 The delegation of the United States reiterated that the provision had to be matched with the corresponding obligation for port or coastal States, and that co-operation by shipowners is often necessary in order to use depositions for this purpose.

4.209 The observer delegation of the Bahamas supported the proposal of the delegation of the United States to replace the wording of the paragraph under consideration with the wording on page 2, paragraph 10, of the annex to document IMO/ILO/WGFTS 2/3/1.

4.210 The Joint Working Group agreed to replace the wording of paragraph 4 with the wording on page 2, paragraph .10, in the annex to document IMO/ILO/WGFTS 2/3/1. It was also agreed to change the word “available” to “reasonable”, to read as follows:

“4 Use all reasonable means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;”.

### **Paragraph 5**

4.211 The Shipowners’ spokesperson, noting that the (ILO) Maritime Labour Convention, 2006 contained adequate provisions dealing with the protection of seafarers’ wages and repatriation, suggested that it was not necessary to have specific provisions regulating the same subject in the guidelines, a reference to the ILO convention being sufficient.

4.212 The Seafarers’ spokesperson stated that he did not object to maintaining these provisions in the guidelines, in spite of the existence of other instruments dealing with repatriation. He then questioned whether, in accordance with the ordinary meaning of the words used in the provisions, a seafarer who would not for any reason co-operate with the investigation would not be repatriated.

4.213 Referring to paragraph 6, he noted that it contained seafarer’s rights. He also noted that, if the seafarer is innocent [unless the seafarer is proved guilty], there is a continuation of the contract and the shipowner should pay. However, this does not happen in practice.

4.214 The Shipowners’ spokesperson, reverting to the paragraph under consideration, stated that the guideline should make the detaining coastal State or port State responsible.

4.215 The delegation of the United States suggested replacing the word “co-operation” with the word “involvement”.

4.216 The observer delegation of the Bahamas suggested using the wording in paragraph 13, page 3, in the annex to document IMO/ILO/WGFTS 2/3/1.

4.217 With regard to repatriation, IFSMA recalled that article 4 of the (ILO) Maritime Labour Convention, 2006 provided for the shared responsibility of the shipowner and the flag State.

4.218 The delegation of Greece, suggested the insertion of an appropriate reference to the (ILO) Maritime Labour Convention, 2006 in the preamble to the resolution for the promulgation of the guidelines. As a consequence, the text of paragraph 5 could be simplified to read: “Fulfil their obligation for the repatriation of seafarers;”. The Secretariat should then propose appropriate wording to cover re-embarkation.

4.219 The delegation of the United States noted that the coastal State could not re-embark the seafarer. He also agreed to the reference to the (ILO) Maritime Labour Convention, 2006.

### **Paragraph 6**

4.220 The Shipowners’ spokesperson noted that, once again, this provision did not involve responsibility by the detaining State. He stated that the shipowners wanted to comply with their contractual obligations; nevertheless the seafarer was no longer employed on board a ship and they had no role to play in the detention of seafarers or in the arrest of their ships. Hence, there

should be responsibility by the detaining State, and appropriate language should be found to establish the shared responsibility of the shipowner/flag State/detaining State.

4.221 The delegation of the United States noted that accidents do happen and are normally related to the status of the ships. This justifies the shipowner's responsibility.

4.222 The observer delegation of the Bahamas warned that, in case of accident, there should not be absolute presumption of responsibility by the shipowners or the seafarers, since the responsibility could be that of the coastal State. In this connection he mentioned accidents caused by pilots, lighting and dredging.

4.223 The observer delegation of Liberia stated that the shipowner should always be involved in case of accidents.

4.224 The Shipowners' spokesperson commented that the shipowners co-operate regularly in the investigations into maritime accidents. He then suggested redrafting the provision based on the wording in paragraph 5, page 2, in the annex to document IMO/ILO/WGFTS 2/3/1.

4.225 The Seafarers' spokesperson welcomed the statement by the observer delegation of Liberia. He then noted that, although shipowners have no direct control over the detention, nevertheless, in some cases shipowners do not meet their obligation. He further commented that the wording in paragraph 5, page 2, in the annex to document IMO/ILO/WGFTS 2/3/1, should be complemented to reflect the essence of the debates. He proposed a text, as follows, which would cover all parties and make sure that the seafarer will suffer no prejudice, or loss in case of detention:

“The investigation of a maritime accident should not prejudice the seafarer in terms of repatriation, lodging, subsistence, payment of wages and other benefits and medical care. These should be provided at no cost to the seafarer by the shipowner or an appropriate State, such as the detaining State.”.

4.226 The delegation of the United States noted that the State should be the affected State and not the port or coastal State.

4.227 The Working Group agreed to consider a draft provision, along the lines of the text proposed by the Seafarers' spokesperson, for insertion in the draft guidelines.

4.228 The Shipowners' spokesperson informed the Working Group that he had produced a text, to be placed in the introductory part, reading: “The investigation of a maritime accident should not prejudice the seafarer in terms of repatriation, lodging, subsistence, payment of wages, and other benefits and medical care. These should be provided at no cost to the seafarer by the shipowner or an appropriate State such as the detaining State.”.

4.229 He also said that paragraph 6 of the current section should be reworded in a similar way to paragraph 5 of document IMO/ILO/WGFTS 2/3/1 with the addition of “wages”. The same addition should also take place in paragraph 5 of document IMO/ILO/WGFTS 2/3/1.

4.230 Both paragraphs would then read: “Take steps to ensure/verify that adequate provisions are in place to provide for the subsistence of each seafarer, including, as appropriate, wages, suitable accommodation, food and medical care.”.

4.231 The delegation of the United States suggested deleting the words “such as the detaining State” in the introductory text, and reserved its position with regard to paragraphs 5 and 6, until it had seen the draft.

4.232 The observer delegation of the Netherlands suggested replacing the word “subsistence” by the word “allowance”, since its Government would not want to pay wages to detained seafarers.

4.233 This was not accepted by the Seafarers’ spokesperson, who concurred with the proposal of the delegation of the United States.

4.234 The delegation of Greece remarked that the text suggested for the introductory part was not in conformity with what had been agreed in the newly adopted (ILO) Maritime Labour Convention, 2006, which provided for the payment of repatriation of the seafarer by the appropriate State only when the shipowner had failed to provide it.

4.235 As a consequence, the observer delegation of Norway suggested adding the words: “if the shipowner fails to do so” at the end of the text.

4.236 The observer delegation of the Bahamas remarked that everything after the word “seafarer” could simply be deleted, since the important point was to have no cost incurred to the seafarer.

4.237 The Shipowners’ spokesperson, observed that the original joint document IMO/ILO/WGFTS 2/3/1 specifically did not contain allusion to payment of wages, and stated that wages should not be referred to in paragraphs 5 and 6 mentioned above.

4.238 The Seafarers’ spokesperson said that no Government had requested the deletion of the word “wages”, and that, as a consequence, the proposal was still valid. However, if the shipowners opposed this, then he was of the opinion that it would be preferable to revert to the text proposed in paragraph 6 of document IMO/ILO/WGFTS 2/3/3.

4.239 The delegation of the Philippines expressed support for the paragraphs, with the proposed change by the delegation of Greece, as modified by the observer delegation of Norway, to include at the end of the proposed introductory paragraph the words “if the shipowner fails to do so”.

4.240 The observer delegation of the Netherlands reiterated his point that the detaining State should not be required to pay the wages of detained seafarers and suggested that, under the shipowner guidelines, the words “while under the terms of their employment” could be added.

4.241 In this regard, the Chairperson recalled that the detaining State was not being called upon to pay wages, but to “take steps to ensure” the payment of wages.

4.242 The Seafarers’ spokesperson could not agree that a State that detained a seafarer for a prolonged period had no responsibility for the wages of the seafarer. Of course, the shipowner had the primary responsibility to provide such wages. However, if the detention was unreasonable, the detaining State also had a responsibility.

4.243 The Shipowners’ spokesperson pointed out that the detaining State must bear responsibility for a lengthy detention. Otherwise, the State had no incentive to reduce the length of the detention, as someone else – the shipowner – would, in effect, pay the cost of such a detention. While many coastal and port States acted responsibly in this regard, there were States which took rogue action, and this problem had to be taken into account.

4.244 The Seafarers' spokesperson pointed out that "fails to do so" was negative text, and suggested that it should not be used in the proposed new introductory paragraph, since the matter was dealt with sufficiently in the body of the guidelines.

4.245 The delegation of Greece, supported by the delegation of China, noted that the new (ILO) Maritime Labour Convention, 2006 dealt with the "normal" problems related to seafarers' wages and repatriation. The detention of a seafarer following a maritime accident was not, however, a "normal situation". In such situations, it was primarily the detaining State that bore responsibility not, for example, the flag State. He therefore suggested deleting the words "an appropriate State" from the proposed introductory paragraph.

4.246 The Seafarers' spokesperson suggested that, at the end of the paragraph, the following words should be included: "by the shipowner, the detaining State, or an appropriate State". The delegations of Greece and of the United States expressed support for this proposal.

4.247 The Group subsequently adopted the following text for the proposed new introductory paragraph:

"The investigation of a maritime accident should not prejudice the seafarer in terms of repatriation, lodging, subsistence, payment of wages and other benefits, and medical care. These should be provided at not cost to the seafarer by the shipowner, the detaining State or an appropriate State."

## **Paragraph 7**

### **New paragraph concerning "no discriminatory or retaliatory measures"**

4.248 The Chairperson drew attention to document IMO/ILO/WGFTS 2/WP.4, submitted by the United States, which proposed the following new paragraph, drawing in part from paragraph 3.4.7 of document IMO/ILO/WGFTS 2/3/3. The paragraph reads as follows:

"Take all available measures to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their co-operation during investigations and that such conduct by other entities is not tolerated."

4.249 The Shipowners' spokesperson suggested adding the words "Take steps to ensure" before the second clause (i.e., "that such conduct ..."). This change reflected their concern that shipowners did not have control over such entities.

4.250 The Working Group agreed to the text, which now reads as follows:

"Take all available measures to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their co-operation during investigations and take steps to ensure that such conduct by other entities is not tolerated."

## **Guidelines for the seafarers**

4.251 The Seafarers' spokesperson explained that the social partners preferred to have the two paragraphs in document IMO/ILO/WGFTS 2/WP.5 as opposed to the sections on guidelines for the Shipowners' and the Seafarers' contained in the annex to document IMO/ILO/WGFTS 2/3/3.

4.252 He then stressed the paramount importance of seafarers receiving independent legal advice to avoid prejudicing their position in case of investigation.

4.253 The delegation of the United States referred to the submission by the United States contained in document IMO/ILO/WGFTS 2/WP.7. This proposed an alternative text to the section on guidelines for Seafarers in the annex to document IMO/ILO/WGFTS 2/3/3. The delegation stressed that the provision would help the investigation and commented that the best way for a seafarer to be of assistance to other seafarers is to provide truthful information and to co-operate with the investigation. In the opinion of this delegation, the wording in document IMO/ILO/WGFTS 2/WP.5 seemed to infer that a seafarer who had information should not give it, unless he first received legal advice. Nonetheless, the United States was in favour of educating seafarers on their rights.

4.254 The Seafarers' spokesperson stated that it was not the intention of the social partners' submission to delay the investigation. However the guidelines needed to be fair and guarantee seafarers the same rights that any citizen would enjoy, including those contained in the Fifth Amendment of the United States' Constitution. He questioned the meaning of the wording "giving due regard to the right to consult with counsel" in document IMO/ILO/WGFTS 2/WP.7 and concluded that the joint submission in document IMO/ILO/WGFTS 2/WP.5, possibly amended, was to be preferred to the section on guidelines in document IMO/ILO/WGFTS 2/3/3 and to the text in document IMO/ILO/WGFTS 2/WP.7.

4.255 The observer delegation of the Bahamas pointed out that there are two reasons to make an investigation, firstly, to establish the causes of an accident and to derive lessons to be learned (in this case, the maximum co-operation should be given to the investigation); and secondly, to establish who is to blame for the accident (in this case, the person interviewed needs legal advice and protection and must enjoy legal rights, including the right to be silent).

4.256 In some States, the outcome of the investigation to establish the causes of an accident will not be used in legal proceedings. In other States, where there is a combined investigation, seafarers need legal advice. The guidelines should clarify that there are two types of investigation.

4.257 The observer delegation of the Netherlands supported the proposal of the observer delegation of the Bahamas and stressed that any legal procedure should include independent legal advice. He then suggested the insertion of the wording "independent legal" before the word "counsel" in the text in document IMO/ILO/WGFTS 2/WP.7.

4.258 The delegation of the United States suggested that the texts in documents IMO/ILO/WGFTS 2/WP.5 and WP.7 could be combined.

4.259 The Seafarers' spokesperson supported the proposal of the observer delegation of the Bahamas and reiterated that the guidelines must include information on legal rights.

4.260 IFSMA stated that the wording should not indicate that fair treatment depends on co-operation.

4.261 The Seafarers' spokesperson stated that, in view of the increasing trend to criminalize seafarers resulting from investigations, and although ITF informs seafarers of their legal rights, it was a fact that seafarers did not know their legal rights. Because of that, it was necessary that the guidelines cover the issue of legal advice.

4.262 Following agreement on the principles to be contained in the guidelines for seafarers, a small group drafted four paragraphs as set out in document IMO/ILO/WGFTS 2/WP.14. The Working Group agreed to this document, with the request that the Secretariat align its style with the other sections of the guidelines.

### **Introduction to the guidelines**

4.263 The Working Group considered the introduction to the guidelines contained in document IMO/ILO/WGFTS 2/WP.10.

4.264 An IMO representative explained that the Secretariat intended to attach resolution A.987(24) to the guidelines. This would avoid having to refer in the introduction to instruments already referred to in that resolution. He also informed that the Secretariat would have taken care of any necessary editorial amendment after the approval of the guidelines.

4.265 It was decided to move the paragraph containing the definitions to the end of the introduction. The Working Group then considered the rest of the paragraphs in the introduction in the order in which they appeared in the document under consideration.

### **First paragraph**

4.266 The delegation of the United States proposed the deletion of the wording in the square brackets “[, and, in particular,]”.

4.267 At the suggestion by the Seafarers’ spokesperson, the decision on the wording in the square brackets was postponed after the consideration of the definitions (last paragraph).

### **Second, third and fourth paragraphs**

4.268 Approved unamended.

### **Definition paragraphs**

#### **Fifth paragraph**

4.269 With regard to the definition of “maritime accident”, the delegation of the United States stated that it was necessary to add wording to make sure that the guidelines applied in case of accident only, as was intended in resolution A.987(24). To this end he made reference to the proposed text in document IMO/ILO/WGFTS 2/WP.8.

4.270 The Seafarers’ spokesperson questioned the meaning of the wording in the requested amendment in document IMO/ILO/WGFTS 2/WP.8 and indicated his strong preference for the definition in document IMO/ILO/WGFTS 2/WP.10, which had originally been drafted by the CMI and which did not make reference to “damage or potential damage”. The reference to damage, he noted, would restrict the scope of application of the guidelines. This position was supported by the Shipowners’ spokesperson.

4.271 The delegation of Turkey stated that, although the guidelines should protect seafarers, these should not prevent coastal States from acting.

4.272 The delegation of the United States proposed to let the IMO Legal Committee and the ILO Governing Body decide on the requested amendment in document IMO/ILO/WGFTS 2/WP.8 and to include the wording in brackets in the guidelines, specifically, “and which results in or has the potential to result in damage to the ship, its cargo, or the marine environment, or injury to any individual.”.

4.273 After debate, the Working Group approved the definition of “maritime accident” as contained in document IMO/ILO/WGFTS 2/WP.10. The definition of “detention” was also approved unamended.

4.274 In the light of this decision, the Seafarers’ spokesperson agreed to the deletion of the wording in the square brackets “[, and, in particular,]” and the brackets themselves in the first paragraph. The Working Group also agreed to this.

4.275 The Working Group then agreed to include a definition of “shipowner”, based on the one contained in Article II.1(j) of the (ILO) Maritime Labour Convention, 2006, to read as follows:

““shipowner” means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.”.

4.276 The Working Group further decided to include a definition of “seafarer”, based on the one contained in Article II.1(f) of the (ILO) Maritime Labour Convention, 2006, to read as follows:

““Seafarer” means any person who is employed or engaged or works in any capacity on board a ship to which these guidelines apply.”.

4.277 The Working Group further decided to include a definition of “investigation” as contained in document IMO/ILO/WGFTS 2/3/3, to read as follows:

“Investigation” means an investigation into a maritime accident.”.

#### **Additional new paragraphs for the introduction**

4.278 The Working Group approved the inclusion of the wording in paragraph 1.3 of document IMO/ILO/WGFTS 2/3/3, as modified in light of the wording contained in article II.4 of the (ILO) Maritime Labour Convention, 2006 to read as follows:

“Except as expressly provided otherwise, these Guidelines apply to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or similar pursuits and ships of traditional build such as dhows and junks. These Guidelines do not apply to warship or naval auxiliaries 2.”.

4.279 The delegation of the United States proposed the addition of a new paragraph in the introduction based on the text contained in paragraph 1.2 in document IMO/ILO/WGFTS 2/3/3, annex (i.e., “These Guidelines apply to maritime accidents and are not intended to apply following incidents committed with criminal intent.”). This delegation observed that the wording was provided by the Joint IMO/ILO Secretariat and derived from the agreement in the

Legal Committee that the terms of reference for the Working Group did not extend to treatment of seafarers following incidents committed with criminal intent (document LEG 89/16, paragraph 195, brought to the attention of the Working Group in document IMO/ILO/WGFTS 1/7, paragraph 2).

4.280 The Seafarers' spokesperson said that the question of whether an accident was committed with criminal intent was a complex legal matter. Intent may not be evident at the outset of an investigation; and proof of the legal elements of intent could only be determined through judicial process. It would not be right, according to him, to exclude application of the guidelines because of the belief by an investigator that there may be criminal intent. This left too much discretion to the investigator. The assumption at the outset should be the presumption of innocence.

4.281 The delegation of Turkey suggested that the term "criminal intent" could be replaced by the term "criminal behaviour."

4.282 The observer delegation of the Bahamas recalled the circumstances relating to the **Prestige** casualty, including the fact that the master was ordered to shore when the ship was still at sea and the cause of the casualty was unclear, and once ashore he was arrested. In his view, there had been a presumption of criminal intent by the coastal State authorities before the investigation had started, and therefore, under the wording being proposed, the guidelines would not apply to the master in those circumstances. He said the intent of the new guidelines was to ensure that individuals such as the master of the **Prestige** were treated more fairly.

4.283 The observer delegation of the Netherlands recalled the discussion, during the Legal Committee's ninetieth session, when reference was made to maritime incidents consisting of acts or omissions on board ships which, while not being technically accidents, might result in unfair treatment of seafarers, and to commercial disputes (document LEG 90/15, paragraph 380).

4.284 The delegation said its understanding was that the Working Group's terms of reference were focused on maritime accidents to avoid suggesting the guidelines would also address situations involving commercial disputes. He did not think there should be any different treatment of seafarers who were caught up in a maritime accident that might include the possibility of criminal prosecutions.

4.285 The Shipowners' spokesperson said it was important to keep in mind the context of the current trend toward criminalization of seafarers who were engaged in normal behaviour. He said criminal intent could only be determined after the fact. In this respect, a change from 'intent' to 'behaviour' would not solve the problem.

4.286 IFSMA recalled that, by its Terms of reference, the Working Group had been asked to take into account a number of instruments, including "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 ...".

4.287 In light of the discussion, the delegation of the United States withdrew its proposal.

4.288 The delegation of the United States then introduced the proposal contained in document IMO/ILO/WGFTS 2/WP.12. This delegation indicated that it was flexible regarding the wording. For example the words "from any quarter" could be replaced by the words "by any Government, shipowner, or other seafarer". It also said it recognized the word "unlawful" might be a problem and could be removed.

4.289 The Shipowners' spokesperson said the replacement of the word "quarter" with a list was acceptable, but then it might also need to include "other personnel". He also suggested inserting the words "or after" between "during" and "investigation". Finally, he said the term "unlawful coercion" implied there was a legal form of coercion.

4.290 The Seafarers' spokesperson agreed with these suggestions and noted that, while there may be instances where a seafarer could be legally compelled to give a statement in a State with due process protections, these protections did not exist in all States and it was better to delete the word "unlawful".

4.291 The Chairperson suggested replacing the word "quarter" with the word "source", and this was agreed.

4.292 The Working Group agreed to add a new paragraph to the Introduction, based on document IMO/ILO/WGFTS 2/WP.12, as amended: "Seafarers are entitled to protections against coercion or intimidation from any source during or after any investigation into a maritime accident."

4.293 The delegation of the United States proposed a new paragraph to read along the following lines: "These guidelines are intended to be applied in conformity with each State's national laws and international law obligations, in particular, those relating to human rights, and with respect to all international instruments related to the fair treatment of seafarers."

4.294 The Seafarers' spokesperson said there appeared to be no need for the paragraph in light of the Working Group's agreement on paragraph 3 of document IMO/ILO/WGFTS 2/WP.10 ("These guidelines do not seek to interfere with ..."). He was also concerned that the proposed new paragraph might limit the application of the guidelines if a State was not party to human rights instruments.

4.295 The delegation of the United States said that the last phrase of the proposed paragraph (i.e., "with respect to all international instruments related to the fair treatment of seafarers") would cover the case where a State was not party to some of the instruments.

4.296 The delegation of Turkey suggested inserting the words "at least" before the words "in conformity with". The Chairperson, however, said this might imply that the guidelines were being reduced to the minimum.

4.297 The observer delegation of the Netherlands suggested that the words "in furtherance to" could be inserted before "and in conformity with".

4.298 The Shipowners' spokesperson said the subject was addressed by the previously agreed paragraph 3 and the additional paragraph would send a confused message and should not be included.

4.299 The Seafarers' spokesperson noted that there could also be a lack of clarity about which international instruments related to the fair treatment of seafarers. He said he agreed with the shipowners that the proposed new paragraph should not be included.

4.300 The Working Group did not adopt the proposed paragraph.

4.301 The delegation of Greece noted that, with respect to maritime accidents, the sequence of events was as follows: first the accident, then an initial investigation, a possible detention of the seafarer, and then the continuation of the investigation. It did not appear that the Shipowners' and Seafarers' spokespersons had fully taken this into account in their proposed guidelines set out in document IMO/ILO/WGFTS 2/3/1. The Shipowners' and Seafarers' spokespersons agreed that the delegation of Greece had identified an important concern.

4.302 The delegation of the United States shared the same concern, and noted that it had indeed had raised this point early on. The problem identified by the delegation of Greece created certain difficulties at this late stage, since important provisions had been discussed and argued by the social partners based explicitly on this limitation; particularly those relating to provision of counsel. However, some others could be addressed by inserting the word "detained" before "seafarer", where appropriate. The observer delegation of the Bahamas suggested replacing the words "are" with "may be" before the word "detained" in one of the introductory paragraphs, so that it read "It is recommended that these guidelines be observed in all instances where seafarers may be detained ...". The Working Group agreed and requested the Secretariat to revisit the introductory paragraphs and adjust them to reflect that the guidelines applied, in many of their provisions, to actions taken prior to the detention of the seafarer.

## **Discussion of the draft guidelines contained in document IMO/ILO/WGFTS 2/WP.6**

### **Guidelines for the detaining port or coastal State**

4.303 The Working Group agreed to introduce a short chapeau reading "The port or coastal State should:".

#### **Paragraph 1**

4.304 This paragraph was adopted without change.

#### **Paragraph 2**

4.305 To address the problem noted by the delegation of Greece, the word "detaining" was changed to "port or coastal".

4.306 The paragraph was adopted as amended.

#### **Paragraph 3**

4.307 The Working Group agreed to delete this paragraph.

#### **Paragraph 4**

4.308 The Working Group agreed to modify this paragraph to reflect that the coastal or port State did not have control over the economic rights of seafarers that had not been detained.

4.309 The paragraph was adopted as amended.

#### **Paragraph 5**

4.310 Following on earlier decisions, the Working Group agreed to insert the word "detained" before the word "seafarer" and to include "wages" in the list of items to be provided for.

4.311 Following the suggestion to delete paragraph *5bis* concerning the issue of the subsistence needs of seafarers' families, and as the result of an intervention from the delegation of the Philippines, it was agreed to modify paragraph 5 by deleting the word "immediate" before the word "subsistence". The intent was to ensure that not only the immediate needs of families, but also their needs following a prolong detention, were catered for.

4.312 The paragraph was adopted as amended.

#### **Paragraph *5bis***

4.313 With the addition of the word "wages" to the list of items in paragraph 5, it was agreed that paragraph *5bis* could be deleted.

#### **Paragraph 6**

4.314 This paragraph was adopted without change.

#### **Paragraph 7**

4.315 The delegation of the United States offered, as an alternative to this paragraph, a text contained in document IMO/ILO/WGFTS 2/WP.13, which read: "Ensure seafarers are, where necessary, provided interpretation services and, consistent with the national laws of the port or coastal State, are advised of their right to independent legal advice, are provided access to independent legal advice, are advised of their right not to incriminate themselves and their right to remain silent, and, in the case of seafarers who have been taken into custody, ensure that independent legal advice is provided."

4.316 The Seafarers' spokesperson said that this could be agreed if the words "consistent with the national laws of the port or coastal State" were deleted, reminding the Working Group that the guidelines were not binding text but were recommendatory.

4.317 This was agreed, and the paragraph was adopted as amended.

#### **Paragraph 8**

4.318 This paragraph was adopted without change.

#### **Paragraph 9**

4.319 The Working Group agreed to delete the brackets that appeared in the text and to make an editorial correction to the text.

4.320 This paragraph was adopted as amended.

#### **Paragraphs *9bis*, 10, 11, 12, 13, *13bis* and 14**

4.321 These paragraphs were adopted without change.

### **Paragraph 14bis**

4.322 The delegation of the United States proposed deleting the word “shipowner”, to select the word “wrongful” over the words “unreasonable and unjustified”, and to insert the word “detained” before “seafarer”.

4.323 The Shipowners’ spokesperson suggested retaining the word “shipowner”, noting that if the shipowner had liability for the damage, harm or loss of the seafarer, he should also have the right to obtain compensation for these costs in the event of a wrongful, unreasonable, unjustified or unlawful detention.

4.324 The delegation of Greece supported the previous view and said that, in some circumstances, certain States, such as flag States, might also have to bear such costs and should be able to obtain compensation for doing so.

4.325 The delegation of the United States said that it must be borne in mind that it was often the shipowner who had put the seafarer in such situations. He suggested adding the words “through no fault of the shipowner”. The observer delegation of the Netherlands and the Shipowners’ spokesperson did not agree with this proposal.

4.326 The observer delegation of the Bahamas, supported by the observer delegation of Norway and by the Shipowners’ spokesperson, suggested that the matter might be resolved by qualifying the word “shipowner” by inserting after it the words “in relation to the detention of the seafarer”. The observer delegation of Norway stated that in its mind, the reference to the shipowner was outside the mandate of the Working Group. However, to come to an agreement on the text, Norway could support the suggestion made by the Bahamas.

4.327 The Shipowners’ spokesperson agreed with the suggestion made by the observer delegation of the Bahamas.

4.328 At the request of the Working Group, the Secretariat prepared an alternative text, as follows:

“Have in place procedures so that any damage, harm or loss incurred by the seafarer, or by the shipowner in relation to the detained seafarer, attributable to the wrongful, unreasonable or unjustified acts or omissions of the detaining port or coastal State are promptly and fully compensated.”.

4.329 It was agreed to include the word “detained” before the first use of the word “seafarer”.

4.330 The paragraph was adopted as amended.

### **Paragraph 15**

4.331 The delegation of Greece suggested inserting the word “detained” before the word “seafarer”. This was agreed, and the paragraph was adopted as amended.

### **Paragraph 15bis**

4.332 The delegation of Turkey pointed out that it was not possible for the administrative authorities to influence the speed of judicial proceedings.

4.333 The delegation of the United States suggested that the ideas in this paragraph might be better placed in the resolution.

4.334 The Shipowners' spokesperson reminded the Working Group that this paragraph had been included in order to indicate to judicial authorities that the special situation of seafarers should be taken into account when scheduling court hearings.

4.335 The Seafarers' spokesperson and the delegation of Greece noted that the words "Take steps to" had been added to cover the concern raised by the delegation of Turkey. Such steps might be things that could be done by the administrative authorities themselves, in order to progress matters.

4.336 The Working Group agreed to remove the words "within a reasonable period of time" and to add the words "when seafarers are detained".

4.337 The paragraph was adopted as amended.

### **Paragraph 16**

4.338 After discussion, it was agreed to delete all references to specific matters referred to in various articles of UNCLOS, which could not be mentioned in these guidelines, and to delete all text after the words "law of the sea".

### **Paragraph 17**

4.339 This paragraph was adopted without change.

### **Paragraph 18**

4.340 For the sake of coherence, the word "co-operation" was replaced by the word "participation", and the paragraph was adopted as amended.

### **Guidelines for the flag State**

4.341 It was agreed to include the following chapeau: "The flag State should:".

#### **Paragraph 1**

4.342 This paragraph was adopted without change.

#### **Paragraph 2**

4.343 The words "involved in the investigation" were deleted at the request of the Seafarers' spokesperson, and the paragraph was adopted as amended.

#### **Paragraph 3**

4.344 This paragraph was adopted without change.

#### **Paragraph 4**

4.345 The observer delegation of the Netherlands remarked that a reference to wages would be useful here. The Seafarers' spokesperson agreed. It was then decided not to touch paragraph 4, and to add a new paragraph *4bis*, based on the existing paragraph 5 in the coastal State section.

#### **Paragraph 5**

4.346 This paragraph was adopted without change.

#### **Paragraph 6**

4.347 This paragraph was adopted without change.

#### **Paragraph 7**

4.348 This paragraph was adopted without change.

#### **Paragraph 8**

4.349 This paragraph was adopted without change.

#### **Paragraph 9**

4.350 This paragraph was adopted without change.

#### **Paragraph 10**

4.351 One delegation proposed replacing the word "posting" by the word "granting" for the sake of clarity, but this was not agreed.

4.352 The Seafarers' spokesperson suggested including the words "utilizing international dispute resolution mechanisms" after the word "include" and replacing the word "crews" by the words "detained seafarers". This was agreed and the paragraph was adopted as amended.

#### **Paragraph 11**

4.353 The word "co-operation" was replaced by the word "participation", for the sake of coherence.

#### **Guidelines for the seafarer State**

4.354 The following chapeau was added: "The seafarer State should:".

#### **Paragraph 1**

4.355 This paragraph was adopted without change.

#### **Paragraph 2**

4.356 This paragraph was adopted without change.

**Paragraph 3**

4.357 This paragraph was adopted without change.

**Paragraph 4**

4.358 This paragraph was adopted without change.

**Paragraph 5**

4.359 This paragraph was adopted without change.

**Paragraph 6**

4.360 This paragraph was adopted without change.

**Paragraph 7**

4.361 Concern was expressed by several delegations regarding the necessity to include other stakeholders in this paragraph. The Shipowners' spokesperson suggested adding the words "the detaining State or any other State", and this was agreed. The delegation of the United States suggested mentioning "all" funds, and this was agreed, while the necessity to allude to "detained" seafarers was recognized.

4.362 The paragraph was then adopted as amended.

**Paragraph 8**

4.363 This paragraph was adopted with the replacement of the word "co-operation" by the word "participation".

**Discussion of the draft guidelines contained in document IMO/ILO WGFTS 2/WP.11****Guidelines for shipowners**

4.364 The following chapeau was added: "The shipowner should:".

**Paragraph 1**

4.365 It was recognized that this paragraph should constitute an introduction to this section.

**Paragraph 2**

4.366 This paragraph was deleted and replaced by paragraph 9, where the word "co-operation" was replaced by the word "participation".

**Paragraph 3**

4.367 This paragraph was adopted without change.

#### **Paragraph 4**

4.368 This paragraph was adopted without change.

#### **Paragraph 5**

4.369 This paragraph was adopted without change.

#### **Paragraph 6**

4.370 This paragraph was adopted without change.

#### **Paragraph 7**

4.371 This paragraph was amended at the suggestion of the Shipowners' spokesperson, to read "Take steps to re-embark the seafarers".

#### **Paragraph 8**

4.372 This paragraph was adopted after deletion of the words "Take steps".

#### **Guidelines for the seafarer**

4.373 The following chapeau was added: "The seafarer should:".

4.374 Since these guidelines had been previously adopted, they were not re-discussed, but the Secretariat was requested to rephrase them in a way which made them easier to read.

#### **Discussion of the draft guidelines contained in document IMO/ILO/WGFTS 2/WP.17**

4.375 The Joint Secretariat prepared a consolidated text of the draft guidelines as document IMO/ILO/WGFTS 2/WP.17. The Working Group examined each paragraph of this document and reached the following conclusions.

#### **INTRODUCTION**

4.376 The Working Group agreed to this section subject to the following revisions:

- .1 paragraph 4 should be the opening paragraph (i.e., paragraph 1);
- .2 paragraph 1 (as numbered in WP.17) should be revised by inserting the words "following a maritime accident and" after the words "treated fairly", and reverse the words "detention and investigation" to read "investigation and detention";
- .3 paragraph 2 should be revised by inserting the word "by" before the words "the Assembly"; and
- .4 paragraph 5 should be revised by deleting the first sentence and retaining only the second sentence (i.e., "These guidelines do not apply to warships or naval auxiliaries."), and this paragraph should be located immediately before the section on definitions.

## DEFINITIONS

4.377 The Working Group agreed to the definitions subject to correction of typographical errors.

## GUIDELINES FOR THE PORT OR COASTAL STATE

4.378 The Working Group agreed to this section subject to the following revisions:

- .1 in paragraph .5, the words “Takes steps” should be revised to “take steps”. The observer delegation of the Netherlands reserved its position on this paragraph with respect to the incorporation of the word “wages”; and
- .2 in paragraph .7, the word “that” should be inserted after the word “Ensure”, and the word “and” should be inserted between the words “services” and “are advised”. The delegation of the United States said that its understanding of this paragraph was that it was to be applied in a manner consistent with a State’s national law, and that the phrase “where necessary” applies to all parts of the paragraph and it was the delegation’s understanding that the intent of the language compromise was to achieve that result.

## GUIDELINES FOR THE FLAG STATE

4.379 The Working Group agreed to this section subject to the following revisions:

- .1 in paragraph .3, the words “may be” should be inserted before the word “as” and “subsequently” (i.e., “as may be subsequently amended”);
- .2 in paragraph .4*bis*, the words “the shipowner has” and insert the word “are” between the words “provisions” and “in place”;
- .3 in paragraph .8 the word “their jurisdiction” should be replaced by “its jurisdiction”; and
- .4 in paragraph .9, the words “of the Flag State” should be deleted, the word “its” should be inserted before the words “consular officers”, and the word “seafarer” should be revised to “seafarers”.

4.380 In paragraph .10, the word “their flag” should be replaced by “its flag”.

## GUIDELINES FOR THE SEAFARER STATE

4.381 The Working Group agreed to this section subject to the following revisions:

- .1 in paragraph .4, the words “their jurisdiction” should be changed to “its jurisdiction”; and
- .2 in paragraph .5, the words “of the seafarer’s State” should be deleted, the word “its” should be inserted before the words “consular officers”, and the word “seafarer” should be changed to “seafarers”.

## **GUIDELINES FOR SHIOWNERS**

4.382 The Working Group agreed to this section subject to the following revisions:

- .1 in paragraph .4, a comma should be inserted after the words “applicable rights” (i.e., “... applicable rights, to co-operate ...”); and
- .2 in paragraph .6, the word “promptly” should be deleted.

## **GUIDELINES FOR SEAFARERS**

4.383 The Working Group agreed to replace the four paragraphs in this section with the following paragraphs:

- .1 take steps to ensure, if necessary, that they have appropriate interpretation services;
- .2 take steps to ensure that they fully understand their right not to self-incriminate, and that they fully understand that when statements are made to port, coastal or flag State investigators, these may potentially be used in a future criminal prosecution;
- .3 take steps to ensure, if they consider it necessary, that they have arrangements for access to legal advice prior to deciding whether to give statements to port, coastal or flag State investigators; and
- .4 participate in an investigation, to the extent possible, having regard to their right not to self-incriminate, with port, coastal or flag State investigators, by providing truthful information to the best of their knowledge and belief.

4.384 The above decisions are reflected in document IMO/ILO/WGFTS 2/WP.20, which is contained at annex 3 to this report.

4.385 At the end of the discussion on the guidelines the delegation of the United States made a statement which is attached at annex 4 to this report.

### **Discussion of the draft resolution**

4.386 The IMO Secretariat introduced the draft resolution contained in document IMO/ILO/WGFTS 2/WP.16, with some amendments.

#### **Paragraph 1**

4.387 This paragraph was adopted without change.

#### **Paragraph 2**

4.388 This paragraph was adopted as amended by the Secretariat.

#### **Paragraph 3**

4.389 It was suggested to include a new paragraph 3, to read as follows: “Realizing the need to keep the guidelines under review;”. This was agreed.

4.390 The delegation of Greece also suggested inserting this paragraph in the operative part of the resolution. This was agreed.

#### **Paragraph 4**

4.391 This paragraph was adopted without change.

#### **Paragraph 5**

4.392 This paragraph was adopted without change.

#### **Paragraph 6**

4.393 The Working Group agreed to delete the square brackets in this paragraph. The paragraph was adopted as amended, retaining the words “done at Montego Bay”, in spite of a contrary suggestion from the delegation of Greece, which was opposed by the delegations of Turkey and the United States.

#### **Paragraph 7**

4.394 This paragraph was adopted with the inclusion of the date of adoption of the Maritime Labour Convention.

#### **Supplementary Paragraph 7bis**

4.395 The Seafarers’ spokesperson suggested a new paragraph to read: “Considering that the guidelines provide a code of best practice and urges the member Governments to implement them”.

4.396 The delegation of the United States proposed deleting this text after the words “best practice”. This was agreed by the Working Group.

4.397 The delegation of Greece then suggested that a new paragraph should be included to “recognize that the involvement of ILO and IMO in the resolution of disputes was of great value”. The delegation of the United States objected that it might not be appropriate to allude here to a dispute-resolution system, the delegation of Greece recognized this point, and it was agreed to introduce a new paragraph saying that the Working Group was “mindful of the need to monitor the application and implementation of these guidelines”. This was agreed by the Working Group.

#### **Operative paragraph 1**

4.398 This paragraph was adopted with the changes suggested by the Secretariat. The paragraph being amended to read “Adopt the guidelines on fair treatment of seafarers in the event of a maritime accident set out in the annex to the present resolution;”.

#### **Operative paragraph 2**

4.399 This paragraph was adopted with the changes suggested by the Secretariat, as follows: “Invite member Governments to implement these guidelines as from 1 July 2006”.

### **Operative paragraph 3**

4.400 Following a suggestion concerning inclusion of a new paragraph by the Secretariat, the Seafarers' spokesperson proposed the inclusion of the words "and non-governmental organizations in consultative status with ILO and IMO", after the words "Invite member Governments". The new paragraph was adopted by the Working Group.

### **Operative paragraph 4**

4.401 The Seafarers' spokesperson suggested the following wording "Invite, where appropriate, member Governments to amend their national legislation to give full and complete effect to the guidelines". This was accepted, after a further amendment of the delegation of the United States stipulating "to consider amending".

### **Operative paragraph 5**

4.402 The Shipowners' spokesperson suggested the following wording: "Invite member Governments to follow these guidelines in all instances of detention of seafarers".

4.403 The delegation of the United States found this wording too general, and suggested amending it as follows: "Invite member Governments to take note of the principles contained in these guidelines when considering fair treatment of seafarers in other circumstances where seafarers might be detained".

4.404 This was accepted by the Working Group, after an intervention by the Shipowners' spokesperson, remarking that seafarers, like everyone else, were innocent until proven guilty.

4.405 The text of the draft resolution, as approved by the Working Group, is attached at annex 2 to this report.

## **5 Terms of reference**

5.1 The Working Group agreed to recommend and promulgate the guidelines on fair treatment of seafarers in the event of a maritime accident so that ILO Governing body and the IMO Legal Committee could adopt them. The Working Group also agreed to recommend that it continue and be convened as and when required. To this end, the Group suggested revised terms of reference for consideration, as contained in document IMO/ILO/WGFTS 2/WP 19, which are contained in annex 5 to this report.

## **6 Any other business**

6.1 The Seafarers' spokesperson informed the Working Group that the Code for the investigation of marine casualties and incidents, is currently under review by MSC. The Seafarers' spokesperson requested the Secretariat to bring the guidelines to the attention of the body undertaking a review of the Code, in line with the decision of the IMO Council, taken at its eighty-ninth session (document C 89/D, paragraph 12.1(v)). He suggested that the related body reviewing the Code on casualty investigation should take into account the principles set out in the guidelines, especially that of non self-incrimination, in carrying out its review. This was agreed by the Working Group.

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**ANNEX 1**

**AGENDA FOR THE SECOND SESSION**

- Opening of the session
- 1 Adoption of the agenda
  - 2 Opening views of IMO and ILO participants
  - 3 Development of guidelines on the fair treatment of seafarers in the event of a maritime accident
  - 4 Formulation of suitable recommendations to the IMO Legal Committee and the ILO Governing Body
  - 5 Any other business
  - 6 Adoption of the report to the IMO Legal Committee and the ILO Governing Body

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## ANNEX 2

Draft resolution and guidelines on fair treatment of seafarers  
in the event of a maritime accident as prepared by  
the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers

### **Resolution LEG.3(91) adopted on [.....]**

#### **ADOPTION OF GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT**

THE LEGAL COMMITTEE OF THE INTERNATIONAL MARITIME ORGANIZATION  
AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR ORGANIZATION,

RECALLING resolution A.987(24) approved by the Assembly of IMO at its twenty-fourth regular session and the ILO Governing Body at its 292<sup>nd</sup> session, by which the IMO Assembly and the ILO Governing Body, *inter alia*, agreed to the adoption of Guidelines on fair treatment of seafarers in the event of a maritime accident as a matter of priority and authorized the IMO Legal Committee and the ILO Governing Body to promulgate the said guidelines once finalized, by appropriate means;

HAVING considered the Guidelines as prepared by the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident;

REALIZING the need to keep the Guidelines under review;

RECALLING the Vienna Convention on Consular Relations, in particular, Article 36 concerning communication and contact with nationals;

NOTING MSC/MEPC.4/Circ.1 on Retention of original records/documents on board ships dated 26 September 2005;

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, in particular articles 97, 228, 230, 232 and 292, and of the customary international law of the sea;

CONSIDERING that the Guidelines provide a code of best practice;

MINDFUL of the need to monitor the application and implementation of the Guidelines;  
and

BEARING IN MIND FURTHER, the adoption of the ILO Maritime Labour Convention on 23 February 2006; hereby,

1. ADOPT the Guidelines on fair treatment of seafarers in the event of a maritime accident set out in the annex to the present resolution;
2. INVITE Member Governments to implement these Guidelines as from 1 July 2006;

3. INVITE ALSO Member Governments and non-governmental organizations in consultative status with IMO and ILO to circulate the Guidelines as widely as possible in order to ensure their widespread promulgation and implementation;
4. INVITE, where appropriate, Member Governments to consider amending their national legislation to give full and complete effect to the Guidelines;
5. INVITE FURTHER Member Governments to take note of the principles contained in these Guidelines when considering fair treatment of seafarers in other circumstances where innocent seafarers might be detained; and
6. AGREE on the need to keep the Guidelines under review.

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**ANNEX 3****GUIDELINES ON FAIR TREATMENT OF SEAFARERS  
IN THE EVENT OF A MARITIME ACCIDENT****I INTRODUCTION**

1 It is recommended that these Guidelines be observed in all instances where seafarers may be detained by public authorities in the event of a maritime accident.

2 Seafarers are recognized as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions that they may be brought into contact with, need special protection, especially in relation to contacts with public authorities. The objective of these Guidelines is to ensure that seafarers are treated fairly following a maritime accident and during any investigation and detention by public authorities and that detention is for no longer than necessary.

3 These Guidelines have been prepared in accordance with resolution A.987(24)\* on Guidelines on fair treatment of seafarers in the event of a maritime accident adopted on 1 December 2005 by the Assembly of the International Maritime Organization. This resolution is attached at annex to these Guidelines.

4 These Guidelines do not seek to interfere with any State's domestic, criminal, or civil law processes nor the full enjoyment of the basic rights of seafarers, including those provided by international human rights instruments, and the seafarers' right to humane treatment at all times.

5 Seafarers are entitled to protection against coercion and intimidation from any source during or after any investigation into a maritime accident.

6 The investigation of a maritime accident should not prejudice the seafarer in terms of repatriation, lodgings, subsistence, payment of wages and other benefits and medical care. These should be provided at no cost to the seafarer by the shipowner, the detaining State or an appropriate State.

7 These Guidelines do not apply to warships or naval auxiliaries.

**II DEFINITIONS**

8 For the purposes of these Guidelines:

“seafarer” means any person who is employed or engaged or works in any capacity on board a ship;

“shipowner” means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities of the shipowner, regardless of whether

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\* Not included in this document.

any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner;

“maritime accident” means any unforeseen occurrence or physical event connected to the navigation, operations, manoeuvring or handling of ships, or the machinery, equipment, material, or cargo on board such ships which may result in the detention of seafarers;

“investigation” means an investigation into a maritime accident;

“detention” means any restriction on the movement of seafarers by public authorities, imposed as a result of a maritime accident, including preventing them leaving the territory of a State other than the seafarer’s country of nationality or residence.

### **III Guidelines for the port or coastal State**

9 The port or coastal State should:

- .1 take steps so that any investigation they conduct to determine the cause of a maritime accident that occurs within their jurisdiction is conducted in a fair and expeditious manner;
- .2 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers’ representative organizations in the port or coastal State with access to seafarers;
- .3 take steps to ensure that adequate measures are taken to preserve human rights of seafarers at all times, and the economic rights of detained seafarers;
- .4 ensure that seafarers are treated in a manner which preserves their basic human dignity at all times;
- .5 take steps to ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer including, as appropriate, wages, suitable accommodation, food and medical care;
- .6 ensure that due process protections are provided to all seafarers in a non-discriminatory manner;
- .7 ensure that seafarers are, where necessary, provided interpretation services, and are advised of their right to independent legal advice, are provided access to independent legal advice, are advised of their right not to incriminate themselves and their right to remain silent, and, in the case of seafarers who have been taken into custody, ensure that independent legal advice is provided;
- .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 as subsequently amended), or pursuant to other national legal procedures);

- .9 ensure that the obligations of the Vienna Convention on Consular Relations, including those relating to access, 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, and also allow access to the seafarers by consular officers of the flag State;
- .10 ensure that all seafarers detained are provided with the means to communicate privately with all of the following parties:
  - family members;
  - welfare organizations;
  - the shipowner;
  - trade unions;
  - the Embassy or Consulate of the flag State and of their country of residence or nationality; and
  - legal representatives;
- .11 use all available means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
- .12 ensure decisions taken pursuant to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) are consistent with the provisions of Annex 1 (Regulations for the prevention of pollution by oil), Regulation 11;
- .13 promptly conduct interviews with seafarers, when done for a coastal State investigation following a maritime accident, taking into account their physical and mental condition resulting from the accident;
- .14 take steps to 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;
- .15 consider non-custodial alternatives to pre-trial detention (including detention as witnesses), particularly where it is evident that the seafarer concerned is employed in a regular shipping service to the detaining port or coastal State;
- .16 promptly conclude its investigation and, if necessary, charge seafarers suspected of criminal actions and ensure that due process protections are provided to all seafarers subsequent to any such charge;
- .17 have in place procedures so that any damage, harm or loss incurred by the detained seafarer or by the shipowner, in relation to the detention of that particular seafarer, attributable to the wrongful, unreasonable or unjustified acts or omissions of the detaining port or coastal State are promptly and fully compensated;

- .18 insofar as national laws allow, ensure that a process is available for posting a reasonable bond or other financial security to allow for release and repatriation of the detained seafarer pending resolution of any investigatory or judicial process;
- .19 take steps to ensure that any court hearing, when seafarers are detained, takes place as expeditiously as possible;
- .20 take steps to ensure decisions taken are consistent with generally applicable provisions of the law of the sea;
- .21 take steps to respect the generally accepted provisions of international maritime law regarding the principle of exclusive flag State jurisdiction in matters of collision or other incidents of navigation; and
- .22 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

#### **IV Guidelines for the flag State**

10 The flag State should:

- .1 take steps to ensure that any investigation to determine the cause of a maritime accident is conducted in a fair and expeditious manner;
- .2 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- .3 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) and as may be subsequently amended), in any casualty investigation;
- .4 assist in ensuring that shipowners honour obligations to seafarers involved in a maritime accident or any investigation;
- .5 ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer, including, as appropriate, wages, suitable accommodation, food and medical care;
- .6 ensure that shipowners honour obligations to co-operate in any flag, coastal or port State investigation following a maritime accident;
- .7 assist seafarers to secure fair treatment, and assist shipowners in the event of an investigation by a port or coastal State;
- .8 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;

- .9 assist, as provided for in national law, in the issuance and service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
- .10 take steps to ensure that its consular officers are permitted access to the involved seafarers, irrespective of their nationality;
- .11 take all necessary measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying its flag. This may ultimately include utilizing international dispute resolution mechanisms, which can secure the prompt release of vessels and crews upon the posting of a reasonable bond or financial security; and
- .12 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

## **V Guidelines for the seafarer State**

- 11 The seafarer State should:
  - .1 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
  - .2 monitor the physical and mental well-being and treatment of seafarers of their nationality involved in a maritime accident, including any associated investigations;
  - .3 fund the repatriation of their national seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners and the flag State fail to fulfil their responsibility to repatriate;
  - .4 assist, as provided for in national law, in the service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
  - .5 take steps to ensure that its consular officers are permitted access to the involved seafarers;
  - .6 take steps to provide support and assistance, to facilitate the fair treatment of nationals of the seafarer State and the expeditious handling of the investigation;
  - .7 take steps to ensure that all funds remitted by shipowners, the detaining State, or any other State for detained seafarers, or for support of those seafarers' families, are delivered for the intended purposes; and
  - .8 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

## **VI Guidelines for shipowners**

12 With regard to investigations, shipowners have an overriding duty to protect the rights of the seafarers employed or engaged, including the right to avoid self-incrimination and to take steps to ensure their fair treatment, and should:

- .1 take all available measures to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations and take steps to ensure that such conduct by other entities is not tolerated;
- .2 co-operate and communicate with all substantially interested States, other shipowners, as appropriate, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- .3 take action to expedite the efforts of a port, coastal, or flag State investigation;
- .4 take steps to encourage seafarers and others under their employment, with due regard to any applicable rights, to co-operate with any investigation;
- .5 use all reasonable means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
- .6 fulfil their obligation in relation to the repatriation of, or take steps to re-embark, the seafarers; and
- .7 ensure/verify that adequate provisions are in place to provide for the subsistence of each seafarer, including, as appropriate, wages, suitable accommodation, food and medical care.

## **VII Guidelines for seafarers**

13 Seafarers should:

- .1 take steps to ensure, if necessary, that they have appropriate interpretation services;
- .2 take steps to ensure that they fully understand their right not to self-incriminate, and that they fully understand that when statements are made to port, coastal or flag State investigators, these may potentially be used in a future criminal prosecution;
- .3 take steps to ensure, if they consider it necessary, that they have arrangements for access to legal advice prior to deciding whether to give statements to port, coastal or flag State investigators; and
- .4 participate in an investigation, to the extent possible, having regard to their right not to self-incriminate, with port, coastal or flag State investigators, by providing truthful information to the best of their knowledge and belief.

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**ANNEX 4****UNITED STATES' REMARKS (AT CLOSE OF DISCUSSION OF GUIDELINES)**

The United States thanks the Chairperson, the social partners, observers and our fellow Governments, and of course the two Secretariats for their commitment to the issue of fair treatment of seafarers in the event of a maritime accident and for their participation in this Working Group. We have accomplished a great deal this week that will have a significant positive impact for seafarers.

While there are several provisions in the Guidelines that our delegation believes should have been clearer, we now have complete text to take back for consideration. Some of the adopted text may make this somewhat difficult for us and for other Governments. However, a completed text is a significant accomplishment and it is our hope that the Guidelines can be implemented successfully in our nation and elsewhere. There are several items that need specific mention, as we conclude:

In particular, paragraph 2.7 was substantively amended during this discussion and differs from our understanding of the compromise previously reached. This final wording may create confusion and requires us to express our concerns. It is the understanding of the United States that paragraph 2.7 is to be applied as provided for and consistent with a State's national law and that the phrase "where necessary" modifies all of the items that follow in that paragraph, including providing of interpretation services and advising of rights.

Additionally, the United States believes that the introductory paragraphs and the definition of a "maritime accident" should be clearer and should contain text more faithful to the intent of the mandate from the IMO Legal Committee, the ILO Governing Body and the IMO Assembly. In particular, I refer to language proposed in WP.8 and in paragraph 1.2 of our paper IMO/ILO/WGFTS 2/3/3. However, the United States understands that, in the definition in the Guidelines adopted by this Working Group, the requirement that any accident be "unforeseen" prevents any rational conclusion that acts committed with criminal intent could be considered maritime accidents and will apply these Guidelines in that vein.

To be workable in practice, the Guidelines must be interpreted and applied in conformity with, and as provided for in, a State's national law. Although it would have been helpful to seafarers and States to have clearer wording to that effect in key provisions, the United States interprets and understands what was paragraph 3 of the Introduction in WP.17 and should now be paragraph 4 of the Introduction in the final version, to mean precisely this.

We recommend that the IMO Secretariat amend the LEG 91 document submission deadline, so that Governments who could not participate this week may comment on these guidelines in preparation for LEG 91.

We once again thank our fellow participants for their hard work and attention. We can rest assured that our efforts this week will improve the lives of those seafarers to whom we all owe so much.

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**ANNEX 5**

**RECOMMENDATION FOR REVISED TERMS OF REFERENCE**

1 The Joint IMO/ILO *Ad Hoc* Expert Working Group should monitor and evaluate the implementation of the Guidelines on fair treatment of seafarers in the event of a maritime accident.

2 In doing so, the Group should take into account resolution A 987(24) adopted by the Assembly of the International Maritime Organization, as well as IMO and ILO instruments relevant to the implementation of the Guidelines.

3 The Group should make suitable recommendations to the IMO Legal Committee and the Governing Body of the ILO in relation to any appropriate action for better implementation and wider acceptance of the Guidelines.

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## ANNEX 6

**LIST OF DOCUMENTS SUBMITTED FOR THE PURPOSES OF THE  
WORKING GROUP**

**Opening of the session**

No document submitted

**1 Adoption of the Agenda**

IMO/ILO/WGFTS 2/1	IMO and ILO Secretariats	Provisional Agenda
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**2 Opening views of IMO and ILO participants**

No document submitted

**3 Development of guidelines on fair treatment of seafarers in the event of a maritime accident**

IMO/ILO/WGFTS 2/3	IMO and ILO Secretariats	Provides information on the work of the Correspondence Group established by the first session of the Joint IMO/ILO <i>Ad Hoc</i> Expert Working Group
IMO/ILO/WGFTS 2/3/1	ISF, ICS, ICFTU	Provides an amended version of the guidelines prepared for the first session of the Working Group
IMO.ILO/WGFTS 2/3/2	IFSMA	Provides proposals for guidelines on fair treatment of seafarers
IMO/ILO/WGFTS 2/3/3	United States	Provides principles for Workable guidelines
IMO/ILO/WGFTS 2/3/4	ICFTU/ITF	Provides a legal opinion on the legal aspects of fair treatment of seafarers in the event of a maritime accident and, in particular, the aspect of the right to silence and not to self-incriminate

**4 Formulation of suitable recommendations to the IMO Legal Committee and the ILO Governing Body**

No documents submitted

**5 Any other business**

No document submitted

**6 Adoption of the report to the IMO Legal Committee and the ILO Governing Body**

IMO/ILO/WGFTS 2/6

Joint Secretariat

Report of the Working Group

**Working papers**

IMO/ILO/WGFTS 2/WP.1	Joint Secretariat	Contains a definition of “maritime accident”
IMO/ILO/WGFTS 2/WP.2	Joint Secretariat	Contains revised language for paragraph .2 of the guidelines for the detaining port or coastal State
IMO/ILO/WGFTS 2/WP.3	Joint Secretariat	Contains revised language for paragraphs .3 and .3bis of the guidelines for the detaining port or coastal State
IMO/ILO/WGFTS 2/WP.4	United States	Contains revised language regarding non-retaliation language proposed by the Shipowners
IMO/ILO/WGFTS 2/WP.5	Shipowners and Seafarers	Contains new proposals on Seafarers guidelines for shipowners and seafarers
IMO/ILO/WGFTS 2/WP.6	Joint Secretariat	Contains a revised version of the draft guidelines as at 15 March 2006
IMO/ILO/WGFTS 2/WP.7	United States	Contains revised seafarers’ co-operation language
IMO/ILO/WGFTS 2/WP.8	United States	Contains an amendment to the definition of “maritime accident”
IMO/ILO/WGFTS 2/WP.9	Seafarers	Contains language regarding the investigation of a maritime accident
IMO/ILO/WGFTS 2/WP.10	Joint Secretariat	Contains the text of the draft guidelines as at 15 March 2006
IMO/ILO/WGFTS 2/WP.11	Joint Secretariat	Contains language regarding the guidelines for shipowners

IMO/ILO/WGFTS 2/WP.12	United States	Contains an introductory language alternative with regard to seafarers' right to be protected against unlawful coercion or intimidation
IMO/ILO/WGFTS 2/WP.13	United States	Contains alternative language for paragraph 7 of the guidelines for the detaining port or coastal State to that provided in WP.6
IMO/ILO/WGFTS 2/WP.14	Small drafting group	Contains proposed language regarding guidelines for seafarers
IMO/ILO/WGFTS 2/WP.15	Joint Secretariat	Contains an alternative text for paragraph 14 <i>bis</i> in the guidelines for the detaining port or coastal State provided in WP.6
IMO/ILO/WGFTS 2/WP.16	Joint Secretariat	Contains the text of the draft resolution on the promulgation of the guidelines
IMO/ILO/WGFTS 2/WP.17	Joint Secretariat	Contains the text of the draft guidelines agreed by the Working Group and edited by the Secretariat, as at 16/3/2006
IMO/ILO/WGFTS 2/WP.18	Joint Secretariat	Draft report of the Working Group
IMO/ILO/WGFTS 2/WP.19	Joint Secretariat	Contains the text of the revised terms of reference
IMO/ILO/WGFTS 2/WP.20	Joint Secretariat	Contains the revised text of the guidelines agreed by the Working Group and edited by the Secretariat
IMO/ILO/WGFTS 2/WP.21	Joint Secretariat	Contains the revised text of the draft resolution

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