

JOINT IMO/ILO AD HOC EXPERT  
WORKING GROUP ON LIABILITY  
AND COMPENSATION REGARDING  
CLAIMS FOR DEATH, PERSONAL  
INJURY AND ABANDONMENT OF  
SEAFARERS  
6<sup>th</sup> Session  
Agenda item 2

IMO/ILO/WGLCCS 6/2/??

28 July 2005

**EXAMINATION OF THE ISSUE OF FINANCIAL SECURITY FOR  
CREW/SEAFARERS**

**Repatriation of seafarers following abandonment**

**Submitted by the Shipowners' Group**

**Executive Summary:** The Shipowners' Group has been active at ILO in securing a tripartite agreement in the new Consolidated Convention text to resolve the issue of repatriation following abandonment. Given this and the concerns raised in IMO/ILO/WGLCCS 6/3, the Group questions the compelling need to further this issue.

**Action to be taken:** See paragraph 5

**Related documents:** IMO/ILO/WGLCCS 6/3

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1. Following the last meeting of the Working Group, the Shipowners' Group has been proactive in responding to concerns raised about abandonment.
  2. The Shipowners' Group has actively participated in the development of a tripartite solution in the ILO Consolidated Maritime Labour Standards Convention, which they believe now adequately deals with the repatriation of seafarers in the event of abandonment.
  3. The Convention will ensure seafarers have a right to be repatriated at no cost to themselves and that each member state shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated. The circumstances in which this right arises include abandonment. A copy of the relevant convention text in Regulation 2.5, Standard A2.5 and Guideline B2.5 is attached at the annex to this paper.
  4. The Shipowners' Group accordingly believes that there is no longer a compelling need for this issue to be discussed further since the planned solution now exists in the draft ILO consolidated convention.

**Action requested of the Working Group**

5. The Working Group is invited to note the views expressed above and take action accordingly.

*Regulation 2.5 - Repatriation*

*Purpose: To ensure that seafarers are able to return home*

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

*Standard A2.5 - Repatriation*

1. Each Member shall ensure that seafarers on ships that fly its flag are entitled to repatriation in the following circumstances:
  - (a) if the seafarers' employment agreement expires while they are abroad;
  - (b) when their seafarers' employment agreement is terminated:
    - (i) by the shipowner; or
    - (ii) by the seafarer for justified reasons; and also
  - (c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.
2. Each Member shall ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargaining agreements, prescribing:
  - (a) the circumstances in which seafarers are entitled to repatriation in accordance with paragraph 1(b) and (c) of this Standard;
  - (b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation - such periods to be less than 12 months; and
  - (c) the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.
3. Each Member shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations. (modified C.166A4/5)
4. National laws and regulations shall not prejudice any right of the shipowner to recover the cost of repatriation under third-party contractual arrangements.
5. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:
  - (a) the competent authority of the Member whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the Member whose flag the ship flies;
  - (b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member whose flag the ship flies; and
  - (c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 3 of this Standard.
6. Taking into account applicable international instruments, including the International Convention on Arrest of Ships, 1999, a Member which has paid the cost of repatriation pursuant to this Code may detain, or request the detention of, the ships of the shipowner concerned until the reimbursement has been made in accordance with paragraph 5(a) of this Standard.
7. Each Member shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board.

8. In particular, a Member shall not refuse the right of repatriation to any seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace a seafarer.

9. Each Member shall require that ships that fly its flag carry and make available to seafarers a copy of the applicable national provisions regarding repatriation written in an appropriate language.

*Guideline B2.5 -Repatriation*

*Guideline B2.5.1 -Entitlement*

1. Seafarers should be entitled to repatriation:

- (a) in the case covered by paragraph 1(a) of Standard A2.5: upon the expiry of the period of notice given in accordance with the provisions of the seafarers' employment agreement; and
- (b) in the cases covered by paragraph 1(b) and (c) of Standard A2.5:
  - (i) in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;
  - (ii) in the event of shipwreck;
  - (iii) in the event of the shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of the seafarers by reason of insolvency, sale of ship, change of ship's registration or any other similar reason;
  - (iv) in the event of a ship being bound for a war zone, as defined by national laws or regulations or seafarers' employment agreements, to which the seafarer does not consent to go; and
  - (v) in the event of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason. (C.166A2/1)

2. In determining the maximum duration of service periods on board following which a seafarer is entitled to repatriation, in accordance with this Code, account should be taken of factors affecting the seafarers' working environment. Each Member should seek, wherever possible, to reduce these periods in the light of technological changes and developments and might be guided by any recommendations made on the matter by the Joint Maritime Commission. (C.166A2/2)

3. The costs to be borne by the shipowner for repatriation under Standard A2.5 should include at least the following:

- (a) passage to the destination selected for repatriation in accordance with paragraph 6 of this Guideline B2.5.1;
- (b) accommodation and food from the moment the seafarers leave the ship until they reach the repatriation destination;
- (c) pay and allowances from the moment the seafarers leave the ship until they reach the repatriation destination, if provided for by national laws or regulations or collective agreements;
- (d) transportation of 30 kg of the seafarers' personal luggage to the repatriation destination; and
- (e) medical treatment when necessary until the seafarers are medically fit to travel to the repatriation destination

4. Time spent awaiting repatriation and repatriation travel time should not be deducted from paid leave accrued to the seafarers.

5. Shipowners should be required to continue to cover the costs of repatriation until the seafarers concerned are landed at a destination prescribed pursuant to this Code or are provided with suitable employment on board a ship proceeding to one of those destinations.

6. Each Member should require that shipowners take responsibility for repatriation arrangements by appropriate & expeditious means. The normal mode of transport should be by air. The Member should prescribe the destinations to which seafarers may be repatriated. The destinations should include the countries with which seafarers may be deemed to have a substantial connection including:

- (a) the place at which the seafarer agreed to enter into the engagement;

- (b) the place stipulated by collective agreement;
- (c) the seafarer's country of residence; or
- (d) such other place as may be mutually agreed at the time of engagement.

7. Seafarers should have the right to choose from among the prescribed destinations the place to which they are to be repatriated.

8. The entitlement to repatriation may lapse if the seafarers concerned do not claim it within a reasonable period of time to be defined by national laws or regulations or collective agreements.

*Guideline B2.5.2 - Implementation by Members*

1. Every possible practical assistance should be given to seafarers stranded in foreign ports pending their repatriation and in the event of delay in the repatriation of seafarers, the competent authority in the foreign port should ensure that the consular or local representative of the flag State is informed immediately.

2. Each Member should have regard to whether proper provision is made:

- (a) for the return of seafarers employed on a ship that flies the flag of a foreign country who are put ashore in a foreign port for reasons for which they are not responsible to:
  - (i) the port at which the seafarer concerned was engaged; or
  - (ii) a port in the seafarer's own country or the country to which the seafarer belongs; or
  - (iii) another port agreed upon between the seafarer and the master or shipowner, with the approval of the competent authority or under other appropriate safeguards; and
- (b) for medical care and maintenance of seafarers employed on a ship that flies the flag of a foreign country who are put ashore in a foreign port in consequence of sickness or injury incurred in the service of the ship and not due to their own wilful misconduct.

3. If, after young seafarers under the age of 18 have served on a ship for at least four months during their first foreign-going voyage, it becomes apparent that they are unsuited to life at sea, they should be given the opportunity of being repatriated at no expense to themselves from the first suitable port of call in which there are consular services of the country either of the flag of the ship or of the nationality of the young seafarer. Notification of any such repatriation, with the reasons therefor, should be given to the authority which issued the papers enabling the young seafarers concerned to take up seagoing employment.