



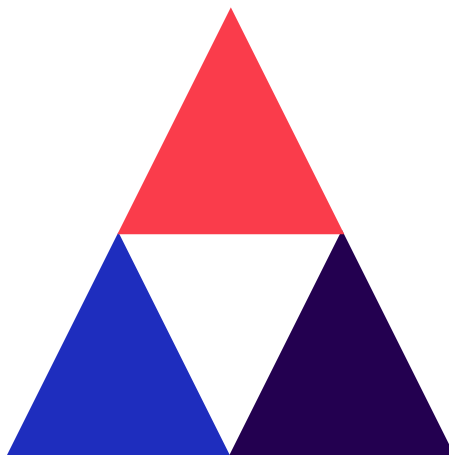
International
Labour
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▶ TWGSHE/2022/8

▶ Record of Proceedings

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



▶ Contents

	Page
I. Introduction	5
II. General discussion	7
III. Consideration and adoption of the draft Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases	10
Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases	10
Proposed title	10
Introduction	10
Purpose	14
International framework	15
Application	17
Definition	20
Principles and responsibilities	21
Procedure	28
General procedure	28
Special circumstances	33
Post-resolution	36
Annex	39
IV. Other business related to the work of the Joint Tripartite Working Group	39
V. Closure of the meeting	40

► I. Introduction

1. The first meeting of the Joint ILO–IMO Tripartite Working Group to identify and address seafarers' issues and the human element was held in hybrid format from 13 to 15 December 2022. The Governing Body of the International Labour Organization (ILO) decided at its 341st Session (March 2021) to convene the meeting, the purpose of which would be to adopt guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases.
2. The Chairperson of the meeting was Ms Julie Carlton (United Kingdom of Great Britain and Northern Ireland). The Government Vice-Chairperson was Mr César A. Gómez Ruiloba (Panama), the Shipowner Vice-Chairperson was Mr Max Johns and the Seafarer Vice-Chairperson was Mr Mark Dickinson.
3. The Joint ILO–IMO Secretariat comprised: Ms Alette Van Leur, Director, Sectoral Policies Department, ILO, as Secretary-General of the meeting (ILO); Mr Frederick Kenney, Director, Legal and External Affairs, IMO, as Secretary-General of the meeting (IMO); Mr Brandt Wagner, Head, Transport and Maritime Unit, ILO as Executive Secretary (ILO); and Mr Jan Engel de Boer, Senior Legal Officer, IMO, as Executive Secretary (IMO).
4. The hybrid meeting was attended by 250 participants, including 20 Government representatives and advisers (from eight Member States), together with 190 Government observers (from 57 Member States), as well as 10 Shipowner and 17 Seafarer representatives and advisers, and 13 observers from intergovernmental organizations (IGOs) and invited international non-governmental organizations.
5. The Chairperson welcomed all participants and declared open the first meeting of the Joint ILO–IMO Tripartite Working Group (JTWG), to identify and address seafarers' issues and the human element. The purpose of the meeting was to adopt guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases. The draft document serving as a basis for the discussion had been prepared jointly by the ILO and IMO Secretariats, based on the draft developed by a correspondence group established by the International Maritime Organization (IMO) Legal Committee and led by the Government of Indonesia. The guidelines would be a helpful tool, not only for port and flag States, but for all those involved in resolving abandonment cases.
6. The Secretary-General of the meeting (ILO) acknowledged the long-standing cooperation between the ILO and the IMO, which included jointly operating the ILO/IMO Database on reported incidents of abandonment of seafarers. The first of the three scheduled meetings of the JTWG would discuss and adopt guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases. The draft Guidelines prepared by the IMO correspondence group had been reviewed by the Secretariat, which had made some suggestions for additions and changes. The draft Guidelines were thus presented to the JTWG for a tripartite discussion. Once adopted, the Guidelines would be submitted to the Governing Body of the ILO and to the IMO Legal Committee. The abandonment of seafarers was an issue of particular importance to the ILO. Despite the Organization's efforts to amend the Maritime Labour Convention (MLC), 2006 and update guidance for flag and port States, cases of abandonment of seafarers reported to the ILO had increased dramatically. The adoption of the Guidelines would thus be both timely and highly necessary.
7. The Secretary-General of the meeting (IMO) recalled that the significant increase in seafarer abandonment cases during the COVID-19 pandemic had inspired the establishment of the JTWG

and the development of the draft Guidelines. There were an increasing number of abandonment cases reported to the joint ILO/IMO database, which had been extremely difficult to resolve, in particular owing to repatriation difficulties caused by travel restrictions imposed during the pandemic. At its 107th Session in December 2020, the IMO Legal Committee had agreed on the need to develop guidelines for port State and flag State authorities on seafarer abandonment cases. The draft Guidelines had thus been developed over the course of 2021, by a correspondence group coordinated by the Government of Indonesia, and had been presented to the IMO Legal Committee for endorsement at its 109th Session in March 2022. The Guidelines were intended to provide practical advice to flag States, port States and the maritime industry on how to resolve abandonment cases efficiently and effectively. Once adopted by the JTWG, the Guidelines would be submitted to the IMO Legal Committee, for formal adoption.

8. The Senior Maritime Adviser, IMO, provided some background information on the preparation of the draft Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases. The document before the JTWG was the result of the work of a correspondence group, mandated by the IMO Legal Committee to develop practical guidelines for port States and flag States to address cases of seafarer abandonment. The Guidelines had been developed using the MLC, 2006, as a standard. The Guidelines had been drafted taking into consideration proposals submitted by the Governments of China, Indonesia and the Philippines, the world's three largest seafarer-supplying countries. The correspondence group had taken into consideration the various perspectives of flag States, port States, seafarer-supplying States, the shipping industry, and Seafarers' associations, as well as ILO representatives. The draft Guidelines aimed to facilitate the development and implementation of practical steps for port State and flag State authorities to resolve abandonment cases expeditiously and effectively where duty holders had failed to do so. Those practical steps included the payment of outstanding wages in full, repatriation of the seafarers concerned, coordination with institutions and social partners, and measures to be taken during judicial proceedings and emergency situations that could, directly or indirectly, threaten the safety of seafarers. Since the Guidelines would not be legally binding, the correspondence group had agreed to use non-mandatory language. The draft had been endorsed, without amendment, by the IMO Legal Committee at its 109th Session in March 2022.
9. The Executive Secretary of the meeting (ILO) presented the draft Guidelines, as revised by the Secretariat (TWGSHE/2022). The ILO, in consultation with the IMO, had introduced some revisions, to align it with the MLC, 2006, and put it in a format that was more acceptable to the ILO and its tripartite constituents. All revisions to the IMO correspondence group version were clearly indicated, and some footnotes had been added with suggestions from the Secretariat and explanatory notes to help guide the discussions. An annex, entitled "The MLC, 2006, and the issue of abandonment of seafarers", had been added to provide the background and context of the abandonment-related provisions of the MLC, 2006, including with respect to relevant amendments adopted in 2022 that are due to enter into force in December 2024. Since the IMO correspondence group had done its work before the adoption of the 2022 amendments, the consequences of those amendments would need to be taken into consideration in the Working Party's deliberations. Relevant IMO and ILO documents had been made available on the ILO website for the meeting in order to provide the full gamut of background information. The JTWG's meeting would afford an opportunity to ensure that the Guidelines reflected the work of the IMO correspondence group, and the full tripartite discussion by representatives of shipowners, seafarers, labour ministries and maritime administrations.

▶ II. General discussion

10. The Shipowner Vice-Chairperson emphasized that the Shipowners' priority was the situation of seafarers and the swift resolution of cases of abandonment. No seafarer should ever be abandoned by a shipowner. In cases of abandonment, seafarers had a fundamental right to repatriation, payment of wages and access to the basic necessities of life. Furthermore, they must not be left without the resources necessary to operate the ship. The number of cases of abandonment reported had increased significantly during the COVID-19 pandemic. Ultimately, one case of abandonment was one too many. Collective action was needed from shipowners and seafarers, national governments, as well as the IMO and the ILO, to ensure the abandonment safeguards reflected in the MLC, 2006, were implemented effectively to protect the world's seafarers. The Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases would be instrumental in tackling the challenges of abandonment. The Shipowners' group had considered the proposed text of the Guidelines carefully, and the amendments proposed by the ILO, and would be seeking clarification in some instances. The Guidelines alone would be insufficient to address the root causes of abandonment. The ultimate aim of the JTWG should be to collectively discuss how to address abandonment in the long term.
11. Universal ratification of the MLC, 2006, would be essential to ensure a level playing field in terms of States' obligations and responsibilities. Around 50 per cent of the seafarer abandonment cases reported in 2022 could have been avoided if the States concerned had ratified the MLC, 2006. An uneven playing field in maritime labour standards caused by lack of ratification of the Convention allowed some port States to remain passive to the plight of abandoned seafarers. As a further consideration, the IMO Facilitation (FAL) Committee should be made aware of abandonment-related issues in the context of its oversight of matters related to the facilitation of international maritime traffic. National plans of action for how to address seafarer abandonment cases were also particularly important and the Guidelines should contain a specific recommendation for flag and port States on drawing up such plans and designating a national point of contact for engagement and communication of information on abandonment-related issues. The name and contact details of the point of contact should be communicated to either the ILO or the IMO.
12. The ILO/IMO Database on reported cases of abandonment of seafarers must be reviewed and updated as a matter of urgency. Digital technology had advanced significantly since the database had been set up, and an upgrade to a more efficient electronic system was now required. A technological upgrade would benefit users and increase data accuracy. The better the data collected, the more effectively cases could be managed. In its current form, the database contained inaccurate information on the resolution of cases and classification of vessels. Some cases had been listed as resolved, as the seafarers had been paid the four months' remuneration required under the MLC, 2006, yet the monies owed to them went beyond those four months and remained unpaid. Common understanding must be found in respect of how to deal with disputed abandonment cases, and ensuring accurate classification of "unresolved" or "disputed" in the database. A joint ILO/IMO task force could be established to review the database. The International Chamber of Shipping (ICS) and the International Transport Workers' Federation (ITF) had expressed their willingness to contribute financial and staffing resources to that end. The database should be used to produce standardized annual reports on abandonment cases, with analysis of significant trends. Consistent annual reporting was required to ensure appropriately targeted management of abandonment cases.
13. The Seafarer Vice-Chairperson said that the COVID-19 pandemic had been the most difficult three years in the history of the shipping industry. It had, however, brought the industry together and

highlighted the importance of cohesive action between the social partners and the importance of coordination between all stakeholders to ensure greater visibility and recognition for the industry. Cooperation between the ILO and the IMO was especially welcome. The task currently before the JTWG was focused on seafarers and their welfare and safety. To deliver in that regard, the Guidelines must clarify the responsibilities of shipowners, flag States, port States and labour-supplying States, to ensure decent work for the world's seafarers. Decent work would translate into safer operations for ships and an improved marine environment. The social partners had common goals. The support provided by the ILO and the IMO would ensure that the JTWG's discussions and the Guidelines were aligned with existing instruments to address seafarer abandonment comprehensively and cohesively.

14. The first meeting of the JTWG afforded an opportunity to set the tone for the JTWG's future activities and to bring together all stakeholders to work to ensure the well-being of seafarers and eradicate the scourge of abandonment. One of the main issues to be addressed was the possibility for some ship operators to slip through the net of international obligations and scrutiny, and find ways of operating perilous profit-based businesses that endangered seafarers' lives. In certain cases, seafarers were abandoned deliberately; such violations of seafarers' rights was a heinous act that must be stopped. The JTWG should take the opportunity to consider how to apply international instruments to ensure that abandonment cases were resolved swiftly, with seafarers protected from harm and repatriated with all their entitlements.
15. The JTWG should consider how to make the ILO/IMO Database on reported incidents of abandonment of seafarers more accurate, to allow for better monitoring and swifter resolution of abandonment cases. A change to the requirements of the MLC, 2006, on financial security, which would call for the annual payment of a financial security premium, could potentially prevent disputed abandonment, in which seafarers were often penalized. Since the next round of amendments to the MLC, 2006, was set for 2025, there was time to identify areas for improvement. It would be desirable to consider including the MLC requirements on abandonment in the discussions of the FAL Committee. All States must be encouraged to ratify the MLC, 2006. He also noted the importance of encouraging more States to ratify the MLC. The first meeting of the JTWG marked the beginning of a new era of cooperation and pragmatism, and sharing of experiences and knowledge. With the support of the IMO and the ILO, the JTWG would deliver practical guidance to port and flag State authorities and other stakeholders to improve the circumstances of abandoned seafarers and bring an end to their suffering.
16. The Government Vice-Chairperson welcomed the emphasis on cooperation and underscored the importance of working together to seek solutions to the plight of abandoned seafarers and set targets to end abandonment. The COVID-19 pandemic, while constituting an unprecedented challenge, had also afforded a significant opportunity for renewed cooperation between the social partners, governments and international organizations, to address the abandonment of seafarers and guarantee decent work. The social partners and governments were committed to improving the lot of seafarers and better managing the situation of abandonment. To that end, the database on reported incidents of abandonment of seafarers must be revised and upgraded. Up-to-date, accurate data must be made available to inform approaches to tackling the root causes of seafarer abandonment and bring an end to the phenomenon. The Government group would participate actively in the deliberations of the JTWG, with a view to seeking specific solutions to the problems of abandonment and to ensure that abandoned seafarers were repatriated promptly and paid in full. The pandemic had shed light on what worked and what did not in the shipping industry; the lessons learned must be applied for the benefit of all. Consideration must be given to how to implement the Guidelines most effectively and ensure clear delineation of roles, obligations and responsibilities between stakeholders in the resolution of abandonment cases. Each government

had its own experiences in that regard, and the meeting would provide a unique opportunity to share those experiences and best practices.

17. The Government representative of Indonesia said that the COVID-19 pandemic had indeed represented an unprecedented global health challenge, which had particularly affected the working conditions of seafarers. The draft Guidelines to be discussed by the JTWG would constitute a tangible result of strengthened cooperation to improve the livelihood, welfare and protection of seafarers. The Government of Indonesia had participated actively in the work of the IMO correspondence group to draft the Guidelines. As the third largest seafarer-supplying country in the world, seafarer welfare was a priority for the Government of Indonesia; it had applied several policies to address the needs of seafarers, and had established associations for Indonesian nationals in various ports around the world. During the pandemic, every effort had been made to repatriate more than 27,000 Indonesian seafarers from all over the world.
18. Once adopted, the Guidelines would serve as a foundation for cooperation among the global community, and stakeholders in the shipping industry, to strengthen the protection of the rights and interests of abandoned seafarers and ensure that their essential needs were met and the required crew changes were conducted. The Guidelines should clearly set out the roles and responsibilities of the various stakeholders to expedite repatriation, remuneration and medical care for abandoned seafarers. The JTWG should discuss potential financing schemes to support the expeditious and effective resolution of abandonment cases and to deal with cases in which duty holders failed to fulfil their obligations. The Guidelines should give clear guidance on the specific actions to be taken by port and flag States, and the role of other stakeholders. The JTWG should consider proposals for the fair treatment of seafarers detained on suspicion of committing maritime crimes. Consideration should also be given to how the IMO and the ILO could monitor the implementation of the MLC, 2006, and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, to ensure decent work and better employment opportunities for, as well as the welfare and well-being of, seafarers.
19. The Government representative of India looked forward to the deliberations on the draft Guidelines, which would help to identify and eliminate the root causes of seafarer abandonment. Every effort must be made to clearly define and distinguish the roles of port States, flag States and labour-supplying States through the Guidelines.
20. The Government representative of Kenya said that, since 2020, the Government of Kenya had recognized seafarers as key workers, and had repatriated some 450 Kenyan seafarers since the start of the COVID-19 pandemic. Crew changes had been facilitated to minimize the suffering of seafarers stranded on board ships. Kenya had consistently been involved at both IMO and ILO on issues related to the human element and the protection of the rights of seafarers. The Government was cognizant of the dilemma faced by port States and flag States following seafarer abandonment and the complexity of resolving the cases expeditiously, particularly when the responsible parties were either uncooperative or unresponsive. The JTWG should seize the opportunity to develop useful, pragmatic and clear guidelines to facilitate the efficient and expedient repatriation of abandoned seafarers.
21. The Government observer from Panama said that the repatriation of abandoned seafarers had long been a priority for the Government of Panama. Relevant international instruments must be applied to the letter, and the ratification of international conventions must be promoted. The adoption of the Guidelines would constitute a significant step towards securing the welfare and well-being of abandoned seafarers. Port and flag States should work together to strengthen administrative mechanisms and ensure the expeditious resolution of abandonment cases. The

number of such cases had increased significantly and been exacerbated by the COVID-19 pandemic, which had severely hampered repatriation efforts.

22. The Government observer from Malaysia said that protection of seafarers was crucial; without them there could be no trade, and without trade the economy would suffer. The Guidelines to be adopted by the JTWG must be detailed and aspirational, and must set out clearly the different roles and responsibilities of the stakeholders concerned. As a key port State authority dealing with abandonment cases, the Malaysian Government hoped that the JTWG would work in a spirit of cooperation and compromise, and that the Guidelines adopted would serve as a valuable complementary instrument to the MLC, 2006.

▶ III. Consideration and adoption of the draft Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases

23. With regard to the consistent use of terminology, the JTWG established, during the course of its deliberations, that throughout the Guidelines:
- the term “seafarer” would be understood in line with the definition thereof in the MLC, 2006;
 - “parties” would be replaced by “stakeholders” in all instances;
 - “labour-supplying States” would be replaced by “States of which seafarers are nationals or are resident or are otherwise domiciled in their territory”; and
 - the term “administration” as employed by the IMO and “authority” as employed by the ILO, would be replaced by “competent authority” in all instances.

Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases

Proposed title

24. The Seafarer Vice-Chairperson pointed out, in the light of discussions on proposed paragraph 12, that restricting the Guidelines to port and flag States limited their scope and excluded other duty holders and stakeholders. The words “for port State and flag State authorities on” should therefore be deleted.
25. The title was adopted, as amended.

Introduction

Proposed paragraph 1

26. The Shipowner Vice-Chairperson said that the annual numbers of abandoned seafarers listed in paragraph 1 were not up to date; figures for 2022 should be included. The drafting of the paragraph in general was cumbersome. A simple graph showing the progressive annual increase in seafarer abandonment cases would be clearer. Reference to abandoned ships should be avoided since the Guidelines were only intended to address the issue of abandoned seafarers.

Seafarers' families should also be mentioned, since they also suffered in the event of their family member being abandoned at sea.

27. The Seafarer Vice-Chairperson agreed that the data should be up to date and that the paragraph was not structured logically or impactfully.
28. The Government Vice-Chairperson said that provided that paragraph 1 gave a good introductory explanation of the problem and set the intention of the Guidelines to address it, his group could be flexible with regard to the drafting.
29. The JTWG agreed that the Seafarers' group would provide a suggested new draft of paragraph 1. If figures for 2022 were to be included, they could be inserted by the Office once the final count had been received in the database at the end of the year, in due time for the Guidelines to be submitted to the ILO Governing Body in March 2023.
30. A revised draft of paragraph 1, prepared by the Seafarers' group, was subsequently presented.
31. The Shipowner Vice-Chairperson and Government Vice-Chairperson supported the revised text, on the understanding that, for the sake of coherence and consistency, the list of States concerned would be aligned with the list in the "Application" section of the Guidelines.
32. It was so agreed.
33. Paragraph 1 was adopted, as amended.

Proposed paragraph 2

34. The Shipowner Vice-Chairperson said that paragraph 2, which defined the scope and purpose of the first meeting of the JTWG was limited to drafting the Guidelines. His group would prefer a broader scope, to include the possible recommendation to establish a task force for improving data on seafarer abandonment cases.
35. The Seafarer Vice-Chairperson said that the information in paragraphs 2 and 3 was in reverse chronological order. Logically, the paragraphs should be the other way round. Paragraph 2 on the scope of the JTWG referred to the adoption of guidelines for "port State and flag State authorities". In light of the discussion on paragraph 12 and the agreed change to the title of the Guidelines, careful consideration should be given to how to reflect the scope of the application of the Guidelines, ensuring that references to the IMO Legal Committee decision were accurate, and that references to the scope of application of the Guidelines as decided by the JTWG were consistent.
36. The Government Vice-Chairperson agreed that the information should be presented chronologically. The two paragraphs could be combined to make the introduction to the guidelines more concise.
37. The Chairperson requested that the Office revise and combine the two paragraphs.
38. A revised draft paragraph 2, combining and streamlining the information in proposed paragraphs 2 and 3, was subsequently presented.
39. A Shipowner representative from Switzerland suggested including a footnote with the text of the relevant IMO Legal Committee decisions.
40. It was so agreed.
41. Paragraph 2 was adopted, as amended.

Proposed paragraph 3

42. In the light of the foregoing, paragraph 3 was deleted.

Proposed paragraph 4

43. The Shipowner Vice-Chairperson pointed out that, in light of the discussions on the application of the Guidelines, paragraph 4 should be revised to include, in particular, labour-supplying States, as well as port State and flag State authorities.
44. The Chairperson said that the first sentence could be revised to read "The present Guidelines are addressed to all States, and primarily to port State, flag State and labour-supplying State authorities."
45. The Seafarer Vice-Chairperson agreed with that suggestion.
46. The Government Vice-Chairperson said that the list of States to which the Guidelines were addressed should align with the list in the section of the Guidelines entitled "Application".
47. A revision to the first sentence of paragraph 4 was subsequently presented, to read "The present Guidelines are addressed to all States, and primarily to port States, flag States and States of which seafarers are nationals or are resident or are otherwise domiciled in their territory."
48. It was so agreed.
49. Paragraph 4 was adopted, as amended.

Proposed new paragraph after paragraph 4

50. Following the guidance of the two Secretaries-General of the meeting (ILO and IMO), the Shipowner Vice-Chairperson withdrew a proposal to add a new paragraph, after paragraph 4, on the JTWG's discussions of other matters related to addressing seafarer abandonment, including the possibility of establishing a joint ILO/IMO task force to oversee the review and update of the ILO/IMO Database on reported cases of abandonment. The proposal was withdrawn on the understanding that the ILO Governing Body would be informed of the JTWG's views on the need to establish such a task force to update the database.

Proposed paragraph 5

51. The Shipowner Vice-Chairperson said that "and policies" should be deleted after "relevant IMO international frameworks and agreements".
52. The Seafarer Vice-Chairperson agreed and said that he wished to insert the word "also" before "consistent with the ILO Guidelines for port State control ... ". In (ii), the words "and agreements;" should be replaced with ", agreements and IMO Assembly resolutions;". The words "and IMO Assembly resolution A.930(22)" should be added to the paragraph.
53. The Government Vice-Chairperson and Shipowner Vice-Chairperson agreed to those amendments.
54. Paragraph 5 was adopted, as amended.

Proposed paragraph 6

55. The Shipowner Vice-Chairperson expressed concern that stating in absolute terms that the Guidelines were not legally binding seemed to leave the possibility of not applying them wide open. The term "aspirational" should be replaced by "recommendatory". States that were party to the MLC, 2006, were obliged to take the Guidelines into consideration.

56. The Seafarer Vice-Chairperson agreed that referring to the guidelines as “aspirational” left a significant loophole for parties to fail to take responsibility in the settlement of seafarer abandonment cases.
57. The Secretary-General of the meeting (ILO) recalled that paragraph 4 described the Guidelines as a “reference tool of principles”. It was important to make a clear statement on the legal status of the Guidelines, and to stipulate that they were not subject to the supervisory mechanisms that oversaw the application of legally binding instruments. The words “are aspirational in scope” could be deleted. She pointed out that proposed paragraph 8 of the draft Guidelines stated that “nothing set out in these Guidelines should be understood as lowering the protection afforded by existing international labour standards, and other standards.”. The Guidelines were intended to go above and beyond existing standards.
58. The Seafarer Vice-Chairperson proposed moving proposed paragraph 8 to become the first sentence of paragraph 6. He agreed that “are aspirational in scope” should be deleted. For the sake of consistency, he also suggested replacing “IMO agreements and policies” with “IMO frameworks and agreements” in line with the amendments to paragraph 5.
59. The Shipowner Vice-Chairperson and the Government Vice-Chairperson agreed.
60. Paragraph 6 was adopted, as amended.

Proposed paragraph 7

61. The Seafarer Vice-Chairperson said that “2018” should be replaced by “2022”, to keep the Guidelines up to date with the most recent amendments to the MLC, 2006.
62. The Shipowner Vice-Chairperson and Government Vice-Chairperson agreed.
63. The Seafarer Vice-Chairperson suggested that paragraph 7 might be an appropriate place in the Guidelines to encourage ratification of the MLC, 2006.
64. The JTWG agreed to add a final sentence to the paragraph to read “All ILO Members are encouraged to ratify and effectively implement the MLC, 2006”.
65. Paragraph 7 was adopted, as amended.

Proposed paragraph 8

66. In the light of the discussion on paragraph 6, paragraph 8 was deleted.

Proposed paragraph 9

67. A Shipowner representative from the United Kingdom said that it would be preferable to simply reference the ILO Declaration on Fundamental Principles and Rights at Work, (1998), as amended in 2022 rather than enumerate each aspect thereof; there was no evidence of child labour issues in relation to seafarer abandonment and it was therefore unnecessary and misleading to draw attention to the matter.
68. The Seafarer Vice-Chairperson said that, given the standardized nature of the language of the paragraph and the importance attached to the fundamental principles and rights at work in the international framework section of the Guidelines, his group preferred the original draft.
69. The Government Vice-Chairperson also preferred the original draft.
70. The Shipowner Vice-Chairperson suggested adding, at the end of the paragraph, a footnote referencing the ILO Declaration on Fundamental Principles and Rights at Work.

71. It was so agreed.
72. Paragraph 9 was adopted, with the addition of the footnote.

Proposed paragraph 10

73. The Shipowner Vice-Chairperson said that flag States and port States had different responsibilities with respect to inspection and should be addressed separately. The five-year validity of the maritime labour certificate should be considered, given its impact on inspection.
74. The Seafarer Vice-Chairperson said that while he could accept the text as presented by the Office, he could also agree to split the paragraph into two statements.
75. The Government Vice-Chairperson said that his group preferred the original text as presented by the Office.
76. The Chairperson suggested replacing “Flag States and port States” with “All States” and inserting “within their respective frameworks” after “labour conditions”.
77. Paragraph 10 was adopted, as amended.

Proposed paragraph 11

78. The Seafarer Vice-Chairperson said that “Flag States and port States” should be replaced by “All States”, in line with the amendment to the previous paragraph.
79. The Government representative of the United Kingdom proposed deleting the word “simply” before “exchange” in the second sentence.
80. Paragraph 11 was adopted, as amended.

Purpose

Proposed paragraph 12

81. The Shipowner Vice-Chairperson said that his group wished to add a reference to “labour-supplying States”, as well as port States and flag States.
82. The Seafarer Vice-Chairperson said that restricting the Guidelines to port and flag States limited their scope by excluding other duty holders and stakeholders, such as labour-supplying States. Rather than adding to the list, his group proposed deleting “for port State and flag State authorities”. He requested clarification with regard to the definition of the term “duty holders” and whether it was commonly used in the ILO context.
83. The Executive Secretary (ILO) said that the term “duty holders” had been introduced by the IMO correspondence group. The meeting could decide whether to use it or not.
84. The Government Vice-Chairperson said that his group had discussed the possible inclusion of “labour-supplying States” and the definition of duty holders, and had considered whether the words “where duty holders have failed to do so” could be deleted, since abandonment, by definition, involved the failure of duty holders to resolve the situation. The group had, however, agreed to maintain the text as proposed by the correspondence group.
85. The Government representative of Indonesia, supported by the Government representative of France, added that the Guidelines should specifically address how to deal with abandonment in the event that duty holders were unable to uphold their obligations. Duty holders were defined in proposed paragraph 14.

86. The Shipowner Vice-Chairperson said that his group could agree to deleting the reference to “port State and flag State authorities” and would withdraw its amendment to include “labour-supplying States”. Abandonment only occurred when there was a failure on the part of duty holders to uphold their obligations. His group would therefore prefer to delete “where duty holders have failed to do so”. The words “of seafarers” should be added after “abandonment”, to make it clear that the Guidelines referred to the abandonment of seafarers, not the abandonment of vessels.
87. The Seafarer Vice-Chairperson agreed to those proposals, which would make the paragraph clearer and more concise.
88. The Government representative of the Marshall Islands also supported those proposed amendments. The Government Vice-Chairperson added that the Government group as a whole could accept the proposals.
89. Paragraph 12 was adopted, as amended.

International framework

Proposed paragraph 13

90. The Shipowner Vice-Chairperson suggested that, since the frequently asked questions (FAQ) accompanying the MLC, 2006, were not legally binding, they should be moved from the list in proposed paragraph 13 to a separate paragraph or referred to in a footnote.
91. The Seafarer Vice-Chairperson pointed out that the section was entitled “international framework”; there was no specification that the texts listed should be legally binding. The FAQ seemed well placed. He proposed adding the words “The FAQ are not legally binding.” at the beginning of the explanatory footnote on the FAQ.
92. The Shipowner Vice-Chairperson and the Government Vice-Chairperson agreed.
93. The Government Vice-Chairperson suggested adding “and resources” to the subheading, for the sake of clarity.
94. The Seafarer Vice-Chairperson and the Shipowner Vice-Chairperson agreed.
95. The Seafarer Vice-Chairperson considered that the IMO Convention on Facilitation of International Maritime Traffic, 1965, as amended (FAL Convention) should also be included in the list, to avoid giving the impression that the Guidelines would only apply to parties to the MLC, 2006. The ILO Forced Labour Convention, 1930 (No. 29), and the 2014 Protocol thereto, as mentioned in the Preamble to the MLC, 2006, should also be included in the list. The situation of abandoned seafarers, who were required by port States to remain on board the ship, working to maintain the vessel, without pay or repatriation and without provision of food or fuel, was tantamount to forced labour. When referring to the MLC, 2006, specific mention should be made of Article V, paragraph 7 (no more favourable treatment); it was imperative to recall that seafarers abandoned on any vessel must be repatriated, not just those on vessels covered by a Maritime Labour Certificate. Footnote 1, which drew attention to specific regulations and standards of the MLC, 2006, should also recall Article III (fundamental rights of seafarers) and Article V, paragraph 7 (no more favourable treatment).
96. While the Shipowner Vice-Chairperson said that his group could agree to adding the FAL Convention to the list, the Government Vice-Chairperson, supported by the Government representatives of Indonesia and the United Kingdom said that the Government group would need further time to consider the proposal, and requested information on the application of the Convention in cases of abandonment.

97. The Government representative of the United Kingdom cautioned that the definition of “shipowner” in the FAL Convention differed from that in the MLC, 2006, which could be problematic if both were included as reference points for the Guidelines.
98. The Secretary-General of the meeting (IMO) said that while the FAL Convention did not specifically address abandonment, section 3, Standard 3.10 and 3.10.2 of the Annex to the Convention referred to the repatriation of seafarers and seafarer transits in and out of ports for crew changes. The definition of “shipowner” in the FAL Convention indeed differed from that in the MLC, 2006, although that difference should not pose problems in the context of the Guidelines.
99. The Seafarer Vice-Chairperson agreed to include the FAL Convention in the list of texts comprising a contextual framework for the Guidelines.
100. The Government representative of Kenya pointed out that the application of the FAL Convention could be problematic for some States; in Africa, for example, it was common to deal with shipowners through agencies, rather than directly, which aligned with the definition in the MLC, 2006.
101. The Shipowner Vice-Chairperson said that including the FAL Convention would be logical; the Convention regulated the arrival, stay and departure of seafarers, and should be borne in mind in the context of the Guidelines.
102. Following informal discussions and receipt of further information from the IMO on the application of the FAL Convention, the Government Vice-Chairperson said that his group could agree to the inclusion of the FAL Convention in the list of documents in paragraph 13.
103. Regarding forced labour, a Shipowner representative from the United Kingdom pointed out that ILO Convention No. 29 was included de facto in the scope of the MLC, 2006, along with other fundamental Conventions. She questioned whether it should be mentioned specifically in the list in paragraph 13, or whether it would be preferable to recall the Articles of the MLC, 2006, that referred to those instruments.
104. The Seafarer Vice-Chairperson underscored that the Guidelines should highlight the fact that the abandonment of seafarers could quickly become a situation of forced labour. Specific reference should be made to Convention No. 29 and its 2014 Protocol.
105. The Secretary-General of the meeting (ILO) said that forced labour was a crucial issue for the ILO, as were the other fundamental principles and rights at work, all of which had been mentioned specifically in paragraph 9 of the draft Guidelines, and all of which must be implemented by all ILO Member States, irrespective of their ratification status. Consideration might therefore be given to including the ILO Declaration on Fundamental Principles and Rights at Work in the list.
106. The Seafarer Vice-Chairperson said that while he did not object to including the ILO Declaration on Fundamental Principles and Rights at Work in the list, the Declaration referred to five instruments, all of which were indisputably important, but some of which were more relevant than others to the situation of abandoned seafarers. Specific mention should therefore also be made of ILO Convention No. 29 and its Protocol.
107. The Shipowner Vice-Chairperson agreed to add ILO Convention No. 29 to the list to emphasize the importance of preventing situations of forced labour when seafarers were abandoned.
108. The Government Vice-Chairperson, supported by the Government representatives of Kenya and Indonesia, preferred to include the ILO Declaration on Fundamental Principles and Rights at Work, and not to single out forced labour. Including both would constitute unnecessary duplication.

- 109.** The Government representative of the United Kingdom suggested listing each of the Conventions that comprised fundamental principles and rights at work.
- 110.** The Shipowner Vice-Chairperson said that his group could support the inclusion in the list of both the ILO Declaration on Fundamental Principles and Rights at Work and ILO Convention No. 29. While he conceded that it constituted a certain degree of duplication, forced labour should be highlighted, and the other fundamental principles and rights should not be excluded.
- 111.** The Secretary-General of the meeting (ILO) said that there was a golden rule at the ILO that the fundamental principles and rights at work were interrelated, inseparable and mutually supportive. Singling out one would give the wrong impression. There was, however, no harm in listing the Declaration, while also drawing particular attention to forced labour by also referring specifically to ILO Convention No. 29.
- 112.** It was so agreed.
- 113.** The Shipowner Vice-Chairperson and the Government Vice-Chairperson supported the Seafarers' proposal to add references to Article III and Article V, paragraph 7 to the list of relevant provisions in footnote 1. The Government Vice-Chairperson also wished to add a reference to Standard A1.4, paragraph 5(c)(vi).
- 114.** It was so agreed.
- 115.** Paragraph 13 was adopted, as amended.

Application

Proposed paragraph 14

Proposed chapeau

- 116.** The Government Vice-Chairperson proposed that, since the Guidelines were non-binding, the chapeau should read "These Guidelines are addressed to", rather than "apply to".
- 117.** The Seafarer Vice-Chairperson and the Shipowner Vice-Chairperson agreed.
- 118.** The chapeau was approved, as amended.

Proposed clause (a)

- 119.** The Shipowner Vice-Chairperson said that clause (a) referred to two separate entities: shipowners and financial security providers. It should therefore be split into two clauses. Clause (a) should simply read, "Shipowners;". Financial security providers should be the subject of a new clause after clause (a).
- 120.** The Seafarer Vice-Chairperson and the Government Vice-Chairperson agreed.
- 121.** Clause (a) was approved, as amended.

Proposed new clause after clause (a)

- 122.** The Seafarer Vice-Chairperson suggested using the wording of the second part of clause (a) as originally drafted but wished to delete the reference to the MLC, 2006, since IMO resolution A.930(22), which dealt with financial security, was equally relevant. The clause would thus read, "those who provide financial security to enable shipowners to meet their obligations to seafarers;".

- 123.** The Shipowner Vice-Chairperson agreed to delete the reference to the MLC, 2006. He expressed concern that “enable shipowners to meet their obligations” would create a loophole whereby no financial security would be provided if the shipowner no longer existed. His group therefore proposed that the clause should read, “those who provide financial security related to shipowner obligations;”.
- 124.** The Seafarer Vice-Chairperson agreed.
- 125.** The Government Vice-Chairperson expressed concern that in the event that shipowners were no longer present, governments were called on to address the situation of abandoned seafarers and had to use taxpayers’ money to do so. Governments must be able to recover those funds from somewhere. The paragraph, in its current drafting, did not take account of that situation.
- 126.** The Shipowner Vice-Chairperson said that the financial security provided for in the MLC, 2006, Standard A2.5.2 was very specific. The Standard clearly provided for direct access to financial security for the remuneration of seafarers, without any intermediary involved. The clause should be as clear and simple as possible on the matter. If governments made contributions beyond the scope of A2.5.2, there were indeed means of recuperating those funds, including, for example through the courts or auctioning off the vessel.
- 127.** The Government Vice-Chairperson said that his group could accept the clause as proposed by the Shipowners’ group, provided that the Guidelines included a provision on the right of the State to recover any funds spent on meeting the needs and upholding the rights of abandoned seafarers.
- 128.** Clause (a) *bis* was approved, as amended.

Proposed clause (b)

- 129.** The Shipowner Vice-Chairperson and the Government Vice-Chairperson agreed with proposed clause (b).
- 130.** The Seafarer Vice-Chairperson said that it should be clear that the clause applied to all flag States, not just those parties to the MLC, 2006. His group therefore wished to add “All” before “flag states”, and to insert “including those” before “, which are responsible”, to ensure that the clause was read beyond the scope of the MLC, 2006.
- 131.** The Shipowner Vice-Chairperson and the Government Vice-Chairperson agreed.
- 132.** Clause (b) was approved, as amended.

Proposed clause (c)

- 133.** The Executive Secretary (ILO) presented changes proposed by the Office to bring the Guidelines into line with recent amendments to the MLC, 2006, thus taking account of the new paragraph 9 that had been added to Standard A2.5.1 on repatriation.
- 134.** The Shipowner Vice-Chairperson pointed out that the term “territory” should be understood to mean “territorial waters”. His group wished to add “All” before “port States” and to insert “including those”, before “which are responsible”, in line with the preceding amendments to clause (b).
- 135.** The Seafarer Vice-Chairperson and the Government Vice-Chairperson agreed.
- 136.** Clause (c) was approved, as amended.

Proposed clause (d)

137. The Executive Secretary (ILO) presented footnotes included by the Office in clause (d), which were intended to spark a discussion on the possibility of including the criterion of residence, as well as nationality, in line with certain provisions of the MLC, 2006.
138. The Shipowner Vice-Chairperson said that, in line with previous amendments, the word "All" should be added before "States" at the beginning of the clause. The words "a national" should be replaced by "nationals".
139. The Seafarer Vice-Chairperson agreed with those proposals and added that "including" should be inserted before "as required by the MLC, 2006". He suggested that "and/or residents" should be inserted after "nationals".
140. The Government representative of the United Kingdom suggested using the same wording as in Regulation 5.3 of the MLC, 2006, to add, after "are nationals", the words "or are resident or are otherwise domiciled in its territory". The Government representative of Indonesia requested clarification in that regard, given that Regulation 5.3 referred to social security and other matters, but did not refer to repatriation.
141. The Secretary of the Shipowners' group referred to the case of the Kiribati seafarers, 200 of whom had been abandoned abroad by their country of nationality during the COVID-19 pandemic and had been stuck in dire conditions for two years, unable to return home. The Guidelines must refer to the responsibility of countries of nationality to bring home their abandoned seafarers.
142. The Chairperson pointed out that, since the Guidelines were not legally binding, the language "endeavour to facilitate repatriation" should be acceptable to all parties.
143. It was so agreed.
144. Clause (d) was approved, as amended.

Proposed new clause after clause (d)

145. The Executive Secretary (ILO) suggested that the JTWG might wish to consider adding a new subparagraph on the State in which the relevant seafarer recruitment service operated.
146. The Seafarer Vice-Chairperson agreed and said that the States in which recruitment and placement services operated were additional stakeholders that should also be included in the new subparagraph.
147. The Shipowner Vice-Chairperson asked whether recruitment and placement services were within the scope of the paragraph.
148. The Chairperson confirmed that recruitment and placement services had a responsibility to protect seafarers, and would be appropriately included in the list of stakeholders in paragraph 14.
149. The Shipowner Vice-Chairperson asked whether it should be specified that the clause would only apply to recruitment and placement services in States bound by the MLC, 2006.
150. The Chairperson said that the system of protection only applied under the MLC, 2006, but the Guidelines were applicable to all, irrespective of their MLC, 2006, ratification status.
151. The Secretary of the Shipowners' group said that seafarers were often recruited by unscrupulous agents in foreign States that were not parties to the MLC, 2006. Those States should be taken into account in the clause.

152. The Government Vice-Chairperson agreed. His group had been concerned that recruitment services had not been included in the original scope of the application of the Guidelines, and the proposed new clause met those concerns.
153. The Government representative of Belgium pointed out that the recruitment and placement services themselves, as well as the States in which they operated, were relevant stakeholders. She proposed that the clause should read “recruitment and placement services and the States in which they operate;”.
154. The Shipowner Vice-Chairperson wished to insert “responsible for placing seafarers on board ships” after “recruitment and placement services”.
155. Clause (d) *bis* was approved.

Proposed clause (e)

156. The Seafarer Vice-Chairperson said that, in the context of tripartite discussions, the clause should refer not only to “other stakeholders” but to “social partners and other stakeholders”. At the end of the clause, “process” should be replaced by the words, “resolution of seafarer abandonment cases”.
157. The Shipowner Vice-Chairperson agreed with those proposals.
158. The Government representative of the United Kingdom, supported by the Government representative of Indonesia, proposed replacing “social partners and” with “seafarers, seafarers’ and shipowners’ organizations concerned and”. It was particularly important to include seafarers; their abandonment was the subject of the Guidelines and their involvement in the resolution of cases that pertained to them was essential.
159. The Shipowner Vice-Chairperson said that “representatives of” should be inserted before “seafarers’ and shipowners’ organizations”. The clause would thus read, “seafarers, representatives of seafarers’ and shipowners’ organizations concerned and other stakeholders who are able to contribute to the resolution of seafarer abandonment cases.”.
160. It was so agreed.
161. Clause (e) was approved, as amended.
162. Paragraph 14, as a whole, was adopted, as amended.

Definition

Proposed paragraph 15

163. The Shipowner Vice-Chairperson said that care should be taken with the use of the words “should” and “shall” in the context of Guidelines, which were not binding. In the case of paragraph 15, his group proposed replacing “According to the MLC, 2006,” with “The MLC, 2006 states that” and then putting the rest of the paragraph in inverted commas to indicate that it was a direct quote from the Convention.
164. The Government Vice-Chairperson agreed. While the use of “shall” and “should” ought to be avoided in guidelines, in the case of a direct quote, the language of the MLC, 2006, should be replicated faithfully.
165. The Seafarer Vice-Chairperson said that consideration should be given to footnote 7, containing the Secretariat’s proposal to include a reference to the MLC, 2006. It was important to note that

the definition applied regardless of whether States had ratified the MLC, 2006. At the end of clause (a), the word “or” should be added, to align the wording with that of the MLC, 2006.

- 166. The Shipowner Vice-Chairperson, referring to footnote 8, said that the word “universally” was too ambitious and should be deleted. He pointed out that not all States party to the MLC, 2006, had ratified all of the amendments on abandonment.
- 167. It was so agreed.
- 168. Paragraph 15 was adopted, as amended.

Principles and responsibilities

Proposed paragraph 16

- 169. The Shipowner Vice-Chairperson said that the paragraph could be simplified. His group proposed deleting “making arrangements for repatriation and covering the cost of”. The words “under their seafarer employment agreements” should also be deleted. The words “other requirements under” should be inserted before “the MLC, 2006”. After “the MLC, 2006”, the rest of the paragraph, “as well as provision of essential needs, including medical care.”, should be deleted.
- 170. The Seafarer Vice-Chairperson disagreed; the Guidelines were supposed to be broad in their description of obligations and responsibilities. While efforts to simplify the text were welcome, the proposed amendments would reduce the detail regarding the responsibilities of those who would be implementing the Guidelines. The Guidelines should go beyond the MLC, 2006. With regard to medical care, shipowners should provide medical care not only until repatriation but until full recovery.
- 171. The Government Vice-Chairperson agreed with the Seafarers’ group; while the Guidelines should be short, clear and concise, care must be taken not to oversimplify them. The reference to arranging for and covering the cost of repatriation should be maintained. Continual referencing of the MLC, 2006, would make the Guidelines too restrictive. The Government representative of Indonesia, supported by the Government representative of the Philippines, added that in the context of a global pandemic, the specific reference to medical care was particularly important.
- 172. The Shipowner Vice-Chairperson said that the section on principles and responsibilities referred to pre-existing provisions. Recommendations would be made in detail later in the Guidelines.
- 173. The Secretary of the Shipowners’ group added that the 2022 amendments to the MLC, 2006, stipulated that medical care was the responsibility of the port State authority in the event that the shipowner was no longer present. The words “requirements under the MLC, 2006” would strengthen the provision of the Guidelines on medical care by providing greater clarity.
- 174. The Government observer from Norway pointed out that the paragraph at hand addressed the responsibilities of shipowners, not port States. His Government supported the original draft.
- 175. The Seafarer Vice-Chairperson suggested replacing “the liable entity” with “liable”. The subsequent details should be maintained.
- 176. It was so agreed.
- 177. The Seafarer Vice-Chairperson said that the principles and responsibilities section of the Guidelines should be broader than the scope of the MLC, 2006. The shipowner’s liability to repatriate was not only codified in seafarer employment agreements under the MLC, 2006, but also more widely in seafarers’ contracts of employment. The words “or contracts of employment” should therefore be added after “seafarer employment agreements”.

- 178.** It was so agreed.
- 179.** The Government representative of the Marshall Islands suggested deleting the reference to requirements under the MLC, 2006. The reference to the provision of medical care at the end of the paragraph should be maintained.
- 180.** The Shipowner Vice-Chairperson, Seafarer Vice-Chairperson and Government Vice-Chairperson agreed.
- 181.** Paragraph 16 was adopted, as amended.

Proposed paragraph 17

- 182.** The Shipowner Vice-Chairperson said that, with regard to financial security, there were three different categories of vessels that flag States should take into consideration: those covered by the MLC, 2006, those covered by the no more favourable treatment clause, and those covered by IMO Assembly resolution A.930(22). The paragraph should be redrafted to reflect those three sets of circumstances.
- 183.** The Seafarer Vice-Chairperson agreed that the paragraph needed to be redrafted. Flag States needed a mechanism in place for checks, and a reporting and investigation mechanism to address cases whereby shipowners had not complied and financial security was not in place. Furthermore, under port State control, the validity of financial security certificates should be checked rather than relying on maritime labour certificates, which were valid for five years. The reference to the MLC, 2006, should be broadened; IMO Assembly resolution A.930(22) referred to the need to verify financial security.
- 184.** The Executive Secretary (ILO) drew attention to footnote 10, which contained a suggestion from the Office to consider including in the Guidelines an indication of the recommended periodicity of checks, with a suggestion that flag States should be encouraged to “check on an annual basis the validity of the required financial security”.
- 185.** The Government Vice-Chairperson said that the COVID-19 pandemic had highlighted the problem of absence of financial security required by the MLC, 2006. If financial security checks were subsumed into the five-yearly verification of maritime labour certificates, lapsed financial insurance could go unnoticed. Consideration should, therefore, indeed be given to the required periodicity of financial security verification; however, different governments had different circumstances to take into account. The Guidelines should allow for flexibility, rather than prescribing annual verification.
- 186.** The Chairperson suggested “on a regular basis” rather than “annual” verification. The Government representative of France agreed.
- 187.** At the request of the Shipowner Vice-Chairperson, the Government representatives of the Marshall Islands, Greece, Panama, Liberia and France described how their authorities handled situations in which shipowners did not have valid financial security. In the Marshall Islands, discussions would take place with the shipowner; failure to obtain the requisite financial security for registration of the vessel would result in the flag being withdrawn. Similarly in Panama, failure to rectify a lapse in financial security guarantees would result in the deregistration of the vessel. In Greece, financial security providers were required to inform the competent authority if a certificate had expired or been withdrawn. In Liberia, when shipowners renewed other liability insurance papers, they were obliged to provide a financial security certificate. Failure to do so within a certain period would result in the invalidation of their maritime labour certificate. In France, checks were conducted during flag State inspections under the MLC, 2006, which took

place every two-and-a-half years. Those checks comprised a combined inspection looking into 16 aspects of certification, which could not be conducted separately.

188. The Seafarer Vice-Chairperson pointed out that the financial security system should be in place in all States, not just those party to the MLC, 2006. The word “meeting” before “the requirements of the MLC, 2006” should therefore be replaced by “including that which meets”. Lack of a valid financial security certificate should trigger the withdrawal of the maritime labour certificate by the flag State. A sentence should be added at the end of the paragraph to the effect that flag States were encouraged to check on a regular basis the validity of the required financial security certificate during the period of validity of the relevant flag State certification.
189. A Shipowner representative from the United States of America said that when negotiating the 2014 amendments to the MLC, 2006, a discussion had taken place on whether flag States should be required to issue certificates attesting that financial security was in place. The administrative burden had been deemed too great. As a result, ships were continuing to trade without valid financial security insurance. The problem of ensuring financial security for abandoned seafarers could not be rectified unless flag States were willing to answer the question why they allowed that situation to continue.
190. Proposed paragraph 17 was redrafted by the Office in the light of the foregoing and subsequently presented to the JTWG for its consideration.
191. The Shipowner Vice-Chairperson wished to replace “on a regular basis” with “on an annual basis”. He also proposed adding two sentences at the end of the paragraph to read, “IMO Assembly resolution A.930(22) recommends that flag States ensure that there is a financial security system in place as described in the operative text of the resolution. Port States are encouraged to pay particular attention to the period of validity of the financial security when checking the relevant documents during inspections.” Footnote 15 should be removed as a logical consequential amendment.
192. The Seafarer Vice-Chairperson welcomed and supported those proposals.
193. The Government Vice-Chairperson said that his group did not wish to stipulate that verification should be annual, but rather wished to allow a degree of flexibility for flag States to use their discretion. “Annual” was too restrictive; the Government group would prefer “on a regular basis”, as proposed by the Office. Some governments conducted checks more frequently than once a year, while others did not have the resources to perform annual checks.
194. The Secretary-General of the meeting (ILO) recalled that the Guidelines were not binding, and a degree of flexibility in their application was therefore inherent in their nature. They should, however, be easily readable.
195. The Shipowner Vice-Chairperson said that leaving too much leeway with regard to the time frame for checking financial security documents would not improve the situation for seafarers. The use of “encouraged” should offer sufficient flexibility. He suggested “on at least an annual basis”.
196. The Seafarer Vice-Chairperson and the Government Vice-Chairperson agreed.
197. The Government Vice-Chairperson said that, with regard to the new sentence on port States proposed by the Shipowners’ group, his group wished to delete “period of” before “validity”. A further sentence should be added to read, “States in which the relevant recruitment and placement services operate are encouraged to regularly verify that the insurance carried by the recruitment and placement services concerned is still in place”.
198. The Shipowner Vice-Chairperson said that, with regard to port State verification of financial security, the MLC, 2006, referred to “period of validity”.

- 199.** The Government representative of Greece said that port State control officers should not be required to judge whether the duration of the validity of the certificate was acceptable or not. They should simply be required to establish whether a valid certificate was held. The words “period of” should therefore be deleted.
- 200.** The Shipowner Vice-Chairperson reiterated that under the MLC, 2006, port States were required to check the “period of” validity, not the validity, of financial security certificates. A Shipowner representative from the United States added that the validity of the insurance was relevant for the flag State. Checking the validity of insurance documents was outside the scope of competence of port State control authorities.
- 201.** The Secretary of the Shipowners’ group further drew attention to the MLC, 2006, Appendix A2-I(h), which referred to certificates of financial security and their “period of validity”.
- 202.** The Seafarer Vice-Chairperson pointed out that Appendix A2-I(h) should be read in conjunction with A2-I(i), which referred to financial security in line with the requirements of Standard A2.5.2. Furthermore, the international framework set out in paragraph 11 of the current Guidelines referred to the Guidelines for port State control officers carrying out inspections under the MLC, 2006 (Second revised edition, 2021), which stated that for all ships, port State control officers were required to check “relevant documents confirming that financial security has been provided”. For ships required to be certified, they were required to check “the valid financial security certificate and other documentary evidence provided by the financial security provider”. The term “period of validity” was therefore too restrictive.
- 203.** The Secretary of the Shipowners’ group said that if the words “, in accordance with MLC, 2006, Appendix A2-I and the ILO Guidelines for port State control officers carrying out inspections under the MLC, 2006 (Second revised edition, 2021)” were added after “during inspections”, all of the relevant information would be included. The words “period of” could then be deleted.
- 204.** It was so agreed.
- 205.** The Shipowner Vice-Chairperson, regarding the new sentence proposed by the Government group, said that the States in which recruitment and placement services operated were under obligation to verify that these services had valid insurance; encouraging States to uphold that obligation was not sufficient. The words “are encouraged” could be replaced by “are reminded of their obligation”.
- 206.** The Secretary-General of the meeting (ILO) agreed; the Guidelines should not lower pre-existing obligations.
- 207.** The Seafarer Vice-Chairperson considered the new sentence proposed by the Government group to be out of place in the current paragraph. If it was to be maintained, perhaps as a new paragraph after paragraph 17, the word “insurance” should be replaced by “system of protection” in line with the terminology used in the MLC, 2006.
- 208.** Paragraphs 17 and 17 *bis*, as amended, were adopted.

Proposed paragraph 18

Proposed chapeau

- 209.** The Shipowner Vice-Chairperson said that the chapeau should specify that the “obligations above” referred to cases of abandonment.
- 210.** The Seafarer Vice-Chairperson suggested “the obligations set out in paragraph 16 above”.

211. The chapeau was approved, as amended.

Proposed clause (a)

212. The Government representative of the United Kingdom wished to replace the word “ability” with “entitlement”.

213. The Seafarer Vice-Chairperson and Shipowner Vice-Chairperson agreed.

214. Clause (a) was approved, as amended.

Proposed clause (b)

215. The Shipowner Vice-Chairperson said that the MLC, 2006, Standard A.2.5.1 paragraph 5, requiring flag States to provide for the repatriation of seafarers if shipowners failed to do so, should be clearly referenced and quoted. Equivalent provisions from other instruments, including IMO resolution A.930(22), should also be included, to broaden the scope of the clause beyond the MLC, 2006.

216. The Seafarer Vice-Chairperson agreed. The wording “State of which the seafarers are a national” (and all such references throughout the Guidelines) should be revised in line with paragraph 14(d) for consistency. The hierarchy of responsibility should be reflected in order: shipowners, flag States, port States, labour-supplying States. If they had failed to check the validity of the financial security certificate upon arrival of the vessel, port States had a responsibility towards seafarers subsequently abandoned on that vessel. The words “the port State and from” should be inserted after “may request assistance from”.

217. The Government representative of the United Kingdom said that “to” should be inserted before “assist” in the last line of the clause.

218. Clause (b) was approved, as amended.

Proposed clause (c)

219. The Shipowner Vice-Chairperson said that the clause should be redrafted, since it referred to “vessels” rather than seafarers. Seafarers must be the priority at all times in the Guidelines. Over recent years, cases had been observed in which seafarers had not been let off abandoned vessels for various reasons and had not been repatriated for several months, or in some cases, years. The main issue was removing the seafarers from the abandoned vessel, not the safety and security of the vessel. Seizure of the passports of international crew and forcing them to stay on board was tantamount to forced labour.

220. The Seafarer Vice-Chairperson agreed that the paragraph should clearly address the needs of seafarers and the vessels on which they worked. The actions required by port States, as set out in subclause (i), gave the impression that the port State was somehow responsible for deeming a vessel to have been abandoned. The rights and obligations of seafarers and their representatives should be included in the subclause. With regard to subclause (ii), keeping in mind the discussion on financial security certificates, port States should be required to check the validity of the financial security certificate before allowing vessels into port. It should also be clearly stipulated that the financial security provider is the entity responsible for payment of wages to abandoned seafarers.

221. The Secretary-General of the meeting (IMO) explained that when the IMO correspondence group had drafted the paragraph, it had intended to ensure that seafarers had access to everything they

needed on board, such as fuel, electricity, food and drinking water while they remained aboard; the vessel would need to be maintained and the abandoned seafarers would be living on board.

222. A representative of the Shipowners from the United Kingdom said that while abandoned seafarers would of course require adequate living conditions on board the vessel, the overriding intention was to remove them from the vessel as swiftly as possible.
223. At the suggestion of the Seafarer and Shipowner Vice-Chairpersons, the JTWG agreed to establish an informal drafting group to revise the proposed clause.
224. The revised proposed clause (c), comprising a list of seven minimum actions to be taken by port States to facilitate the resolution of abandonment cases, was subsequently presented to the JTWG.
225. The Seafarer and Shipowner Vice-Chairpersons endorsed the revised text as presented by the drafting group.
226. The Government Vice-Chairperson said that in subclause (i) his group wished to insert the word “unjustified” before “reason”. The words “as necessary,” should replace “if necessary”.
227. The Seafarer Vice-Chairperson expressed concern with regard to the addition of the word “unjustified”.
228. The Chairperson asked whether the Government group could provide examples of a justified reason for not allowing the repatriation of abandoned seafarers.
229. The Government representative of Poland said that while governments were committed to the expeditious repatriation of abandoned seafarers, if an abandoned seafarer fell foul of the local law in the port State, repatriation might not be appropriate. The subclause as currently drafted had no flexibility.
230. The Shipowner Vice-Chairperson pointed out that the Guidelines were not legally binding and were, by their very nature, flexible. There were multiple examples in practice of legal loopholes having been found and exceptions made by States to justify refusal to repatriate seafarers, which had caused those seafarers and members of their families severe trauma and distress. The Guidelines should not leave open any such possibility. His group could not accept the insertion of the word “unjustified”.
231. The Seafarer Vice-Chairperson echoed those concerns and said that the seafarers in question had been abandoned, not detained on grounds of being in conflict with the local law.
232. The Chairperson asked whether deleting the words “and not refuse for any reason” would meet the concerns of all parties.
233. The Shipowner Vice-Chairperson said that his group could, in a spirit of compromise, accept the deletion of the words “for any reason”.
234. It was so agreed.
235. The Government representative of Belgium expressed concern regarding the reference to the use of local custodians or guardians; if they were not classified as seafarers, they would not be covered by the provisions of the MLC, 2006. The Belgian Government could not accept the possibility of Belgian citizens being forced to board abandoned vessels and work under the legislation of the flag State, over which Belgium had no control. Furthermore, the question therefore arose as to which laws would apply to them in the event of the withdrawal of the flag from an abandoned vessel.
236. A Shipowner representative from Switzerland said that in the event of a custodial situation, when the workers concerned were not considered seafarers or covered under the MLC, 2006, those

individuals would be subject to the law of the port State. If the flag was withdrawn, the ship would become stateless and would thus fall under the authority and jurisdiction of the country in which it was found. The seafarers who had been abandoned must not bear the burden for which they were not responsible. Importing a replacement crew simply duplicated the abandonment problem. The use of the words “as necessary” should cover all concerns.

- 237.** The Seafarer Vice-Chairperson endorsed those comments.
- 238.** The Government representative of Belgium said that preventing the import of a replacement crew was not mentioned in the present subclause, the wording of which left open the possibility of non-seafarers from the port State being forced to board a vessel and be subjected to flag State law. Her Government could not accept Guidelines that allowed for that possibility.
- 239.** The Secretary-General of the meeting (IMO) suggested deleting the words “and appropriate subject to the laws of the flag State”.
- 240.** It was so agreed.
- 241.** The Government Vice-Chairperson said that in subclause (iv) his group wished to add the word “immediately” before “inform” at the beginning of the subclause. After the word “territory,” the words “, and the States in which the recruitment and placement services operate,” should be inserted.
- 242.** It was so agreed.
- 243.** The Government Vice-Chairperson wished to add a new subclause (viii) to read “pay particular attention to the validity of the financial security when checking the relevant documents during inspections.”.
- 244.** The Shipowner and Seafarer Vice-Chairpersons said that the issue of checking the validity of financial security documents had already been addressed earlier in the Guidelines and would be ill-placed in the current paragraph, which was addressing measures to be taken when a case of abandonment was already at an advanced stage.
- 245.** The proposal to add a new subclause (viii) was therefore rejected.
- 246.** Clause (c) was approved, as amended.

Proposed clause (d)

- 247.** The Shipowner Vice-Chairperson proposed that the text of proposed clause (d) would be better placed as a new paragraph, after paragraph 18.
- 248.** It was so agreed.
- 249.** Paragraph 18, as a whole, was adopted, as amended.

Proposed new paragraph after paragraph 18

- 250.** At the suggestion of the Shipowner Vice-Chairperson, the text previously proposed as paragraph 18(d) was added as a new paragraph after paragraph 18. The Shipowner Vice-Chairperson said that the word “including” should be inserted before “under the MLC, 2006” at the end of the paragraph.
- 251.** The Government representative of India said that the words “, and States in which the relevant recruitment and placement services operate” should be added after “in their territory”. The word “shall” should be replaced by “should”.
- 252.** It was so agreed.

253. Paragraph 18 *bis* was adopted, as amended.

Procedure

General procedure

Proposed paragraph 19

254. The Shipowner Vice-Chairperson said that the word “authority” should be inserted after “port State” in the second sentence. The word “an” should be inserted before “investigation”. Footnote 22 should not only refer to shipowners’ organizations but also to seafarers’ organizations.
255. The Secretary-General of the meeting (IMO) noted that IMO normally used the term “administration”. The JTWG agreed to use “competent authority” throughout the Guidelines.
256. The Seafarer Vice-Chairperson agreed to those proposed amendments and said that reference should be made to the States in which recruitment and placement services operated. Language should be aligned with that agreed elsewhere in the Guidelines. “Relevant seafarer welfare organizations”, should be added to the list of parties to be notified by the port State of a case of abandonment.
257. The Government representative of the United Kingdom said that “parties involved” should be replaced by “parties concerned”.
258. It was so agreed.
259. The Government representative of the Marshall Islands, supported by the Government representative of Argentina, expressed concern regarding the proposed paragraph; under the MLC, 2006, in the event that a shipowner failed to uphold its duties, the primary responsibility for the seafarers lay with the flag State. The flag State should be the first to be notified of the abandonment situation and should take up the primary responsibility. In practice, notification of abandonment often came from the ITF, not the port State.
260. The Government Vice-Chairperson said that if a port State authority identified a case of abandonment, it must inform the flag State. A clear procedure should be in place to ensure that communication between the port and flag States was timely and efficient to ensure that abandonment cases were registered accurately in the database and would be solved as swiftly as possible.
261. The Seafarer Vice-Chairperson underscored the importance of accurately reflecting the order of events: port State control officers would report to the port State authority, and the port State authority would report to the flag State.
262. The Shipowner Vice-Chairperson, supported by the Government representative of the Marshall Islands, suggested, in the third sentence, replacing “also” with “at the same time”, to avoid any delay in notification of the parties concerned. Electronic communication allowed for multiple parties to be informed simultaneously.
263. The Seafarer Vice-Chairperson wished to replace “any relevant” with “the” before “representatives”.
264. The Secretary of the Shipowners’ group pointed out that the words “representatives of seafarers’ and shipowners’ organizations concerned” should be used, to be consistent throughout the Guidelines with the language of the MLC, 2006.

- 265.** The Government representative of the United Kingdom proposed replacing, in the first sentence, “where the abandonment incident occurred and to the ILO for inclusion in the ILO/IMO Database on reported incidents of abandonment of seafarers.” with “to verify the abandonment case”. After the second sentence, a new sentence should be inserted, to read, “Once this has been verified, the ILO should be informed for inclusion in the ILO/IMO Database on reported incidents of abandonment of seafarers.”. In the final sentence, after “concerned”, the words “of the verified abandonment case” should be inserted.
- 266.** The Secretary of the Shipowners’ group said that those proposed amendments implied that the ITF and welfare organizations were no longer authorized to report cases for inclusion in the database. Including an emphasis on the use of the database was a cause for concern; the database was outdated and not fit for purpose. It must be kept up to date, and must be a living tool for identifying and resolving cases, rather than merely a repository of outdated information. The JTWG’s request to modernize and amend the database should be put to the ILO Governing Body and the IMO Legal Committee. Offers had already been made by the ICS and ITF to assist in upgrading the database and should be taken up.
- 267.** The Seafarer Vice-Chairperson agreed and said that his group would support any efforts to upgrade the database.
- 268.** The Secretary-General of the meeting (ILO) agreed that care should be taken with regard to how the database is referred to in the Guidelines if it was not considered fit for purpose. The JTWG’s concerns would be brought to the attention of the ILO Governing Body through the record of proceedings of the meeting.
- 269.** The Secretary-General of the meeting (IMO) added that recommendations emanating from the JTWG’s meeting would also be transmitted to the IMO Legal Committee.
- 270.** The Seafarer Vice-Chairperson said that he could not agree to the amendments proposed by the Government of the United Kingdom, since they reinforced the idea that the port State was responsible for determining whether a case constituted abandonment and whether it should be entered into the database. Port States had an influence on how quickly cases of abandonment would be resolved, through notification in some instances, but were not the party responsible for determining whether the situation constituted abandonment and should be entered in the database.
- 271.** The amendments proposed by the Government of the United Kingdom were thus rejected.
- 272.** Footnotes 21 and 22 were deleted.
- 273.** Paragraph 19 was adopted, as amended.

Proposed paragraph 20

- 274.** The Seafarer Vice-Chairperson proposed replacing “urge” with “compel” and replacing “or” with “and”. His group wished to delete the words “as soon as practicable” and replace “a reasonable” before “time frame” with “an expeditious”. The word “well-being” should be replaced by “precarious situation”. The words “in accordance with the MLC, 2006” were too vague. Either a full reference should be made to the relevant provision, or the words “in accordance with” should be replaced by “including those provided for in”.
- 275.** The Secretary-General of the meeting (ILO) said that since, in line with paragraph 5 of the Guidelines as agreed by the meeting, the Guidelines as a whole were in line with the MLC, 2006. The reference to the MLC, 2006, could be deleted.
- 276.** It was so agreed.

277. The Secretary of the Shipowners' group wished to add "and the well-being of their families" at the end of the paragraph.

278. Paragraph 20 was adopted, as amended.

Proposed paragraph 21

279. The Seafarer Vice-Chairperson suggested that the first word of the paragraph, "Should", should be replaced by "If" and consequently, "fail" by "fails". If agreed, the same amendments would be required in the subsequent paragraph.

280. The Government Vice-Chairperson and Shipowner Vice-Chairperson agreed.

281. The Chairperson pointed out that "timeline" should be replaced by "expeditious time frame" in line with the amendment to paragraph 20.

282. The Government Vice-Chairperson said that before "take the lead", "will" should be replaced by "should" to avoid the use of prescriptive language in the Guidelines. A similar amendment should be made in paragraph 22.

283. Paragraph 21 was adopted, as amended.

Proposed paragraph 22

284. The Working Party agreed to amend paragraph 22 in line with the amendments made to paragraph 21.

285. Paragraph 22 was adopted, as amended.

Proposed new paragraph after paragraph 22

286. The Shipowner Vice-Chairperson introduced a proposed new paragraph, in line with the format of paragraphs 21 and 22, which referred to the responsibility of labour-supplying States, in line with the 2022 amendments to the MLC, 2006. The paragraph would read, "If the shipowner, the flag State and the port State fail to undertake their responsibilities, the labour-supplying State should take the lead and coordinate with all relevant stakeholders to resolve the case of abandonment of seafarers."

287. Paragraph 22 *bis* was adopted.

Proposed paragraph 23

288. The Shipowner Vice-Chairperson pointed out a consequential amendment from the addition of the new paragraph: after "and/or port State authority", the words "and/or the labour-supplying States" should be added.

289. The Seafarer Vice-Chairperson agreed. He proposed deleting the reference to the MLC, 2006.

290. The Government Vice-Chairperson proposed, in the first sentence, replacing "the seafarers should receive" with "the entities leading on the resolving abandonment cases should provide seafarers with". The word "rapid" should be replaced by "prompt".

291. The Shipowner Vice-Chairperson and Seafarer Vice-Chairperson agreed.

292. Paragraph 23 was adopted, as amended.

Proposed paragraph 24

- 293.** The Shipowner Vice-Chairperson said that “, labour-supplying States” should be inserted after “port State”. The joint ILO/IMO Secretariat had recommended the inclusion of a reference to States in which seafarer recruitment and placement services operated. There were situations in which recruitment and placement services were in a different State to that in which the seafarer was domiciled or was a national. The Secretary of the Shipowners’ group provided an example of such a situation in which seafarers from the Philippines, not covered by Philippines Overseas Employment Administration contracts, were employed by unscrupulous manning agencies located outside the Philippines and therefore fell outside the scope of the MLC, 2006. The States in which those agencies operated must therefore be called on to take some responsibility.
- 294.** The Seafarer Vice-Chairperson said that the intent of the paragraph was unclear. There were two separate scenarios under discussion in one paragraph: one in which there was no financial security cover, and the other in which there was partial financial security cover. The paragraph should be split to address those two scenarios separately. Refusing repatriation pending settlement of a claim could impact whether a seafarer was considered de jure “abandoned”. Forced repatriation must be avoided. Care must also be taken not to allow for a cascading of responsibility, by which if the flag State failed, the port State would be called upon, and if the port State failed, the State of which the seafarer was a national or a resident would be called upon. There was a danger that flag and port States could knowingly renege on their responsibilities, and that States of which seafarers were nationals or residents would be continually left to shoulder the responsibility of repatriation.
- 295.** The Government Vice-Chairperson agreed that the most important thing was to ensure protection for all seafarers. As the flag State with the world’s largest number of ships registered, his Government had gone to great lengths during the COVID-19 pandemic to repatriate over 4,000 seafarers from Panama’s vessels. He thus wished to underscore that responsible flag States had no intention to renege on their obligations to protect seafarers on vessels flying their flag and would not simply pass the problem down the chain of responsibility.
- 296.** Following a discussion in which the Government group proposed several amendments and the Shipowners’ group expressed concern about the cumbersome nature of the paragraph and the lack of clarity, at the suggestion of the Seafarer Vice-Chairperson a drafting group was formed to revise the proposed paragraph.
- 297.** Proposed paragraph 24 was thus redrafted and split into two paragraphs, the first addressing the repatriation of seafarers in situations in which there was no financial security and setting out the potential cascade of responsibility from port, to flag, to labour-supplying States, and the second, in situations in which the financial security was inadequate and seafarers were owed more than four months’ wages.
- 298.** The Shipowner Vice-Chairperson and Seafarer Vice-Chairperson agreed to the proposed revisions.
- 299.** The Government Vice-Chairperson said that the word “expired” in proposed paragraph 24 should be replaced by “ceased” in line with the MLC, 2006.
- 300.** It was so agreed.
- 301.** Paragraphs 24 and 24 *bis* were adopted.

Proposed paragraph 25

- 302.** The Seafarer Vice-Chairperson said that the practicalities of applying paragraphs 25 and 26 as drafted were not realistic. His group therefore proposed capturing the essence of those

paragraphs in a simplified revision to paragraph 25, to read: "All States are encouraged to develop, in consultation with seafarers' and shipowners' representatives, a national Standard Operating Procedure (SOP) in accordance with these Guidelines. Such a procedure should explicitly define the liabilities and obligations of the competent authority and the roles to be played by the various national stakeholders, including the relevant national seafarers' welfare board, shipping agency, seafarers' and shipowners' organizations concerned, seafarer welfare organizations, seafarer recruitment and placement services and other stakeholders involved, referring to the international framework (set out in paragraph 13) as necessary.". Thus, every State should have a clear understanding of how they would resolve cases of seafarer abandonment and how they would involve all parties who would provide assistance in delivering their obligations. Action at national level should be galvanized in all States, to avoid a cascading down the line of responsibilities between States.

- 303.** The Government Vice-Chairperson said that although his group had discussed and prepared amendments to paragraphs 25 and 26, it would be open to considering the revised paragraph proposed by the Seafarers' group, which maintained the spirit of the two original paragraphs.
- 304.** The Shipowner Vice-Chairperson supported the proposal by the Seafarers' group, which gave a clear message and was an elegant solution.
- 305.** The Secretary of the Shipowners' group suggested that "are encouraged to" should be replaced by "should".
- 306.** The Secretary-General of the meeting (ILO) pointed out that "in accordance with these Guidelines" was redundant and should be deleted.
- 307.** The Government representative of the United Kingdom said that separate SOPs would be required for port States and flag States. The Government representative of the Marshall Islands suggested inserting, after "All States" "(in their capacity as both flag and port States)".
- 308.** The Seafarer Vice-Chairperson agreed and said that labour-supplying States should also be included.
- 309.** Paragraph 25, as amended, was adopted.

Proposed paragraph 26

- 310.** In the light of the foregoing, paragraph 26 was deleted.

Proposed paragraph 27

- 311.** The Shipowner Vice-Chairperson said that paragraph 27 on the definition of resolution of cases of abandonment was closely linked to the database, which must be upgraded. Different stakeholders had different understandings of what constituted resolving a case. His group could consider maintaining the paragraph without amendment or incorporation of the text provided in footnotes 25 and 26, provided that there was a common understanding of the need to upgrade the database and a clear recommendation from the JTWG to the ILO Governing Body and the IMO Legal Committee on the need to establish a task force for that purpose.
- 312.** The Seafarer Vice-Chairperson endorsed the comments with regard to updating the database. His group could accept paragraph 27, and wished to maintain footnotes 25 and 26, with the necessary editorial amendments.
- 313.** The Government Vice-Chairperson said that his group wished to see the text from footnote 25 incorporated into paragraph 27, to read, " A case is considered resolved if, and only if, the ILO has received clear advice from the Member State or organization having originally provided the

information that: (i) the totality of the crew has been successfully repatriated; (ii) the totality of all outstanding remuneration and contractual entitlements has been paid and duly received by all crew members;”.

- 314.** The Chairperson pointed out that “the totality of the crew” should be replaced by “all seafarers”.
- 315.** The Secretary of the Shipowners’ group said that in that case, there should be a clear statement in the Guidelines that the term “seafarer” was to be understood as defined in the MLC, 2006, which was a broader definition than the IMO definition of the term. The Seafarer Vice-Chairperson agreed.
- 316.** The Government representative of the United Kingdom wished to insert the words “who have expressed the desire to be repatriated” after “all seafarers”; some seafarers did not wish to be repatriated and the Guidelines must not inadvertently condone forced repatriation.
- 317.** It was so agreed.
- 318.** The Government Vice-Chairperson said that his group also wished to add “and (iii) as well as when all costs incurred in repatriating seafarers have been recovered in the event that the shipowner fails to make arrangements for or to meet the cost of repatriation in accordance with the MLC, 2006.”.
- 319.** The Government representative of Indonesia said that her Government particularly supported that proposal, since it safeguarded against the cascading of responsibilities to labour-supplying States and reassured those States that any contributions they made to the repatriation of seafarers would be recovered.
- 320.** The Shipowner Vice-Chairperson, supported by the Government representative of Liberia, could not agree to the inclusion of the concept of cases remaining open until outlay by States for repatriation of seafarers had been recouped. The abandonment case should be closed when seafarers had been remunerated and repatriated. Recouping of costs by States could continue after the closure of the case.
- 321.** The Seafarer Vice-Chairperson agreed and said that while the issue of recovering costs incurred in the repatriation of seafarers was important and should be included in the Guidelines, it should not be cited as a condition for the closure of abandonment cases.
- 322.** The Chairperson suggested that the matter should be included in the section of the Guidelines on post-resolution.
- 323.** It was so agreed.
- 324.** Paragraph 27 was adopted, as amended.

Special circumstances

- 325.** At the suggestions of the Shipowner Vice-Chairperson, the subheading was deleted.

Proposed paragraph 28

- 326.** The Shipowner Vice-Chairperson said that proposed paragraphs 28 and 29 focused on the abandoned vessel, rather than the seafarers. As currently drafted, paragraph 28 implied that abandoned seafarers could not disembark the vessel, which was tantamount to forced labour and contrary to the spirit of the Guidelines. His group therefore wished to delete paragraphs 28 and 29.

- 327.** The Secretary-General of the meeting (IMO) said that, in certain circumstances, seafarers remained abandoned on vessels pending judicial proceedings, for example with regard to the forfeiture and judicial sale of the vessel to fund their repatriation. Seafarers should be given access to legal counsel if aspects of their abandonment required their participation in legal proceedings. There should also be measures in place to ensure their protection during ongoing legal cases, even when those cases would ultimately contribute to their remuneration or repatriation. Rather than deleting the paragraph, therefore, the JTWG might be advised to revise it, maintaining aspects that were beneficial to seafarers and contributed to the resolution of abandonment cases.
- 328.** The Seafarer Vice-Chairperson welcomed that explanation and said that the paragraph should be retained. He proposed inserting “their contracts of employment and under” before “the MLC, 2006” at the end of the paragraph.
- 329.** The Government representative of the Marshall Islands pointed out that judicial proceedings did not affect States’ obligations towards abandoned seafarers.
- 330.** The Government representative of the United Kingdom shared concerns that the paragraph, as drafted, could be construed as a “get out clause” by which States could avoid repatriating abandoned seafarers. Arresting the vessel was not always beneficial; the vessel might be worthless and while its arrest would be necessary, it would not recover any monies to contribute to seafarers’ remuneration or repatriation. The 2022 amendments to the MLC, 2006, were intended to bring an end to cases in which seafarers were owed more than four months’ wages.
- 331.** The Shipowner Vice-Chairperson did not consider that the Guidelines should be advising on judicial proceedings; they should focus on advice with regard to States’ procedures for repatriating and remunerating abandoned seafarers, irrespective of judicial proceedings potentially ongoing for several years.
- 332.** The Secretary-General of the meeting (IMO) drew the attention of the JTWG to examples of cases where port States had been unaware that they could move to forfeit the vessel and proceed to a judicial sale that could be used to resolve the abandonment case. In one such case, the IMO had spent considerable time educating the port State concerned on its right to do so. Guidance to encourage States to consider that option would therefore be helpful.
- 333.** The Secretary of the Shipowners’ group suggested that a stand-alone document on the matter, issued jointly by the legal departments of the ILO and IMO would be more helpful than including it in the current Guidelines, the focus of which should be the expeditious resolution of abandonment cases.
- 334.** The Secretary-General of the meeting (IMO) suggested, also on behalf of the Secretary-General of the meeting (ILO), replacing “During resolution of cases of abandonment of seafarers through judicial proceedings,” with “Should judicial proceedings be required to resolve an abandonment case,”. The final sentence of the paragraph should be deleted.
- 335.** The Secretary of the Shipowners’ group said that the revision did not meet the Shipowners’ concerns. The resolution of abandonment cases through judicial proceedings should be discouraged.
- 336.** The Secretary-General (IMO) cautioned against discouraging something that might be the only option for resolution.
- 337.** A Shipowner representative from Switzerland said that based on case examples, the Shipowners’ group was concerned that providing for situations in which cases were resolved through judicial proceedings created an increased risk for abandoned seafarers. The cost of repatriation was

relatively small in terms of government spending. The key objective of the Guidelines was to ensure that abandoned seafarers were treated humanely and repatriated as swiftly as possible, not to discuss the source of the funds to do so.

- 338.** The Seafarer Vice-Chairperson said that in many cases, judicial proceedings were required to secure the remaining portion of outstanding claims for seafarers, who would likely refuse repatriation until they had received all outstanding payments. It was hoped that, ultimately, there would no longer be cases that took longer than four months to resolve and that the problem of lack of financial security would be eliminated. However, in circumstances where judicial proceedings were undertaken to resolve abandonment cases, there was no harm in ensuring that seafarers would be provided for and crew changes organized while the judicial process was ongoing.
- 339.** The Chairperson added that while the cost of repatriating abandoned seafarers might be relatively low from a government perspective, governments could only spend money on matters mandated to them by legislation. Governments could spend money on repatriation as that was a statutory duty. Payment of those seafarers' wages, however, was not. If a situation occurred where a seafarer refused repatriation until all monies owed had been received, the arrest and judicial sale of the vessel might be the only solution. She therefore suggested accepting the amendments proposed by the Secretary-General of the meeting (IMO) with the addition of a new sentence at the end of the paragraph to read, "Abandoned seafarers should not be prevented from being repatriated during the judicial process."
- 340.** The Shipowner Vice-Chairperson said that his group could agree to that proposal. In the second sentence, he wished to insert "abandoned" before "seafarers" and replace "crew changes" with "repatriation".
- 341.** The Seafarer Vice-Chairperson agreed. In the second sentence, he proposed inserting "and well-being" after "safety" and deleting the words "and manage the ship safely".
- 342.** The Shipowner Vice-Chairperson supported those amendments.
- 343.** The Government Vice-Chairperson said that his group supported the proposed amendments and particularly welcomed the last sentence on ensuring that abandoned seafarers would not be obliged to remain on board. There had been cases of seafarers being left in squalid conditions on board ships for months while legal cases had been ongoing.
- 344.** The Government representative of the United Kingdom said that it might be useful to mention that port and flag States should reassure seafarers that their entitlements would still be forthcoming if they left the vessel to avoid seafarers feeling the need to stay on board pending receipt of their full entitlement.
- 345.** The Secretary-General of the meeting (IMO) pointed out that such assurances could only be given if the maritime lien for seafarers' wages had been filed. Seafarers would need legal representation to be able to file the lien.
- 346.** The Shipowner Vice-Chairperson underscored that if seafarers returned home without full pay, the abandonment case would only be deemed resolved when they had been paid in full.
- 347.** Paragraph 28 was adopted, as amended.

Proposed paragraph 29

- 348.** The Seafarer Vice-Chairperson said that his group could agree to the deletion of paragraph 29, as proposed by the Shipowners' group during the discussion of the previous paragraph.

- 349.** The Secretary-General of the meeting (IMO) pointed out that paragraph 29 described what would happen if an emergency occurred in the vicinity of the abandoned ship, such as an explosion, to ensure that abandoned seafarers would not be forgotten. Other ships would have agencies and full crews to respond to such emergencies, whereas an abandoned ship might not. It was important to ensure that seafarers were protected in such circumstances.
- 350.** The Shipowner Vice-Chairperson proposed deleting “or the surrounding environment” in the first sentence. At the end of that sentence, the words “ship” and “and the surrounding waters” should also be deleted, to maintain the focus on the seafarers. The last sentence should be deleted.
- 351.** The Secretary of the Shipowners’ group said that “or safety” should be replaced by “and safety or well-being”.
- 352.** The Seafarer Vice-Chairperson said that his group could support those amendments.
- 353.** Paragraph 29 was adopted, as amended.

Proposed paragraph 30

- 354.** The Shipowner Vice-Chairperson proposed inserting, after “are nationals”, the words “or the State in which the recruitment and placement service operates”. The words “urge the shipowner, the seafarer recruitment and placement services, and the ship’s agent” should be deleted. In the event of an abandonment, those parties would no longer be present. The words “, in seeking a judicial remedy and in providing support to the involved families” should also be deleted.
- 355.** The Seafarer Vice-Chairperson said that the scope should be broadened beyond the MLC, 2006, and the reference to Standard A2.5.2 should therefore be avoided.
- 356.** The Government Vice-Chairperson said that the spirit of the paragraph had been changed by removing reference to the shipowners, seafarer recruitment and placement services and the ship’s agent, leaving the onus on States to assist the abandoned seafarers.
- 357.** The Secretary-General of the meeting (ILO) suggested replacing “under Standard A2.5.2 with “to fully resolve their cases”.
- 358.** The Seafarer Vice-Chairperson agreed to that suggestion. Before the words “follow-up process”, he wished to replace “the” with “any”.
- 359.** The Government representative of Belgium said that in many cases, ship’s agents remained present and upheld their responsibilities, even if the shipowner was no longer present.
- 360.** The Secretary of the Shipowners’ group said that if the shipowner was no longer present, the ship’s agent was under no obligation to remain. That some chose to do so was commendable, but the choice to remain was not guaranteed.
- 361.** Paragraph 30 was adopted, as amended.

Post-resolution

Proposed paragraph 31

- 362.** The Seafarer Vice-Chairperson proposed inserting, between “may consider” and “appropriate”, the words “, after consultation with the shipowners’ and seafarers’ organizations concerned”, with a view to encouraging dialogue and cooperation.
- 363.** The Shipowner Vice-Chairperson and the Government Vice-Chairperson agreed to that proposal.
- 364.** Paragraph 31 was adopted, as amended.

Proposed paragraph 32

- 365. The Shipowner Vice-Chairperson suggested replacing, at the end of the paragraph, “relevant” with “pertinent”. The words “with relevant stakeholders” should be added at the end, to indicate with whom States were requested to share the information.
- 366. The Seafarer Vice-Chairperson and Government Vice-Chairperson supported those amendments.
- 367. The Government representative of India said that labour-supplying States and States in which recruitment and placement services operate should also be included.
- 368. The Shipowner, Seafarer and Government Vice-Chairpersons agreed.
- 369. Paragraph 32 was adopted, as amended.

Proposed paragraph 33

- 370. The Shipowner Vice-Chairperson proposed inserting the word “expeditiously” before “updated” and inserting “, particularly” before “when”.
- 371. It was so agreed.
- 372. Paragraph 33 was adopted, as amended.

Proposed new paragraph after paragraph 33

- 373. The Government representative of Indonesia, recalling the discussion on paragraph 27 and the JTWG’s agreement to include, under the section on post-resolution, a new paragraph on the rights of States to recoup any outlay for the repatriation of seafarers, proposed a new paragraph after paragraph 33, to read, “The resolution of an abandonment case should be without prejudice to the recovery of all costs incurred in repatriating seafarers in the event the shipowner fails to make the arrangements for or meet the cost of repatriation in accordance with the MLC, 2006”.
- 374. The Secretary of the Shipowners’ group expressed concern that States’ recovery of costs incurred was in fact a hindrance to the resolution of abandonment cases. The addition of such a sentence would negate the spirit and letter of the Guidelines as a whole. The Shipowners’ group could not accept the proposal.
- 375. The Seafarer Vice-Chairperson disagreed; his group could support the spirit of the proposed amendment, which stipulated that the closure of the case in the database would not hinder States’ efforts to recoup their losses. The Chairperson agreed; the paragraph was in the post-resolution section of the Guidelines, meaning that the abandoned seafarers had already been repatriated and paid and the case resolved.
- 376. The Shipowner Vice-Chairperson said that outstanding legal procedures after the case of seafarer abandonment were a separate issue, the inclusion of which in the Guidelines would be confusing.
- 377. The Government representative of Indonesia said that the proposal, which was a direct quote from the MLC, 2006, Standard A2.5.1, paragraph (a) and (b), was intended to urge full compliance with the Convention.
- 378. The Shipowner Vice-Chairperson proposed the wording “The resolution of a case in the database is not intended to have any impact on or prejudice to, the recovery rights afforded under MLC, 2006, Standard A2.5.1, paragraph 5(a) and (b).”
- 379. The Seafarer Vice-Chairperson said that his group could support that proposal, provided it met the concerns raised by the Government of Indonesia.

- 380.** The Government Vice-Chairperson suggested an alternative wording to read, “The resolution of a case in the database should not impact or prejudice the completion of outstanding liability of the shipowner to the seafarer and other relevant parties afforded under the MLC, 2006, including the obligation to reimburse all costs incurred in repatriating seafarers as afforded under MLC, 2006, Standard A2.5.1, paragraph 5 (a) and (b).”
- 381.** The Shipowner Vice-Chairperson and the Seafarer Vice-Chairperson expressed a preference for the wording proposed by the Shipowners’ group, which was clear and concise, and made direct reference to the relevant provisions of the MLC, 2006.
- 382.** The Government representative of Indonesia proposed inserting after, “recovery rights”, the words “, including the obligation of the shipowner to reimburse all costs incurred in repatriating seafarers, as”.
- 383.** The Shipowner Vice-Chairperson said that while he understood the spirit of the proposal, he cautioned against paraphrasing the MLC, 2006, which could cause confusion. A simple, clear reference to the relevant provisions of the Convention was preferable.
- 384.** The Seafarer Vice-Chairperson pointed out that in a classical context of seafarer abandonment, there was no shipowner. Reference to the relevant provisions of the MLC, 2006, was sufficient.
- 385.** The Government representative of Indonesia, supported by the Government observer from Panama, expressed concern that in the absence of a shipowner, the possibility of a downward cascade of responsibility for repatriation could end with labour-supplying States footing the bill for repatriation, with de facto no possibility of recovering the costs. Labour-supplying States had limited capacity to bear the financial responsibility in such cases.
- 386.** The Government representative of the Marshall Islands said that while her Government sympathized with the Government of Indonesia, it preferred the clarity of the text proposed by the Shipowners’ group.
- 387.** The Seafarer Vice-Chairperson said that the crux of the matter was the importance of flag States upholding their responsibility for arranging and financing repatriation of seafarers from an abandoned vessel, to avoid the downward cascade of responsibility to the seafarers’ home country. That downward cascade must be prevented.
- 388.** The Government representative of India agreed; the primary responsibility for repatriation in the absence of a shipowner lay with the flag State.
- 389.** The Executive Secretary (ILO) drew attention to Standard A2.5.1, paragraph 5, which provided that, in the event of abandonment and the absence of a shipowner, the flag State would bear primary responsibility to repatriate the seafarers. If it failed to do so, the State of which the seafarers were national or resident, could arrange the repatriation and recover the costs “from the member whose flag the ship flies”.
- 390.** Paragraph 33 *bis* was adopted, as amended.
- 391.** The Government representative of Indonesia reiterated his Government’s concerns regarding the need to prevent potential cascading of responsibility for repatriation.
- 392.** The Secretary of the Shipowners’ group suggested that the matter could be raised in the form of a future amendment to the MLC, 2006, which would give rise to a consequential amendment to the Guidelines. Consideration should be given to the procedure for incorporating the consequences of future amendments to the MLC, 2006, into the Guidelines, given the complex process of convening a meeting of the JTWG; perhaps a small intersessional working group could be appointed to deal with such matters by correspondence when they arose.

393. The Secretary-General of the meeting (ILO) said that due consideration must be given to inclusivity in any intersessional work. The matter would be put to the ILO Governing Body for consideration.

Annex

394. The Government representative of the United Kingdom suggested adding to the relevant provisions of the MLC, 2006, Standard A1.4, paragraphs 5(c)(vi) and 6.

395. It was so agreed.

396. The annex was adopted, as amended.

397. The Guidelines on how to deal with seafarer abandonment cases, as a whole, were adopted, as amended.

► IV. Other business related to the work of the Joint Tripartite Working Group

398. The Shipowner Vice-Chairperson proposed the establishment of a task force to review the database on reported incidents of abandonment of seafarers. His group had prepared some draft terms of reference for such a task force and wished to know how to launch a formal procedure to proceed with its establishment. The ICS was proposing to provide financial support for conducting the work to revise and upgrade the database.

399. The Seafarer Vice-Chairperson supported the proposal; the ITF also stood ready to provide financial assistance to the task force. He drew attention to the letter transmitted to the IMO Legal Committee by the Government of India related to the database, which should be transmitted to the task force. Some of the proposals therein would not be practicable, but the letter should be given due consideration.

400. The Government Vice-Chairperson supported those proposals.

401. The Government representative of Liberia fully supported an update of the abandonment database.

402. The Government representative of the Marshall Islands supported the proposal to review and update the database but wished to request further guidance from the Secretariat on the procedures required to do so, through both the IMO Legal Committee and the ILO Governing Body. Database procedures should provide for vetting of every abandonment case to ensure that it met the MLC, 2006, criteria before being logged. Cases were being presented and included in the database that could be more accurately described as “complaints” than abandonment. A detailed discussion on who had the authority to close cases and what evidence was necessary to do so would also be required. There should also be a process for removing ships that had been logged in the database but did not in fact meet the criteria for abandonment.

403. The Secretary-General of the meeting (ILO) said that, within the ILO, the establishment of a task force could only be authorized by the Governing Body, which ensured fully inclusive representation in decision-making. The proposals made had been duly noted and could be raised at the meeting of the sectoral advisory bodies, along with the draft terms of reference to be revised by correspondence, for formal decision by the Governing Body.

- 404.** A Shipowner representative of the ICS cautioned against the matter becoming a subject of barter at the sectoral priorities meeting, since it could be subjected to severe delay. She also asked whether social partners would be able to help draft the text submitted to the Governing Body.
- 405.** The Secretary-General of the meeting (ILO) responded that the establishment of the task force would not be competing in the selection of topics for technical meetings and meetings of experts. Governments and the social partners would indeed be involved in revising the proposed terms of reference. The IMO and ILO Secretariats would consult on the draft terms of reference, which would be reviewed by the legal advisers in both organizations and would subsequently be circulated to the governments and social partners for comments by correspondence.

▶ V. Closure of the meeting

- 406.** The Secretary-General of the meeting (ILO) congratulated participants on the positive outcome to the meeting, which would make a significant contribution to improving the dire situation of abandoned seafarers. Social dialogue had prevailed once again. She noted the successful cooperation of the joint ILO/IMO Secretariat and commended the officers of the meeting on their expertise and the spirit of cooperation in which they had deliberated. She thanked all those who had contributed to the smooth-running of the discussions for their commitment and perseverance.
- 407.** The Secretary-General of the meeting (IMO) thanked all those who had participated in the first meeting of the JTWG; the adoption of the Guidelines was a milestone, which would make a tangible difference to the lives of seafarers around the world. He welcomed the spirit of cooperation that had prevailed during the discussions and commended the contributions from all stakeholders to improving and strengthening the Guidelines. He encouraged all governments present to consult with their delegations to the IMO Legal Committee to ensure that the Guidelines were adopted without delay. The establishment of measures to improve and upgrade the database would be welcome.
- 408.** The Shipowner Vice-Chairperson thanked all participants for their contributions to the proceedings and expressed his appreciation to the joint ILO/IMO Secretariat for its dedication and guidance. He commended the Chairperson on her excellent leadership and thanked his Seafarer and Government counterparts for their constructive approach to the dialogue; the spirit of cooperation created during the COVID-19 pandemic had prevailed throughout the meeting to very positive effect. Abandoned seafarers had a fundamental right to timely repatriation, remuneration and access to the necessities of life. The Guidelines would help to handle abandonment cases more effectively. The inclusion of the development of national SOPs, in consultation with seafarers' and shipowners' representatives, was particularly welcome. Every effort should be made to encourage further ratifications of the MLC, 2006; it was estimated that around half of recent abandonment cases would have been avoided had the States involved been parties to the Convention. All users of the ILO/IMO Database on reported incidents of abandonment of seafarers would benefit from the initiative to review and update the database. Every stakeholder in the shipping industry had a duty to ensure effective implementation of the abandonment safeguards provided for in the MLC, 2006, to protect the world's seafarers. The Guidelines would serve to increase the effective resolution of abandonment cases in future.
- 409.** The Seafarer Vice-Chairperson shared the views of his Shipowner counterpart and recalled the close collaboration that had developed between the social partners during the COVID-19 pandemic, which he hoped would prevail for a long time to come. The strengthened cooperation

with governments would further improve the welfare of seafarers the world over. He commended the work done by the joint Secretariat; the meeting had been a true illustration of tripartism and social dialogue. He thanked his fellow officers of the meeting, and everyone who had participated in the meeting and contributed to its successful outcome.

- 410.** The Government Vice-Chairperson concurred and commended his fellow Vice-Chairpersons on the work achieved. He commended the work of the joint Secretariat, and welcomed the spirit of cooperation, tripartism and social dialogue that had prevailed throughout the meeting. The shipping industry was a crucial contributor to the global economy, and a major employer. The protection of seafarers' rights was a matter of the utmost importance. The adoption of the Guidelines was a significant milestone in that regard.
- 411.** The Government representative of France and the Government observers from the Bahamas, Canada, Mexico, Nicaragua, Panama and the United States thanked and congratulated all those who had contributed to and participated in the meeting.
- 412.** An observer from the International Christian Maritime Association (ICMA) noted with appreciation the spirit of collaboration that had prevailed throughout the meeting. ICMA was a global association of 27 organizations known as seafarers' missions, seamen's churches, and maritime ministries, operating in more than 700 ports worldwide. ICMA was deeply concerned about the issue of abandonment in ports outside its network. The Guidelines adopted by the JTWG would contribute significantly to preventing and solving abandonment cases. He encouraged all stakeholders to contact the ICMA for humanitarian assistance in the event of abandonment cases in ports within its network.
- 413.** The Chairperson thanked all participants in the meeting for their efforts and commended the unanimity of purpose with which the Guidelines had been deliberated and adopted.