

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

INTERNATIONAL MARITIME ORGANIZATION



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 RECOMMEND that Member Governments:

- .1 draw the attention of their immigration authorities to the benefits provided to abandoned seafarers covered by a financial security system;
- .2 consider that the absence of a financial security system should not prejudice the immigration status of abandoned seafarers;

7 CALL UPON Member Governments, without prejudice to notification requirements under applicable international instruments, to communicate to the Secretary-General of the IMO or the Director General of the ILO, for the purpose of disseminating the information widely, national focal points responsible for dealing with cases of abandonment and with other issues falling within the scope of the Guidelines;

8 INVITE Member Governments and non-governmental organizations with consultative or observer status in the IMO or the ILO, as appropriate, to record instances of abandoned seafarers and to provide data to the IMO or the ILO whenever requested;

9 REQUEST the Assembly of the IMO and the Governing Body of the ILO to keep the problem of abandonment under review and to assess periodically the scale of the problem;

10 INVITE the IMO Assembly and the ILO Governing Body to consider other appropriate action for longer-term sustainable solutions to address the problems covered by these Guidelines;

11 REQUEST the IMO Assembly and the ILO Governing Body to keep the Guidelines under review and to amend them as necessary; and

12 INVITE Member Governments to note that these Guidelines will take effect on 1 January 2002.

ANNEX

**GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN CASE OF
ABANDONMENT OF SEAFARERS****1 INTRODUCTION**

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

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

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

2 DEFINITIONS

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

- .1 *Shipowner* means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities;*
- .2 *Seafarer* means any person who is employed or engaged in any capacity on board a seagoing ship; and
- .3 *Abandonment* is characterised by the severance of ties between the shipowner and the seafarer. Abandonment occurs when the shipowner fails to fulfil certain fundamental obligations to the seafarer relating to timely repatriation and payment of outstanding remuneration and to provision of the basic necessities of life, *inter alia*, adequate food, accommodation and medical care. Abandonment will have occurred when the master of the ship has been left without any financial means in respect of ship operation;

3 SCOPE OF APPLICATION

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

3.2 These Guidelines do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

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

4 SHIPOWNERS' RESPONSIBILITIES

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

5 SCOPE OF FINANCIAL SECURITY SYSTEMS

- 5.1 The financial security system should provide for:
- .1 the expenses of the repatriation of the seafarer, which are to be met without costs to the seafarer;
 - .2 the maintenance of the seafarer from the time of abandonment to the time of arrival at the place of repatriation;
 - .3 payment to the seafarer of all outstanding remuneration and contractual entitlements; and
 - .4 payment to the seafarer of other expenses incurred during the period of abandonment arising from the abandonment.

5.2 In the event that the shipowner fails to fulfil its responsibilities, the financial security system should provide for repatriation of the seafarer by appropriate and expeditious means, normally by air, and including provision of food and accommodation for the seafarer from leaving the ship until arrival at the place of repatriation, medical care, passage and transport of personal effects and any other reasonable charges.

5.3 The maintenance of seafarers while abandoned should include: adequate food, clothing, accommodation, medical care and other basic necessities of life.

5.4 Payment to the seafarers of all outstanding remuneration should include accrued wages and other entitlements as provided for in the contract of employment and/or under national law.

5.5 In the event that the seafarer incurs any other reasonable expenses during the period of abandonment, the seafarer should be entitled to recover such expenses from the financial security system.

6 FORM OF THE FINANCIAL SECURITY SYSTEM

6.1 The financial security system may be in the form of, *inter alia*, social security schemes, insurance, a national fund, or other forms of financial security;

6.2 The financial security system in addition to the provisions of paragraph 5.1 should provide the following:

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

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

7 CERTIFICATES

7.1 Shipowners should ensure that their seagoing ships engaged on international voyages have on board a certificate attesting to the existence of a financial security system in the event of abandonment of seafarers. It should be posted in a prominent position in the seafarers' accommodation.

7.2 Where more than one certificate is required to cover all seafarers on board a ship, all such certificates should be posted.

7.3 As a minimum, the certificate should include:

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

7.4 A copy of the certificate should be provided when required to the immigration authorities for the purpose of informing them that the seafarers are provided with a financial security system covering their maintenance, repatriation and payment of outstanding remuneration.

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