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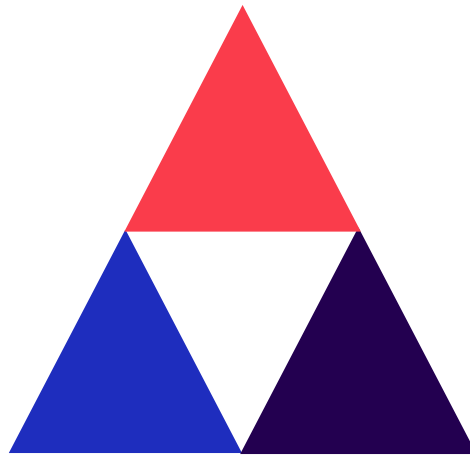


INTERNATIONAL  
MARITIME  
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▶ TWGSHE/2022

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

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)



International Labour Office  
Geneva

## ▶ Introduction

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1. Abandonment has a traumatic impact on the seafarers concerned and is a blight on the image of shipping. The number of ships affected is a fraction of the total number of ships operating; however, cases reported to the [Database on reported incidents of abandonment of seafarers](#), established jointly in 2004 by International Labour Organization (ILO) and the International Maritime Organization (IMO), have increased from a range of 12 to 19 cases from 2011 to 2016, to 40 cases in 2019, 85 cases in 2020, and 95 cases in 2021. More action is needed to quickly resolve cases of abandonment and to prevent future cases.

2. At its 343rd Session (November 2021), the Governing Body of the ILO approved the establishment of a Joint ILO–IMO Tripartite Working Group to identify and address seafarers’ issues and the human element, with a composition of eight Governments nominated by the IMO, and eight Shipowner representatives and eight Seafarer representatives to be appointed by the Workers’ and Employers’ groups of the Governing Body of the ILO. At its 345th Session (June 2022), the Governing Body of the ILO decided that the first meeting of the Joint Tripartite Working Group would be held from 13 to 15 December 2022 and that the purpose of the first meeting would be to discuss and adopt guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases.

3. The IMO Legal Committee, at its 107th session (November–December 2020), agreed to develop guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases. The Committee subsequently agreed, at its 108th session (July 2021), to establish an intersessional correspondence group to progress the work. The correspondence group reported to the 109th session of the Legal Committee (March 2022), which endorsed the draft Guidelines and decided to forward the report and the draft Guidelines to the Joint Tripartite Working Group as a base document for consideration and further refinement. The IMO Council, at its 127th session (July 2022), endorsed the establishment of the Joint Tripartite Working Group and the Legal Committee’s decisions.

4. The present Guidelines are addressed primarily to port State and flag State authorities. They are intended to be a reference tool of principles that can be reflected in the design and implementation of policies, strategies,

programmes, legislation, administrative measures and social dialogue mechanisms on the resolution of cases of abandonment of seafarers.

5. The Guidelines draw on: (i) relevant ILO international labour standards, notably the Maritime Labour Convention, 2006, as amended (MLC, 2006), including the relevant amendments adopted by the Special Tripartite Committee of the MLC, 2006, in 2022; (ii) relevant IMO international frameworks and agreements and policies; and (iii) relevant trends and developments in regional and national law and practice. They are consistent with the [ILO Guidelines for port State control officers carrying out inspections under the MLC, 2006, as amended](#), and the [ILO Guidelines for flag State inspections under the MLC, 2006, as amended](#).

6. The Guidelines are not legally binding. They are not subject to ratification or supervisory mechanisms established under the ILO's international labour standards. They are therefore aspirational in scope and expand on principles laid down in international labour standards and IMO agreements and policies, all the while recognizing that they can be adapted to different national systems and circumstances.

7. The Guidelines are based on and to be read in line with the full principles, rights and obligations set out in the MLC, 2006, as amended. A brief history of the development of the provisions of the MLC, 2006, that have a bearing on the issue of abandonment and the most relevant provisions of the MLC, 2006, concerning abandonment, up to the 2018 amendments, have been included in the Annex.

8. Nothing set out in these Guidelines should be understood as lowering the protection afforded by existing international labour standards and other standards.

9. All ILO Members, even if they have not ratified the fundamental ILO Conventions, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation; and (e) a safe and healthy working environment.

**10.** Flag States and port States should strengthen systems of inspection of seafarers' labour conditions to ensure full compliance with relevant laws and regulations and access by seafarers to appropriate and effective remedy and complaints mechanisms.

**11.** Flag State and port State authorities should engage in social dialogue with representative organizations of shipowners and seafarers. Social dialogue is defined by the ILO to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers on issues of common interest relating to economic and social policy. The main goal of social dialogue, based on the respect of freedom of association and the effective recognition of the right to collective bargaining, is to promote consensus-building and democratic involvement among the main stakeholders in the world of work. As such, it has a key role in the design and implementation of effective policies on how to deal with seafarer abandonment cases.

[Note: The text below uses as its basis the draft endorsed by the IMO Legal Committee. The Joint Secretariat has made changes, shown in blue, as follows: (i) modifying in rare instances the body of the draft text for the sole purpose of ensuring consistency with the provisions of the MLC, 2006, as amended (explanations included in the blue footnotes); (ii) adding or correcting references to the MLC, 2006 (in the blue footnotes); (iii) proposing additional changes of a substantial nature (in the blue footnotes). Purely editorial changes, such as spelling errors or added hyperlinks, are not visible.].

## ~~▶ Guidelines for port state and flag state authorities on how to deal with seafarer abandonment cases~~

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### Purpose

**12.** These Guidelines facilitate the development and implementation of practical steps for port State and flag State authorities to expeditiously and effectively resolve abandonment cases where duty holders have failed to do so.

### International framework

**13.** The international framework consists of:

- (a) Maritime Labour Convention, 2006, as amended (MLC, 2006);<sup>1</sup>
- (b) IMO resolution A.930(22) on Guidelines on provision of financial security in case of abandonment of seafarers;
- (c) ILO Guidelines for port State control officers carrying out inspections under the MLC, 2006 (Second revised edition, 2021);
- (d) ILO Guidelines for flag State inspections under the MLC, 2006 (Second revised edition, 2021);
- (e) Frequently asked questions (FAQ), Maritime Labour Convention, 2006 (MLC, 2006) as amended.<sup>2</sup>

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<sup>1</sup> MLC, 2006, Regulation 2.5 and Standard A2.5, in particular Standard A2.5.1, paragraphs 5 to 8, and Standard A2.5.2.

<sup>2</sup> The Secretariat proposes to include the following text in a footnote:

It must be noted that the answers provided in the FAQ cannot in themselves be cited as authoritative legal opinions. This is because the precise requirements of the Convention are those contained in the national laws or regulations or other measures adopted by each country to implement the MLC, 2006. The answers in the FAQ are intended to provide information in the form of brief explanations referring to the Convention and other

## Application

14. These Guidelines apply to:

- (a) shipowners and those who provide financial security to enable shipowners to meet their obligations under the MLC, 2006, to seafarers;
- (b) flag States, which are responsible for ensuring that shipowners of ships flying their flag comply with the MLC, 2006;
- (c) port States, which are responsible for ensuring compliance with [relevant provisions](#) of the MLC, 2006, on board ships calling at their ports [or which are in their territory](#); <sup>3</sup>
- (d) States of which abandoned seafarers are a national, <sup>4</sup> which should endeavour to facilitate repatriation, [as required by the MLC, 2006](#); <sup>5 6</sup>
- (e) other stakeholders who are able to contribute to the process.

## Definition

15. According to the MLC, 2006, <sup>7</sup> a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:

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reference materials. They are not legal opinions or legal advice as to the meaning of a requirement in the Convention or its application to an individual situation. Such opinions can be provided by the ILO to governments and shipowners' and seafarers' organizations, in particular, upon request and on the understanding that only the International Court of Justice is competent to give authoritative interpretations of international labour Conventions. The FAQ is intended to help persons engaged in the study or application of the MLC, 2006.

<sup>3</sup> The Secretariat proposes this new text to ensure consistency with the MLC, 2006, as amended in 2022 (Standard A2.5.1, paragraph 9; and Standard A4.1, paragraph 5).

<sup>4</sup> The Secretariat suggests including the criterion of residence throughout the document to ensure consistency with the MLC, 2006.

<sup>5</sup> The Secretariat proposes this new text to ensure consistency with the obligation contained in the MLC, 2006.

<sup>6</sup> The Secretariat suggests including a new stakeholder before (e): "the State in which the relevant seafarer recruitment service operates".

<sup>7</sup> Standard A2.5.2, paragraph 2. The Secretariat suggests including this reference to the MLC, 2006.

- (a) fails to cover the cost of the seafarer's repatriation;
- (b) has left the seafarer without the necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer, including failure to pay contractual wages for a period of at least two months.<sup>8</sup>

## Principles and responsibilities

**16.** The shipowner is the liable entity for [making arrangements for repatriation and for covering the cost of repatriation, outstanding wages and other entitlements due to the seafarers under their seafarer employment agreements and the MLC, 2006, as well as provision of essential needs, including medical care.](#)

**17.** [The flag State should ensure that a financial security system meeting the requirements of the MLC, 2006, is in place for ships flying their flag.](#)<sup>9 10</sup>

**18.** In cases where the shipowner does not fulfil the obligations above, the following principles and responsibilities should be followed:

- (a) The flag State should take steps to ascertain whether there is valid financial security in place and make the seafarers and/or the seafarers' representative aware of the details of the financial security provider and of their ability to directly apply for assistance.

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<sup>8</sup> The Secretariat observes that the use of the definition from the MLC, 2006, in these Guidelines implies that that definition is universally recognized and applies regardless of whether the States have ratified the MLC, 2006.

<sup>9</sup> This is an obligation for States that have ratified the MLC, 2006 (see Standard A2.5.2, paragraph 3).

<sup>10</sup> The Secretariat notes that there is empirical evidence that a significant number of abandoned ships did not have any valid financial security in place, and that there is no provision in the MLC, 2006, encouraging flag States to check on an annual basis the validity of the required financial security. Wording along the following lines could be considered: "Flag States are encouraged to check on an annual basis the validity of the required financial security."

- (b) When dealing with cases of abandonment of seafarers,<sup>11</sup> the flag State should make arrangements for the maintenance<sup>12</sup> and repatriation<sup>13</sup> of seafarers. In addition, the flag State may request assistance from the State of which the seafarers are a national and the port State, when needed, and assist the abandoned seafarers in any way.
- (c) The port State shall ensure the safety of the vessels in its ports, including the facilitation of any necessary maintenance<sup>14</sup> of the vessels, and facilitate the resolution of cases of abandonment of seafarers by taking the following actions:
- (i) to inform, or issue official notification to, the parties involved, such as shipowners, flag States and the States of which seafarers are a national, through appropriate channels, [drawing upon, for example, contact information ~~could be provided through~~ found in<sup>15</sup> the IMO Global Integrated Shipping Information System \(GISIS\) module and ~~the ILO/IMO Database on reported incidents of abandonment of seafarers~~, the database of ratification and implementation of the MLC, 2006;<sup>16</sup>](#)
  - (ii) to facilitate the payment of wages from the financial security provider of the seafarers, the availability of essential needs, and access to medical care;<sup>17</sup>

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<sup>11</sup> MLC, 2006, Standard A2.5.24, paragraphs 2 and 5. The Secretariat proposes this reference to ensure consistency with the MLC, 2006.

<sup>12</sup> MLC, 2006, Standard A2.5.2, paragraph 5.

<sup>13</sup> MLC, 2006, Standard A2.5.2, paragraph 10. The Secretariat proposes this reference to ensure consistency with the MLC, 2006.

<sup>14</sup> MLC, 2006, Standard A2.5.2, paragraph 5. The Secretariat observes that this provision of the MLC, 2006, refers to the maintenance of seafarers and not vessels, and suggests that the wording could be modified accordingly.

<sup>15</sup> The Secretariat proposes replacing “could be provided through” with “found in” to ensure that information would not need to be actively provided.

<sup>16</sup> The Secretariat proposes replacing the reference to the database on abandonment cases, which does not contain any contact information, with a reference to the database of ratification and implementation of the MLC, 2006, which contains the contact information of the competent authority of the flag State.

<sup>17</sup> 2022 amendments to the MLC, 2006: Standard A4.1, new paragraph 5. The Secretariat proposes to include this reference to ensure consistency with the 2022 amendments to the MLC, 2006.



- (iii) to facilitate, and not refuse, the repatriation of seafarers;<sup>18</sup> and
  - (iv) to facilitate consular access.<sup>19</sup>
- (d) Port States, flag States and labour-supplying States shall cooperate to ensure that seafarers engaged on a ship to replace seafarers who have been abandoned in their territory, or on a ship flying their flag, shall be accorded their rights and entitlements under the MLC, 2006.<sup>20</sup>

## Procedure

### General procedure

**19.** Upon discovery of a case of abandonment of seafarers, the port State control or other parties should immediately report the case to the port State authority<sup>21</sup> where the abandonment incident occurred and to the ILO for inclusion in the ILO/IMO Database on reported incidents of abandonment of seafarers. The port State should then carry out investigation and necessary coordination work with relevant agencies within the port State. The port State authority should also notify the parties involved, such as the shipowner, flag State, States of which the seafarers are nationals, and any relevant seafarers' representatives and/or organizations<sup>22</sup> about the case of abandonment of seafarers through any appropriate channel.

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<sup>18</sup> MLC, 2006, Standard A2.5.1, paragraphs 7 and 8; 2022 amendments to the MLC, 2006: Standard A2.5.1, new paragraph 9, first sentence.

<sup>19</sup> The Secretariat notes that there is empirical evidence that a significant number of abandoned ships did not have a valid financial security in place, and that there is a need for port States to be encouraged to pay particular attention to the period of validity of the financial security when checking the relevant documents during inspections. Wording along the following lines could be considered: "Port States are encouraged to pay particular attention to the period of validity of the financial security when checking the relevant documents during inspections."

<sup>20</sup> 2022 amendments to the MLC, 2006: Standard A2.5.1, new paragraph 9, second sentence. The Secretariat proposes this new sentence to reflect the new obligation in the 2022 amendments to the MLC, 2006.

<sup>21</sup> The Secretariat observes that the term "port State authority" is not sufficiently specific and that there may be a need for port States to identify the authority concerned. Wording along the following lines could be considered: "Port States should clearly determine the authority or authorities in charge of dealing with cases of abandonment of seafarers."

<sup>22</sup> The Secretariat observes that there is no reference to the notification of shipowners' organizations. Bearing in mind the notification procedure in Standard A5.2.1, paragraph 6, shipowners' organizations could be added as a party to be notified.

**20.** Upon receiving notification of a case of abandonment of seafarers, the flag State authority should urge the shipowner or financial security providers to fulfil their responsibilities, in accordance with the MLC, 2006, as soon as practicable by setting a reasonable time frame taking into account the well-being of the seafarers.

**21.** Should the shipowner fail to undertake its responsibilities within the timeline referred to in paragraph 20, the flag State authority will take the lead and coordinate with the relevant parties to resolve the case of abandonment of seafarers.

**22.** Should the shipowner and the flag State fail to undertake their responsibilities, the port State authority will take the lead and coordinate with all relevant parties to resolve the case of abandonment of seafarers.

**23.** At the same time, where there is a document providing evidence of financial security under Regulation 2.5 of the MLC, 2006, the seafarers should receive assistance in contacting the financial security provider to access rapid and effective financial assistance. The flag State authority and/or the port State authority should facilitate the provision of the required assistance by the financial security provider.

**24.** In cases where there is no financial security or the financial security has expired or is not sufficient, the flag State, port State and States of which seafarers are nationals<sup>23</sup> should arrange for the repatriation of the seafarers and will coordinate with local relevant government agencies and/or parties, such as seafarer and shipowner organizations and seafarer recruitment and placement services, to solve the abandonment case together.

**25.** Some other practical efforts may be undertaken by relevant government agencies and non-government entities, such as seafarers' unions and charity organizations. It is encouraged that necessary maintenance and support of seafarers such as adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care, be provided.

**26.** In order to eliminate potential safety hazards, the port States and the flag States should establish a consultation mechanism for the resolution

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<sup>23</sup> See footnote 6. The Secretariat observes that the State in which the seafarer recruitment and placement service operates (where different from the States of which seafarers are nationals) is not mentioned in this paragraph dealing with problematic cases where there is no financial security. Wording could be considered to this effect.

of cases of abandonment of seafarers. The flag State and the port State are encouraged to develop a domestic Standard Operating Procedure (SOP) in accordance with these Guidelines. Such a domestic SOP<sup>24</sup> should explicitly define the liabilities and obligations of the flag State authority and the port State authority, and the roles to be played by the rescue departments, the shipping agency, seafarers' organizations, shipowners' organizations, seafarer recruitment and placement services and other parties involved, referring to international conventions as necessary.

27. A case is considered resolved when all seafarers who want to be repatriated and all seafarers who must be repatriated in accordance with the MLC, 2006, have been repatriated and when the [seafarers' outstanding wages and entitlements of the crew](#) have been paid in full.<sup>25 26</sup>

### Special circumstances

28. During resolution of cases of abandonment of seafarers through judicial proceedings, the flag State and port State will continue to coordinate with other relevant agencies to offer humanitarian assistance and provide support for the repatriation of seafarers. However, for the safety of the seafarers, the competent authority should cooperate with the relevant institutions to facilitate crew changes and manage the ship safely while the judicial process continues. This should include ensuring that no seafarers are required to work on the ship unless and until arrangements are in place to ensure that they will receive their entitlements under the MLC, 2006 ([see paragraph 18\(d\)](#)).<sup>27</sup>

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<sup>24</sup> The Secretariat raises the question as to whether a domestic standard operating procedure between all possible pairs of flag and port States is realistic.

<sup>25</sup> The Secretariat proposes wording to ensure consistency with the MLC, 2006, and suggests replacing the term "crew" with "seafarers", as in some legislations the term "crew" does not cover all seafarers as defined by the MLC, 2006. Reference is made to the [General procedure to be followed for the operation of the database on reported incidents of abandonment of seafarers and fishers](#), according to which: "A case of abandonment will be considered as resolved if, and only if, 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; and (ii) the totality of all outstanding remuneration and contractual entitlements have been paid and duly received by all the crewmembers".

<sup>26</sup> MLC, 2006, Standard A2.5.2, paragraph 9. The Secretariat proposes this reference to ensure consistency with the MLC, 2006.

<sup>27</sup> The Secretariat proposes this reference to ensure consistency with the MLC, 2006.

**29.** In the event of an emergency in which the health or safety of the seafarers or the surrounding environment is in jeopardy, the port State authority should coordinate with the parties involved to implement mitigation measures, including but not limited to rescue, investigation, information dissemination, and consideration of the safety of the ship, seafarers and the surrounding waters. The port State should coordinate with the flag State and ship's agent so that they can maintain communication with the shipowner and the financial security provider in fulfilling obligations under Standard A2.5.2. of the MLC, 2006.

**30.** The flag State, port State and the States of which the seafarers are nationals should urge the shipowner, the seafarer recruitment and placement services, and the ship's agent to assist the abandoned seafarers in the follow-up process under Standard A2.5.2., in seeking a judicial remedy and in providing support to the involved families.

### Post-resolution

**31.** Following the resolution of a case of abandonment of seafarers, the States involved may consider appropriate further mechanisms to prevent any reoccurrence of such cases by the same shipowner where breaches of applicable law occur, without prejudice to and in accordance with their national applicable law.

**32.** The flag State and the port State involved in the resolution of cases of abandonment of seafarers should carefully analyse, summarize and evaluate the performance of their duties in handling the abandonment, and share relevant information and knowledge.

**33.** The ILO/IMO Database on reported incidents of abandonment of seafarers should be updated when cases are resolved.

## ► Annex

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### The MLC, 2006, and the issue of abandonment of seafarers

1. Five years after the adoption in 2001 by the IMO and the ILO of resolution A.930(22) on Guidelines on provision of financial security in case of abandonment of seafarers, the adoption of the Maritime Labour Convention, 2006, (MLC, 2006) was a major step forward in helping to achieve decent work for all seafarers.

2. The MLC, 2006, requires ratifying States to satisfy themselves that the provisions of their laws and regulations respect, in the context of this Convention, the fundamental rights in Article III, and sets out seafarers' employment and social rights in Article IV.

3. The original version of the MLC, 2006, includes Regulation 2.5 – Repatriation – which aims to “ensure that seafarers are able to return home” and requires ships flying the flag of a ratifying State to provide financial security to ensure that seafarers are duly repatriated. While these provisions are relevant to the issue of abandonment, they did not contain sufficient detail with respect to the issue of abandonment.

4. The original version of the MLC, 2006, includes other provisions that are relevant to resolving cases of abandonment. For example, Standard A1.4 – Recruitment and placement – in paragraph 5(c)(vi), provides that a ratifying State “shall, in its laws and regulations or other measures ... ensure that seafarer recruitment and placement services operating in its territory ... establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them”.

#### 2014 amendments to the MLC, 2006

5. In 2014, the ILO adopted amendments to the Code implementing Regulation 2.5. They included the addition of a new Standard, A2.5.2, which clearly defines abandonment and requires flag States to ensure the provision

of an expeditious and effective financial security system to assist seafarers in the event that they are abandoned. Financial security for repatriation was added to the list of items to be inspected by both flag and port States. The texts of these amendments are set out in the Annex to the present publication.

### **2022 amendments to the MLC, 2006**

6. In 2022, the Special Tripartite Committee of the MLC, 2006, adopted at its Fourth Session (Part II) another set of amendments, including one to strengthen the existing provisions on abandonment. A new paragraph 9 to Standard A2.5.1 – Repatriation – provides that:

Members shall facilitate the prompt repatriation of seafarers, including when they are deemed abandoned within the meaning of Standard A2.5.2, paragraph 2. Port States, flag States and labour-supplying States shall cooperate to ensure that seafarers engaged on a ship to replace seafarers who have been abandoned in their territory, or on a ship flying their flag, shall be accorded their rights and entitlements under this Convention.

7. The amendments of 2022 are expected to enter into force by 23 December 2024.

## Most relevant provisions of the MLC, 2006, pertaining to abandonment

### Regulation 2.5 – Repatriation and related Standards, Guidelines and Appendices (up until the 2018 amendments)

#### Regulation 2.5 – Repatriation

Purpose: To ensure that seafarers are able to return home

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

#### Standard A2.5.1 – Repatriation

1. Each Member shall ensure that seafarers on ships that fly its flag are entitled to repatriation in the following circumstances:
  - (a) if the seafarers' employment agreement expires while they are abroad;
  - (b) when the seafarers' employment agreement is terminated:
    - (i) by the shipowner; or
    - (ii) by the seafarer for justified reasons; and also
  - (c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.
2. Each Member shall ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargaining agreements, prescribing:
  - (a) the circumstances in which seafarers are entitled to repatriation in accordance with paragraph 1(b) and (c) of this Standard;
  - (b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation – such periods to be less than 12 months; and

(c) the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.

3. Each Member shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations.

4. National laws and regulations shall not prejudice any right of the shipowner to recover the cost of repatriation under third-party contractual arrangements.

5. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:

- (a) the competent authority of the Member whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the Member whose flag the ship flies;
- (b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member whose flag the ship flies;
- (c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 3 of this Standard.

6. Taking into account applicable international instruments, including the International Convention on Arrest of Ships, 1999, a Member which has paid the cost of repatriation pursuant to this Code may detain, or request the detention of, the ships of the shipowner concerned until the reimbursement has been made in accordance with paragraph 5 of this Standard.

7. Each Member shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board.

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



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

#### **Standard A2.5.2 - Financial security**

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:

- (a) fails to cover the cost of the seafarer's repatriation; or
- (b) has left the seafarer without the necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.

6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security

provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.

8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
- (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law,

acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

## **Guideline B2.5 – Repatriation**

### **Guideline B2.5.1 – Entitlement**

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

Code, account should be taken of factors affecting the seafarers' working environment. Each Member should seek, wherever possible, to reduce these periods in the light of technological changes and developments and might be guided by any recommendations made on the matter by the Joint Maritime Commission.

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

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

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

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

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

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

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

8. The entitlement to repatriation may lapse if the seafarers concerned do not claim it within a reasonable period of time to be defined by national laws or regulations or collective agreements, except where they are held captive on or off the ship as a result of acts of piracy or armed robbery against ships. The terms *piracy* and *armed robbery against ships* shall have the same meaning as in Standard A2.1, paragraph 7.

#### **Guideline B2.5.2 – Implementation by Members**

1. Every possible practical assistance should be given to a seafarer stranded in a foreign port pending repatriation and in the event of delay in the repatriation of the seafarer, the competent authority in the foreign port should ensure that the consular or local representative of the flag State and the seafarer's State of nationality or State of residence, as appropriate, is informed immediately.

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

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

3. If, after young seafarers under the age of 18 have served on a ship for at least four months during their first foreign-going voyage, it becomes apparent that they are unsuited to life at sea, they should be given the opportunity of being repatriated at no expense to themselves from the first suitable port of call in which there are consular services of the flag State, or

the State of nationality or residence of the young seafarer. Notification of any such repatriation, with the reasons therefor, should be given to the authority which issued the papers enabling the young seafarers concerned to take up seagoing employment.

#### **Guideline B2.5.3 – Financial security**

1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer's nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.

## Appendix A2-I

### Evidence of financial security under Regulation 2.5, paragraph 2

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

## Appendix A5-I

The working and living conditions of seafarers that must be inspected and approved by the flag State before certifying a ship in accordance with Standard A5.1.3, paragraph 1:

Minimum age

Medical certification

Qualifications of seafarers

Seafarers' employment agreements

Use of any licensed or certified or regulated private recruitment and placement service

Hours of work or rest

Manning levels for the ship

Accommodation

On-board recreational facilities

Food and catering

Health and safety and accident prevention

On-board medical care

On-board complaint procedures

Payment of wages

Financial security for repatriation

Financial security relating to shipowners' liability



## Appendix A5-III

General areas that are subject to a detailed inspection by an authorized officer in a port of a Member carrying out a port State inspection pursuant to Standard A5.2.1:

Minimum age

Medical certification

Qualifications of seafarers

Seafarers' employment agreements

Use of any licensed or certified or regulated private recruitment and placement service

Hours of work or rest

Manning levels for the ship

Accommodation

On-board recreational facilities

Food and catering

Health and safety and accident prevention

On-board medical care

On-board complaint procedures

Payment of wages

Financial security for repatriation

Financial security relating to shipowners' liability

