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**International Labour Standards Department
Sectoral Policies Department**

**Background paper for discussion at the third meeting
of the Special Tripartite Committee established under
Article XIII of the Maritime Labour Convention, 2006, as amended
(Geneva, 23–27 April 2018)**

Geneva, 2018

INTERNATIONAL LABOUR OFFICE, GENEVA

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A. Introduction

1. The Maritime Labour Convention, 2006, as amended, entered into force on 20 August 2013. As of 20 January 2018, it has been ratified by 85 Members.¹ The first set of amendments to the Code of the Convention, adopted in June 2014, entered into force on 18 January 2017. Since then, the instrument is to be cited as the Maritime Labour Convention, 2006, as amended (MLC, 2006).
2. The Special Tripartite Committee (STC) was established by the Governing Body, at its 318th Session in June 2013, in accordance with Article XIII of the MLC, 2006.² It consists of “two representatives nominated by the Government of each Member which has ratified this Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission”. In addition, “Government representatives of Members which have not yet ratified this Convention may participate in the Committee” but have no right to vote on any matter dealt with in accordance with the Convention.
3. It is recalled that the second meeting of the STC took place from 8 to 10 February 2016 at ILO headquarters in Geneva and was attended by over 200 participants. The meeting facilitated useful bipartite and tripartite exchanges on many issues related to the working of the Convention, and tripartite agreement was reached on important matters.³ The Committee adopted amendments to the Code implementing Regulation 4.3 – Health and safety protection and accident prevention – intended to eliminate shipboard harassment and bullying by ensuring that these issues are covered by the health and safety policies and measures required by the Code. The Committee further adopted amendments to the Code implementing Regulation 5.1 – Flag State responsibilities – intended to allow an extension of not more than five months of the validity of the maritime labour certificate issued for ships in cases where the renewal inspection required by paragraph 2 of Standard A5.1.3 has been successfully completed, but a new certificate cannot immediately be issued to that ship.⁴ Finally, the Committee adopted a resolution concerning the establishment of a

¹ An updated list is available on the ILO’s dedicated MLC, 2006, website at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312331:NO.

² The Standing Orders of the Committee are to be found at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_183944.pdf.

³ GB.326/LILS/6. All documents related to the second meeting of the Special Tripartite Committee are available at: http://www.ilo.org/global/standards/maritime-labour-convention/events/WCMS_386795/lang--en/index.htm.

⁴ Pursuant to Article XV, paragraph 5, of the MLC, 2006, and article 17 of the Standing Orders of the Committee, the amendments were communicated to the Governing Body for transmission to the following session of the International Labour Conference (June 2016). The 105th Session of the Conference approved them by the required two-thirds majority of the votes cast by the delegates present. On 8 July 2016, these amendments were (under Article XV, paragraph 6, of the MLC, 2006) notified to all Members whose ratification of the MLC, 2006, was registered prior to the date of the Conference’s approval. These Members have a period of two years from that notification – that is, until 8 July 2018 – to communicate to the Director-General a formal expression of disagreement to the amendments. Up to now, only the formal expression of disagreement by the Government of Finland has been received by the Office. The amendments will enter into force on 8 January 2019 – that is, six months after the end of the two-year period – unless more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage

Working Group of the STC called upon: (i) to examine issues related to the protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts such as piracy or armed robbery, and to prepare proposals including an amendment to the Code of the MLC, 2006, to address these issues; and (ii) to recommend improvements to the process for preparing proposals for amendments to the Code of the MLC, 2006, for consideration by the STC in accordance with Article XV of the Convention and article 11 of the Standing Orders of the STC, to promote their earlier and fuller consideration by member States and representative organizations of seafarers and shipowners.

4. The third meeting of the STC was convened by the Governing Body at its 326th Session⁵ in March 2016. Section B of this paper provides an overview of the tasks of the Committee at its third meeting and addresses the items contained in the agenda adopted by the Officers of the Committee and transmitted by the Director-General in the letter of invitation to the meeting.⁶

B. Tasks for the third meeting of the Special Tripartite Committee

5. As set out in the agenda of the meeting, the first task of the STC will be to discuss the report of its Working Group. Second, it will hold an exchange of information related to the implementation of the MLC, 2006, in accordance with the mandate received under Article XIII of the Convention to “keep the working of this Convention under continuous review”.⁷ Third, pursuant to Article XV of the Convention, it will consider proposals for amendments to the Code of the MLC, 2006. Fourth, the Committee will examine any request for consultation presented under Article VII of the MLC, 2006, by Members where representative organizations of shipowners or of seafarers do not exist. Finally, following the request formulated by the Governing Body in the context of the functioning of the Standards Review Mechanism, the Committee will review a first set of 33 maritime-related international labour standards.⁸ A series of separate technical notes will be presented to the Committee on this last issue.

of the ships of the Members which have ratified the Convention have communicated to the Director-General their formal expressions of disagreement with the amendments. After the entry into force of an amendment adopted under Article XV, the Convention may only be ratified in its amended form.

⁵ [GB.326/PV](#), para. 534(e).

⁶ In accordance with article 3 of the Standing Orders. The agenda is set out in Appendix A.

⁷ The text of Articles VII, XIII and XV of the MLC, 2006, is set out in Appendix B. Article 2 of the Standing Orders sets out the mandate of the Committee as follows:

The MLC Committee shall:

- (a) keep the working of the Convention under continuous review and provide advice on this subject to the Governing Body, or through the Governing Body, to the International Labour Conference;
- (b) consider proposals for amendments to the Code of the Convention in accordance with Article XV of the Convention;
- (c) carry out the consultation referred to in Article VII of the Convention.

⁸ [GB.326/LILS/3/2](#). Decision available at: http://www.ilo.org/gb/decisions/GB326-decision/WCMS_461376/lang--en/index.htm.

B.1. Report of the Working Group of the STC

6. The Working Group of the STC worked by correspondence from August 2016 to January 2017 and held a meeting at the ILO headquarters in Geneva from 3 to 5 April 2017.⁹ As requested by the second meeting of the STC, the final report of the Working Group was published nine months before the third meeting of the Committee.¹⁰ The outcome of the meeting is reproduced in Appendix C for ease of reference.
7. In relation to the protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the Working Group agreed on a set of proposals from the outcome of the discussion. In this regard, it was stated that "the text that follows reflects the various types of proposals discussed and is without prejudice to the positions of any government or group. These outcomes should be considered and treated as not replacing or obstructing the need for proposals to be submitted to the Director-General of the International Labour Office in accordance with Article XV, paragraph 2 of the Maritime Labour Convention, as amended (MLC, 2006)." Three proposals were retained, namely: (a) amendments to Standard A2.1 of the MLC, 2006, and the accompanying Guideline; (b) amendments to Standard A2.2 of the MLC, 2006, and the accompanying Guideline; and (c) elements to be incorporated into Office guidelines outside the MLC, 2006.¹¹
8. Following the meeting of the Working Group, the group of Seafarer representatives appointed to the STC submitted, on 25 August 2017, a proposal for amendment to the Code of the MLC, 2006, regarding the protection of wages of seafarers held captive on or off the ship as a result of acts of piracy or armed robbery against ships. The content of this proposal is explained below. On 26 August 2017, the group of Shipowner representatives appointed to the STC submitted a proposal to adopt guidelines outside the MLC, 2006, on the same issue. The proposal is set out in Appendix D to this paper. The two sets of proposals were promptly communicated to all Members for comment and information, respectively. A separate document summarizing the comments received by the International Labour Office from governments and social partners will be published shortly before the meeting of the STC.
9. Concerning the issue of improvements to the process for preparing proposals for amendment to the Code of the MLC, 2006, the STC is invited to examine and adopt the draft template and resolution adopted by the Working Group.¹²

B.2. Consideration and possible adoption of proposals for amendment of the Code of the MLC, 2006

10. The function of the STC with respect to the consideration of amendments to the Code of the MLC, 2006, is set out in Article XV of the Convention. Under this procedure, proposals for amendments to the Code must be submitted to the Director-General, who then communicates

⁹ All the documents relevant to the work of the Working Group of the STC are available at: http://www.ilo.org/global/standards/maritime-labour-convention/special-tripartite-committee/WCMS_500948/lang--en/index.htm.

¹⁰ The final report of the meeting is available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_553219.pdf.

¹¹ See Appendix C, document I.

¹² See Appendix C, documents II and III.

the proposals to all Members of the Organization with an invitation to submit comments or suggestions on them during a specified period. The proposals for amendments and any comments made during this period are then considered by the STC at a meeting and, if adopted, are submitted to the International Labour Conference at its next session for approval. If approved, the amendments are notified to Members that have ratified the Convention before the date of their approval. As indicated above, Members are given a period (between one and two years) to consider them. The Convention as amended enters into force six months after the end of that period, unless more than 40 per cent of ratifying Members, representing not less than 40 per cent of world gross tonnage, have formally expressed their disagreement with the amendments.

B.2.1. Proposals from the group of Seafarer representatives – Proposals for amendments to the Code relating to Regulations 2.1, 2.2 and 2.5 of the MLC, 2006

11. It is recalled that the second meeting of the STC considered a proposal for amendments to the Code relating to Regulation 2.2 – Wages, submitted by the group of Seafarer representatives, intended to ensure the continued payment of wages when a seafarer is held captive by pirates. Following discussion, the Committee recognized the importance of the issue, but considered that it required further consideration by a working group. Accordingly, the Committee adopted a resolution concerning the establishment of a working group of the STC called upon to examine issues related to the protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts such as piracy or armed robbery.¹³ The outcome of the Working Group on this issue has been referred to above.
12. The question of wages and contracts of seafarers held captive as a result of acts of piracy or armed robbery against ships was discussed during the 104th Session of the Legal Committee of the International Maritime Organization (IMO), held at IMO headquarters in London from 26 to 28 April 2017.¹⁴ In that context, the International Labour Office provided written and oral information on the ongoing developments within the ILO.
13. The information submitted by the group of Seafarer representatives together with the proposal is reproduced below.

Background

- (a) Despite an apparent reduction in the number of incidents in recent times, piracy and armed robbery against ships continues to be a problem. One of the most concerning elements of this problem is the effect on the members of a ship's crew who find themselves held captive during an incident, and the families of those crew members. Periods of captivity can last years, leaving crew members traumatized and families in a constant state of worry for their captured loved ones and, potentially, without the income on which they had relied for food, schooling, medicines and other necessities.

¹³ [GB.326/LILS/6](#), para. 8.

¹⁴ See the note prepared by the IMO Secretariat (LEG 104/7) and the document submitted by the Government of India (LEG 104/7/1) where it proposes to the Legal Committee to consider inviting the ILO to explore the possibility of an amendment to the MLC, 2006, to incorporate enabling provisions for deemed continuation of the seafarers' contracts, when the seafarers are held in captivity for protracted periods until such time the seafarers are released from hostage situations and returned to their respective nations.

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- (b) The Interim guidelines on measures relating to the welfare of seafarers and their families affected by piracy off the Coast of Somalia¹⁵ (MSC 93/16/1) which were referred to the ILO by the 93rd Session of the IMO Maritime Safety Committee provides that: Shipowners ... should ensure the continued payment of wages and applicable entitlements to the affected seafarers' families ... and seafarers held hostage should not be dismissed, and consequently the payment of their wages should continue.
 - (c) While it is acknowledged that many shipowners and employers do provide for the families of captured seafarers, unfortunately the guidelines have not been adhered to in all cases. Such cases are damaging to the image of the maritime industry. Further, there are grey areas over the expiry of fixed-term contracts and the continued payment of wages during the entire period on unlawful captivity. This has led to considerable hardship for seafarers and their families.

Purpose

- (d) The purpose of this proposed amendment is to codify the protection of seafarers' 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 during a period when the seafarer is held captive and to ensure that responsibility for such is taken by the appropriate party. To ensure that seafarers' rights are adequately protected, it is proposed that an amendment is made to both Standards and Guidelines.

Relevant considerations

- (e) The proposed amendment will: (i) provide clarity on the requirements which should be placed on shipowners in the case of seafarers being held captive; (ii) ensure that payments of wages and other contractual entitlements which sustain the families of captured seafarers continue to be made, thus removing the need for governments and other social partners to carry the burden of support during this period; and (iii) ensure that the right to decent work and conditions is expressly maintained.
- (f) The proposed amendment will achieve the above aims without placing a large administrative burden on States. It will also ensure that the families of seafarers do not suffer from loss of income during the period of captivity.

Section A – Proposal from the group of Seafarer representatives relating to Regulation 2.1 – Seafarers' employment agreement

14. Insert a new paragraph 1 in Standard A2.1 – Seafarers' employment agreement:

- 1. For the purpose of Standard A2.2.1, Standard A2.2.2, Guideline B2.5.4 and the present Standard, the term:
 - (a) "piracy" shall have the same meaning as in the United Nations Convention on the Law of the Sea, 1982 (UNCLOS);
 - (b) "armed robbery against ships" means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea, or any act of inciting or of intentionally

¹⁵ International Maritime Organization (IMO) (2014): *Interim guidelines on measures relating to the welfare of seafarers and their families affected by piracy off the coast of Somalia*, submitted by Italy, Republic of Korea, Philippines, the Baltic and International Maritime Council, ICC, ICMA, IFSMA, IMHA, INTERCARGO, INTERTANKO, ITF, the Nautical Institute and OCIMF. Document MSC 93/16/1, London. Available at: <http://intertanko.com/Documents/MSC%2093-16-1.pdf>.

facilitating an act described above; this term shall include the kidnapping of seafarers for ransom who are then held on or off a ship.

15. Renumber existing paragraphs in Standard A2.1 from “1 to 6” to “2 to 7” and insert a new paragraph 8:

8. Each Member shall adopt laws or regulations establishing that a seafarer’s employment agreement shall not expire or be terminated while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

**Section B – Proposal from the group of Seafarer representatives
relating to Regulation 2.2 – Wages**

16. Replace the words “Standard A2.2 – Wages” by “Standard A.2.2.1 – Wages”.

17. Insert two new paragraphs:

7. Where a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the seafarer’s wages and entitlements under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, shall continue to be paid, including the remittance of any allotments as provided in paragraph 4 of this Standard, during the entire period of captivity and until the seafarer is released and duly repatriated in accordance with Standard A2.5.1, or until the death of the seafarer while in captivity.

8. Each Member shall require ships that fly its flag to provide financial security to ensure that the wages and entitlements of seafarers held captive on or off the ship as a result of acts of piracy or armed robbery against ships continue to be paid.

18. Insert a new Standard A2.2.2 – Financial security, with the following paragraphs:

1. In implementation of paragraph 8 of Standard A2.2.1, this Standard establishes the requirement to provide an effective financial security system to ensure payment of seafarers, and/or their nominated representative, held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

2. 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.

3. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any seafarer held captive on or off the ship as a result of acts of piracy or armed robbery, and/or their nominated representative, against a ship flying the flag of the Member.

4. 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.

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

6. 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.

7. Having regard to Regulations 2.1 and 2.2, assistance provided by the financial security system shall be sufficient to cover 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, including the remittance of any allotments as provided in paragraph 4 of Standard A2.2.1, during the entire period of captivity and until the seafarer is released and duly repatriated in accordance with Standard A2.5.1, or until the death of the seafarer while in captivity.

8. 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.

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

10. 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 victims of piracy or armed robbery against ships. 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.

19. Insert a new Appendix A2-I – Evidence of financial security under paragraph 8 of Standard A2.2.1, with the following text:

The certificate or other documentary evidence referred to in Standard A2.2.2, paragraph 5, 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 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 A2.2.2.

**Section C – Proposal from the group of Seafarer representatives
relating to Regulation A2.5 – Repatriation**

20. Insert a new Guideline B2.5.4 – Piracy and armed robbery against ships, with the following text:

1. The entitlement to repatriation may not lapse while the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

**Section D – Proposal from the group of Seafarer representatives
relating to Appendix A5-I**

21. After the last line, insert a new line to read: “Financial security for payment of seafarers held captive as a result of acts of piracy or armed robbery.”

Section E – Proposal from the group of Seafarer representatives
relating to Appendix A5-III

22. After the last line, insert a new line to read: “Financial security for payment of seafarers held captive as a result of acts of piracy or armed robbery.”

**B.3. Exchange of information related to implementation:
Keeping the working of the Convention under
continuous review**

23. In accordance with Article XIII of the MLC, 2006, one of the primary tasks of the STC is to consider a wide range of questions relating to the working of the Convention. Where significant gaps or other difficulties are identified, this may lead to recommendations to the Governing Body on action to be taken to ensure the effective, efficient and, to the extent deemed expedient, uniform implementation of the Convention,¹⁶ or to proposals for amendments in the future. The STC also provides an opportunity for a useful intergovernmental and tripartite exchange of information regarding implementation experiences. In this context, the constituents are encouraged to provide information in the meeting on the status of implementation, as well as to identify any particularly difficult issues they have encountered.

B.3.1. Entry into force of the 2014 amendments

24. As stated above, the 2014 amendments to the Code of the MLC, 2006, entered into force on 18 January 2017. Since then, a financial security system must be in place and ships flying the flag of ratifying countries must carry on board a certificate or other documentary evidence of financial security for cases of abandonment and death or long-term disability of seafarers due to an occupational injury, illness or hazard. As of 30 January 2018, the Netherlands, for the European part of the Netherlands and Curaçao, had given notice to the Director-General that they shall be bound by the amendments only after a subsequent express notification of its acceptance. The Office was still awaiting the declaration of acceptance of the amendments from the following countries: Albania, Bangladesh, Belize, Cabo Verde, China, Estonia, Fiji, Gabon, Honduras, India, Islamic Republic of Iran, Jordan, Kenya, Republic of Maldives, Mongolia, Portugal, Romania and Thailand.¹⁷
25. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) made the following observations on some of the legal implications of the entry into force of amendments to the Code of the MLC, 2006. Article XV, paragraphs 6–8, of the MLC, 2006, set out a system of implicit acceptance of the amendments to the Code. However, these provisions of the Convention only apply to “ratifying Members” defined in Article XV, paragraph 6, as Members whose ratification of the MLC, 2006, was registered before the date of approval of the amendments by the Conference. While Article XV,

¹⁶ The Standing Orders provide in article 16, Reports to the Governing Body:

Following its meetings referred to in article 3 above, the MLC Committee, through its Chairperson, shall report to the Governing Body on the working of the Convention. The report may contain recommendations to the Governing Body on action to be taken to ensure the effective, efficient and, to the extent deemed expedient, uniform implementation of the Convention.

¹⁷ The status of the amendments to the Code of the MLC, 2006, for each ratifying Member can be consulted at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312331:NO.

paragraph 12, for its part, provides that the Convention in its amended form will be applicable to Members ratifying after the entry into force of the amendments to the Code, Members whose ratification was registered between the date on which the amendments were approved by the International Labour Conference and the date on which these amendments entered into force are not expressly covered by any provision of Article XV. As a result of this, in a number of cases, questions have arisen as to the manner in which Members whose ratification was registered between the approval and the entry into force of the amendments may accept the amendments to the Code adopted pursuant to Article XV of the MLC, 2006. In light of the absence of an explicit provision in the Convention, the CEACR invited the STC to consider this situation in view of future amendments to the Convention.¹⁸

26. Following a discussion with the Officers of the STC, the Office was requested to provide information to the STC on the manner in which this issue has been addressed. It is to be noted in this regard that the Office has informed all the Members concerned that they may accept the amendments by addressing a formal declaration to that effect to the Director-General. The STC might wish to encourage the governments mentioned in paragraph 25 to clarify their position regarding the acceptance of the amendments without delay.
27. Since the entry into force of the amendments, 53 abandonment cases have been reported to the IMO–ILO Joint Database of Abandonment of seafarers. Eight of them related to ships flying the flag of States which had not ratified the MLC, 2006, as of 30 January 2018. Of the remaining 45 cases, only eight ships had on-board certificates of financial security in the event of abandonment of seafarers. In 2017, the cases reported increased drastically. Over the last five years, the number of cases ranged from 12 to 19. In 2017, however, the number was 55. Of them, 20 cases were now resolved (including six disputed cases).

B.3.2. The work of the Committee of Experts on the Application of Conventions and Recommendations

28. The CEACR has now reviewed 55 first reports submitted by ratifying member States based on article 22 of the ILO Constitution in relation to the implementation of the MLC, 2006. The laws and practices of the major flag states, port states and labour supplying states of the world have now been reviewed.
29. The CEACR has overall observed remarkable efforts to implement the Convention. It has however raised a number of issues that still need to be addressed. In this regard, the situation differs considerably from country to country. While in some cases the CEACR draws the government's attention to gaps regarding specific details of the Convention, in others, it requests the governments concerned to adopt the basic legislation giving effect to most of the provisions of the Convention.

¹⁸ See *Observations arising from the entry into force of the amendments to the Code of the MLC, 2006, adopted under the simplified procedure of Article XV of the Convention*, General observation adopted by the CEACR in 2016 and published in 2017 available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3325970,,,2016.

30. Some of the issues raised by the CEACR concerning the implementation of the MLC, 2006, can be summarized as follows: ¹⁹

1. *Consultations:* In some countries there were no shipowners' or seafarers' organizations or both. In this context, recalling that the implementation of an important number of provisions of the Convention require consultations, the governments concerned were requested to have recourse to the STC. In other instances, while shipowners' and seafarers' organizations did exist, governments failed to provide information on whether consultations had taken place when required by the Convention.
2. *Scope of application of the Convention:*
 - (a) *Definition of seafarer:* A number of countries did not ensure that the protection afforded by the Convention is guaranteed to all seafarers covered by it. Some countries excluded cadets from the definition of seafarers. The Committee considered that obtaining on-board training for the purpose of becoming a seafarer by definition implies working on board and, as a result, no question of doubt can arise concerning the fact that cadets are to be regarded as seafarers for the purpose of the Convention. Some countries determined that "non-marine personnel, employed under outsourced service agreements" are not to be regarded as seafarers. The Committee recalled that the nature of the contract (outsource agreement in this case) was irrelevant for the definition of seafarer as long as the person works on board a ship to which the Convention applies.
 - (b) *Definition of ship:* Some countries adopted general or ad hoc exemptions to their relevant rules and regulations for various categories of ships, based on their area of activities (distance in nautical miles, continental shelf, or notions such as "waters of the Republic", "coastal waters" or "near coastal voyages"), their size or number of seafarers on board, or their destination (e.g. pleasure vessels), which are either not well-defined in the relevant provisions or in contradiction with the scope of application of the Convention.
3. *Minimum age:* The legislation of some countries did not contain a clear prohibition of work on board a ship for persons under the age of 16. Moreover, several countries did not adopt a clear prohibition of hazardous work for seafarers under the age of 18. Some countries allowed for exceptions to the prohibition of hazardous work in specific situations, while this is not authorized under the Convention. A number of countries were yet to adopt, after consultation with shipowners' and seafarers' organizations, the list of work likely to jeopardize the health and safety of seafarers under the age of 18.
4. *Recruitment and placement:* A number of countries did not adopt national provisions, or did not provide the relevant information regarding the system of licensing for agencies dealing with the recruitment and placement of seafarers; minimum requirements concerning the functioning of private seafarer recruitment and placement services; and procedures for investigating complaints.
5. *Seafarers' employment agreement:* Several countries faced difficulties in implementing the requirement that the seafarer employment agreement shall be signed by both the seafarer and the shipowner or a representative of the shipowner. In these cases, additional measures were requested recalling the importance of the basic legal relationship that the Convention establishes between the seafarer and the person

¹⁹ The summary has been prepared, for information purposes, on the basis of the direct requests adopted by the CEACR on the implementation of the MLC, 2006. They are available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:20010:::NO:::>

defined as “shipowner”. Some legislations did not guarantee the seafarer’s right to seek advice before signing a seafarer employment agreement or did not comply with the requirements on the list of matters that should be included in seafarers’ employment agreements. Some countries did not clearly define the adequate minimum prior notice of termination to be given to seafarers and shipowners or did not provide for the possibility to terminate the contract on a shorter notice or without notice for compassionate reasons.

6. *Hours of work/hours of rest:* Several countries encountered problems in implementing the provisions requiring Members to fix either a maximum number of hours of work or a minimum number of hours of rest. It was considered that the Convention should not be understood as to give shipowners or masters the choice of regimes concerning maximum hours of work and minimum hours of rest. Several countries authorized exceptions to the established minimum hours of work or minimum hours of rest, including those provided for by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) of the International Maritime Organization (IMO), either through law or individual contracts and not only through collective agreements as required by the Convention.
7. *Annual leave:* Some countries did not ensure by law a minimum period of annual leave. A problem regarding the prohibition to forgo annual leave was raised with respect to several countries. Standard A2.4, paragraph 3, of the MLC, 2006, stipulates that any agreement to forgo minimum annual leave with pay shall be prohibited, except in cases provided for by the competent authority. While noting that the Convention is silent about the nature and scope of permissible exceptions, it was considered that this provision needs to be understood in a restrictive manner. In contrast, to read in this Standard a broad authorization to forgo annual leave for cash compensation or otherwise, would defeat the purpose of Regulation 2.4 which is to ensure that seafarers have adequate leave. The Committee drew the attention of several governments to the fact that, regardless of the duration of the employment agreement, a seafarer is entitled to a minimum of 30 days of paid annual leave after 11 months of continuous service on board, except in specific cases restrictively provided for by the competent authority. For shorter periods of service, the corresponding number of days should be calculated on a pro rata basis.
8. *Repatriation:* Some countries had a wide definition of the cases where the seafarer is not entitled to repatriation. The Committee considered that even when the seafarer has been found, in accordance with national laws or regulations or applicable collective agreements, to be in serious default of the seafarer’s employment obligations, this situation does not release the shipowner from the obligation to pay for the repatriation in the first instance. Some countries did not comply with the requirements regarding the maximum period of service on board.
9. *Manning levels:* The Committee requested a number of countries to indicate how the determination of the safe manning levels takes into account the requirements concerning food and catering established under Regulation 3.2 and Standard A3.2 (Standard A2.7, paragraph 3).
10. *Accommodation:* Applicable provisions relating to accommodation and recreational facilities of seafarers in a number of countries provided for exemptions which are not allowed by the Convention.
11. *Safety and health:* Several countries did not adopt national guidelines for the management of occupational safety and health on board ships, after consultations with representative shipowners’ and seafarers’ organizations.

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12. *Social security*: A large number of countries did not ensure that all seafarers ordinarily resident in their territory benefit from the social security protection in the applicable branches.
 13. *Declaration of Maritime Labour Compliance (DMLC)*: A number of countries faced difficulties regarding the content of the DMLC Part I as it only referred to the provisions of the Convention and not to the content of the national requirements embodying those provisions. Regarding the DMLC Part II, which is intended to identify the measures adopted by shipowners to implement the national requirements, it was noted that the examples provided by some countries did not contain any information on such measures. In those cases, the DMLC did not fulfil the purpose for which it is required which is to help all persons concerned, such as flag State inspectors, authorized officers in port States and seafarers, to check that the national requirements on the 16 listed matters are being properly implemented on board ships.
 14. *Inspections and inquiries into serious marine casualties*: A number of countries faced difficulties in ensuring that inspectors are independent of changes of government and also of improper external influences. Several countries did not provide sufficient information on how confidentiality is ensured by inspectors receiving complaints and/or about any prohibition from victimization of seafarers for filing a complaint. In a number of countries, there was no obligation to hold an official inquiry into any serious marine casualty.
 15. *Control of the recognized organizations (ROs)*: A number of countries have not provided information on the functioning and control of recognized organizations.
 16. *Port State control*: A number of countries have not provided information regarding: (1) the effective monitoring system to ensure that the working and living conditions for seafarers on board ship meet the requirements of the Convention; and (2) the confidentiality of the complaints. Other countries have not provided information on the procedures established concerning onshore complaints for seafarers calling at foreign ports.

B.3.3. Port State control

31. The Paris Memorandum of Understanding on Port State Control (Paris MOU) submitted a request to the Officers of the STC regarding the possibility of presenting the results of the Concentrated Inspection Campaign (CIC) on the MLC, 2006, conducted in 2016, to the third meeting of the STC. The request was welcomed by the Officers. According to the report,²⁰ “a total of 3674 inspections were carried out with the CIC questionnaire completed on ships targeted for inspection. In general, the results of the CIC on MLC, 2006 show a good standard of implementation of the MLC, 2006 requirements on board the ships inspected, with a minimum of 95% of positive results in the Questionnaire, except the question regarding the Seafarers’ Employment Agreement content (93,5% of positive results) and sufficient compliance on the subjects in the questionnaire with respect to the number of detentions. A total of 42 ships were detained in line with the CIC Questionnaire representing 1,1% of the total. Principal grounds for detention were linked with wages, seafarer’s employment agreement and procedure of complaint areas.” The STC might wish to discuss the outcome of the CIC.

²⁰ *Report of the 2016 Concentrated Inspection Campaign (CIC) on Maritime Labour Convention, 2006*, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_613476.pdf.

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32. According to the Ministerial Declaration adopted by the Third Joint Ministerial Conference of the Paris and Tokyo Memoranda of Understanding on Port State Control, ²¹ the inclusion of the ILO's MLC, 2006, as a relevant instrument in the Paris and Tokyo Memoranda, and related actions to improve training of Port State Control Officers on inspection of MLC, 2006, requirements, has contributed substantially to improving working and living conditions at sea.
 33. Under the abovementioned Ministerial Declaration, the ILO's attention has been drawn to the importance of working together with the IMO and both Memoranda towards the recognition of electronic certificates. It is further indicated in this regard that ship certificates are now being developed and issued in electronic form as a result of the IMO Facilitation Committee's approval of the Guidelines for the use of electronic certificates. This is an important step towards reducing the administrative burdens imposed on Administrations, Port State Control Officers, ships' crews and other stakeholders. There are no technological or legal obstacles to the recognition of electronic certificates. The STC might wish to discuss any possible implications of these developments regarding the certificates required under the MLC, 2006.

B.4. Tripartite consultations under Article VII

34. The MLC, 2006, is a Convention that is founded on encouraging tripartism at the national level. A number of its provisions, particularly with respect to national "determinations" in specific cases of application and exemptions under Title 3, require tripartite consultation by the Government with the shipowners' and seafarers' organizations concerned, as part of the process of implementation. However, some Members do not yet have such organizations. Article VII of the MLC, 2006, therefore provides that in such cases the Government is to consult the Special Tripartite Committee.
35. The Committee will need to consider any requests that are submitted to it in time for consideration at its third meeting. So far, no such requests have been made.
36. Procedures for consultation under Article VII of the Convention are provided for in article 14 of the Standing Orders of the Committee; requests for consultation are to be addressed to the Chairperson of the STC through the International Labour Office.
37. No requests for consultations under Article VII of the MLC, 2006, have been submitted since the first meeting of the Committee in April 2014.

²¹ The Declaration is available at: <https://www.tc.gc.ca/eng/marinesafety/third-joint-ministerial-conference-paris-tokyo-memoranda-understanding-port-state-control.html>.

Appendix A

Agenda for the third meeting of the Special Tripartite Committee (Geneva, 23–27 April 2018)

1. Report from the Working Group of the Special Tripartite Committee
2. Consideration of any proposals for amendments to the Code of the Maritime Labour Convention, 2006, as amended (MLC, 2006)
3. Exchange of information related to the implementation of the MLC, 2006
4. Consideration of any request for consultation under Article VII of the MLC, 2006
5. Review of maritime-related international labour standards (on the basis of the request formulated by the Governing Body in the context of the functioning of the Standards Review Mechanism ¹)
6. Any other business

¹ The Governing Body “referred the maritime instruments (sets of instruments 18 and 20), to the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006), for its expert review and report to the Governing Body”. See [GB.326/LILS/3/2](#). Decision available at: http://www.ilo.org/gb/decisions/GB326-decision/WCMS_461376/lang--en/index.htm.

Appendix B

Relevant provisions in the MLC, 2006

Consultation with shipowners' and seafarers' organizations

Article VII

Any derogation, exemption or other flexible application of this Convention for which the Convention requires consultation with shipowners' and seafarers' organizations may, in cases where representative organizations of shipowners or of seafarers do not exist within a Member, only be decided by that Member through consultation with the Committee referred to in Article XIII.

Special Tripartite Committee

Article XIII

1. The Governing Body of the International Labour Office shall keep the working of this Convention under continuous review through a committee established by it with special competence in the area of maritime labour standards.

2. For matters dealt with in accordance with this Convention, the Committee shall consist of two representatives nominated by the Government of each Member which has ratified this Convention, and the representatives of Shipowners and Seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission.

3. The Government representatives of Members which have not yet ratified this Convention may participate in the Committee but shall have no right to vote on any matter dealt with in accordance with this Convention. The Governing Body may invite other organizations or entities to be represented on the Committee by observers.

4. The votes of each Shipowner and Seafarer representative in the Committee shall be weighted so as to ensure that the Shipowners' group and the Seafarers' group each have half the voting power of the total number of governments which are represented at the meeting concerned and entitled to vote.

Amendments to the Code

Article XV

1. The Code may be amended either by the procedure set out in Article XIV or, unless expressly provided otherwise, in accordance with the procedure set out in the present Article.

2. An amendment to the Code may be proposed to the Director-General of the International Labour Office by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed by, or be supported by, at least five governments of Members that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

3. Having verified that the proposal for amendment meets the requirements of paragraph 2 of this Article, the Director-General shall promptly communicate the proposal, accompanied by any comments or suggestions deemed appropriate, to all Members of the Organization, with an invitation to them to transmit their observations or suggestions concerning the proposal within a period of six months or such other period (which shall not be less than three months nor more than nine months) prescribed by the Governing Body.

4. At the end of the period referred to in paragraph 3 of this Article, the proposal, accompanied by a summary of any observations or suggestions made under that paragraph, shall be transmitted to

the Committee for consideration at a meeting. An amendment shall be considered adopted by the Committee if:

- (a) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and
- (b) a majority of at least two-thirds of the Committee members vote in favour of the amendment; and
- (c) this majority comprises the votes in favour of at least half the government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote.

5. Amendments adopted in accordance with paragraph 4 of this Article shall be submitted to the next session of the Conference for approval. Such approval shall require a majority of two-thirds of the votes cast by the delegates present. If such majority is not obtained, the proposed amendment shall be referred back to the Committee for reconsideration should the Committee so wish.

6. Amendments approved by the Conference shall be notified by the Director-General to each of the Members whose ratifications of this Convention were registered before the date of such approval by the Conference. These Members are referred to below as “the ratifying Members”. The notification shall contain a reference to the present Article and shall prescribe the period for the communication of any formal disagreement. This period shall be two years from the date of the notification unless, at the time of approval, the Conference has set a different period, which shall be a period of at least one year. A copy of the notification shall be communicated to the other Members of the Organization for their information.

7. An amendment approved by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention.

8. An amendment deemed to have been accepted shall come into force six months after the end of the prescribed period for all the ratifying Members except those which had formally expressed their disagreement in accordance with paragraph 7 of this Article and have not withdrawn such disagreement in accordance with paragraph 11. However:

- (a) before the end of the prescribed period, any ratifying Member may give notice to the Director-General that it shall be bound by the amendment only after a subsequent express notification of its acceptance; and
- (b) before the date of entry into force of the amendment, any ratifying Member may give notice to the Director-General that it will not give effect to that amendment for a specified period.

9. An amendment which is the subject of a notice referred to in paragraph 8(a) of this Article shall enter into force for the Member giving such notice six months after the Member has notified the Director-General of its acceptance of the amendment or on the date on which the amendment first comes into force, whichever date is later.

10. The period referred to in paragraph 8(b) of this Article shall not go beyond one year from the date of entry into force of the amendment or beyond any longer period determined by the Conference at the time of approval of the amendment.

11. A Member that has formally expressed disagreement with an amendment may withdraw its disagreement at any time. If notice of such withdrawal is received by the Director-General after the amendment has entered into force, the amendment shall enter into force for the Member six months after the date on which the notice was registered.

12. After entry into force of an amendment, the Convention may only be ratified in its amended form.

13. To the extent that a maritime labour certificate relates to matters covered by an amendment to the Convention which has entered into force:

- (a) a Member that has accepted that amendment shall not be obliged to extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member which:

-
- (i) pursuant to paragraph 7 of this Article, has formally expressed disagreement to the amendment and has not withdrawn such disagreement; or
 - (ii) pursuant to paragraph 8(a) of this Article, has given notice that its acceptance is subject to its subsequent express notification and has not accepted the amendment; and
- (b) a Member that has accepted the amendment shall extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member that has given notice, pursuant to paragraph 8(b) of this Article, that it will not give effect to that amendment for the period specified in accordance with paragraph 10 of this Article.

Appendix C

Outcome of the Working Group of the STC

INTERNATIONAL LABOUR ORGANIZATION

STCMLC/WG/2017/D.1(Rev.)

**Working Group of the Special Tripartite Committee
established under Article XIII of the Maritime
Labour Convention, 2006 (MLC, 2006)**

Geneva
3–5 April 2017

Proposals from the outcome of the discussion of the Working Group related to the protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships

The text that follows reflects the various types of proposals discussed and is without prejudice to the positions of any government or group. These outcomes should be considered and treated as not replacing or obstructing the need for proposals to be submitted to the Director-General of the International Labour Office in accordance with Article XV, paragraph 2 of the Maritime Labour Convention, as amended (MLC, 2006).

(a) Amendments to Standard A2.1 of the MLC, 2006, and the accompanying Guideline

Insert new paragraph 1 in Standard A2.1 – Seafarers' employment agreements, as follows:

For the purpose of this Standard, the term:

- (a) piracy shall have the same meaning as in the United Nations Convention on the Law of the Sea, 1982 (UNCLOS);
- (b) armed robbery against ships means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within

a State's internal waters, archipelagic waters and territorial sea, or any act of inciting or of intentionally facilitating an act described above.¹

Insert new paragraph 7 in Standard A2.1 – Seafarers' employment agreements, as follows:

Each Member shall adopt laws or regulations establishing that a seafarers' employment agreement shall not expire or be terminated while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

* * *

Elements to be considered when drafting the accompanying Guideline:

- (1) The Guideline should point out that a shipowner is not in a position to repatriate seafarers while they are in captivity and hence cannot validly terminate the seafarers' employment agreement should the shipowner wish to do so.
- (2) (Point to be inserted in Standard or Guideline): clarification on the period of captivity and the date of death, the latter to be defined in accordance with the applicable national legislation of the flag State or the seafarer's State of residence as applicable.

(b) Amendments to Standard A2.2 of the MLC, 2006, and the accompanying Guideline

Insert a new paragraph 7 in Standard A2.2 – Wages, as follows:

Where a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the seafarer's wages and entitlements as indicated in the seafarers' employment agreement shall continue to be paid, including the remittance of any allotments as provided in paragraph 4 of this Standard, during the entire period of captivity and until the seafarer is released and duly repatriated in accordance with Standard A2.5, or until the death of the seafarer while in captivity.

* * *

Elements to be considered when drafting the accompanying Guideline:

- (1) Elaboration of the definition of armed robbery against ships to make sure that kidnapping is covered.
- (2) No provision in Standard A2.2 enables the shipowner to terminate the seafarers' employment agreement during the period of captivity.
- (3) Recommendation that the entitlement to repatriation cannot lapse while the seafarer is held captive.
- (4) (Point to be inserted in Standard or Guideline): Clarification on the period of captivity and the date of death, the latter to be defined in accordance with the applicable national legislation of the flag State or the seafarer's State of residence as applicable.

¹ IMO Resolution A.1025(26).

(c) Elements to be incorporated into Office guidelines outside the MLC, 2006

1. Shipowners should continue to pay seafarers' wages and provide all other entitlements in accordance with their seafarers' employment agreements, when seafarers are held captive on or off the ship as a result of acts of piracy or armed robbery against ships.
2. For the purpose of these guidelines, "piracy" has the same meaning as in the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and "armed robbery against ships" has the same meaning as in IMO Resolution A.1025(26).
3. The shipowner's obligations under paragraph 1 above should continue until the seafarer is released and duly repatriated, in accordance with the provisions in Standard A2.5 and Guideline B2.5; or until the date of death if the seafarer dies while in captivity. The date of death should be defined according to the applicable national legislation.
4. The shipowner should continue to remit allotments to the person or persons nominated by the seafarer in accordance with Standard A2.2(4) of the MLC, 2006.
5. The shipowner should not terminate the seafarers' employment agreement while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

Where the seafarers' employment agreement has been made for a fixed period and it expires while the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the shipowner should treat the seafarers' employment agreement as continuing to have effect until the period of captivity ends.

Where the shipowner has already served notice of termination of the seafarers' employment agreement to the seafarer and the date of termination occurs while the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the shipowner should ensure that the seafarers' employment agreement continues to have effect until the period of captivity ends.

6. There should be a reference to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents, for example the International Seafarers Welfare and Assistance Network's *Good Practice Guide for Shipping Companies and Manning Agents: Humanitarian support of seafarers and their families in cases of armed robbery and piracy attack*.
7. Encouragement of seafarers to conclude arrangements on allotments.
8. Support for post-traumatic stress disorder for seafarers.

* * *

**Proposed draft resolution concerning
improvements to the process for preparing
proposals for amendment to the Code of the
Maritime Labour Convention, as amended
(MLC, 2006)**

The third meeting of the Special Tripartite Committee (STC) of the Maritime Labour Convention, 2006, having received the recommendations of the Working Group established by the second meeting of the STC and endorsed by the Governing Body at its 326th Session (March 2016), on improvements to the process for preparing proposals for amendment to the Code of the MLC, 2006, in accordance with Article XV of the Convention:

- (i) decides to recommend the use of the attached template to serve as guidance for the preparation and submission of proposal(s) for amendment, and in this connection;
- (ii) suggests that the STC Officers can, either directly or upon request, provide feedback and comments on a confidential basis to the author(s) of the proposal(s) for amendment with a view to facilitating any subsequent discussion(s) in the STC; and
- (iii) emphasizes that the voluntary communication to the STC Officers should not obstruct the right to submit a proposal(s) for amendment, as provided for in Article XV, paragraph 2, of the Convention and should not delay the prompt communication of the proposal(s) for amendment to all Members of the Organization as required by Article XV, paragraph 3.

**Working Group of the Special Tripartite Committee
established under the Maritime Labour Convention,
2006 (MLC, 2006)**

Geneva
3–5 April 2017

**Template for submitting proposals for
amendment to the Code of the Maritime
Labour Convention, 2006, as amended
(MLC, 2006), in accordance with Article XV**

This template, to be used on a voluntary basis, contains an indicative list of information to facilitate consideration by the STC of a proposed amendment to the Code of the MLC, 2006

Reference (for ILO Office use only)

Part A

Date: day/month/year

Topic

Proposal submitted by (please tick as appropriate)

- Government(s) of
(supported by:)

Shipowners

Seafarers

Contact details

Name:.....
Position:
Email:
Telephone:.....

Part B

Background

Please explain the background of the proposal (*by providing, for example, relevant international instruments or discussions, data or statistics, action by international organizations, activities in other fora, etc.*).

--

Purpose

Please provide the reason(s) for the proposal (*by explaining, for example, the need for an amendment to either Standards (Part A of the Code), Guidelines (Part B of the Code) or both, and how this amendment meets the objectives of the MLC, 2006*).

--

Relevant considerations

Please explain the benefits and implications ([social], [financial], practical/administrative, or other) of the proposal, if applicable.

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Part C

Proposed amendment(s)

Standard	Guideline	Proposed text (amendments in track changes)

Part D

Transitional measure(s), if applicable

Please specify any suggested transitional measure(s) that should be adopted with the proposed amendment and the preferred timeline for implementation.

--

Please attach any relevant materials or references in support of the proposal.

[Note: Proposer(s) may wish to informally and confidentially discuss Parts B and D above with the STC Officers prior to the official submission of the proposal(s) for amendment. This process should not delay its prompt communication to all Members of the Organization as required by Article XV, paragraph 3, of the MLC, 2006.]

Amendments to the Code

Article XV

1. The Code may be amended either by the procedure set out in Article XIV or, unless expressly provided otherwise, in accordance with the procedure set out in the present Article.

2. An amendment to the Code may be proposed to the Director-General of the International Labour Office by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed by, or be supported by, at least five governments of Members that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

3. Having verified that the proposal for amendment meets the requirements of paragraph 2 of this Article, the Director-General shall promptly communicate the proposal, accompanied by any comments or suggestions deemed appropriate, to all Members of the Organization, with an invitation to them to transmit their observations or suggestions concerning the proposal within a period of six months or such other period (which shall not be less than three months nor more than nine months) prescribed by the Governing Body.

4. At the end of the period referred to in paragraph 3 of this Article, the proposal, accompanied by a summary of any observations or suggestions made under that paragraph, shall be transmitted to the Committee for consideration at a meeting. An amendment shall be considered adopted by the Committee if:

- (a) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and
- (b) a majority of at least two-thirds of the Committee members vote in favour of the amendment; and
- (c) this majority comprises the votes in favour of at least half the government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote.

5. Amendments adopted in accordance with paragraph 4 of this Article shall be submitted to the next session of the Conference for approval. Such approval shall require a majority of two-thirds of the votes cast by the delegates present. If such majority is not obtained, the proposed amendment shall be referred back to the Committee for reconsideration should the Committee so wish.

6. Amendments approved by the Conference shall be notified by the Director-General to each of the Members whose ratifications of this Convention were registered before the date of such approval by the Conference. These Members are referred to below as “the ratifying Members”. The notification shall contain a reference to the present Article and shall prescribe the period for the communication of any formal disagreement. This period shall be two years from the date of the notification unless, at the time of approval, the Conference has set a different period, which shall be a period of at least one year. A copy of the notification shall be communicated to the other Members of the Organization for their information.

7. An amendment approved by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40 per cent of the Members which have

ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention.

8. An amendment deemed to have been accepted shall come into force six months after the end of the prescribed period for all the ratifying Members except those which had formally expressed their disagreement in accordance with paragraph 7 of this Article and have not withdrawn such disagreement in accordance with paragraph 11. However:

- (a) before the end of the prescribed period, any ratifying Member may give notice to the Director-General that it shall be bound by the amendment only after a subsequent express notification of its acceptance; and
- (b) before the date of entry into force of the amendment, any ratifying Member may give notice to the Director-General that it will not give effect to that amendment for a specified period.

9. An amendment which is the subject of a notice referred to in paragraph 8(a) of this Article shall enter into force for the Member giving such notice six months after the Member has notified the Director-General of its acceptance of the amendment or on the date on which the amendment first comes into force, whichever date is later.

10. The period referred to in paragraph 8(b) of this Article shall not go beyond one year from the date of entry into force of the amendment or beyond any longer period determined by the Conference at the time of approval of the amendment.

11. A Member that has formally expressed disagreement with an amendment may withdraw its disagreement at any time. If notice of such withdrawal is received by the Director-General after the amendment has entered into force, the amendment shall enter into force for the Member six months after the date on which the notice was registered.

12. After entry into force of an amendment, the Convention may only be ratified in its amended form.

13. To the extent that a maritime labour certificate relates to matters covered by an amendment to the Convention which has entered into force:

- (a) a Member that has accepted that amendment shall not be obliged to extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member which:
 - (i) pursuant to paragraph 7 of this Article, has formally expressed disagreement to the amendment and has not withdrawn such disagreement; or
 - (ii) pursuant to paragraph 8(a) of this Article, has given notice that its acceptance is subject to its subsequent express notification and has not accepted the amendment; and
- (b) a Member that has accepted the amendment shall extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member that has given notice, pursuant to paragraph 8(b) of this Article, that it will not give effect to that amendment for the period specified in accordance with paragraph 10 of this Article.

Appendix D

Proposals from the group of Shipowner representatives appointed to the Special Tripartite Committee to adopt guidelines outside the MLC, 2006

Proposal for the development of ILO guidelines outside the Maritime Labour Convention, 2006, as amended (MLC, 2006) submitted by the group of Shipowner representatives (26 August 2017)

Protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships

Background

The second meeting of the Special Tripartite Committee (STC) established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006) (Geneva, 8–10 February 2016), decided, in accordance with article 15 of its Standing Orders, to establish a Working Group to, inter alia, examine issues related to the protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts such as piracy or armed robbery, and to prepare proposals including a possible amendment to the Code of the MLC, 2006, to address these issues.

The Working Group of the STC established under the MLC, 2006, met at the ILO from 3 to 5 April 2017. The outcome of their discussion was outlined in document [STCMLC/WG/2017/D.1](#) which sets out various types of proposals for potential consideration of the STC. These proposals are without prejudice to the positions of any government or group and not to be considered or treated as replacing or obstructing the need for proposals to be submitted to the Director-General of the ILO in accordance with Article XV, paragraph 2, of the MLC, 2006.

The Shipowners' group is therefore submitting one of the proposals which it made to the Working Group, using the proposed draft template prepared at the Working Group meeting (see document [STCMLC/WG/2017/D.3](#)).

The proposal is found at paragraph (c) of document [STCMLC/WG/2017/D.1](#), and provides elements that could be incorporated into Office guidelines outside of the MLC 2006, on the protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships. These elements are reproduced below:

1. Shipowners should continue to pay seafarers' wages and provide all other entitlements in accordance with their seafarers' employment agreements, when seafarers are held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

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2. For the purpose of these guidelines, “piracy” has the same meaning as in the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and “armed robbery against ships” has the same meaning as in IMO Resolution A.1025(26).
 3. The shipowner’s obligations under paragraph 1 above should continue until the seafarer is released and duly repatriated, in accordance with the provisions in Standard A2.5 and Guideline B2.5; or until the date of death if the seafarer dies while in captivity. The date of death should be defined according to the applicable national legislation.
 4. The shipowner should continue to remit allotments to the person or persons nominated by the seafarer in accordance with Standard A2.2(4) of the MLC, 2006.
 5. The shipowner should not terminate the seafarers’ employment agreement while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

Where the seafarers’ employment agreement has been made for a fixed period and it expires while the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the shipowner should treat the seafarers’ employment agreement as continuing to have effect until the period of captivity ends.

Where the shipowner has already served notice of termination of the seafarers’ employment agreement to the seafarer and the date of termination occurs while the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the shipowner should ensure that the seafarers’ employment agreement continues to have effect until the period of captivity ends.

6. There should be a reference to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents, for example the International Seafarers Welfare and Assistance Network’s *Good Practice Guide for Shipping Companies and Manning Agents: Humanitarian support of seafarers and their families in cases of armed robbery and piracy attack*.
7. Encouragement of seafarers to conclude arrangements on allotments.
8. Support for post-traumatic stress disorder for seafarers.

Purpose

The Shipowners’ group recognizes the importance of ensuring the protection of seafarers’ wages when a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, and supports examination of this issue by the STC. However, as advised in the Working Group, the Shipowners’ group notes that the number of cases of piracy where seafarers have not received their wages is extremely small, with most of the cases reported being prior to the 2014 amendments to the MLC, 2006 (related to financial security), entering into force. Furthermore, many of the cases drawn to the attention of the Working Group related to vessels that fall outside the scope of application of the MLC, 2006, namely fishing vessels, dhows and junks, or registered with the flags of States that had not ratified the MLC, 2006, or did not comply with its requirements. The Shipowners’ group also considers that the MLC, 2006, covers situations when SEAs cannot be terminated or wages cease to be paid when a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

Therefore, the Shipowners’ group:

- considers that an amendment to the Code of the MLC, 2006, would not assist those affected, be appropriate, or be the most effective or proportionate response;
- recalls that the MLC, 2006, has only recently entered into force (including some amendments already adopted) and needs more time to be fully implemented;

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- considers that the most appropriate, effective and proportionate response would be to develop Office guidelines on the protection of seafarers’ wages when a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships; and
 - proposes that the guidance could be developed to be broad in scope and address all personnel onboard seagoing vessels, and not just those within the scope of the MLC, 2006.

Furthermore, such guidance would also ensure that the current statutory requirement and practice of shipowners continuing to pay seafarers’ wages and provide all other entitlements in accordance with their seafarers’ employment agreements, when seafarers are held captive on or off the ship as a result of acts of piracy or armed robbery against ships is clear and unquestioned. Any amendment to the Code of the MLC, 2006, on this issue could have the unfortunate and unintended consequence of negatively affecting current practice or lead to confusion about existing requirements under the MLC, 2006, related to payment of wages and SEAs.

Relevant considerations

The STC is invited to note relevant existing guidance produced by a number of stakeholders within the industry as part of the ISWAN Maritime Piracy Humanitarian Response Programme (MPHRP)¹ It is entitled *Good Practice Guide for Shipping Companies and Manning Agents: Humanitarian support of seafarers and their families in case of armed robbery and piracy attack*.

The Shipowners’ group does not propose that the document should be the Office guidelines as it has not been produced by a formal tripartite setting, however it could form a good starting point and resource for the necessary discussions along with the elements found at paragraph (c) of document STCMLC/WG/2017/D.1. It can be accessed at <http://seafarerswelfare.org/piracy/mphrp>, where it is available in both English and French.

Copies of the ISWAN guidance are also attached to this submission for ease of reference. Using the ISWAN guidance would assist the Office in preparing for the tripartite meeting convened to produce guidelines, therefore reducing the associated financial and administrative burdens involved. It would also have the benefit of incorporating the considerable experience and lessons learned by those having been involved in handling such regrettable situations.

Proposal

Development of ILO guidelines outside the MLC, 2006, related to the protection of seafarers’ wages when the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, incorporating the elements indicated in paragraph (c) of document STCMLC/WG/2017/D.1.

¹ MPHRP was established in 2011 as a not-for-profit alliance of maritime industry partners, maritime unions and welfare associations (<http://seafarerswelfare.org/piracy/mphrp>). The aim of MPHRP was to provide assistance to seafarers and their families affected by maritime piracy. In addition to assisting seafarers and their families with their recovery and rehabilitation, MPHRP developed guidance, provided training programmes for companies and seafarers, and established a network of trained welfare responders to assist families and seafarers affected by piracy.

Transitional measures

The ISWAN guidance could be used in the interim until new formal ILO guidelines outside the MLC, 2006, related to the protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, can be developed.