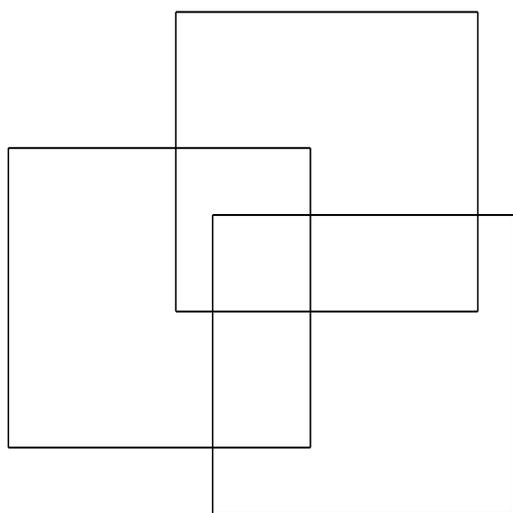




Summary of observations and suggestions on the proposals for amendments to the Code of the Maritime Labour Convention, 2006

Information document for discussion at the second meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (Geneva, 8–10 February 2016)



STCLMC/2016/2

INTERNATIONAL LABOUR ORGANIZATION
International Labour Standards Department
Sectoral Policies Department

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Geneva, 2016

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Introduction

1. In his letter of 23 July 2015, the Director-General invited all Members of the Organization, pursuant to paragraph 3 of Article XV of the Maritime Labour Convention, 2006 (MLC, 2006), to transmit, by 23 January 2016, any observations or suggestions concerning the proposals for amendments that had been submitted, respectively, by the groups of Shipowner and Seafarer representatives appointed to the Special Tripartite Committee (STC) established under Article XIII of the MLC, 2006, concerning the Code provisions relating to Regulation 2.2, Regulation 4.3 and Regulation 5.1.3 of the Convention.
2. In accordance with paragraph 4 of Article XV, the present document provides a summary of the observations and suggestions that were communicated in response to the Director-General's letter. The following (23) Members responded with comments: *Brazil, Cambodia, China, Estonia, Finland, India, Japan, Lithuania, Mauritius, Netherlands, Panama, Portugal, Republic of Korea, Russian Federation, Samoa, Spain, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Thailand, Togo, Turkey and Viet Nam*.
3. Many of those governments indicated that they had held tripartite consultations with respect to their observations and suggestions. In that connection, some governments transmitted the comments they received from their social partners, which are reflected in this document.
4. This summary has been prepared for the information of participants at the second meeting of the Special Tripartite Committee established under Article XIII of the MLC, 2006, and is relevant to the first item on the agenda of the meeting.
5. The next section sets out first the general observations and suggestions on the proposals. It is followed by sections A and B, which contain the general observations as well as specific suggestions on each of the proposals organized by reference to the respective proposal.

General observations on the proposals for amendments to the Code of the MLC, 2006

6. Some Governments welcomed the proposals on a general basis (*Brazil, Estonia, Mauritius, Portugal and Thailand*).
7. The Government of *India* supported the two proposals from the group of Seafarer representatives, but suggested that guidelines should be developed during the forthcoming meeting of the STC. The Government of *Portugal* similarly supported those proposals but indicated that it was not possible to express an opinion on their specific aspects without a clear understanding of the reasoning behind the amendments.
8. The Government of the *Netherlands* expressed concern about the timing and appropriateness of the new amendments since Members were still preparing the implementation of the two amendments adopted by the International Labour Conference in June 2014, which required additional capacity of the relevant authorities who were still familiarizing themselves with the enforcement of the Convention.

A. Observations and suggestions on the proposals from the group of Seafarer representatives (Regulations 2.2 and 4.3)

A1. Observations and suggestions on the proposal concerning Standard A2.2 – Wages

General observations

9. Some Governments generally welcomed the proposal by the group of Seafarer representatives concerning Standard A2.2 to ensure the payment of wages during the period in which a seafarer is held captive by pirates (*Brazil, Cambodia, China, Estonia, India, Mauritius, Panama, Republic of Korea, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Turkey and Viet Nam*).
10. The Government of *Lithuania* indicated that, if adopted as proposed, the amendment could be difficult to implement as obligations to pay wages and all related payments under Standard A2.2 would be extended to periods in which seafarers are unable to perform work owing to the fault of a third party. The Government of the *Netherlands* asked about the appropriateness of limiting the amendment to a very specific situation instead of extending it to a more general one. This could be described as a situation in which a seafarer is not able to work owing to circumstances which are reasonably attributed to the shipowner/employer and during the duration of which the shipowner must therefore pay the seafarer's normal salary.
11. The Government of *Spain* opposed the proposal arguing that the situation in which a seafarer is held captive by pirates should be considered as an event of force majeure (one that could not be foreseen or that, even if foreseen, could not be avoided) for which the shipowner could not be held responsible. It added that the situation of suspension of the employment contract by force majeure was regulated by Spanish legislation. During the suspension, seafarers were considered legally unemployed and received the corresponding benefits.
12. Expressing concerns that the shipowner's responsibility may go beyond their legal obligations, the Government of *Cambodia* requested further review of the legal consequences of the expiration of an employment contract during the period of captivity of a seafarer.
13. The Government of *Japan* was generally opposed to the proposal because: (i) compensation to seafarers affected by piracy should not be limited to wages, and the responsibilities of the relevant entities should be carefully considered; (ii) mandatory wage assurance might permit deception, such as a fraudulent receipt; and (iii) the Convention did not address damages attributed only to piracy, but rather established minimum decent living and working conditions for all seafarers.
14. The Governments of *Japan* and the *Republic of Korea* stressed that consideration should be given to the *Interim guidelines* on measures relating to the welfare of seafarers and their families affected by piracy off the coast of Somalia which was submitted jointly by Italy, the Republic of Korea and the Philippines, BIMCO, ICC, ICMA, IFSMA, IMHA, INTERCARGO, INTERTANCO, ITF, the Nautical Institute and OCIMF to 93 session of IMO/MSC in 11 February 2014, document IMO/MSC 93/16/1. The government of the *Republic of Korea* noted that the *Interim guidelines* highlighted various recommendations including shipowners insurance cover in respect of crew, employment terms and

agreements, education and training, support to families in the event of hijack, post release of repatriation, post hijack medical support, compensation for losses, financial support and future employment.

15. The Government of *India* indicated that the proposed amendment required the development of guidelines as provided in the existing Standards of the MLC, 2006.
16. The National Council of Private Enterprises of Panama (CONEP) and the Lithuanian Shipowners Association, while supporting the amendment, expressed concern that the obligation for shipowners to pay wages during captivity should not be unlimited, and proposed that a formula be considered to limit the maximum duration of this obligation.
17. While acknowledging that the proposal merits acceptance, the Portuguese Shipowners' Association (AAMC) indicated that the proposed amendment related to a situation in which the employment contract should be considered as suspended and gave rise to complex issues.
18. The Estonian Shipowners' Association did not support the proposal arguing that it was not reasonable to place the risk stemming from pirates on shipowners, which in case of piracy already suffered from damages related to the detention of the vessel, delayed cargo delivery and other expenses. Instead, negotiations should be initiated with insurance undertakings to establish an adequate insurance coverage for shipowners in case of piracy, on the basis of reasonable insurance premium or general conditions of insurance. This coverage should specify whether the term "payments" meant average wages or basic wages without additional pay . This proposal was supported by the Government of *Estonia*.
19. The Royal Dutch Shipowners Association (KVNR) and the Vereniging van Waterbouwers of the Netherlands, generally opposed to the proposal, expressed the concern that this amendment would impose further obligations on shipowners, which were already confronted with a heavy administrative burden to prove that they were in compliance with the requirements of the Convention .
20. The Estonian Seamen's Independent Union highlighted that shipowners are directly responsible for the vessel and its crew in the event of piracy because they make the relevant decisions, including navigation routes and employing security firms.

Specific observations

21. The Government of the *Russian Federation* proposed that, to bring the proposal into line with the provisions of the global collective agreement between the International Transport Workers' Federation and the International Maritime Employers' Council defining circumstances where seafarers are illegally held captive, the new paragraph should read:

Where the freedom of a seafarer is restricted owing to circumstances outside the shipowner's or seafarer's control, or the ship is hijacked, or in the event of other illegal acts committed against the ship, payments as provided for in paragraph 1 of this Standard, including any allotments, shall continue to be paid during the entire period of such acts, in accordance with the law of the flag State.

22. Observing that piracy is not the only threat to the lives and safety of seafarers, the Government of *Thailand* suggested adding "international terrorists, and related transnational organized criminals" after the term "pirates".
23. To ensure coherence, the Government of *China* proposed to add corresponding language to Standard A2.1, Seafarers' employment agreements, paragraph 4(e). In that paragraph, after

“the amount of seafarer’s wages”, the words “including paying wages during the entire period of a seafarer’s captivity by pirates” should be added.

24. The National Confederation of Transport (CNT) and the National Confederation of Industry (CNI) of Brazil suggested to add, after the term “allotments”, the phrase “as provided for in paragraph 4 of this Standard” in order to ensure legal certainty.
25. The Swiss Federation of Trade Unions (SGB) proposed that the words “abducted and” be inserted immediately before “held captive”.
26. The Turkish Seafarers Unions (TDS) proposed deleting the words “by pirates”.

A2. Observations and suggestions on the proposal concerning Standard A4.3 – Health and safety protection and accident prevention

General observations

27. Some Governments generally welcomed the proposal concerning Standard A4.3 (*Brazil, Cambodia, China, India, Mauritius, Panama, Syrian Arab Republic, United Republic of Tanzania, Togo, Turkey and Viet Nam*).
28. In noting the relevance of this proposal, the government of the *Republic of Korea* highlighted that the issue of harassment and bullying on board could well be directly or indirectly associated with forced labour on board, a fundamental right which Members must respect under *Article 3* of the Convention.
29. The Government of *Cambodia* noted that it was crucial to develop policies and plans not only to eliminate harassment and bullying on board ships but also to ensure that other working conditions, including working hours and health and safety, comply with minimum labour standards.
30. The Governments of *Japan* and *Spain* did not support the proposals. They expressed concerns with the broad definitions that could be attributed to the terms “harassment” and “bullying” and noted that this might lead to differing national practices and interpretations thereby creating legal uncertainty for shipowners. They also noted that Standard A4.3 only regulates occupational accidents, injuries and diseases. The Government of *Spain* stressed that if the intention was to provide protection for cases of violations of the right to privacy and seafarers’ dignity and not to limit it to cases related to health and safety, the proposed amendment should be placed elsewhere in the Convention.
31. The Governments of *Lithuania* and *Switzerland* expressed the concern that, under this proposal, ensuring shipowner compliance at the national level could be difficult or excessively cumbersome for the competent authority. The Government of the *Netherlands* added that most Members had already enacted legislation requiring employers to have a policy to eliminate harassment and bullying in a working environment, and that the enforcement of this policy was ensured under the Convention’s complaint procedures. It accordingly questioned the added value of the proposal.
32. The Governments of *Lithuania* and *Turkey* suggested that, to facilitate the implementation of the proposed policies and plans at the national level, guidelines or recommendations should be prepared. The Government of *India* similarly indicated that the proposed amendment required the development of guidelines, as provided in the existing Standards of the MLC, 2006.

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33. The Government of *India* suggested that the proposed amendment include the prevention against gender-specific harassment on board ship.
 34. The National Confederation of Transport (CNT) and the National Confederation of Industry (CNI) of Brazil did not support the proposal arguing that Standard A4.3 already provides for the obligations of the shipowners and masters to ensure the implementation of and compliance with occupational safety and health policies and plans.
 35. The Estonian Shipowners' Association, the Royal Dutch Shipowners Association (KVNR) and the Vereniging van Waterbouwers of the Netherlands pointed out that the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) had agreed on guidelines to prevent bullying and harassment that were applied by shipowners. The Dutch shipowners' organizations expressed the preference of continuing the process of implementation of that agreement before a further step was taken. They expressed concern that this amendment would impose further obligations on shipowners.
 36. Nautilus International of the Netherlands observed that, in addition to complaints procedures and international initiatives, it was necessary that all shipowners put procedures in place to prevent harassment and bullying.

Specific observations

37. The Government of the *Russian Federation* proposed to delete the term "plans".
38. The Government of *China* proposed to insert the relevant provisions on harassment and bullying into Guideline B4.3.9.
39. The Turkish Seafarers Unions (TDS) proposed to add a new paragraph [9] after the present paragraph 8 of Standard A4.3, to read as follows:

[9] – The competent authority shall ensure that shipowners develop policies and plans in consultation with their representative organizations to reduce harassment and bullying aboard ships that fly its flag.

40. The Swiss Federation of Trade Unions (SGB) similarly proposed to add a new paragraph [9] after the present paragraph 8 of Standard A4.3, to read as follows:

[9] – The competent authority shall ensure that shipowners, in consultation with representative seafarers' organizations, develop policies and plans to mitigate or eliminate harassment and bullying on board ships that fly its flag.

41. The Swiss Federation of Trade Unions (SGB) and the Turkish Seafarers Unions (TDS) proposed to add new Guideline B4.3.12, to read as follows:

Shipboard Harassment and Bullying

The provisions required under Standard A4.3(8) should take into account the contents of the latest version of the International Chamber of Shipping/International Transport Federation *Guidance on Eliminating Shipboard Harassment and Bullying*.

B. Observations and suggestions on the proposals from the group of Shipowner representatives (Regulation 5.1 and Appendix 5-II)

B1. Observations and suggestions on the proposal concerning Standard A5.1.3 – Maritime labour certificate and declaration of maritime labour compliance

General observations

42. Some Governments generally welcomed the proposal by the group of Shipowner representatives to bring the procedure for the renewal of the maritime labour certificate in line with the procedures under International Maritime Organization (IMO) Conventions (*Brazil, Cambodia, China, India, Lithuania, Mauritius, Panama, Spain, Switzerland, United Republic of Tanzania, Togo, Turkey and Viet Nam*).
43. In noting its strong support of the proposal, the Government of the *Netherlands* recalled that it is the responsibility of the member State to organize the renewal process and to ensure that certificates, following a successful inspection, are delivered within a reasonable period of time.
44. Nautilus International of the *Netherlands* supported the Government's comment, above, and noted that the proposed amendment could not lead to an extension of the validity of the renewed certificate.

Specific observations

45. In order to address the possibility that a new certificate might be issued but not yet delivered, and following a similar provision contained in the IMO's International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, the Government of the *Russian Federation* proposed including the phrase "or placed on board the ship ..." immediately after the phrase "but a new certificate cannot immediately be issued to that ship".
46. The Government of *Portugal* proposed replacing the term "renew" with "endorse" to make clear that the endorsement of the certificate would only extend its validity and would not renew an expired certificate.
47. The Governments of *India* and the *Russian Federation* proposed replacing the term "renew" with "extend". The Government of the *Russian Federation* suggested that this would align the language proposed in Standard A5.1.3 with that proposed in Appendix 5-II.
48. The Government of *Cambodia* proposed that the period "not exceeding five months" should be deleted as it was too restrictive. It suggested that member States should have the opportunity to define their own time frames to take into account their respective practices.
49. The Governments of the *Republic of Korea* and the *Syrian Arab Republic* suggested that the proposal should be replaced by the language that is contained in Regulation 14(d) of Chapter I of the SOLAS Convention, as amended. That language reads as follows:

If a renewal survey has been completed and a new certificate cannot be issued or placed on board the ship before the expiry date of the existing certificate, the person or organization authorized by the Administration may endorse the existing certificate and such a certificate shall be accepted as valid for a further period which shall not exceed 5 months from the expiry date.

50. The Governments of the *Syrian Arab Republic* and *Viet Nam* suggested that the amendment should follow the language set out in Regulation 14(e) of Chapter I of the SOLAS Convention as amended. They accordingly proposed inserting a new paragraph [4bis2] after the proposed new paragraph [4bis] of Standard A5.1.3 as follows:

[4bis2] If a ship at the time when a maritime labour certificate expires is not in a port in which renewal inspection is to be completed, the competent authority, or recognized organization duly authorized for this purpose, may extend the period of validity of the existing certificate but this extension should be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be inspected, and then only in cases where it appears proper and reasonable to do so. No maritime labour certificate should be extended for a period of longer than three months, and the ship to which an extension is granted should not, on its arrival in the port in which it is to be inspected, be entitled by virtue of such extension to leave that port without having a new maritime labour certificate. When the renewal inspection is completed, the new maritime labour certificate should be valid to a date not exceeding five years from the expiry date of the existing maritime labour certificate before the extension was granted.

51. The Swiss Federation of Trade Unions (SGB) proposed to replace “ship has been found” with “ship is found”; to replace “meet the national requirements” with “meet the standards”; and to add the following at the end of the proposed paragraph “The new certificate shall be valid for a period not exceeding five years from the date of expiry of the original certificate”.
52. The Turkish Seafarers Unions (TDS) proposed adding the word “original” between “from the” and “expiry date”. It further suggested the following sentence after the word “accordingly”: “The certificate to be renewed shall be deemed valid for a period not exceeding five years starting from the date of validity of the original certificate”.

B2. Observations and suggestions on the proposal concerning Appendix 5-II

General observations

53. The Governments of *Togo* and *Turkey* generally welcomed the proposal.

Specific observations

54. The Government of *Japan* expressed the concern that the proposal amendment to Appendix 5-II, limits the official authorized to sign the renewal certificate to the official who issued the initial certificate. According to that Government, this limit could mean that ships flying the flag of the Member – if it does not permit recognized organizations to issue initial certificates – will have to require the signature of the competent authority on renewal certificates. In that respect, the Government suggested that the proposed text requiring the “Signature of the duly authorized official issuing the certificate” and the “seal or stamp of issuing authority, as appropriate” be replaced by:

Signature of the duly authorized official
(seal or stamp of the authority, as appropriate)

55. The Government of *Portugal* suggested replacing the proposed text with the following:

Endorsement where the renewal inspection has been completed and Standard A5.1.3 (4bis) applies

The ship complies with the national requirements implementing the Convention, and this certificate shall, in accordance with Standard A5.1.3 (4bis) of the Convention, be accepted as valid until ...

Signed:

(signature of the authorized official)

Place:

Date:

(seal or stamp of the issuing authority, as appropriate)

56. The Government of *Viet Nam*, with reference to its proposal as contained in paragraph 50 of this document, suggested that the following paragraph should be added to the end of the maritime labour certificate model in Appendix A5-II:

Extension for the purpose of renewal inspection (if applicable)

For the purpose to extend the validity of the certificate until reaching the port of renewal inspection for a period of grace where paragraph [4bis2] of Standard A5.1.3 applies, the certificate should be accepted as valid until [date (not more than three months after the expiry date)] pending the completion of renewal inspection.

Signed:

(Signature of duly authorized official issuing the certificate)

Place:

Date:.

57. The Swiss Federation of Trade Unions (SGB) proposed deleting the words “implementing the Convention”.

58. The Turkish Seafarers Unions (TDS) proposed adding the following sentence before the signature: “The inspection date on which the period of extension of validity is based is the date on which the inspection ended.”