
INTERNATIONAL LABOUR ORGANIZATION

International Labour Standards Department

Sectoral Policies Department

Background paper and questionnaire for the Working Group of the Special Tripartite Committee established under the Maritime Labour Convention, 2006 (MLC, 2006)

The preparation of proposals 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, including an amendment to the Code of the MLC, 2006 to address these issues

Second round of consultations

December 2016 - January 2017

INTERNATIONAL LABOUR OFFICE, GENEVA

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Part I. Background

(a) First consultative paper and questionnaire

1. This paper is the second consultative paper for the Working Group established in accordance with article 15 of the Standing Orders of the Special Tripartite Committee (STC) of the Maritime Labour Convention, 2006 (MLC, 2006) with the following terms of reference:
 - (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;
 - (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; and
 - (iii) to deliver a report, with recommendations, to be submitted to the third meeting of the STC, not later than nine months before the meeting.¹
2. A draft of the first consultative paper for the Working Group – Background paper and questionnaire – was sent to the Officers of the STC on 6 September 2016. The Background paper and questionnaire was then sent to the members of the Working Group on 14 September 2016. Answers to the questionnaire were requested by 15 October 2016.

(b) Further communication

3. On 25 October 2016, a further communication was sent to the members of the Working Group explaining that “all the cases of ‘lost wages’ noted in paragraph 19 of the Background paper refer to ships that are not covered by the MLC 2006 as they are dhows or fishing vessels. These examples are therefore not directly relevant to the discussion on a possible way forward on the issue of seafarers’ wages in the context of the MLC, 2006”.

(c) Replies received

4. Replies to the questionnaire have been received from Working Group members from the Americas (on 28 October 2016); Asia-Pacific (on 14 October 2016); Europe (on

¹ Resolution concerning the establishment of a Working Group of the Special Tripartite Committee, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_452072.pdf

2 December 2016)²; the Shipowners' Group (on 14 October 2016); and the Seafarers' Group (on 18 October 2016). The Shipowners' Group provided views on the contents of the background paper (for example, on the sections concerning maritime liens, loss of the vessel and other matters). The Office will address these comments in the final version of the background paper that will be published for the April meeting of the Working Group.

Part II. Updated information on piracy

5. The Shipowners' Group members of the Working Group underlined the need to have evidence of cases concerning the non-payment of wages when seafarers are held captive on or off a ship to which the MLC, 2006 is applicable. With this in mind, the Office has gathered updated and additional information as specified below.

(a) Piracy and armed robbery incidents according to the International Maritime Bureau (IMB)

6. A report from the International Chamber of Commerce's International Maritime Bureau (IMB) for the period 1 January to 30 September 2016 indicates that piracy and armed robbery at sea have fallen to its lowest levels since 1995, despite a surge in kidnappings off West Africa. For the period 1 January to 30 September 2016, 141 incidents of piracy and armed robbery were reported to the IMB³ compared to 190 in the same period in 2015. For the period 1 January to 30 September 2016, five vessels were reported hijacked and a further 111 boarded, 10 fired upon and 15 were the subject of attempted attacks. Worldwide, 110 seafarers were taken hostage; 49 seafarers were kidnapped; six seafarers were injured; five seafarers were assaulted and a further five were threatened according to the IMB report.⁴

(b) Payment of wages

7. At the recommendation of the International Chamber of Shipping (ICS) and in consultation with the International Transport Workers' Federation (ITF), the Office contacted the International Seafarers Welfare and Assistance Network (ISWAN) and the Maritime Piracy Humanitarian Response Programme (MPHRP) for information on incidents of piracy on shipping vessels and payment of seafarers' wages. Subsequently, ISWAN submitted to the Office a list detailing piracy and armed robbery on vessels in East Africa, West Africa and South East Asia.⁵ ISWAN have

² For Europe, the comments received were those provided by the United Kingdom, as submitted to the Office through the Working Group member from France.

³ Report of ICC International Maritime Bureau Piracy and armed robbery against ships Report for the period 1 January to 30 September 2016.

⁴ Per Captain Mukundan in ICC IMB media release dated 31 October 2016.

⁵ ISWAN is an international NGO promoting the welfare of seafarers worldwide. In 2015 ISWAN merged with the Maritime Piracy Humanitarian Response Programme (MPHRP), an international

provided the full list of piracy attacks known to them, including information which relates to seafarers and their families who have been in contact with the MPHRP. This predominantly lists incidents from 2008 to 2014.⁶ ISWAN's data is not an exhaustive list of incidents of piracy. It comprises mainly cases in East Africa, with a small number of supplementary cases from other regions. In total, 119 incidents of piracy and armed robbery were listed: 103 in East Africa, 12 in West Africa and 4 in South East Asia.⁷ Furthermore, using the data provided by ISWAN, the Office has roughly calculated that, overall, for the cases where such information was available, the average period from the moment when a ship is hijacked to the date of its release has been between six and eight months, where some releases come after a very short period and some after many years. In some cases, the seafarers still remain captives.

8. Data on the payment of seafarers' wages by companies was only available for vessels in East Africa, where ISWAN had been in contact to assist the seafarers. Of 101 incidents, ISWAN was able to provide feedback on the payment of wages for 22 individual incidents. In 12 of these incidents, it was reported by ISWAN that seafarers were compensated, paid and generally well treated.⁸ In the other 10 incidents, non-payment or part payment of wages or other compensation was reported.⁹ For the remaining 79 incidents, the Office has not received any information on the payment of seafarers' wages.

Part III. Replies and comments received to the questionnaire

(a) Replies and comments shown in tabular format

9. The replies and comments received to the questionnaire are contained in tabular format at Annex 1. The Working Group members may wish to read the responses provided in that table, as the section below summarizes and may not capture their full contents.

(b) Summary and short analysis of replies and comments received

10. The members of the Working Group will read at Annex 1 that there are not yet converging views on several of the questions amongst those who have replied and

NGO working with the maritime industry to assist seafarers affected by piracy, to bring MPHRP activities under ISWAN. See <http://seafarerswelfare.org/> and <http://www.mphrp.org/>

⁶ The ISWAN data also includes a single case from both 2002 and 2006.

⁷ The Office removed from the data provided by ISWAN incidences involving fishing vessels, dhows and ships without IMO numbers.

⁸ Vessels: Asphalt Venture; BISCAGLIA; Blida; Cec Future NL; Enrico Ievoli; Fairchem Bogey; Jahan Moni; Marida Marguerite; Montecristo; Savina Caylyn; Smyrni; Stolt Valor.

⁹ Albedo; Eglantine; Faina; Free Goddess; Iceberg I; Olig B; Orna; Royal Grace; Sinin; and Suez.

commented on the questionnaire to date. A summary and short analysis of the replies and comments received might be made as follows.

Part 1. Content of the proposal

Scope and definitions

- (1) Should the proposal provide that shipowners should continue to pay seafarers' wages when seafarers are held captive on or off the ship as a result of:
 - (a) only acts of piracy or armed robbery, or
 - (b) acts of piracy, armed robbery or other similar situations? If yes, please specify.

Amongst those who have answered the question to date, there appears to be converging views that the proposal should provide that shipowners should continue to pay seafarers' wages when seafarers are held captive on or off the ship as a result of acts of piracy or armed robbery.

Views differ as to the inclusion of "other similar situations". The need to take into account the concept of a seafarer being "lawfully" and "unlawfully" held or removed from the vessel was raised.

- (2) Should the definitions of the terms "piracy" and "armed robbery" be included in the proposal?

Amongst those who have answered the question to date, there do not appear to be converging views as to the need to include definitions of "piracy" and "armed robbery" in the proposal. There appeared to be converging views that the definitions, whether included or not in the proposal, should be those included in the United Nations Convention on the Law of the Sea (UNCLOS) and other relevant international documents.

- (3) Should the proposal state that the expression "period of captivity" is understood to have ended when the seafarer has been released and safely repatriated or at the time of the death of the seafarer? Please specify.

Amongst those who have answered the question to date, there appear to be converging views that the proposal could indicate that the "period of captivity" can be understood to end when the seafarer is released and safely repatriated, in accordance to the provisions in Standard A2.5 and Guideline B2.5 regarding "Repatriation".

With respect to the situation when a seafarer dies during captivity, it was noted that clarity may be needed on the information required for compensation to be paid. Reference was also made to "death in service" compensation.

- (4) Should the term wages in the proposal be understood as referring to
 - (a) the contractual wages as indicated in the seafarers' employment agreement?

-
- (b) payments as provided in Standard A2.2 or payment of the basic wage as defined in Guideline B2.2 of the MLC, 2006 or payment of the consolidated wage as defined in Guideline B2.2 of the MLC, 2006?
 - (c) payments as provided for in paragraph 1 of Standard A.2.2 of the MLC, 2006, including any allotments?
 - (d) any other elements or items (including compensation)? Please specify.

Amongst those who have answered the question to date, there appear to be converging view that the wages referred to are those set out in the seafarer's employment agreement (hereafter referred to as "contractual wages").

It was recalled that the elements of the collective bargaining agreement that formed part of the seafarers' employment agreement must be taken into account. There was a further suggestion that where a seafarers' employment agreement was not compliant with the MLC, 2006, the term "wages" should then refer to the payments provided in Standard A2.2, including "basic wage"¹⁰ and "consolidated wage"¹¹ as defined in Guideline B2.2. The issues of continued payment of allotments and payment of other accrued contractual benefits (with a reference to Standard A2.5.1(9)(a) of the MLC, 2006¹² were raised, as was the need to discuss whether the proposed solution should refer to "wage" or "compensation payments in lieu of wages".

Time limitations

- (5) Should the proposal indicate that the obligation to pay seafarers' wages should:
 - (a) cover the entire period of captivity or
 - (b) not exceed a maximum period? If yes, please specify what this maximum period should be.

Amongst those who have answered the question to date, some indicated that the obligation to pay seafarers' wages should cover the entire period of captivity. However, others indicated that consideration could be given to setting a minimum period for making such payments.

¹⁰ "*basic pay or wages* means the pay, however composed, for normal hours of work; it does not include payments for overtime worked, bonuses, allowances, paid leave or any other additional remuneration".

¹¹ "*consolidated wage* means a wage or salary which includes the basic pay and other pay-related benefits; a consolidated wage may include compensation for all overtime hours which are worked and all other pay-related benefits, or it may include only certain benefits in a partial consolidation".

¹² "outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements".

Seafarers' employment agreement

- (6) Should the proposal indicate that the seafarers' employment agreement expressly refers to the shipowner's obligations and/or conditions that would apply in the event of captivity?"

Amongst those who have answered the question to date, there appear to be converging views that the proposal should indicate that the seafarers' employment agreement expressly refers to the shipowner's obligations and/or conditions that would apply in the event of captivity.

Protection against termination

- (7) Should the proposal state that the employment of seafarers may not be terminated during the period of captivity?

Amongst those who have answered the question to date, there appear to be converging views that the proposal should state that the employment of seafarers may not be terminated during the period of captivity.

Financial security

- (8) Should the proposal provide that there may be a financial security system in the form of a social security scheme or insurance or a national fund or other similar arrangements (for instance similar to the one provided in A2.5.2 by the 2014 amendments of the Code of the MLC, 2006) to cover the shipowners' liability for the payments of wages to seafarers held captive? If yes, please specify.

Amongst those who have answered the question to date, there do not appear to be converging views that the proposal should provide that there may be a financial security system in the form of a social security scheme or insurance or a national fund or other similar arrangements to cover the shipowners' liability for the payments of wages of seafarers held captive.

For those in favour of having the proposal include such a system, reference was made to the amendments of 2014 to the MLC, 2006 which could be taken as a model. Those against noted that such a system might have negative consequences, such as providing an incentive for pirates and others to hold seafarers captives.

Maritime lien

- (9) Should the proposal make reference to maritime liens for the purpose of the protection of wages of seafarers held captive? If yes, please specify.

Amongst those who have answered the question to date, there do not appear to be converging views that the proposal should refer to maritime liens.

Some indicated that the maritime lien was not necessary or not relevant to the situation. Others indicated that the wages of captive seafarers should be protected by a lien.

Others

- (10) Please indicate any other element that should be included in the proposal.

There were several references to existing guidance on the pastoral care of the families of seafarers held captive by pirates, such as relevant International Maritime Organization Assembly resolutions and the ISWAN/MPHRP programme, which may be beneficial. It was also noted that a reference to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents may be useful – for example, provisions concerning repatriation and medical assessment on return, including post-traumatic stress disorder (PTSD).

Part 2. Form of the proposal

(11) Should the issue of the protection of seafarers' wages when seafarers are held captive on or off the ship as a result of acts such as piracy or armed robbery be dealt with by way of:

- (a) an amendment to the Code of the MLC, 2006? If yes, should the amendment refer to a Standard(s) or a Guideline(s) or both? Please specify.
- (b) Office guidelines outside of the MLC, 2006?
- (c) both (a) and (b)?

Amongst those who have answered the question to date, there do not appear to be converging views as to whether there should be an amendment to the MLC, 2006 or whether there should be Office guidelines outside of the MLC, 2006, or both.

(12) Please indicate any other suggestions that should be considered by the Working Group.

There do not appear to be converging views as to any other suggestions that should be considered by the Working Group.

(c) Areas where there appear to be converging views

Amongst those who have answered the related questions:

Scope and definitions

- (a) There appear converging views that the proposal should provide that shipowners should continue to pay seafarers' wages when seafarers are held captive on or off the ship as a result of acts of piracy and/or armed robbery.
- (b) There appear to be converging views that the proposal could indicate that the "period of captivity" can be understood to end when the seafarer is released and safely repatriated, in accordance to the provisions in Standard A2.5 and Guideline B2.5 regarding "Repatriation". There appear to be converging views that the period of captivity may reflect the date of death where relevant, but further clarification is needed concerning establishment of the date of death.
- (d) There appear to be converging views that the "wages" referred to are those set out in the seafarer's employment agreement.

Seafarers' employment agreement

- (e) There appear to be converging views that the proposal should indicate that the seafarers' employment agreement should expressly refer to the shipowner's obligations and/or conditions that would apply in the event of captivity.

Protection against termination

- (f) There appear to be converging views that the proposal should state that the employment of seafarers may not be terminated during the period of captivity.

Others

- (g) There appear to be converging views concerning the usefulness of referring to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents.

Part IV. Further questions

11. All members of the Working Group are invited to provide further views on the following:

Scope and definitions

- Whether the proposal should cover, in addition to acts of piracy and armed robbery, "other similar situations".
- If so, what should be the elements to be included in the definition of "other similar situations".
- Whether the proposal should expressly provide that the payment of allotments, as provided under Standards A2.1(4) should be continued.
- If the proposal includes a reference to "compensation payments in lieu of wages", what this expression encompasses.

Time limitations

- What information would be needed to establish the death of the seafarer during captivity, in particular if the exact date of the death is not known.
- Whether the proposal should establish a minimum period for such payments of wages under certain conditions, and what those conditions should be.

Seafarer's employment agreement

- Whether the express reference to shipowners' obligations in the event of captivity should be included in all seafarers' employment agreements, or only certain agreements, and, if so, how to determine to which agreements this would apply.

Financial security

- Whether the proposal should include the possibility of providing protection through a financial security system in the form of a social security scheme or insurance or a national fund or other similar arrangements.

Others

- Whether the proposal should provide protection for other contractual benefits as provided in the seafarers' employment agreement (for example, as set out in Standard A2.1(4)(h)¹³ and (i)¹⁴ of the MLC, 2006. Please specify.
- Whether there are other elements that should be considered for inclusion in the proposed solution.
- If the proposed solution should include a reference to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents, or to similar or related guidance, what guidance (and, if only certain parts of such guidance, which parts) should be referred to. Please specify.

Form of the proposal

- Should the issue of the protection of seafarers' wages when seafarers are held captive on or off the ship as a result of acts such as piracy or armed robbery be dealt with by way of:
 - (a) an amendment to the Code of the MLC, 2006? If yes, should the amendment refer to a Standard(s) or a Guideline(s) or both? Please specify.
 - (b) Office guidelines outside of the MLC, 2006?
 - (c) both (a) and (b)?

Miscellaneous

- Please indicate any other points you wish to share with the Working Group.

Part V. Way forward

12. The members of the Working Group are invited to answer the questions.
13. The answers should be sent no later than **20 January 2017** to mlcstc@ilo.org.
14. The results of the consultations will be published prior to the meeting of the working group from 3 to 5 April 2017. Following the meeting of the Working Group, the

¹³ “the health and social security protection benefits to be provided to the seafarer by the shipowner”.

¹⁴ “the seafarer’s entitlement to repatriation”.

Office will publish the report, with recommendations, in May 2017, nine months before the third meeting of the STC.

Responses to questionnaire for the Working Group of the STC – Piracy and Armed Robbery

No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
Part 1 – Content of the proposal						
Scope and definitions						
1.	<p>Should the proposal provide that shipowners should continue to pay seafarers' wages when seafarers are held captive on or off the ship as a result of:</p> <p>(a) Only acts of piracy or armed robbery, or</p> <p>(b) Acts of piracy, armed robbery or other similar situations? If yes, please specify.</p>	<p>Yes. We support that shipowners should continue paying seafarers' wages when seafarers are held captive on or off the ship following any acts of piracy, armed robbery or other similar situations.</p> <p>(a) No answer provided. (b) Yes.</p>	<p>The proposal should be restricted only to acts of piracy or armed robbery committed against the ship.</p>	<p>We consider that provision should be made to protect seafarers wages in any situation where: (a) crew is unlawfully denied control of the vessel; or (b) crew is unlawfully removed from the vessel. A distinction needs to be made between lawful and unlawful removal or denial of control.</p>	<p>No answer provided.</p>	<p>We prefer (b) and for the entire period in which the seafarer is unlawfully held captive onboard or off the ship.</p>
2.	<p>Should the definitions of the terms "piracy" and "armed robbery" be included in the proposal?</p>	<p>Yes. Hostage situation.</p>	<p>Yes. For piracy, the Working Group may consider using the definition under Article 101 of UNCLOS. For armed robbery, the WG may consider the definition under IMO Assembly Resolution A.1025(26).</p>	<p>Any use or definition of the term piracy or armed robbery should be consistent with other international instruments. However there is a risk that situations arise which fall outside the definition in force. We would therefore favour a broader scope for any provisions to avoid this problem.</p>	<p>No. Definitions of these terms are found elsewhere, such as piracy is in UNCLOS Article 101.</p>	<p>No they are widely known and the preamble to the MLC contains a reference to UNCLOS.</p>

No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
3.	Should the proposal state that the expression “period of captivity” is understood to have ended when the seafarer has been released and safely repatriated or at the time of the death of the seafarer?	<p>Yes. The “period of captivity” shall be properly defined to identify the specific moment it has ended. We support that the “period of captivity” end when the seafarer has been released and safely repatriated.</p>	<p>The “period of captivity” can be understood to end when the seafarer is released and safely repatriated, in accordance to the provisions in Standard A2.5 and Guideline B2.5 regarding “Repatriation”, or at the time of the death of the seafarer while in captivity, whichever occurs first.</p>	<p>In principle, we believe that the seafarer should be protected (including payment of wages) until they are safely home, or have died, and that the seafarer therefore should retain a link with the employer, and the vessel with the flag State, to that point in time. Current repatriation provisions in the MLC do not allow for this sort of situation (e.g. the SEA may expire during a period of captivity but the seafarer is not released for many months later). One possible way forward is to amend the current MLC provisions relating to repatriation to ensure they are not excluded.</p>	<p>No answer provided.</p>	<p>Yes although if the seafarers dies the exact date may not be known and it is highly likely that the body will be repatriated. Part B of the Code could elaborate on what information would be needed to trigger the death in service compensation. Like the 2014 amendments to Standard A4.2 of the MLC, the contractual compensation shall be without prejudice to any other claims.</p>

No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
4.	<p>Should the term wages in the proposal be understood as referring to:</p> <p>(a) The contractual wages as indicated in the seafarers' employment agreement?</p> <p>(b) Payments as provided in Standard A2.2 or payment of the basic wage as defined in Guideline B2.2 of the MLC, 2006 or payment of the consolidated wage as defined in Guideline B2.2 of the MLC, 2006?</p> <p>(c) Payments as provided for in paragraph 1 of Standard A.2.2 of the MLC, 2006, including any allotments?</p> <p>(d) Any other elements or items (including compensation)? Please specify.</p>	<p>Yes. However if there is any mutual agreement, we believe that this situation of piracy and armed robbery should be debated and clarified between the two parties.</p> <p>No answer provided. No answer provided. No answer provided.</p>	<p>If the ship and its crew are covered by a valid CBA that continues to remain in force, then the term "wages" in the proposal should refer to all elements and items covered by this CBA. In the absence of such a CBA, the term "wages" should refer to (a), the contractual wages as indicated in the seafarers' employment agreement (SEA), provided that the SEA is MLC-compliant. If the SEA is not MLC-compliant, the term "wages" should then refer to the payments provide in Standard A2.2, including "basic wage" and "consolidated wage" as defined in Guideline B2.2.</p>	<p>We believe that; the level of wages to be referred to in the proposal should be agreed between seafarers and shipowners representatives, but as a minimum this should be basic wages, with allotments continuing to be paid as normal. There should be further discussion to establish whether the proposal should refer to wages or to compensation payments in lieu of wages.</p>	<p>No answer provided.</p>	<p>We prefer a.&c. as per the SEA and including allotments and other accrued contractual benefits, as per A2.5.1 (9(a)) and should be as per the SEA and not be based on the MLC minimum standards.</p>

No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
Part 1 – Content of the proposal						
Scope and definitions						
1.	<p>Should the proposal provide that shipowners should continue to pay seafarers' wages when seafarers are held captive on or off the ship as a result of:</p> <p>(a) Only acts of piracy or armed robbery, or</p> <p>(b) Acts of piracy, armed robbery or other similar situations? If yes, please specify.</p>	<p>Yes. We support that shipowners should continue paying seafarers' wages when seafarers are held captive on or off the ship following any acts of piracy, armed robbery or other similar situations.</p> <p>(a) No answer provided. (b) Yes.</p>	<p>The proposal should be restricted only to acts of piracy or armed robbery committed against the ship.</p>	<p>We consider that provision should be made to protect seafarers wages in any situation where: (a) crew is unlawfully denied control of the vessel; or (b) crew is unlawfully removed from the vessel. A distinction needs to be made between lawful and unlawful removal or denial of control.</p>	<p>No answer provided.</p>	<p>We prefer (b) and for the entire period in which the seafarer is unlawfully held captive onboard or off the ship.</p>
2.	<p>Should the definitions of the terms "piracy" and "armed robbery" be included in the proposal?</p>	<p>Yes. Hostage situation.</p>	<p>Yes. For piracy, the Working Group may consider using the definition under Article 101 of UNCLOS. For armed robbery, the WG may consider the definition under IMO Assembly Resolution A.1025(26).</p>	<p>Any use or definition of the term piracy or armed robbery should be consistent with other international instruments. However there is a risk that situations arise which fall outside the definition in force. We would therefore favour a broader scope for any provisions to avoid this problem.</p>	<p>No. Definitions of these terms are found elsewhere, such as piracy is in UNCLOS Article 101.</p>	<p>No they are widely known and the preamble to the MLC contains a reference to UNCLOS.</p>

No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
3.	Should the proposal state that the expression “period of captivity” is understood to have ended when the seafarer has been released and safely repatriated or at the time of the death of the seafarer?	<p>Yes. The “period of captivity” shall be properly defined to identify the specific moment it has ended.</p> <p>We support that the “period of captivity” end when the seafarer has been released and safely repatriated.</p>	The “period of captivity” can be understood to end when the seafarer is released and safely repatriated, in accordance to the provisions in Standard A2.5 and Guideline B2.5 regarding “Repatriation”, or at the time of the death of the seafarer while in captivity, whichever occurs first.	In principle, we believe that the seafarer should be protected (including payment of wages) until they are safely home, or have died, and that the seafarer therefore should retain a link with the employer, and the vessel with the flag State, to that point in time. Current repatriation provisions in the MLC do not allow for this sort of situation (e.g. the SEA may expire during a period of captivity but the seafarer is not released for many months later). One possible way forward is to amend the current MLC provisions relating to repatriation to ensure they are not excluded.	No answer provided.	Yes although if the seafarers dies the exact date may not be known and it is highly likely that the body will be repatriated. Part B of the Code could elaborate on what information would be needed to trigger the death in service compensation. Like the 2014 amendments to Standard A4.2 of the MLC, the contractual compensation shall be without prejudice to any other claims.

No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
4.	<p>Should the term wages in the proposal be understood as referring to:</p> <p>(a) The contractual wages as indicated in the seafarers' employment agreement?</p> <p>(b) Payments as provided in Standard A2.2 or payment of the basic wage as defined in Guideline B2.2 of the MLC, 2006 or payment of the consolidated wage as defined in Guideline B2.2 of the MLC, 2006?</p> <p>(c) Payments as provided for in paragraph 1 of Standard A.2.2 of the MLC, 2006, including any allotments?</p> <p>(d) Any other elements or items (including compensation)? Please specify.</p>	<p>Yes. However if there is any mutual agreement, we believe that this situation of piracy and armed robbery should be debated and clarified between the two parties.</p> <p>No answer provided. No answer provided. No answer provided.</p>	<p>If the ship and its crew are covered by a valid CBA that continues to remain in force, then the term "wages" in the proposal should refer to all elements and items covered by this CBA. In the absence of such a CBA, the term "wages" should refer to (a), the contractual wages as indicated in the seafarers' employment agreement (SEA), provided that the SEA is MLC-compliant. If the SEA is not MLC-compliant, the term "wages" should then refer to the payments provide in Standard A2.2, including "basic wage" and "consolidated wage" as defined in Guideline B2.2.</p>	<p>We believe that; the level of wages to be referred to in the proposal should be agreed between seafarers and shipowners representatives, but as a minimum this should be basic wages, with allotments continuing to be paid as normal. There should be further discussion to establish whether the proposal should refer to wages or to compensation payments in lieu of wages.</p>	<p>No answer provided.</p>	<p>We prefer (a) & (c) as per the SEA and including allotments and other accrued contractual benefits, as per A2.5.1 (9(a)) and should be as per the SEA and not be based on the MLC minimum standards.</p>

Time Limitations

No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
5.	<p>Should the proposal indicate that the obligation to pay seafarers' wages should</p> <p>(a) Cover the entire period of captivity?</p> <p>(b) Not exceed a maximum period? If yes, please specify what this maximum period should be.</p>	<p>We shall keep in mind that support seafarers' families needed during this period.</p> <p>Yes. No limitations.</p> <p>No. No limitations.</p>	<p>We think that pirate captivity is unlikely to be indefinite and that an average period of captivity can be estimated using reported periods of captivity of merchant ships. We propose 18 months as a minimum. We further propose to require shipowners to obtain financial security to cover, for a minimum period of 18 months, wages paid during captivity. If captivity prolongs beyond this minimum period that is covered by financial security, the obligation to continue paying wages should fall on the shipowners.</p>	<p>The seafarer and their family should not suffer detriment however long the situation continues. However, we recognise that shipowner may have limited funds available if through an act of piracy a ship is unable to earn revenue. We understand that most periods of captivity due to Piracy do not extend beyond 5 months. We would welcome further information in this regard being available to the working group for its meeting, so that consideration could be given to whether it is possible to agree an acceptable minimum period for payment of wages as defined in question (4) above.</p>	<p>No answer provided.</p>	<p>We prefer a. and that it cover the entire period in which the seafarer is unlawfully held captive onboard or off the ship and the obligation to pay continues past the expiry date of the SEA.</p>

Seafarers' employment agreement						
No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
6.	Should the proposal indicate that the seafarers' employment agreement expressly refers to the shipowner's obligations and/or conditions that would apply in the event of captivity?	Yes. Conditions shall be clearly indicate to seafarers at the time of the seafarers' employment agreement	We prefer for "wages during captivity" to be expressly indicated in the SEA, along with the other items required under Standard A2.1, Paragraph 4.	The SEA should include the shipowner's obligations and conditions that would apply but only where a seafarer is engaged to work in a high risk area or other area with known risk, SEA/CBA should make clear what they can expect.	No answer provided.	Yes. The flag State should provide that the payment obligation extends until repatriation and past the SEA's expiry date.
Protection against termination						
7.	Should the proposal state that the employment of seafarers may not be terminated during the period of captivity?	Yes. We shall keep in mind that support seafarers' families needed during this period.	Yes. The seafarers should remain under employment until repatriation. We think that this is reasonable as the amendments of 2014 ensure that shipowners will be able to fulfil their obligation to repatriate their seafarers.	The fact that a seafarer has been taken hostage, or a ship hijacked should never be a reason for terminating a relationship with the seafarer. Is it continued employment or other arrangement? Working group should consider whether compensation equivalent to basic wages could be a possibility.	No answer provided.	Yes, and past the date of expiry and until their release and repatriation.

Financial security						
No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
8.	Should the proposal provide that there may be a financial security system in the form of a social security scheme or insurance or a national fund or other similar arrangements (for instance similar to the one provided in A2.5.2 by the 2014 amendments of the Code of the MLC, 2006) to cover the shipowners' liability for the payments of wages to seafarers held captive? If yes, please specify.	No. There will be a complexity to establish this requirement: – there is no specific zone of high risk of piracy or situation of captivity; – today's zones may change in the future; – determining zones will aim lead to discrimination amongst locations. The obligation should remain with shipowners, i.e. the decision to set financial security should be discretionary.	Yes, there should be a form of financial security system to cover shipowner's liability for payment of wages during captivity (see response to question 5). An option would be to adopt the requirements of the amendments of 2014, which requires shipowners to obtain a financial security cover against the abandonment seafarers.	While the security of funds is desirable, we have a concern that a danger of having mandated financial security is that it provides an incentive to pirates etc, to hold out for payment. The Working group should consider the wider ramifications of this possibility.	No answer (check)	Yes there may be a financial security system in the form of a social security scheme or insurance or a national fund or other similar arrangements.
Maritime Lien						
9.	Should the proposal make reference to maritime liens for the purpose of the protection of wages of seafarers held captive? If yes, please specify.	Yes. Amend article 8 of the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages 1926 to include protection of wages of seafarers held captive.	Yes. Similar to claims for unpaid wages, claims for wages earned during captivity should be protected by a maritime lien as well.	If wages are being paid, the lien is not an issue. We cannot see that this is helpful during an incident if the ship is held.	The Shipowner Group notes that maritime liens are already referred to in Guideline 2.2.2.4 (l) of the MLC, 2006. We would again like to see evidence of appropriate cases before responding further.	No it is not necessary.

Others

No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
10.	Please indicate any other element that should be included in the proposal.	No answer provided.	No answer provided.	A reference to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents may be useful – for example, provisions for repatriation, medical assessment on return, including post-traumatic stress disorder (PTSD).	The Shipowner group notes there is existing guidance on the pastoral care of the families of seafarers held captive by pirates, such as relevant IMO Assembly resolutions and the ISWAN MPHRP programme, which may be beneficial.	The payment of any other accrued contractual benefits as set out in the SEA.

Part II – Form of the proposal

No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
11.	<p>Should the issue of the protection of seafarers' wages when seafarers are held captive on or off the ship as a result of acts such as piracy or armed robbery be dealt with by way of:</p> <p>(a) An amendment to the Code of the MLC, 2006? If yes, should the amendment refer to a Standard(s) or a Guideline(s) or both? Please specify.</p> <p>(b) Office guidelines outside of the MLC, 2006?</p> <p>(c) Both (a) and (b)?</p>	<p>(a) No</p> <p>(b) No</p> <p>(c) Yes. The framework of the requirement and basic conditions shall be address as a requirement under the MLC 2006. Decision shall remain to shipowners on the implementation ie financial security.</p>	<p>(a) To ensure a level playing field amongst member states, amendments should, where applicable, refer to both the Standards and Guidelines of the MLC. This issue should not be dealt with differently from other wage issues.</p> <p>(b) Not preferred.</p>	<p>An ILO Guideline not linked to the Code of the MLC 2006 would limit the impact of the policy. We think that making clarifications of how existing provisions of MLC apply in such an incident, and ensuring that they do not allow a loophole in the protection of seafarers held captive could be a way forward – e.g.</p> <ul style="list-style-type: none"> - A2.1 –SEA to include conditions applying in event of incident if operating in high risk area/other area of known risk; - B2.5 – Add to circumstances where seafarer entitled to repatriation. <p>A separate document could be developed to provide a guide to best practice in the event of an incident occurring.</p>	<p>No answer provided.</p>	<p>(a) In Part A of the Code.</p>

Miscellaneous

No.	Question	Americas	Asia Pacific	Europe (UK only)	Shipowners	Seafarers
12.	Please indicate any other suggestions that should be considered by the Working Group.	Repatriation shall be address; depending on the final document, if we consider that the “employment agreement” expire during a “period of captivity” or on the meaning of the expression “period of captivity”, it worth to mention that repatriation of a release or decease seafarers shall be address.	Now answer provided.	No answer provided.	No answer provided.	We should include something on the role of the flag state and that it is important that the vessel retains the nationality even if the annual fees are not paid. Panama removed the Iceberg 1 on the grounds that the fees were not paid.