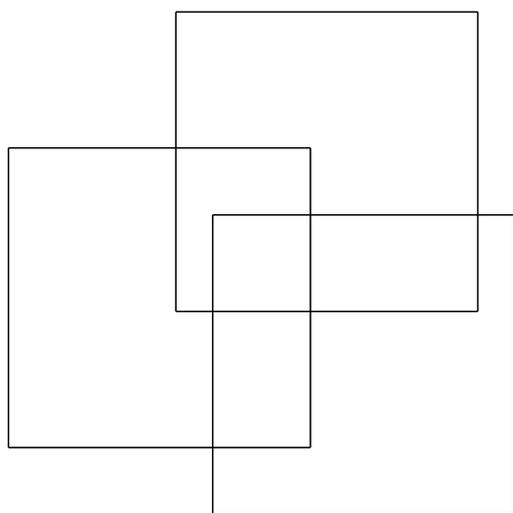




Working Group of the Special Tripartite Committee established under the Maritime Labour Convention, 2006 (MLC, 2006)

Background paper for 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
(Geneva, 3–5 April 2017)



STCMLC–WG/2017/2

INTERNATIONAL LABOUR ORGANIZATION

**International Labour Standards Department
Sectoral Policies Department**

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

Background paper on 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

(Geneva, 3–5 April 2017)

Geneva, 2017

INTERNATIONAL LABOUR OFFICE, GENEVA

Copyright © International Labour Organization 2017
First edition 2017

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publications (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with reproduction rights organizations may make copies in accordance with the licences issued to them for this purpose. Visit www.ifro.org to find the reproduction rights organization in your country.

Working Group of the Special Tripartite Committee established under the Maritime Labour Convention, 2006 (MLC, 2006): Background paper for 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, Geneva, 3–5 April 2017, International Labour Office, International Labour Standards Department, Sectoral Policies Department, Geneva, ILO, 2017.

ISBN 978-92-2-130780-8 (print)

ISBN 978-92-2-130788-4 (Web pdf)

ILO Cataloguing in Publication Data

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications and digital products can be obtained through major booksellers and digital distribution platforms, or ordered directly from ilo@turpin-distribution.com. For more information, visit our website: www.ilo.org/publns or contact ilopubs@ilo.org.

Contents

	<i>Page</i>
I. Introduction	1
II. Work undertaken by the Special Tripartite Committee	2
(a) Proposal by the group of Seafarer representatives.....	2
(b) Responses to the proposal of the group of Seafarer representatives.....	2
(c) Discussion on the piracy issue during the second meeting of the STC	4
(d) Scope and nature of issue.....	6
(e) Piracy and armed robbery	6
(f) Non-payment of wages	7
III. Piracy and armed robbery in international law	7
(a) Definitions	8
(b) International developments relevant to the issue of 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.....	8
IV. National laws and collective bargaining agreements	10
(a) National laws	10
(b) Collective bargaining agreements.....	10
V. Replies and comments received to the questionnaires	11
(a) Summary and short analysis of replies and comments received.....	11
(b) Summary of areas where there appear to be converging views	19
Scope and definitions.....	20
Time limitations.....	20
Seafarers' employment agreement.....	20
Protection against termination	20
Others.....	20
Form of the proposal.....	20
(c) Areas for possible further discussion	21
Financial security.....	21
Compensation payments in lieu of wages.....	21
High risk areas	21
VI. Elements and forms of solutions to the issue	21
(a) Amendments to Standards of the Code of the MLC, 2006	21
Standard A2.2 of the MLC, 2006.....	22
Standard A2.1 of the MLC, 2006.....	22
(b) Amendments to Guidelines of the Code of the MLC, 2006	22
(c) Guidelines or other documents <i>outside</i> of the MLC, 2006.....	23

I. Introduction

1. 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 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. The decision to establish a Working Group was endorsed by the Governing Body of the International Labour Office (ILO) at its 326th Session (March 2016).² The members of the Working Group participated in two rounds of consultations which took place by correspondence from August 2016 to January 2017.³
3. This background paper specifically addresses the issues related to (i) above.

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. The final report, Second meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006) (Geneva, 8–10 February 2016) STCM/LC/2016/7 is found at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_459566.pdf.

² Document GB.326/LILS/6 available at: http://www.ilo.org/gb/GBSessions/GB326/lils/WCMS_458136/lang--en/index.htm.

³ The Working Group is composed of Government representatives from Canada, France, Nigeria and Singapore; the Shipowner representatives from China (Hong Kong), Germany, United Kingdom and the Philippines; and the Seafarer representatives from the United States, United Kingdom, Russia and the Philippines. The representative from the Government of Nigeria did not submit any comments during the consultations. Details about the members as well as the documents prepared for the two rounds of consultations are available, only in English, at: http://www.ilo.org/global/standards/maritime-labour-convention/special-tripartite-committee/WCMS_500948/lang--en/index.htm.

II. Work undertaken by the Special Tripartite Committee

(a) Proposal by the group of Seafarer representatives

4. In 2015, pursuant to Article XV, paragraphs 2 and 5 of the MLC, 2006, the group of Seafarer representatives appointed to the STC submitted a proposal to amend the Code of the MLC, 2006, relating to Regulation 2.2 of the MLC, 2006. The proposal consisted in adding the following new paragraph [5bis] or [7] after the present paragraphs 5 or 6 of Standard A2.2 – Wages: ⁴ “Where a seafarer is held captive by pirates, payments as provided for in paragraph 1 of this Standard, including any allotments, shall continue to be paid during the entire period of the seafarer’s captivity.”
5. The proposal for amendment aimed to ensure the payment of wages during the period for which a seafarer is held captive by pirates. ⁵ It sought to address some of the concerns that were raised, in particular, by Working Group 3 of the Contact Group on Piracy off the Coast of Somalia in the draft *Interim guidelines on measures relating to the welfare of seafarers and their families affected by piracy off the Coast of Somalia* (hereafter the *Interim Guidelines*). ⁶

(b) Responses to the proposal of the group of Seafarer representatives

6. In keeping with article 11 of the Standing Orders of the STC, the Office communicated the seafarers’ proposal to all Members of the ILO, with an invitation to transmit to the Office their observations or suggestions concerning the proposal. In their comments, ⁷ some Governments generally welcomed the proposal (Brazil, Cambodia, China, Estonia, India, Mauritius, Panama, Republic of Korea, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Turkey and Viet Nam).

⁴ Background paper 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) [STCMLC/2016, Appendix C].

⁵ *ibid.*, para. 8.

⁶ *ibid.*, para. 9. See 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. MSC 93/16/1. London. Available at <http://intertanko.com/Documents/MS2093-16-1.pdf>. The Contact Group on Piracy off the Coast of Somalia, created on 14 January 2009, pursuant to United Nations Security Council Resolution 1851(2008), is a voluntary, ad hoc international forum of approximately 80 countries, organizations and industry groups with a common interest in combating piracy in the Gulf of Aden and the Indian Ocean.

⁷ 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) at http://www.ilo.ch/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_448665.pdf.

7. In addition, many diverse views were expressed on the subject. These included that there should be a clear understanding of the reasoning behind the amendment;⁸ that the amendment could be difficult to implement if it extended to periods in which seafarers are unable to perform work owing to the fault of a third party;⁹ that it could be appropriate to extend the amendment to a situation in which a seafarer is not able to work owing to circumstances which are reasonably attributable to the shipowner/employer and during the duration of which the shipowner must therefore pay the seafarer's normal salary;¹⁰ that the situation in which a seafarer is held captive by pirates should be considered as an event of force majeure for which the shipowner could not be held responsible;¹¹ that it was a concern that the shipowner's responsibility may go beyond their legal obligations;¹² that there should be further review of the legal consequences of the expiration of an employment contract during the period of captivity of a seafarer;¹³ that compensation to seafarers affected by piracy should not be limited to wages and the responsibilities of the relevant entities should be carefully considered;¹⁴ that regard should be had to the *Interim Guidelines* and various recommendations including shipowners insurance cover in respect of crew, employment terms and agreements, compensation for losses, financial support and future employment;¹⁵ that the proposed amendment required the development of guidelines as provided in the existing Standards of the MLC, 2006;¹⁶ that the obligation of shipowners to pay wages during captivity should not be unlimited;¹⁷ that the proposed amendment related to a situation in which the employment contract should be considered as suspended and giving rise to complex issues;¹⁸ that it is not reasonable to place the risk stemming from pirates on shipowners, who already suffered from damages related to the detention of the vessel, delayed cargo delivery and other such expenses and that instead, negotiations should be initiated with insurance undertakings to establish an adequate insurance coverage for shipowners in case of piracy;¹⁹ that this amendment would impose further obligations on shipowners, who are already confronted with a heavy administrative burden to prove that

⁸ *ibid.*, para. 6.

⁹ *ibid.*, para. 10.

¹⁰ *ibid.*

¹¹ *ibid.*, para. 11.

¹² *ibid.*, para. 12.

¹³ *ibid.*

¹⁴ *ibid.*, para. 13.

¹⁵ *ibid.*, para. 14.

¹⁶ *ibid.*, para. 15.

¹⁷ *ibid.*, para. 16.

¹⁸ *ibid.*, para. 17.

¹⁹ *ibid.*, para. 18.

they are in compliance with the requirements of the Convention;²⁰ and that shipowners are directly responsible for the vessel and its crew in the event of piracy.²¹

8. In its comments, the Government of the Russian Federation proposed to bring the seafarers' proposal into line with the provisions of the global collective agreement between the International Transport Workers' Federation (ITF) and the International Maritime Employers' Council (IMEC) defining circumstances where seafarers are illegally held captive, and suggested that the proposal should be amended to read as follows:²²

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.

9. In its comments, the Government of China proposed in Standard A2.1 (seafarers' employment agreements), in paragraph 4(e), to add after the words "the amount of seafarer's wages", the words "including paying wages during the entire period of a seafarer's captivity by pirates."²³

(c) Discussion on the piracy issue during the second meeting of the STC

10. The interventions made during the general discussion of the second meeting of the STC on the proposed amendment²⁴ generally reflected the recognition for the need to address the matter, with several governments noting that their own seafarers had suffered from this problem. However, different views were expressed on what aspects of the issue should be considered, on the approach to be taken (e.g. whether to amend the MLC, 2006, or follow another approach) and on the scope of the situations to be addressed (e.g. whether "piracy" was too restrictive).
11. Following STC practice, Government, Shipowner and Seafarer representatives were provided the opportunity to submit written amendments, during the meeting, to the original proposal by the seafarers. The following written amendments relevant to the piracy issue were submitted:²⁵

- Amendment submitted by the Republic of Korea – Standard A2.2, new paragraph [5bis] or [7] – After the words "by pirates", *insert* "and while in the service of the ship";

²⁰ *ibid.*, para. 19.

²¹ *ibid.*, para. 20.

²² Summary of observations and suggestions on the proposals for amendments to the Code of the Maritime Labour Convention, 2006, STCMLC/2016/2, para. 21, Government of the Russian Federation.

²³ Summary of observations and suggestions on the proposals for amendments to the Code of the Maritime Labour Convention, 2006, STCMLC/2016/2, para. 23, Government of China.

²⁴ Paras 28 to 51 of the final report.

²⁵ The full text of all amendments submitted to the second meeting of the STC may be found in Annex III of the final report.

-
- Amendment submitted by the Seafarer representatives – Standard A2.2, new paragraph [5bis] or [7] – *Replace* the words “held captive by pirate” by “unlawfully held captive on board or off the ship”;
 - Amendment submitted by the Shipowner representatives – Standard A2.2, new paragraph [5bis] or [7] – *Delete* the proposed new paragraph [5bis] or [7];
 - Amendment submitted by Greece – Standard A2.2, new paragraph [5bis] or [7] – *Replace* the proposed paragraph by: “Each Member shall require that payments, including any allotments, of seafarers which are held captive on board or off the ship, such as in cases of piracy or armed robbery, are made in accordance with their employment and/or with any applicable bargaining agreement”; and
 - Amendment submitted by the Seafarer representatives – Standard A2.2, new paragraph [5bis] or [7] – *Add* at the end of the sentence the words “, even if the seafarers’ employment agreement expires or is terminated”.
12. Following the agreement by the meeting that the best way to move forward on this issue would be to establish a Working Group of the STC,²⁶ which would carry out its work prior to the third meeting of the STC, the Chairperson invited the members of the STC to express their views concerning piracy, which could be taken into consideration by the Working Group. The comments may be summarized as follows: that over 300,000 Filipino seafarers were working on board ships on any given day and, since 2006, over 1,000 had been victims of piracy and the issue of the protection of seafarers’ wages in such circumstances was a very real concern;²⁷ that issue of piracy was a very important issue, of which the protection of seafarers’ wages when held in captivity was only one aspect;²⁸ that the objective should be to encourage governments and the social partners to develop policies to deal with the issue;²⁹ that there should be consideration of the broader issues involved when seafarers were deprived of liberty for reasons beyond their control;³⁰ that the proposed amendment should be redrafted with clearer definitions of such issues as the period of captivity and systems for the provision of financial support for the affected seafarers;³¹ that the Working Group was an opportunity for more serious consideration of the issues involved, which went beyond piracy;³² that it was essential to make progress on the issue as rapidly as possible;³³ that it was important to emphasize the human face of piracy;³⁴ that other aspects should also

²⁶ Final report, paras 101 and 102.

²⁷ *ibid.*, para. 104.

²⁸ *ibid.*, para. 105.

²⁹ *ibid.*, para. 106.

³⁰ *ibid.*, para. 107.

³¹ *ibid.*, para. 108.

³² *ibid.*, para. 109.

³³ *ibid.*, para. 110.

³⁴ *ibid.*, para. 111.

be taken into consideration, such as the mental health effects on seafarers and their treatment once they had been released.³⁵

13. As noted in the introduction above, the Working Group was formally established through the adoption of an STC resolution. During the debate on the terms of reference of the resolution,³⁶ there were many additional interventions concerning the piracy issue. These included that the Working Group should consider not only a possible amendment to the Code but other possible solutions as well (there was concern that the options available should not be restricted to amending the Code);³⁷ that seafarers allotments should be addressed;³⁸ that the protection should cover both when the seafarer is held on the ship and ashore;³⁹ the scope of the situations to be covered;⁴⁰ the possible need to address the elements of the wages or payments to be covered;⁴¹ whether there should or should not be limitations on the period during which the wages should be paid.⁴²
14. The Chairperson of the STC indicated that all the amendments and comments made during the STC would be submitted to the Working Group for examination.

(d) Scope and nature of issue

15. The following information is provided in order to assist the Working Group to put the issue into context. It is based on the best information available to the Office when the present report was written.

(e) Piracy and armed robbery

16. The 2016 annual report from the International Chamber of Commerce's (ICC) International Maritime Bureau (IMB)⁴³ recorded that global piracy reached its lowest levels since 1998. In 2016, the IMB recorded 191 incidents of piracy and armed robbery on the world's seas. Worldwide in 2016, 150 vessels were boarded, 12 vessels were fired upon, seven were hijacked, and 22 attacks were thwarted. The number of hostages fell to 151. Information on the types of vessels attacked may be found in table 11 of the ICC IMB Piracy and Armed

³⁵ *ibid.*, para. 113.

³⁶ *ibid.*, paras 135 to 160.

³⁷ Final report, paras 135 and 148.

³⁸ *ibid.*, para. 136.

³⁹ *ibid.*, paras 136, 139 and 140.

⁴⁰ *ibid.*, paras 142, 143 and 145.

⁴¹ *ibid.*, para. 143

⁴² *ibid.*, para. 147

⁴³ <http://www.nepia.com/media/558888/2016-Annual-IMB-Piracy-Report.pdf>. The ICC International Maritime Bureau (IMB) is a specialized division of the International Chamber of Commerce (ICC). The IMB is a non-profit making organization, established in 1981 to act as a focal point in the fight against all types of maritime crime and malpractice. The IMB Piracy Reporting Centre (PRC) has monitored world piracy since 1991.

Robbery Against Ships – 2016 Annual Report. Not all vessels listed in that table may be within the scope of the MLC, 2006.⁴⁴

(f) Non-payment of wages

17. Following a request by the Office, the International Seafarers Welfare and Assistance Network (ISWAN) submitted a list detailing piracy and armed robbery on vessels in East Africa, West Africa and South-East Asia.⁴⁵ ISWAN provided the full list of piracy attacks known to them at that time, including information which relates to seafarers and their families who have been in contact with the MPHRP. This predominantly lists incidents from 2008 to 2014.⁴⁶ 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 four in South-East Asia.⁴⁷ 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.
18. 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.⁴⁸ In the other ten incidents, non-payment or part payment of wages or other compensation was reported.⁴⁹ For the remaining 79 incidents, the Office has not received any information on the payment of seafarers' wages.

III. Piracy and armed robbery in international law

19. As the mandate of the Working Group is “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**...”, it is useful to set out how these terms are defined in international instruments.

⁴⁴ <http://www.icc.se/wp-content/uploads/2016/07/2016-Q2-IMB-Piracy-Report-Abridged.pdf>, pp. 11 and 12.

⁴⁵ ISWAN is an international NGO promoting the welfare of seafarers worldwide. In 2015 ISWAN merged with the MPHRP, an international 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/>.

⁴⁶ ISWAN data also includes a single case from both 2002 and 2006.

⁴⁷ It is not entirely certain from ISWAN data whether all these 119 incidents concern ships within the scope of the MLC, 2006. However, the Office has not included in the figure those incidents involving fishing vessels, dhows and ships without IMO numbers.

⁴⁸ Vessels: Asphalt Venture; BISCAGLIA; Blida; Cec Future NL; Enrico Ievoli; Fairchem Bogey; Jahan Moni; Marida Marguerite; Montecristo; Savina Caylyn; Smyrni; and Stolt Valor.

⁴⁹ Albedo; Eglantine; Faina; Free Goddess; Iceberg I; Olig B; Orna; Royal Grace; Sinin; and Suez.

(a) Definitions

20. “Piracy” is defined in Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS). This states:

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

21. “Armed robbery against ships” is defined in the Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships (IMO Resolution A.26/Res.1025, Annex, paragraph 2.2) as follows:

“Armed robbery against ships” means any of the following acts:

- .1 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;
- .2 any act of inciting or of intentionally facilitating an act described above.

(b) International developments relevant to the issue of 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

22. It may also be useful for the Working Group to take into account developments outside the ILO relevant to the protection of wages of seafarers held captive as a result of acts of piracy or armed robbery.

23. IMO Assembly Resolution A27/Res.1044 adopted on 30 November 2011 on piracy and armed robbery against ships in waters off the coast of Somalia:

8. ALSO STRONGLY URGES Governments which have not already done so to promptly:

...

- (l) establish, as necessary and when requested, plans and procedures to keep substantially interested States informed, as appropriate, about welfare measures for seafarers in captivity on ships entitled to fly their flag, measures being taken for the early release of such seafarers and the status of payment of their wages; [emphasis added]

24. It may be recalled that at the meeting of the Maritime Safety Committee of the IMO on 11 February 2014,⁵⁰ Italy⁵¹ submitted to the Committee for its review the *Interim Guidelines* (noted above) which had been developed by Working Group 3 of the Contact Group on Piracy off the Coast of Somalia.

25. The *Interim Guidelines* contain the following provisions:

3. Employment Terms and Agreements

1. Shipowners and manning agents should review their employment contracts to consider issues such as wages, bonuses, medical and life insurance in piracy high risk areas or opportunity for repatriation if/when a ship is destined for piracy high risk areas, without detriment to employment. Seafarers held hostage should not be dismissed, and consequently the payment of their wages should continue; [emphasis added]
2. Flag States should, where possible, encourage shipowners of ships flying their flag to review their employment contracts to consider issues such as wages, bonuses, medical and life insurance in piracy high risk areas or opportunity for repatriation if/when a ship is destined for piracy high risk areas, without detriment to employment. [emphasis added]

5. Support to Families in the Event of Hijack

1. Shipowners should have plans in place to provide information, support, and assistance to families including guidance on how to respond to pirates and the media. Likewise, they should ensure the continued payment of wages and applicable entitlements to the affected seafarers' families. Manning agents should work in conjunction with shipowners to provide this information, support, and assistance; (emphasis added)
2. Seafarers are also recommended to consider arranging for the transmittance of wages to their families; ...

9. Financial Support

1. Shipowners should ensure prompt payment of all/any outstanding wages and other contractual entitlements to the affected seafarers and are encouraged to consider further ex gratia payments; (emphasis added)

2. In the event of financial default or insolvency of shipowners, flag States should make all reasonable efforts to secure payment of outstanding wages and other contractual entitlements; (emphasis added)

3. If the next of kin, whom a seafarer has a duty to support, does not have or receive any means for their support, the flag State or the seafarer's state of nationality is recommended to consider providing reasonable financial aid to them.

26. The IMO Maritime Safety Committee supported the goals of the *Interim Guidelines*, but the majority of the delegations that spoke were of the view that they were a matter for the ILO and the Committee instructed the secretariat of the IMO to forward the *Interim Guidelines* to the ILO for its review and further action.⁵²

⁵⁰ IMO MSC 93/16/1

⁵¹ Also the Republic of Korea, the Philippines, BIMCO, ICC, ICMA, IFSMA, IMHA, INTERCARGO, INTERTANKO, ITF, the Nautical Institute, and OCIMF

⁵² MSC/93/22 30 May 2014. Report of the Maritime Safety Committee on its 93rd Session, para. 16.13.

IV. National laws and collective bargaining agreements

(a) National laws

27. In at least two countries, legislation has been proposed or adopted or both, specifically concerning the matter of payment of seafarers' wages during captivity. For example, in Denmark,⁵³ the Consolidated Act No. 73 of 17 January 2014 issued by the Danish Maritime Authority⁵⁴ provides that:

Section 19a. It shall not be possible to dismiss seafarers held hostage in connection with piracy. The employment shall not terminate though the ship is lost in connection with piracy or the shipowner is no longer able to have it at his disposal.

Subsection 2. When released, the hostages shall be entitled to a free journey home with subsistence to their own domicile at the shipowner's expense.

28. In addition, the Government of India has promulgated Bill No. 236 of 2016 that would amend the Merchant Shipping Act of 1958. Clause 69 states: "(4) A seafarer shall be entitled to continue receiving the wages at the same rate till such a time he returns home, if such seafarer is held in the captivity including in case of piracy in the course of his employment."

(b) Collective bargaining agreements

29. It is relevant to recall that Regulation 2.1.3 of the MLC, 2006, states that: "To the extent compatible with the Member's national law and practice, seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreements."

30. The following are examples of collective bargaining agreements that apply to hijacking and piracy in different circumstances, as these may be helpful for the Working Group to consider when developing the way forward to addressing the issue of protection of wages.

31. The International Transport Workers' Federation – International Maritime Employers' Council – International Bargaining Forum (ITF–IMEC–IBF) International Collective Bargaining Agreement 2015–2017 states:⁵⁵

Article 17: Warlike Operations / High Risk Area

17.5 In case a Seafarer may become captive or otherwise prevented from sailing as a result of an act of piracy [emphasis added] or hijacking, irrespective whether such act takes place within or outside IBF designated areas referred to in this Article, the Seafarer's employment status and entitlements under this Agreement shall continue until the

⁵³ During the second meeting of the STC, the Government of Denmark indicated that it had already adopted provisions with regard to the wages of seafarers held in captivity, and that it was clear that, even if the employment agreement expired during the period of captivity, the seafarer was not at liberty to take up other employment and that the wages should continue to be paid.

⁵⁴ Only the Danish version has legal validity.

⁵⁵ There is a similar provision in Article 17.5 of the 2015–2017 IBF Framework TCC Agreement; in Article 16.5 of the ITF Uniform "TCC" Collective Agreement for Crews on Flag of Convenience Ships, 1 January 2015–2017; in Article 20 of the ITF Standard Collective Agreement 1 January 2015; and in Article 23 of the ITF Offshore Collective Agreement 1 January 2015.

Seafarer's release and thereafter until the Seafarer is safely repatriated to his/her home or place of engagement or until all Company's contractual liabilities end. These continued entitlements shall, in particular, include the payment of full wages and other contractual benefits. The Company shall also make every effort to provide captured Seafarers, with extra protection, food, welfare, medical and other assistance as necessary.

32. The Anglo Eastern Shipmanagement (Hong Kong) Ltd and Anglo Eastern Maritime Services Pvt Ltd represented in Singapore by the Anglo Eastern Shipmanagement (Singapore) Pte Ltd and Singapore Organisation of Seamen states: ⁵⁶

17. SERVICE IN WARLIKE OPERATIONS AREAS AND HIGH RISK AREA

17.7. In case a seaman may become captive or otherwise prevented from sailing as a result of an act of piracy [emphasis added] or hijacking, irrespective whether such act takes place within or outside IBF designated areas referred to in this clause, the seaman's employment status and entitlements under this Agreement shall continue until the seaman's release and thereafter until the seaman is safely repatriated to his/her home or place of engagement. The Company's contractual liabilities to a seaman in captivity shall not be deemed to end until the seaman is safely repatriated to his/her home or place of engagement, notwithstanding the date of expiry of contract of service. These continued entitlements shall, in particular, include the payment of full wages and other contractual benefits. The Company shall also make every effort to provide captured seaman, with extra protection, food, welfare, medical and other assistance as necessary'.

33. The Korea Special Seafarers Union – Korea Ship Managers Association CBA 2016, Confirmation of the Agreements between Labour and Management for the High Risk Area and Risk Zone states:

High Risk Area – Gulf of Aden

- (4) In the case that the ship has been hijacked, [emphasis added] special bonus shall be [paid] to seafarers equal to 100% of ordinary wages for the duration of the ship's stay in the war risk areas added to the duration under hijacking. In this calculation, the duration under hijacking shall be counted up to the point of the ship's arrival in safe waters upon being released.

V. Replies and comments received to the questionnaires

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

34. As noted above, the members of the Working Group participated in two rounds of consultations which took place by correspondence from August 2016 to January 2017. The full replies and comments received in response to the questionnaires circulated in the first and second rounds of consultations are not included in this document. However, tables containing the questions and complete replies will be made available, in English, by the Office. Working Group participants are encouraged to consult the tables. In some cases, Government members of the Working Group forwarded comments from other governments from their regions (Africa, Americas, Asia-Pacific, Europe), and these replies were taken into account by the Office.

⁵⁶ [2015] SGIAC 97, IAC Collective Agreement No. 33/2015, 17 February 2015, Industrial Arbitration Court.

35. The following sets out questions from the first and second rounds of consultations and the relevant answers in order to assist with the task of describing where there appear to be converging views.

First round Question 1 Part I – Content of the proposal Scope and definitions	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: – only acts of piracy or armed robbery; or – acts of piracy, armed robbery or other similar situations? If yes, please specify.
Second round Further questions 1 and 2 Scope and definition	<i>Whether the proposal should cover, in addition to acts of piracy and armed robbery, "other similar situations"</i> <i>If so, what should be the elements to be included in the definition of "other similar situations"?</i>

36. There appear 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 and/or armed robbery.⁵⁷
37. There were views that the proposal should include situations where the seafarer is unlawfully held captive, or denied control of the ship, or removed from the ship through no fault of his or her own.⁵⁸
38. Views diverge regarding the inclusion in the proposal of a reference to "other similar situations".⁵⁹

First round Question 2 Part I – Content of the proposal Scope and definitions	Should the definitions of the terms "piracy" and "armed robbery" be included in the proposal?
--	---

39. There do not appear to be converging views as to the need to include definitions of "piracy" and/or "armed robbery" in the proposal.⁶⁰

First round Question 3 Part I – Content of the proposal Scope and definitions	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?
--	---

⁵⁷ Canada, Netherlands, Norway, Panama, Philippines, Singapore, United Kingdom and Seafarers. The Shipowners consider that only piracy should be covered.

⁵⁸ Norway, Singapore, United Kingdom and Seafarers.

⁵⁹ Canada, Netherlands, Norway, Panama and Shipowners did not support including a reference to "other similar situations". Replies of the Philippines and the Seafarers supported including a reference to "other similar situations".

⁶⁰ Canada and Singapore consider that definitions of "piracy" and "armed robbery" should be included in the proposal. Netherlands, Shipowners and Seafarers consider that definitions of "piracy" and "armed robbery" should not be included in the proposal.

40. There appear to be converging views that the proposal could indicate that the “period of captivity” can be defined or understood to end when the seafarer is released and safely repatriated, in accordance with 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. ⁶¹
41. There was a view that the seafarers should be protected until safely home, or dead, and that the link between the seafarer and employer, and the vessel and flag State, should be retained. However, the current repatriation provisions in the MLC, 2006, do not allow for this sort of situation and could be amended. ⁶²
42. There was a view that Part B of the Code could be amended to elaborate on what is needed to trigger death in service compensation, and that contractual compensation shall be without prejudice to any other claims. ⁶³

First round Question 4 Part I – Content of the proposal Scope and definitions	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 A2.2 of the MLC, 2006, including any allotments? (d) Any other elements or items (including compensation)? Please specify.
Second round Further question 3 Scope and definitions	<i>Whether the proposal should expressly provide that the payment of allotments, as provided under Standard A2.2(4) * should be continued?</i>
* In the questions sent out in the second round of consultations, there was a typographical error: reference was made to Standard A2.1(4) as opposed to Standard A2.2(4).	

43. There appear to be converging views that the term “wages” in the proposal should be understood as referring to contractual wages as indicated in the seafarer’s employment agreement. ⁶⁴
44. There appear to be converging views that the proposal should expressly provide that the payment of allotments, as provided under Standard A2.2(4) of the MLC, 2006, should be continued. ⁶⁵

⁶¹ Canada, Netherlands, Singapore, United Kingdom and Seafarers.

⁶² United Kingdom.

⁶³ Seafarers.

⁶⁴ Canada, Panama, Philippines, Netherlands and Seafarers. The United Kingdom elaborated that wages should be agreed between Seafarer and Shipowner representatives, but as a minimum this should be basic wages with allotments continuing to be paid as normal.

⁶⁵ Canada, Netherlands, Panama, Philippines, Singapore and Seafarers. The United Kingdom commented that if the wages are being paid, then there should be no need to specify that allotments continue – this should happen automatically.

-
45. There was a view that if the ship and its crew are covered by a valid collective bargaining agreement that continues to remain in force, then the term “wages” in the proposal should refer to all elements and items covered by this collective agreement. ⁶⁶
46. There was a view that if the seafarer’s employment agreement is not compliant with the MLC, 2006, the term “wages” in the proposal should then refer to the payments provided in Standard A2.2, including “basic wage” ⁶⁷ and “consolidated wage” ⁶⁸ as defined in Guideline B2.2. ⁶⁹
47. There was a view that payment of other accrued contractual entitlements (with a reference to Standard A2.5.2(9)(a) of the MLC, 2006) ⁷⁰ should be taken into account. ⁷¹

<p>Second round Further question 4 Scope and definitions</p>	<p><i>If the proposal includes a reference to “compensation payments in lieu of wages”, what this expression encompasses?</i></p>
--	---

48. There were views against including a reference in the proposal to compensation payment in lieu of wages. ⁷²
49. Alternatively, there were views that there should be further discussion on whether the proposal should include a reference to compensation payment in lieu of wages. ⁷³

⁶⁶ Singapore.

⁶⁷ “*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.”

⁶⁸ “*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.”

⁶⁹ Singapore.

⁷⁰ “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.”

⁷¹ Philippines and Seafarers.

⁷² Panama, Singapore, United Kingdom and Shipowners.

⁷³ Canada and United Kingdom.

First round Question 5 Part I – Content of the proposal Time limitations	Should the proposal indicate that the obligation to pay seafarers' wages should: (a) Cover the entire period of captivity? (b) Not exceed a maximum period? If yes, please specify what this maximum period should be.
Second round Further question 6 Time limitations	<i>Whether the proposal should establish a minimum period for such payments of wages under certain conditions, and what those conditions should be?</i>

- 50.** There appear to be converging views that wages should continue to be paid during the entire period of the captivity and until repatriation, or until the issuance of the declaration of the death of the seafarer.⁷⁴
- 51.** There were views that there should be a maximum period, under certain conditions, for the payment of wages.⁷⁵ In this regard, there was a view that it would be important to agree a time limit particularly for cases where the status of the crew and the vessel become unknown after a defined agreed period of time.⁷⁶
- 52.** There was a view that the maximum period could be 18 months, and that this period should be covered by a requirement for the shipowner to obtain financial security cover⁷⁷ (see also further discussion of this issue below).

Second round Further question 5 Time limitations	<i>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?</i>
--	---

- 53.** There appear to be converging views that when a seafarer dies during captivity, the time of death should be defined according to the applicable national legislation.⁷⁸
- 54.** There were views that it would be helpful to have information on how death has been established/notified in previous incidents and this is an area that needs further discussion concerning what is practical in the circumstances.⁷⁹

First round Question 6 Part I – Content of the proposal Seafarer's employment agreement	Should the proposal indicate that the seafarer's employment agreement expressly refers to the shipowner's obligations and/or conditions that would apply in the event of captivity?
--	---

⁷⁴ Canada, Netherlands, Philippines, Singapore, United Kingdom and Seafarers.

⁷⁵ Panama and Shipowners.

⁷⁶ Shipowners.

⁷⁷ Singapore.

⁷⁸ Canada, Panama, Philippines, Singapore, Netherlands.

⁷⁹ Panama and the United Kingdom. See also earlier reference to Seafarer comments on addressing this issue in Part B.

Second round Further question 7 Seafarer's employment agreement	<i>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?</i>
---	--

55. There appear to be converging views that the proposal should indicate that the seafarer's employment agreement expressly refers to the shipowner's obligations and/or conditions that would apply in the event of captivity.⁸⁰

First round Question 7 Part I – Content of the proposal Protection against termination	Should the proposal state that the employment of seafarers may not be terminated during the period of captivity?
---	--

56. 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.⁸¹

57. There was a view that there will need to be a discussion as to whether there should be an agreed exception when the employment may be considered reasonable to terminate if there has been no evidence of the safety and well-being of the crew and ship after a long-agreed period of time.⁸²

First round Question 8 Part 1 – Content of the proposal Financial security	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 shipowner's liability for the payment of wages to seafarers held captive? If yes, please specify.
Second round Further question 8 Financial security	<i>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?</i>

58. Views diverge as to the fact 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 payment of wages of seafarers held captive.⁸³

59. There was a view that the amendments of 2014 to the MLC, 2006, could be taken as a model for a financial security system.⁸⁴

⁸⁰ Canada, Netherlands, Panama, Philippines, Singapore, United Kingdom and Seafarers.

⁸¹ Canada, Netherlands, Singapore, United Kingdom, Seafarers.

⁸² Shipowners, with respect to the concerns raised in their replies to the second round, question 6.

⁸³Canada, Netherlands, United Kingdom and Shipowners are not in favour of a financial security system. Philippines, Singapore and Seafarers are in favour of a financial security system.

⁸⁴Singapore.

60. There were views that while the obligation to pay wages remains with the shipowners, the establishment of a financial security system would be complex,⁸⁵ and such a system might have negative consequences, such as providing an incentive for pirates and others to hold seafarers captive.⁸⁶

First round Question 9 Part 1 – Content of the proposal Maritime lien	Should the proposal make reference to maritime liens for the purpose of the protection of wages of seafarers held captive? If yes, please specify.
--	--

61. There do not appear to be converging views that the proposal should refer to protection of the wages of seafarers held captive by way of a maritime lien.
62. There were views that the maritime lien was not necessary or not relevant to the situation.⁸⁷
63. There were views that the wages of captive seafarers should be protected by a maritime lien.⁸⁸

First round Question 10 Part 1 – Content of the proposal Others	Please indicate any other element that should be included in the proposal.
Second round Further question 10 Others	Whether there are other elements that should be considered for inclusion in the proposed solution.

64. There appear to be converging views that it would be useful to refer to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents.⁸⁹
65. There was a view that 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 may be beneficial.⁹⁰
66. There was a view that an addition could be made to Guideline B2.5 to make clear that a seafarer is entitled to repatriation at the end of the piracy/armed robbery/hostage incident.⁹¹

⁸⁵Canada.

⁸⁶United Kingdom.

⁸⁷ Netherlands, United Kingdom, Shipowners, Seafarers.

⁸⁸ Canada, Singapore.

⁸⁹Canada, Singapore, United Kingdom, Shipowners and Seafarers.

⁹⁰ Shipowners.

⁹¹ United Kingdom.

Second round Further question 11 Others	<i>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.</i>
---	---

67. There was a view that a reference to the hostage support programme of the United Nations Office on Drugs and Crime (UNODC) ⁹² should be contained within the proposal when considering any additional humanitarian support to seafarers held captive and their families. ⁹³
68. There was a view that recruitment intermediaries should be required to provide anti-piracy training based on international best practice and that psychosocial counselling may be provided to victimized seafarers and their families. ⁹⁴

Second round Further question 9 Others	<i>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) * and (i) ** of the MLC, 2006. Please specify.</i>
* "the health and social security protection benefits to be provided to the seafarer by the shipowner". ** "the seafarer's entitlement to repatriation".	

69. There appear to be converging views (three respondents) that the proposal should provide protection for other contractual benefits as provided in the seafarer's employment agreement. ⁹⁵
70. There was a view that reference should be made to medical care insurance. ⁹⁶ There was also a view that the current discussion should be limited to wages (which would protect related benefits such as payment of national social security contributions, allotments) and repatriation. ⁹⁷

First round Part II – Question 11 Second round Further question 12 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)?
---	---

⁹² <http://www.lessonsfrompiracy.net/files/2014/06/Hostage-Support-Programme-Lessons-Learned-Report-14-Apr-14.pdf>

⁹³ Canada.

⁹⁴ Philippines.

⁹⁵ Canada, Singapore, Seafarers.

⁹⁶ Netherlands.

⁹⁷ United Kingdom.

71. There appear to be converging views that 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 should be dealt with by way of an amendment to the Code of the MLC, 2006, both mandatory Standards and non-mandatory Guidelines.⁹⁸
72. There were views that Office guidelines outside of the MLC, 2006, may, in certain circumstances, be an additional option,⁹⁹ or a stand-alone option.¹⁰⁰

First round Part II – Question 12 Second round Further question 13 Miscellaneous	Please indicate any other suggestions [<i>points</i>] that should be considered by the Working Group.
---	---

73. There do not appear to be converging views as to any other suggestions that should be considered by the Working Group.
74. There was a view that repatriation should also be addressed, depending on the final document.¹⁰¹
75. There was a view that seafarers detained by police authorities or a port State after an accident/incident should be paid their wages in certain circumstances, but it was not clear to the Office how this was meant to be reflected in the solution developed.¹⁰²
76. There was a view that the solution should address that the flag State of a ship taken by pirates should be required to maintain its nationality even if annual fees are not paid.¹⁰³
77. There was a comprehensive statement covering the whole of the issue under consideration by one respondent Government which is available in the tables.¹⁰⁴

(b) Summary of areas where there appear to be converging views

78. The following appear to be converging views.

⁹⁸ Canada, Netherlands, Norway, Philippines, Singapore, United Kingdom and Seafarers.

⁹⁹ Canada.

¹⁰⁰ Shipowners.

¹⁰¹ Canada.

¹⁰² Philippines.

¹⁰³ Seafarers.

¹⁰⁴ Norway.

Scope and definitions

79. There appear 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 and/or armed robbery.
80. There appear to be converging views that the proposal could indicate that the "period of captivity" can be defined or understood to end when the seafarer is released and safely repatriated, in accordance with 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.
81. There appear to be converging views that the term "wages" in the proposal should be understood as referring to contractual wages as indicated in the seafarer's employment agreement.
82. There appear to be converging views that the proposal should expressly provide that the payment of allotments, as provided under Standard A2.2(4) of the MLC, 2006, should be continued.

Time limitations

83. There appear to be converging views that wages should continue to be paid during the entire period of the captivity and until repatriation, or until the issuance of the declaration of the death of the seafarer.
84. There appear to be converging views that when a seafarer dies during captivity, time of death should be defined according to the applicable national legislation.

Seafarers' employment agreement

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

Protection against termination

86. 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

87. There appear to be converging views that it could be useful to refer to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents.
88. There appear to be some convergence of views that the proposal should provide protection for other contractual benefits as provided in the seafarer's employment agreement.

Form of the proposal

89. There appear to be converging views that 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 could be dealt with by way of an amendment to the Code of the MLC, 2006, both mandatory Standards and non-mandatory Guidelines.

(c) Areas for possible further discussion

90. In the first and second round of consultations, certain specific issues were identified for possible further discussion by the Working Group.

Financial security

91. There was a view that the Working Group should consider the wider ramifications of the possibility that mandating financial security could provide an incentive to pirates to hold out for payment.¹⁰⁵

Compensation payments in lieu of wages

92. There was a view that there should be further discussion on the decision to include “compensation payments in lieu of wages” as this will have a significant impact for ship operators or certain governments.¹⁰⁶

High risk areas

93. There was a view that provision could be made in a seafarer’s employment agreement if the vessel is scheduled to enter a high risk area or areas known to have heightened risk, according to information published by the IMB and it may be useful for discussion to have information about whether any incidents reported to the IMB took place outside high risk areas/areas already identified as “risky”/requiring vigilance.¹⁰⁷

VI. Elements and forms of solutions to the issue

94. The following elements and forms of possible solutions to the issue are drawn from the comments and replies received in the first and second rounds of consultations and are proposed for discussion by the Working Group.

(a) Amendments to Standards of the Code of the MLC, 2006

95. From the replies to the questions in the two rounds of consultation, there appear to be converging views that 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 could be dealt with by way of an amendment to the Code of the MLC, 2006, both mandatory Standards and

¹⁰⁵ United Kingdom.

¹⁰⁶ Canada.

¹⁰⁷ United Kingdom.

non-mandatory Guidelines.¹⁰⁸ The Shipowners indicated in this regard that if it was felt that the only option was an amendment to be made to the MLC, 2006, this could refer to Standard A2.1 as indicated in the first proposal related to this Standard set out below.

96. At least two non-mutually exclusive possible proposals of amendments to the Code of the MLC, 2006, appear to emerge from the views set out above, one in relation to Standard A2.2 – Wages, and the other one regarding Standard A2.1 – Seafarers’ employment agreement. These are presented below for consideration and discussion by the Working Group and do not intend in any way to pre-empt the outcome of the meeting.

Standard A2.2 of the MLC, 2006

97. Insert a new paragraph 7 in Standard A2.2 as follows:

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

Standard A2.1 of the MLC, 2006

98. Insert a new paragraph 7 in Standard A2.1 as follows:

- Any statement in a seafarer’s employment agreement or collective bargaining agreement which has the effect of permitting the cessation of payment of wages in a situation of piracy shall be void.

Alternatively:

Insert a new subparagraph (k) in paragraph 4 in Standard A2.1 as follows:

- (k) The seafarer’s employment agreement shall not be terminated while a seafarer is held captive on or off the ship as a result of acts of piracy and/or armed robbery.

(b) Amendments to Guidelines of the Code of the MLC, 2006

99. Following any agreement on a proposed amendment to any Standard of the Code, the Working Group may wish to develop supporting text for appropriate Guidelines in the MLC, 2006.
100. In this regard, there was a view that Part B of the Code could elaborate on what information would be needed to trigger the death in service compensation and that the contractual compensation shall be without prejudice to any other claims.¹⁰⁹

¹⁰⁸ Canada, Netherlands, Norway, Philippines, Singapore, United Kingdom, Seafarers. The Shipowners also propose a guideline outside the MLC, 2006.

¹⁰⁹ Seafarers.

**(c) Guidelines or other documents
outside of the MLC, 2006**

- 101.** There were views that Office guidelines outside of the MLC, 2006, may be an additional option. The Working Group may wish to consider whether 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 should be dealt with by way of Office guidelines outside of the MLC, 2006, whether in addition to or instead of amendments to the Convention.
- 102.** The Office guidelines could incorporate all the elements around which general agreement has been reached among the members of the Working Group notably 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;
 - the "period of captivity" can be defined to end when the seafarer is released and safely repatriated, in accordance with the provisions in Standard A2.5 and Guideline B2.5; or at the time of the death of the seafarer while in captivity, whichever occurs first;
 - the term "wages" in the proposal should be understood as referring to contractual wages as indicated in the seafarer's employment agreement;
 - the payment of allotments, as provided under Standard A2.2(4) of the MLC, 2006, should be continued;
 - when a seafarer dies during captivity, time of death should be defined according to the applicable national legislation;
 - the seafarer's employment agreement should expressly refer to the shipowner's obligations and/or conditions that would apply in the event of captivity;
 - the employment of seafarers may not be terminated during the period of captivity;
 - protection should be provided for other contractual benefits as provided in the seafarer's employment agreement;
 - there should be a reference to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents.