
Proposals for amendment to the Code of the Maritime Labour Convention, 2006, as amended (MLC, 2006) submitted by the group of Seafarer representatives in accordance with Article XV (23 August 2017)

Piracy and armed robbery against ships

Background

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

The interim guidelines on measures relating to the welfare of seafarers and their families affected by piracy off the coast of Somalia (MSC 93/16/1) which was referred to the ILO by the 93rd Session of the IMO MSC provide:

Shipowners ... should ensure the continued payment of wages and applicable entitlements to the affected seafarers' families.

and

Seafarers held hostage should not be dismissed, and consequently the payment of their wages should continue.

It should be noted that these guidelines were submitted to the IMO by Italy, the Republic of Korea, the Philippines, BIMCO, ICC, ICMA, IFSMA, IMHA, INTERCARGO, INTERTANKO, ITF, the Nautical Institute, and OCIMF.

While it is acknowledged that many shipowners and employers do provide for the families of captured seafarers, unfortunately the guidelines have not been adhered to in all cases. Such cases are damaging to the image of the maritime industry. Further, there are grey areas over the expiry of fixed-term contracts and the continued payment of wages during the entire period on unlawful captivity. This has led to considerable hardship for seafarers and their families.

Purpose

The purpose of this proposed amendment is to codify the protection of seafarers' wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State during a period when the seafarer is held captive and to ensure that responsibility for such is taken by the appropriate party. To ensure that seafarers rights are adequately protected, it is proposed that an amendment is made to both Standards and Guidelines.

Relevant considerations

The proposed amendment will: (i) provide clarity on the requirements which should be placed on shipowners in the case of seafarers being held captive; (ii) ensure that payments of wages and other contractual entitlements which sustain the families of captured seafarers continue to be made, thus removing the need for governments and other social partners to carry the burden of support during this period; and (iii) ensure that the right to decent work and conditions is expressly maintained.

The proposed amendment will achieve the above aims without placing a large administrative burden on States. It will also ensure that the families of seafarers do not suffer from loss of income during the period of captivity.

Proposed amendment(s)

Standard A2.1

1. Insert a new paragraph 1:

1. For the purpose of Standard A2.2.1, Standard A2.2.2, Guideline B2.5.4 and the present Standard, the term:

- (a) “piracy” shall have the same meaning as in the United Nations Convention on the Law of the Sea, 1982 (UNCLOS);
- (b) “armed robbery against ships” means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea, or any act of inciting or of intentionally facilitating an act described above; this term shall include the kidnapping of seafarers for ransom who are then held on or off a ship.

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

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

Standard A2.2

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

4. Insert two new paragraphs:

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

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

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

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

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

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

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

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

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

7. Having regard to Regulations 2.1 and 2.2, assistance provided by the financial security system shall be sufficient to cover wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, including the remittance of any allotments as provided in paragraph 4 of Standard A2.2.1, during the entire period of captivity and until the seafarer is released and duly repatriated in accordance with Standard A2.5.1, or until the death of the seafarer while in captivity.

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

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

10. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are victims of piracy or armed robbery against ships. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received

from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

New Guideline B2.5.4

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

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

Appendix A5-I

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

Appendix A5-III

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

New Appendix A2-I

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

The certificate or other documentary evidence referred to in Standard A2.2.2, paragraph 5, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.2.2.

10. Make all necessary consequential amendments.