



Special Tripartite Committee
of the MLC, 2006

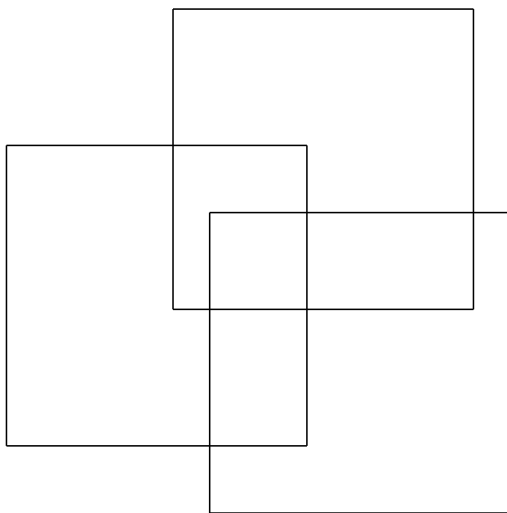


International
Labour
Office
Geneva

STCMLC/2018/3

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

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



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INTERNATIONAL LABOUR OFFICE, GENEVA

Contents

	<i>Page</i>
Introduction	6
General remarks concerning the proposals submitted by the groups of Seafarer and Shipowner representatives to the STC	6
Observations and suggestions on the proposals for amendment to the Code of the Maritime Labour Convention, 2006, as amended (MLC, 2006) submitted by the group of Seafarer representatives (Regulations 2.1, 2.2 and 2.5; and Appendices A5-I and A5-II and new Appendix A2-I)	9
I. Observations and suggestions on the proposal concerning Standard A2.1 – Seafarers’ employment agreements.....	9
II. Observations and suggestions on the proposal concerning Standard A2.2 – Wages	10
III. Observations and suggestions on the proposal concerning new Guideline B.2.5.4	12
IV. Observations and suggestions on the proposal concerning Appendix A5-I.....	12
V. Observations and suggestions on the proposal concerning Appendix A5-III	12
VI. Observations and suggestions on the proposal concerning new Appendix A2-I	13

Introduction

1. In his letter of 3 October 2017, the Director-General invited all Members of the Organization, pursuant to paragraph 3 of Article XV of the Maritime Labour Convention, 2006, as amended (MLC, 2006), to transmit, by 30 March 2018, any observations or suggestions on the [proposals that had been submitted by the group of Seafarer representatives](#) appointed to the Special Tripartite Committee (STC) established under Article XIII of the MLC, 2006, concerning the amendment to the provisions of the Code relating to Regulations 2.1, 2.2 and 2.5 of the Convention as well as Appendices A5-I and A5-II and new Appendix A2-I. The Director-General also transmitted to all member States, for information, a [proposal submitted by the group of Shipowner representatives](#) to develop ILO guidelines outside the MLC, 2006 on the protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.
2. In accordance with paragraph 4 of Article XV, the present document provides a summary of the observations and suggestions that were communicated in response to the Director-General's letter. The following nine (9) Members responded: *China, Côte d'Ivoire, Estonia, Germany, Japan, Norway, Panama, Thailand and Turkmenistan*.
3. Some governments indicated that they had held tripartite consultations with respect to their observations and suggestions. In that connection, certain governments transmitted the comments they received from social partners, which are reflected in this document.
4. This summary has been prepared for the information of participants at the third meeting of the STC and is relevant to the second item on the agenda of the meeting.
5. The next section sets out the general remarks and positions concerning the proposal by the group of Seafarer representatives for amendment to the Code of the MLC, 2006, as well as the proposal by the group of Shipowner representatives on the development of ILO guidelines outside the MLC, 2006. It is followed by a section containing the general and specific observations on the details of the proposal for amendment to the Code of the MLC, 2006 submitted by the group of Seafarer representatives, organized by reference to the relevant provisions of the MLC, 2006.

General remarks concerning the proposals submitted by the groups of Seafarer and Shipowner representatives to the STC

6. The Government of *China* appreciated the proposal from the group of Seafarer representatives to address the urgent need of securing the payment of seafarers' wages while seafarers were held captive as a result of piracy or armed robbery but argued that the implementation difficulties faced by the shipowners should also be properly addressed. It did not support the proposal by the group of Shipowner representatives, since, due to their recommendatory nature, the guidelines would not serve the purpose and would not be effective in ensuring that the wages of seafarers continued to be paid during captivity.
7. The Government of *Côte d'Ivoire* generally supported the principle of continued payment of wages during the period in which a seafarer was held captive by pirates, considering that this was a no-fault liability of the shipowner.

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8. The Government of *Estonia* indicated that the adoption of amendments to the MLC, 2006 would only be justified if no other measure was sufficient and effective to secure the income of seafarers in the event of piracy or armed robbery. It stated that in over half of the cases of documented acts of piracy or armed robbery, seafarers had been paid their wages in full; in the remaining cases, the seafarers were employed on fishing vessels or dhows which were not covered by the MLC, 2006, or the damages claimed had been other than unpaid wages. Amending the MLC, 2006 would therefore not seem to be a sufficient measure to solve the problem on board vessels not falling under the Convention and vessels flying the flag of countries not having ratified the MLC, 2006. It would be preferable to first try to solve the problem through ILO guidelines and, solely if this measure did not prove efficient, consider amending the MLC, 2006. The Maritime Administration of the country was in favour of a compulsory insurance requirement for vessels flying the flag of or passing through piracy-prone areas, in line with the current Marine Kidnap for Ransom & Hijack (K&R) Insurance practice in the maritime industry. This would enable maritime administrations to verify the existence of insurance during inspections and to manage the risk of both the members of the crew and the flag State in the case of piracy. The insurance obligation should be applied to the shipowner as the person responsible for the welfare of the members of the crew. The Government stated that, whichever measure was chosen, the following principles should apply: (i) financial security measures should not apply to all vessels, since the scope of the insurance obligation would be disproportionate. Specific piracy-prone areas should be defined and insurance coverage should be established only during the passage of these areas; (ii) the insurance obligation of the shipowner should be preferred to the national social security system; and (iii) when applying the financial security system, shipowners should be able to choose between more measures than only insurance and guarantees provided by financial institutions, as the shipowner might have sufficient means to ensure payment of wages. The Government could accept a compulsory insurance requirement under the MLC, 2006 only if all these principles were applied; otherwise it would rather support the development of ILO guidelines outside the MLC, 2006.
 9. The Government of *Japan* observed that the number of incidents caused by piracy and armed robbery against ships had recently decreased and that there had been no cases where seafarers had been held hostage for a long period of time. Noting moreover that the incidents usually occurred to dhows and other ships falling outside the scope of the MLC, 2006, it considered that the proposal by the group of Shipowner representatives to develop ILO guidelines with the participation of labour and management, should be regarded as an option to improve the situation, instead of the proposed amendments to the Code of the MLC, 2006.
 10. The Government of *Norway* stated that a key premise for the MLC, 2006 was to codify the usual situations constituting a normal employment relationship, with the exception of abandonment, which originally had not been part of the MLC, 2006 but had been incorporated at a later stage. The proposal by the group of Seafarer representatives dealt with an exceptional circumstance, given that seafarers being held captive was fortunately a rare occurrence. There should be a high threshold before accepting amendments concerning exceptional circumstances. Amendments to seafarer and shipowner/ship documentation would only be acceptable if there was justification based on, for instance, the amplitude of a particular issue or problem. The main reason was the administrative burdens that such amendments placed on all parties concerned, and in particular the confusion resulting from the entry into force phase. Such documentation should in general only be required for matters that form part of a standard employment relationship. The Government stated that its comments were limited to the proposal from the group of Seafarer representatives, as this was the only one that contained amendments to the MLC, 2006 itself.
 11. The Government of *Panama* agreed that the shipowners should continue paying wages (including remittance of allotments) to seafarers being held captive as a result of piracy or armed robbery, until the liberation and due repatriation of the seafarer. Nonetheless, it did not support amendments involving changes in contracts and ship certification. The

requirement of a financial security system was a sensitive issue and would place huge administrative and economic burdens on States and shipowners. It noted that the proposed definitions were clear and in line with the United Nations Convention on the Law of the Sea (UNCLOS) and the relevant International Maritime Organization (IMO) resolution.

12. The Government of *Thailand* provided comments on and disagreed with parts of the proposal from the group of Seafarer representatives. It agreed with the proposal from the group of Shipowner representatives to develop ILO guidelines outside the MLC, 2006 relating to the protection of seafarers' wages when the seafarer was held captive on or off the ship as a result of acts of piracy or armed robbery against ships, incorporating the elements indicated in paragraph (c) of document [STCMLC/WG/2017/D.1](#). It also supported the proposed transitional measure to use in the interim the guidance issued in this regard by the Maritime Piracy Humanitarian Response Programme (MPHRP) of the International Seafarers' Welfare and Assistance Network (ISWAN), the [MPHRP/ISWAN Good Practice Guide for Shipping Companies and Manning Agents – Humanitarian support of seafarers and their families in cases of armed robbery and piracy attack](#), until new formal ILO guidelines outside the MLC, 2006 could be developed.
13. The National Council of Private Enterprise of Panama (CONEP), while expressing concern at the fact that seafarers were still being held captive and at the financial situation of the latter and their families and recognizing the need to guarantee the continued payment of seafarers' wages during the period of captivity, considered that the proposal from the group of Seafarer representatives would not assist the persons affected and would not serve the purpose. The number of cases of piracy in which the seafarers held captive had not received wages, was extremely low. Moreover, most of the notified cases concerned fishing vessels, dhows and junks, which did not fall within the remit of the Convention, or vessels flying the flag of States that had not ratified the MLC, 2006. The most appropriate, efficient and proportionate solution would therefore be to develop guidelines outside the MLC, 2006 with a broader scope of application, which would also apply to personnel on board fishing vessels. The MPHRP/ISWAN [Good Practice Guide for Shipping Companies and Manning Agents, Humanitarian Support of Seafarers and their Families in cases of armed robbery and piracy attack](#), could serve as a basis for the development of such ILO guidelines.
14. The Estonian Shipowners' Association did not support the proposal from the group of Seafarer representatives considering that social protection measures for seafarers in case of piracy or armed robbery must be limited to vessels sailing in piracy-prone areas. Shipowners whose vessels sailed in such areas could acquire necessary additional insurance coverage for cases when the vessel crew was held captive (K&R Insurance), usually for every trip separately, in view of its high cost. The proposed financial security system would mean that all shipowners would have to pay extra costs for taking out K&R Insurance, since such insurance coverage was currently not included in standard insurance terms. The proposal from the group of Shipowner representatives offered a more reasonable solution. The development of advisory guidelines would avoid creating unnecessary additional costs for shipowners and give shipowners whose vessels did not sail in piracy-prone areas the option to apply appropriate measures if need be.
15. The Estonian Seamen's Independent Union supported the proposal from the group of Seafarer representatives. Members of the vessel crew were not free to decide whether a vessel sailed in a piracy-prone area or whether it was provided with armed protection. Those decisions were made by the shipowners. When seafarers were held captive as a result of piracy, their families were also suffering because they depended on the income earned by the seafarers. The objective of ensuring adequate income for the seafarers' families during captivity could not be achieved through non-binding guidelines.

Observations and suggestions on the proposals for amendment to the Code of the Maritime Labour Convention, 2006, as amended (MLC, 2006), submitted by the group of Seafarer representatives (Regulations 2.1, 2.2 and 2.5; and Appendices A5-I and A5-II and new Appendix A2-I)

I. Observations and suggestions on the proposal concerning Standard A2.1 – Seafarers’ employment agreements

16. Some Governments supported the proposal concerning Standard A2.1 (*China, Japan and Norway*).
17. The Government of *Norway* indicated that the reasoning to accept the proposed paragraph 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” – was that in a standard employment relationship the seafarer was in a weaker bargaining position than the shipowner, and should therefore be afforded protection by law, for instance in the event of termination of the employment relationship. The termination of the contract during captivity should be deemed to be a case of unlawful termination of the employment relationship, since the captive seafarer was not in a position to take any action in this regard.
18. The Government of *China* observed that the existing Code of the MLC, 2006 could not guarantee in practice that seafarers’ employment agreements would not be terminated by shipowners thus discontinuing the payment of wages during the period of captivity.
19. The Government of *Germany* raised the question as to whether the sole objective for introducing this amendment was to protect the seafarer’s entitlement to pay during captivity (i.e. to ensure continued payment of wages), or also to protect the employment relationship as a whole, including other entitlements such as holidays. Furthermore, given that the date on which notice of termination was given and the date on which the employment agreement ended, were not the same, it seemed unclear which situations were covered by the prohibition of termination during captivity, in particular whether the intention was to postpone the date on which the employment agreement ended in cases in which notice had been given before the period of captivity, or also to cover cases where notice of termination was given while a seafarer was held captive.
20. The Government of *Norway* proposed to move the definitions of “piracy” and “armed robbery”, possibly after the proposed paragraph 8. It seemed inappropriate to insert those definitions as new paragraph 1, since the purpose of Standard A2.1 was to regulate all seafarers’ employment agreements, and piracy and armed robbery were by their very nature, exceptional.
21. The Government of *Japan* suggested to delete, in the proposed new paragraph 1, ¹ the phrase that had been added to the definition of “armed robbery against ships” in IMO Resolution

¹ The proposed paragraph 1 of Standard A2.1 reads as follows: “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

A.1025(26): “this term shall include the kidnapping of seafarers for ransom who are then held on or off a ship”, so as to keep consistency with the internationally unified definition. The insertion of the example of kidnapping seemed unnecessary because it was already included in the definition. In new paragraph 8, the Government proposed: (i) to replace the phrase “shall adopt laws or regulations establishing” with the words “shall ensure”, taking into account that some countries had already regulated the prohibition of the expiration or termination of seafarers’ employment agreements in national law; and (ii) to insert the phrase “until the seafarer is released and repatriated in accordance with Standard A2.5.1 or until the seafarer’s death is confirmed” after the words “shall not expire or be terminated” and to replace the term “while” with “when”, so as to unify the overlapping elements of the proposed new paragraph 8 of Standard A2.1 and the proposed new paragraph 7 of Standard A2.2.1.²

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

22. Several Governments (*China, Japan, Norway and Panama*) opposed the proposed requirements for financial security (paragraph 8 of Standard A2.2.1³ and Standard A2.2.2).
23. With respect to the proposal by the group of Seafarer representatives concerning Standard A2.2 to ensure the payment of wages during the period in which a seafarer was held captive by pirates, the Government of *Norway* indicated that, while it could accept the proposed paragraph 7 of Standard A2.2.1, it did not agree to a requirement for financial security specific to the issue at hand, since the cases were very few and a general requirement on all shipowners could not be justified. The issue would be better handled through agreements between the social partners or arrangements with other organizations for ships sailing in high-risk areas, however defined and determined.
24. The Government of *Japan* deemed the proposed new paragraph 7 of Standard A2.2.1 redundant if the suggested modification of new proposed paragraph 8 of Standard A2.1 was accepted. As to the proposed new paragraph 8 of Standard A2.2.1 as well as Standard A2.2.2 and related appendices, the Government considered that the financial security system was already assured by Standard A2.5.2, paragraph 9(a), and that the relationship between the financial securities provided in Regulation 2.5 and the proposed Standard A2.2.2 should be carefully examined.

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 The proposed paragraph 7 of Standard A2.1 reads as follows: “Where a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the seafarer’s wages and entitlements 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.”

³ The proposed paragraph 8 of Standard A2.2.1 reads as follows: “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.”

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25. The Government of *China* did not support the proposal concerning Standard A2.2. The proposed financial security system would be difficult to implement as it would not only create an administrative burden for member States but also increase the operation costs for shipowners.
26. The Government of *Germany* raised the question as to whether the sole objective of the proposal from the group of Seafarer representatives concerning Standard A2.2 was to protect the seafarer's entitlement to pay during captivity (i.e. to ensure continued payment of wages), or to protect the employment relationship as a whole, including other entitlements such as holidays. With regard to the proposals concerning financial security, clarification was requested as to: (i) the situation in which a provider of financial security was obliged to pay, in particular whether the captivity of a seafarer per se gave rise to an insured event because the purpose of the proposed amendment was to ensure that seafarers would always and immediately be entitled to financial security, or whether an insured event arose, similarly to the cases of abandonment, where the shipowner had severed their ties with the seafarer contrary to their duty (e.g. failure to pay); (ii) the meaning of the proposed paragraph 8 of Standard A2.2.1, which could be misunderstood to the effect that the security must be concluded in the shipowner's favour, i.e. that the shipowner was entitled to fall back on the insurance in the event of payment difficulties; and (iii) the reason for the omission of a provision similar to paragraph 12 of Standard A2.5.2 concerning financial security in the case of abandonment, under which the provider of the financial security would be able to claim the seafarer's entitlements and have them satisfied by the shipowner after making the relevant payments to the seafarer.
27. The Government of *Thailand* questioned the appropriateness of the term "direct access" in the context of the financial security system (new Standard A2.2.2, paragraph 3)⁴ and requested its further deliberation, given that, in practice, when a seafarer was being held captive, the Thai shipowner would pay financial assistance in advance equal to the compensations of one–two months to the seafarer and then claim reimbursement from the financial security provider. It also proposed to replace in paragraph 4⁵ the term "the seafarers" with "every seafarer on board a ship", so as to be in accordance with the rules of inspection at foreign ports that normally require all documentary evidence to be posted in a place on board available to every seafarer. At the end of paragraph 5,⁶ the following sentence should be added: "Such documentary evidence in English must be provided to a shipowner by the financial security provider." The words "until the death of the seafarer

⁴ The proposed paragraph 3 of Standard A2.2.2 reads as follows: "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."

⁵ The proposed paragraph 4 of Standard A2.2.2 reads as follows: "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."

⁶ The proposed paragraph 5 of Standard A2.2.2 reads as follows: "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."

while in captivity” at the end of paragraph 7⁷ should be replaced with the phrase “until the date of the death of the seafarer while in captivity is known”.

III. Observations and suggestions on the proposal concerning new Guideline B.2.5.4

28. The Government of *Norway* indicated that it did not see the need for this provision, if the proposed new paragraph 8 in Standard A2.1 and paragraph 7 of Standard A2.2.1 were accepted.

IV. Observations and suggestions on the proposal concerning Appendix A5-I

29. The Governments of *Norway* and *Thailand* opposed the proposal concerning Appendix A5-I.

30. The Government of *Norway* did not support amending the Maritime Labour Certificate. The problem was very limited, and fortunately affected few seafarers. It would impose great and unnecessary administrative burdens on shipowners and administrations to include this matter as part of the certification process.

31. The Government of *Thailand* highlighted the additional burden for governments to enact further laws for a new version of the Maritime Labour Certificate as well as for shipowners to produce a new version of the Declaration of Maritime Labour Compliance.

V. Observations and suggestions on the proposal concerning Appendix A5-III

32. The Governments of *Norway* and *Thailand* did not support the proposal concerning Appendix A5-III.

33. The Government of *Norway* was not in favour of including the item as part of MLC, 2006 certification, and thus believed that it should not be part of port State control. Moreover, port State and coastal State interests did not seem to be affected.

34. The Government of *Thailand* again underlined the additional burden for governments to enact further laws for a new version of the Maritime Labour Certificate as well as for shipowners to produce a new version of the Declaration of Maritime Labour Compliance.

⁷ The proposed paragraph 7 of Standard A2.2.2 reads as follows: “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.”

VI. Observations and suggestions on the proposal concerning new Appendix A2-I

35. The Governments of *Norway* and *Thailand* disagreed with the proposal concerning new Appendix A2-I.
36. The Government of *Norway* indicated that its opposition to this new appendix was a consequence of not supporting the requirement for additional financial security.
37. The Government of *Thailand* emphasized the additional burden placed on governments.