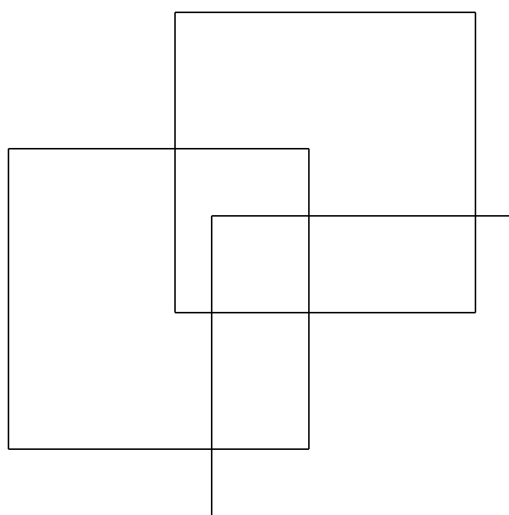




## Final report

**Meeting of the Working Group of the Special Tripartite Committee  
established under Article XIII of the Maritime Labour Convention, 2006  
(MLC, 2006)  
(Geneva, 3–5 April 2017)**



Geneva, 2017

International  
Labour  
Standards  
Department

Sectoral  
Policies  
Department



**STCMLC/WG/2017/5**

INTERNATIONAL LABOUR ORGANIZATION

**International Labour Standards Department  
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## 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.<sup>1</sup>
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).<sup>2</sup>

## II. Composition of the Working Group

3. The Working Group of the STC was composed of the Government representatives of Canada, France, Nigeria and Singapore, the Shipowner representatives of China (Hong Kong), Germany, the Philippines and United Kingdom, and the Seafarer representatives of the Philippines, Russian Federation, United Kingdom and United States. Observers representing other member States and observers representing a number of intergovernmental organizations and non-governmental international organizations, as well as other interested parties, also attended the meeting. A list of participants is attached.
4. It is recalled that the Officers of the STC are as follows:

*Chairperson:* Ms Julie Carlton (Government, United Kingdom)

*Vice-Chairpersons:* Mr Hans Leo Caddac (Government member, Philippines)  
Mr David Heindel (Seafarer member, United States)<sup>3</sup>  
Mr Arthur Bowring (Shipowner member, Hong Kong Special Administrative Region, China)

<sup>1</sup> Resolution concerning the establishment of a Working Group of the Special Tripartite Committee, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/meeting\\_document/wcms\\_452072.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meeting_document/wcms_452072.pdf).

<sup>2</sup> Document GB.326/LILS/6, available at: [www.ilo.org/gb/GBSessions/GB326/lils/WCMS\\_458136/lang--en/index.htm](http://www.ilo.org/gb/GBSessions/GB326/lils/WCMS_458136/lang--en/index.htm).

<sup>3</sup> During the meeting of the Working Group, Mr Heindel was replaced by Mr Mark Dickinson (Seafarer member, United Kingdom).

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### III. Opening of the meeting

5. The Secretary-General welcomed the participants and wished them every success in their important work. She noted the two important issues on the agenda of the Working Group and recalled that the outcome of its work would be submitted to the third meeting of the STC, to be held on 23–27 April 2018. She recalled that the Working Group had worked by correspondence well in advance of the present meeting. In this respect, she noted that, in accordance with the authority delegated to them by the STC, its Officers had agreed on a series of arrangements, including: the Office would play a facilitation role in the work by correspondence in consultation with the Officers of the STC; the work by correspondence would be limited to the members of the STC Working Group; the Government representatives on the Working Group would be invited to consult other Governments in order to present a position that represented as many of them as possible; a letter would be sent to all ILO member States informing them of the launching and time frame of the work by correspondence; a dedicated page would be created to post relevant documents and provide information to all ILO member States; and all member States would be invited to the actual meeting of the Working Group. In accordance with these arrangements, the members of the Working Group participated in two rounds of consultations by correspondence from August 2016 to January 2017. For each round of consultations, the Office had prepared short background papers and a questionnaire on the two issues covered by the mandate of the Working Group. On the basis of the replies and comments received, the Office had carefully identified the points on which there appeared to be agreement among the members of the Working Group, as well as those on which views diverged, which were set out in the two background papers prepared for the meeting, document STCMLC/WG/2017/1 (hereinafter, paper 1) and STCMLC/WG/2017/2<sup>4</sup> (hereinafter, paper 2).
6. The Chairperson said that the broad participation at the meeting demonstrated the importance of the issues to be discussed and the continued commitment of the ILO's tripartite constituents, and many other actors in the sector, to addressing issues relating to the living and working conditions of seafarers. She indicated that it was her intention, as agreed with the Officers, that the Working Group would operate in a less formal manner than the full STC with a view to facilitating the exchange of ideas, taking into account the mandate of the Working Group. Following the more general discussion of the proposals, small drafting committees would be established to prepare texts on the two issues under discussion. She noted that the Working Group agreed to adopt the programme of work as set out in document STCMLC/WG/2017.

### IV. Opening statements

7. The Shipowner Vice-Chairperson said that the Shipowners were, as always, ready to contribute to the successful accomplishment of the terms of reference of the Working Group. The Shipowners wished to recall their understanding of the purpose of the meeting and emphasized that it was a working group, and not a meeting of the STC. The Working Group had been given a very specific job to do, namely to examine the issues on its agenda, prepare proposals and produce a report for the third meeting of the STC. It was not its job to make decisions that would result in amendments to the Convention. While the meeting would be based on tripartite negotiation, the negotiations would focus on the preparation of proposals. The Shipowners fully expected the textual outcome of the meeting to contain many square

<sup>4</sup> See also: Summary of the responses received to the first round and second round of consultations relating 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, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/genericdocument/wcms\\_546834.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_546834.pdf).



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brackets, and that many different views would be presented. They also fully expected all participants in the meeting to accept the views of others, even if they did not agree with them. The contributions of the Shipowners, and their willingness to listen to the views of others, should not therefore be understood as limiting the views that they would express at the STC in 2018, when potential amendments to the Convention might be discussed. The Shipowners also recalled that the meeting had been convened to discuss two issues, both of which had arisen out of the discussions of the second meeting of the STC. The two issues were therefore linked, and offered an opportunity to agree on an efficient procedure for proposed amendments to the Code of the MLC, 2006.

8. The Seafarer Vice-Chairperson looked forward to working with the Shipowners and Governments in the spirit of tripartism and the traditions of the ILO for the successful conclusion of the meeting. The Seafarers wished to emphasize that the MLC, 2006, was a journey, not a destination. Ratification of the Convention was not the end of the process. Constant attention to the continuous improvement of minimum standards was required to preserve a level playing field in this most global of globalized industries. The Seafarers therefore supported improvements in the amendment process, but not at the cost of restricting the possibility of amending the Convention, for example through the introduction of unnecessary bureaucracy or the requirement of a cost-benefit analysis or economic justification for changes, which would be a betrayal of the spirit of the MLC, 2006, and in contradiction with Article XV. Concerning the issue of the protection of wages, they referred to the *Interim Guidelines on measures relating to the welfare of seafarers and their families affected by piracy off the coast of Somalia*, adopted by the Contact Group on Piracy off the Coast of Somalia (CGPCS) in November 2013, which contained a key provision that was not addressed directly or indirectly by the MLC, 2006, as follows: “Seafarers held hostage should not be dismissed, and consequently the payment of their wages should continue”. They emphasized that, unfortunately, there were cases in which shipowners did not continue to pay seafarers’ wages or allotments to the families, and some of the seafarers concerned had been held for a very long time. That caused great hardship at a very stressful time for the seafarers and their families. There had also been cases in which the vessel and the crew had been abandoned, which was also very damaging to the image of the sector, leading the wider shipping industry to take measures to secure their release. Somali pirates were still active, and had recently seized a vessel, but had then released it because it had been chartered by Somali interests. A dhow had also been captured recently and, although it was understood that it had since been released, this demonstrated the aim of pirate groups to substantially increase their operational range. In addition, there had been a substantial increase in the areas where seafarers were seized and held for ransom, both off eastern Africa and in the Sulu Sea area, and it was understood that 21 seafarers were currently being held in the Philippines. The *Interim Guidelines* had been considered by the International Maritime Organization (IMO) Maritime Safety Committee (MSC), which had referred them to the ILO. It was important for the ILO to take action on these *Interim Guidelines* in order to provide seafarers with assurances that shipowners would continue to pay their wages and allotments to their families.
9. The Chairperson of the Government group, the Government member of Singapore, noted that the views expressed by members of the Government group during their meeting included the need to focus on areas of convergent views. Protection of the payment of wages would be of great help to seafarers and their families before, during and after the ordeal of captivity. The proposed amendments would help to produce a more robust system in that regard. It was an important principle that there should be no time limit for the payment of wages during captivity. However, the Working Group should not be distracted by other elements, such as overtime payments. Moreover, the principle of the payment of wages during captivity should focus on cases of piracy and armed robbery, but not on other cases of detention. It was to be hoped that a simple and elegant legally binding proposal would be developed, which did not place a great administrative burden on states and did not involve changes to seafarers’ employment agreements or the certification of ships. With regard to the procedure for the

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amendment of the Convention, the process should remain speedy and useful, without being weighed down in detail.

- 10.** The observer representing the IMO indicated that the IMO had welcomed the adoption of the 2014 amendments to the Code of the MLC, 2006, to ensure better protection to seafarers and their families in case of abandonment, death and long-term disability. In view of the existence of unresolved cases of abandonment, the IMO Legal Committee had decided to keep the issue under consideration. With reference to the prevention and suppression of piracy, armed robbery against ships and illicit maritime activity in the Gulf of Guinea, the IMO Council had expressed concern at the number of attacks and cases of the boarding of ships in the region, and had expressed appreciation to all the countries that had contributed to the IMO West and Central Africa Maritime Security Trust Fund, the Djibouti Code Trust Fund and the International Maritime Security Trust Fund. The Council had welcomed the improvements in the piracy situation off the coast of Somalia and in the Indian Ocean, and had expressed appreciation to member States that were providing naval and other resources in the region. The Council had also expressed concern for the innocent seafarers still in captivity. With reference to the Cooperative Mechanism for the Straits of Malacca and Singapore, the Council had expressed appreciation to Indonesia, Malaysia and Singapore for the timely implementation of the various components of the Mechanism, and to the Governments, intergovernmental and non-governmental organizations which had made contributions to and/or pledged support for the various projects implemented under the Mechanism and the Singapore Straits Trust Fund. The IMO looked forward to the successful outcome of the current deliberations on the payment of wages of seafarers held captive.
- 11.** An observer representing the International Seafarers' Welfare and Assistance Network (ISWAN) said that over recent years all the actors in the maritime sector had come together to support seafarers affected by piracy and their families through the Maritime Piracy Humanitarian Response Programme (MPHRP), for which ISWAN was now responsible. Although piracy attacks off the coast of Somalia had diminished since 2012, it was still necessary to remain vigilant. There had been two recent pirate attacks, on the *Aris 13* and the *Al Kausar*. The *Aris 13* was the first ship to have been hijacked by Somali pirates since 2012, and fortunately had been released after four days without a ransom. More recently, a dhow had been hijacked with eleven Indian seafarers on board. Elsewhere, seafarers were being kidnapped and held hostage in the Gulf of Guinea and the Sulu Sea. ISWAN was still providing support for seafarers affected by piracy. In many cases, seafarers who had been held for a long period required not just financial support, but also medical and psychosocial assistance. Seafarers who had been held hostage were nearly six times as likely to suffer from post-traumatic stress disorder and depression. Although most companies looked after their seafarers in cases of piracy, a small minority left them at the mercy of the pirates. For seafarers, the knowledge that their families were being taken care of, through the payment of their wages, could diminish the mental ordeal of captivity. The coming together of companies, unions, NGOs, welfare organizations and governments in supporting seafarers affected by piracy had helped to improve the lives of many piracy survivors and their families.
- 12.** An observer representing the International Christian Maritime Association (ICMA) emphasized that the measures outlined in the proposed amendments needed to apply fully to cases of piracy and armed robbery wherever they occurred. A reference to acts of maritime piracy would be understood as applying only to acts occurring on the high seas. However, similar acts were also carried out in ports, with exactly the same results, and should therefore be covered by the proposed measures.
- 13.** An observer representing Seafarers' Rights International (SRI) noted that although the number of cases of piracy had fallen, the number of kidnappings of seafarers seemed to have grown. The subject of unpaid wages continued to be of high importance. The SRI considered that kidnapping should also be covered by the proposed amendments. If the IMO definition

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of armed robbery was to be used, there was a need to clarify whether that definition included kidnapping. Seafarers should be able to claim their wages against a ship, even if the ship was sold to a new owner, through a maritime lien, as envisaged by the MLC, 2006, in Guideline B2.2.2, paragraph 4(1). Seafarers also needed to be protected against the possible insolvency of the shipowner, which was also covered by the same Guideline. Finally, if a ship had been destroyed, or was not returned to the shipowner by the pirates, it might then be considered to have been “lost”, within the meaning of Standard A2.6 of the Convention. In that case, an indemnity limited to two months wages would be payable under Guideline B2.6. The meeting should therefore clarify the relationship between Regulation 2.6 and the proposed amendment. Those points would need to be addressed to assist states in the implementation of the amendments and reduce the risk of future litigation between seafarers and shipowners.

14. The observer representing the Government of the Philippines said that the President and administration of the country took the issue of piracy in the Sulu Sea very seriously and that the Government was doing its utmost to address the problem.
15. The observer representing the Government of the Dominican Republic emphasized the need to take into account the distinction between kidnapping, armed robbery and piracy. For example, Somali pirates often acted within Somali territorial waters, and could not therefore technically be engaged in “piracy”.
16. The observer representing the Government of the Russian Federation suggested that reference should be made to “any illegal or unlawful act by a third party”, rather than to armed robbery.
17. The observer representing the Government of Norway said that his Government was in favour of the inclusion of a new provision in the MLC, 2006, covering the protection of wages in the event of seafarers being unlawfully held captive. However, one issue of implementation was likely to create problems, namely the idea set out in paragraph 55 of paper 2 that the seafarer’s employment agreement should expressly refer to the shipowners’ obligations and/or the conditions that would apply in the event of captivity. His Government was not in favour of an amendment which would require the updating or redrafting of seafarers’ employment agreements, which might take a long time in view of the large number of agreements concerned. The measures required by an amendment to the Code of the Convention should be applied through national legislation, which should provide strong protection for seafarers’ wages and other benefits in the event of unlawful captivity.

## **V. Discussion of proposals related to the protection of seafarers’ wages during captivity**

18. The Chairperson drew attention to the summary of areas where there appeared to be converging views and the proposals set out in paragraphs 78–102 of paper 2.
19. The Shipowner Vice-Chairperson emphasized that the present meeting was a working group, and not a meeting of the STC. The Working Group was mandated to examine specific issues, prepare proposals and produce a report for the third meeting of the STC, but not to prepare amendments to the Code of the MLC, 2006. Although the terms of reference of the Working Group included the possibility of preparing proposals for an amendment to the Code, the Shipowners’ group had emphasized on various occasions that the terms of reference clearly indicated that there were a number of options to choose from, including stand-alone guidance, contractual changes, an amendment to the Code of the MLC, 2006, or no action at all. The Shipowners’ group had raised this point during the last meeting of the STC and

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in the Governing Body, and did not accept the presumption that an amendment to the Code was the only option available. Indeed, they did not believe that an amendment to the Code was an appropriate way forward. Moreover, situations of piracy, armed robbery or hostage taking did not lie within the mandate of the ILO and could not in themselves be addressed by the MLC, 2006. The subject before the meeting was protection for the payment of seafarers' wages in the event of acts of piracy, armed robbery and kidnapping. Other essential issues had also been raised during the correspondence work and in earlier interventions, including the mental health of seafarers held captive, pastoral care and support for seafarers' families. If amendments were to be proposed on such other issues, which were not related to wages, they should concern the corresponding regulations. It should be borne in mind that the MLC, 2006, contained provisions that were directly related to the payment of wages. In addition, the *Interim Guidelines* submitted to the IMO encouraged flag States to make all reasonable efforts to secure payment of outstanding wages and other contractual entitlements in the event of financial default or insolvency of shipowners. In preparation for the meeting, the Shipowners had undertaken research into the number of cases of non-payment of wages in the event of seafarers being held captive. Some national administrations had played a very active role in the resolution of cases reported to them, while others appeared to have been a little more reticent. Of the 119 cases cited in paragraph 19 of paper 2, the Shipowners had found that full payment and compensation had been made in 67 cases. A further 12 cases concerned fishing vessels and dhows, which were not covered by the MLC, 2006. In only ten of the 119 cases had wages not been paid. Moreover, some of those ten cases related to claims for compensation for the loss of personal effects, and not the non-payment of wages. It should be emphasized that all ten of the cases had occurred before the entry into force of the Convention. The Shipowners were continuing their investigations into the various cases and hoped to be able to provide more comprehensive information to the next meeting of the STC. With reference to the recent attacks referred to by previous speakers, and although the welfare of the crews on those vessels was a matter of great concern, it should be noted that two of the cases were related to fishing vessels and dhows, which were outside the scope of the Convention. The involvement of the appropriate stakeholders was important in resolving these issues, which should be examined by the meeting scheduled for the fishing sector. The Shipowners added that some of the measures proposed during the correspondence work would increase the burden of compliance for shipowners and their administrations. While some of the measures might be seen as an effective way forward, they completely ignored the obligations already established in the MLC, 2006, and would have the effect of penalizing all shipowners for the actions of a very few, whose ships probably sailed under the flags of States that had not ratified the Convention and did not call into the ports of ratifying States. It should also be emphasized that the MLC, 2006, as currently formulated, already addressed many of the issues raised. In conclusion, the Shipowners commended the excellent good practice guide for shipping companies and manning agents, entitled *Humanitarian support of seafarers and their families in cases of armed robbery and piracy attack*, which had recently been revised by ISWAN and the social partners, and encouraged its widespread dissemination.

20. The Seafarer Vice-Chairperson emphasized that the terms of reference of the Working Group were very clear, namely to examine issues related to the protection of seafarers' wages during captivity and to prepare proposals including an amendment to the Code of the MLC, 2006. The central issue in this respect was the responsibility, or lack of it in certain cases, of shipowners. The issue was also about the failure of some flag States to protect seafarers. In that regard, it was encouraging to hear the comments of governments, which were present in great numbers and were clearly determined to stand up for the rights of seafarers. The very strong support of the IMO on this issue was also much appreciated. In its comments, the SRI had made some important points on how it could be ensured that seafarers' wages continued to be paid in cases of insolvency, through the inclusion of liability as part of the existing financial security system. Although it had been argued that a financial security system might end up endangering seafarers, that seemed a somewhat perverse viewpoint, as the default assumption should be that seafarers would continue to be paid. Fears that

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financial security would lead to extortion seemed to be far-fetched. Shipowners routinely took out kidnap, ransom and extortion (KRE) insurance as part of the multifaceted response to piracy, and the fact that until recently there had been no incidents in Somalia since 2012 was undoubtedly related to that response. The Seafarers broadly welcomed the proposed amendment to Standard A2.2 (new paragraph 7), although there was also a need to ensure consistency of wording in relation to the definition of wages by including reference to other entitlements. They also supported the alternative subparagraph (k) in paragraph 4 in Standard A2.1. They requested legal advice to confirm that kidnapping or being held hostage would fall under the definition of piracy and/or armed robbery. Another issue of concern related to the recording of the time of death, which would be defined according to national legislation, although that raised the question of the determination of the applicable national legislation: that of the flag State, the port State or the seafarer's country of residence. That could cause confusion and delay, especially in cases where the body of the seafarer had not been returned, which could make it difficult to secure a death certificate. If the seafarer was presumed missing, it might take many years before death was presumed and a certificate issued. Reasonable grounds should be agreed upon for the presumption of death, which could be set out in an amendment to Part B of the Code. The Seafarers were in favour of a mandatory provision, although further guidance could also be developed in cooperation between the social partners.

- 21.** The Chairperson of the Government group said that paper 2 provided a very good starting point for the discussion. He noted that the terms “piracy” and “armed robbery against ships” were covered by existing definitions. The use of both terms ensured that the proposal covered acts occurring both on the high seas and in territorial waters. The Government group also agreed with the proposal that wages should be paid throughout the period of captivity, which would end, as indicated in paragraph 80 of paper 2, once the seafarer had been released and safely repatriated, or at the time of death of the seafarer. It further agreed with the indication in paragraph 81 that the term “wages” should be understood as referring to those set out in the seafarer's employment agreement, and that allotments should continue to be paid throughout the period of captivity.
- 22.** The Chairperson noted the disagreement on the form to be taken by the proposals, but proposed that the Working Group should discuss the substance of the proposals, before coming back to their form later.
- 23.** The Shipowner Vice-Chairperson considered that the discussion should commence with an examination of whether a case had been made for the need to amend the MLC, 2006. The Shipowners therefore sought clarifications from the Seafarers on the number of cases of seafarers affected by piracy and/or armed robbery whose wages had not been paid, and whether they had occurred prior to or following the entry into force of the MLC, 2006, which might in practice have resolved many of the cases.
- 24.** The Seafarer Vice-Chairperson said that the wages of too many seafarers affected by piracy and/or armed robbery had not been paid. “Too often” meant that had happened more than once. One family suffering for that reason was too many. Following much research, it had been determined that the seafarers concerned had not been paid in 11 of the cited cases, while it was believed that they had been paid in 13 cases. In the remaining 93 cases, the situation was not known. It was irrelevant whether the cases had occurred before or after the entry into force of the Convention. Although the number of cases of piracy had declined, the problem had not disappeared and it was necessary to establish the appropriate protection in the event that there were further cases.
- 25.** The observer representing the Government of the Philippines recommended that discussion should first cover the converging views outlined in paper 2 with a view to facilitating discussion and examining the issues related to piracy and armed robbery against ships, in accordance with the terms of reference of the Working Group. With reference to the need to

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ensure the protection of seafarers' wages during captivity, the Philippines, as a ratifying State with a labour-supplying responsibility, undertook to validate, in coordination with shipowners and seafarers, the list of cases mentioned in paper 2. He emphasized that there was a need to develop a concrete proposal for submission to the STC with a view to protecting the wages of seafarers held in captivity. Seafarers who had been the victims of piracy were stigmatized and suffered from depression. The protection of their wages was one of the more effective means of helping them cope with the situation.

26. The Government member of France recalled that, based on previous discussion of the issue at the second meeting of the STC and the consultations held prior to the present meeting, as well as the information provided by the Office, there were many points of convergence, as well as other points that required further discussion. Even though the number of cases of piracy had decreased, it might increase again and it was important to send out a strong political signal. Most shipowners were paying the wages of the seafarers affected and were fulfilling their responsibilities. The signal was needed for those that were not doing so.
27. The Shipowner Vice-Chairperson, referring to the data contained in paragraph 17 of paper 2 on cases of the non-payment of wages to seafarers affected by piracy and armed robbery, which had been provided by ISWAN, noted that further research into the data showed that some of the cases reported related to fishing vessels, which were not covered by the MLC, 2006, while others did not have an IMO number, which suggested that they might also be fishing vessels.
28. The Deputy Secretary-General, in response, explained that the data in paragraph 17 covered all types of vessels. The lower figures in paragraph 18, which concerned the issue of payment of wages, excluded fishing vessels.

## Scope and definitions

29. The Chairperson noted the reservations of the Shipowners. She proposed to proceed with the examination of the substance of the proposals. Turning to paragraph 79 of paper 2, she noted the agreement that shipowners should continue to pay seafarers' wages when they were held captive on or off the ship as a result of acts of piracy and/or armed robbery against ships.
30. The Chairperson of the Government group observed that the definitions of piracy and armed robbery against ships were clear, as set out in the United Nations Convention on the Law of the Sea (UNCLOS), and the IMO Resolution A.1025(26).
31. The Shipowner Vice-Chairperson expressed full agreement with the point. It was evident that shipowners should continue to pay seafarers' wages in such circumstances. The only disagreement was on the form of the proposal.
32. The Seafarer Vice-Chairperson agreed that the terms used were well understood.
33. The Chairperson drew attention to the convergent view (paragraph 80 of paper 2) that the proposal could indicate that the period of captivity could be defined or understood to end when the seafarer was released and safely repatriated, in accordance with the provisions of Standard A2.5.1 and Guideline B2.5 regarding "Repatriation", or at the time of death of the seafarer while in captivity, whichever occurred first.
34. The Seafarer Vice-Chairperson supported the proposal, but noted that certain difficulties might arise in relation to the determination of the time of death, which would be in accordance with the provisions of national legislation. The question therefore arose of which national legislation would be applicable.

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35. The Shipowner Vice-Chairperson agreed that consideration needed to be given to the manner in which the time of death was determined, particularly as there were certain cases in which a disappearance could continue for a very long period with no certainty as to the status of the seafarer.
  36. The observer representing the Government of Norway said that only a certain level of detail could be regulated through the MLC, 2006. In this case, different countries defined the time of death in the absence of a body in different ways. It was important to know when it was appropriate not to determine matters at the international level and to leave them to national regulation. The applicable national legislation would depend on the facts of the case. In specific cases, it would be for the courts to determine the applicable national legislation. The Government member of Singapore, while supporting the proposal in general, agreed that some questions arose as to which national legislation would be applicable in determining the time of death. The observer representing the Government of Denmark noted that, in some cases, the applicable national legislation could depend on the jurisdiction in which a claim was filed. The observer representing the Government of Greece agreed with the previous speakers. The observer representing the Government of the Islamic Republic of Iran said that it was necessary to remove any ambiguity in this respect. The Government member of France indicated that the determination of the time of death should be left to the national definition.
  37. The Chairperson drew attention to the proposals contained in paragraphs 81 and 82 of paper 2 that the term “wages” should be understood as referring to contractual wages as indicated in the seafarer’s employment agreement and that the proposal should expressly provide that the payment of allotments, as provided under Standard A2.2, paragraph 4, of the MLC, 2006, should be continued.
  38. The Shipowner and Seafarer Vice-Chairpersons expressed agreement with these proposals.

### **Time limitations**

39. The Chairperson requested the meeting to address the proposals contained in paragraphs 83 and 84 of paper 2 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, and that when a seafarer died during captivity, the time of death should be defined according to the applicable national legislation.
40. The Shipowner Vice-Chairperson, while agreeing with the proposal, noted that there were cases in which it took years to determine the death of a person who had disappeared.
41. The Seafarer Vice-Chairperson agreed with the proposal.

### **Seafarers’ employment agreement and protection against termination**

42. The Chairperson drew attention to paragraphs 85 and 86 of paper 2, according to which 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, and that the proposal should state that the employment of seafarers may not be terminated during the period of captivity.

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43. The Shipowner Vice-Chairperson expressed a reservation relating to the wording “proposal” concerning the seafarer’s employment agreement pending further clarification of the nature of the proposal involved.
44. The Seafarer Vice-Chairperson indicated a preference for a proposal along the lines proposed by the observer representing the Government of Norway, as set out in paragraph 98 of paper 2, to the effect that there should be a requirement that the employment agreement shall not be terminated while a seafarer is held captive as a result of acts of piracy and/or armed robbery.
45. The observer representing the Government of Norway recalled the great difficulties that would be involved in modifying all seafarers’ employment agreements throughout the world. It would be preferable to require flag States to establish protection against the termination of the employment relationship through national legislation, which was probably already the case in many countries. Seafarers held in captivity could not be party to the termination of the employment relationship and, for example, would not be in a position to exercise the choice to remain in employment. Dismissal under such circumstances should be considered a specific case of unfair dismissal. In the event of unlawful captivity, seafarers would therefore be presumed to be still in employment, and all the terms and conditions of the employment agreement would still be applicable. The observer representing the Government of Denmark indicated that, in her country, the requirement for the protection of seafarers, including their wages, during captivity was set out in the national legislation. Even if the employment agreement would normally expire during the period of captivity, the employment relationship should continue throughout that period. Shipowners should also be prohibited from dismissing seafarers during captivity. The Government member of France suggested that clarification was needed to reinforce the prohibition of the dismissal of seafarers during their period of captivity. The observer representing the Government of Panama considered that a more accurate expression would be “termination of the employment relationship”, rather than “dismissal”. There were many reasons for continuing the employment relationship during captivity, and it should not be allowed to end under such circumstances.
46. The Shipowner Vice-Chairperson noted the ambiguity in the terms used and wondered whether it was legally possible to extend contracts that came to an end during periods of captivity. It was doubtful that there were cases of shipowners dismissing seafarers during captivity, although unscrupulous operators might be tempted to abandon the crew.
47. The Seafarer Vice-Chairperson recalled that it had already been agreed that the period of captivity ended with the repatriation of the seafarer, and that shipowners were under the obligation to look after seafarers during that period.

## **Other matters**

48. The Chairperson invited the participants to consider paragraphs 87 and 88 of paper 2 indicating 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, and that the proposal should provide protection for other contractual benefits as provided in the seafarer’s employment agreement.
49. The Seafarer Vice-Chairperson expressed the willingness of the seafarers to work on guidance with the social partners.



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## Areas for possible further discussion

### *Financial security*

50. The Chairperson drew attention to paragraph 91 of paper 2 concerning the 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.
51. The observer representing the Government of Denmark considered that the wording of the proposal was a little confusing. It was important to recall that seafarers' wages were usually covered by a maritime lien, in accordance with the Convention on Maritime Liens and Mortgages, 1993 (CMLM). A system of financial security for seafarers' wages was therefore available. Moreover, although most shipowners fulfilled their responsibilities regarding the payment of wages, there were some, which were not represented within the Shipowners' group, which did not do so. These shipowners were most likely to abandon the ship in the event of captivity, in which case, the system of financial security established under the recent amendments of the MLC, 2006, would apply. The observer representing the Government of Norway did not agree that there was a need for a different system of financial security in the event of captivity. The premise for the discussions was that the employment relationship continued, and the provisions of the MLC, 2006, respecting financial security would therefore continue to apply. The Government member of Canada agreed with the previous speakers and considered that the responsibility lay with each State to take the necessary measures, based on whether ships were sailing through high-risk areas.
52. The observer representing the Government of the Philippines indicated that, under the joint and several liability clause in the national legislation in his country, both shipowners and seafarers' recruitment intermediaries could be held responsible for the payment of wages under certain circumstances, such as acts of piracy. The recruitment intermediaries however considered that it was the responsibility of shipowners to protect wages and that financial security mechanisms should be improved.
53. The Government member of Singapore assumed that the concerns raised relating to the use of the term "wider ramifications" concerned the possibility that pirates might hold out for higher ransoms if insurance were available. The observer representing the Government of the United Kingdom considered that the existence of mandatory financial security might offer a reason for seeking a ransom and that the proposal should be withdrawn.
54. The Shipowner Vice-Chairperson firmly opposed any further form of financial security. Provisions on financial security had already been adopted in the 2014 amendments to the Convention. It was the responsibility of a State which agreed to take a ship under its flag to ensure that the shipowner fulfilled its responsibilities in relation to the payment of wages.
55. The Seafarer Vice-Chairperson emphasized that reference was not being made to viable shipowners, but to cases of insolvency and abandonment, which was when it was most difficult to guarantee the maintenance of the rights of seafarers and their families in the event of captivity. The question also arose of whether existing forms of financial security were adequate. The existence of an open-ended commitment by shipowners to pay the wages of captive seafarers could act as an encouragement to abandon vessels and crews. Although significant progress had been made in achieving general consensus on the need to protect seafarers' wages and allotments to their families in case of captivity, the question needed to be resolved of how that commitment could be met in the event of the insolvency of the shipowner. There had been several high-profile cases of shipowners abandoning their vessels and crews. Under the terms of the 2014 amendments, financial security was ensured for four months. However, in the case of captivity, wages would need to be paid until repatriation, which could be longer than that period. The existence of maritime liens as a security for

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wages was important, but did not obviate the need for special provisions in respect of seafarers held in captivity. Although the maritime lien was attached to the vessel, and remained with it even after sale, it was not helpful if the vessel was a rusting hulk, and liens were not maintained in the event of the judicial sale of vessels.

56. The observer representing the Government of Norway said that the financial security available in cases of abandonment only applied where shipowners were experiencing difficulties in meeting their obligations, for example as a result of insolvency. However, the MLC, 2006, could not address directly questions of insolvency. Care was therefore required in the present case. The observer representing the Government of Denmark considered that maritime liens were one tool among others. It might be possible to include a reference in the proposal to the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), together with a cross reference to the text of the 2014 amendments. She was opposed to any further provisions on financial security.
57. The Shipowner Vice-Chairperson reaffirmed his opposition to the proposed amendments to the Convention. However, certain significant points of principle had been agreed upon, including the continued payment of seafarers' wages and allotments to their families in the event of captivity. He added that sufficient provision was already made in the Convention in relation to financial security and no further amendment of the Convention was therefore required.

### ***Compensation payments in lieu of wages***

58. The Chairperson said that it was her understanding that, in view of the agreement that wages should continue to be paid during captivity, there was no need to further discuss the proposal relating to compensation payments in lieu of wages (paragraph 92 of paper 2).

### ***High-risk areas***

59. The Chairperson drew attention to the proposal set out in paragraph 93 of paper 2 that provision could be made in a seafarers' employment agreement if the vessel was scheduled to enter a high-risk area or areas known to have heightened risk, according to information published by the International Maritime Bureau (IMB).
60. The Seafarer Vice-Chairperson welcomed discussion of questions related to high-risk areas, such as the payment of bonuses and provision for life insurance, which were a feature of collective bargaining in the industry, including within the International Bargaining Forum (IBF). These matters were also covered by other bodies, such as the Lloyds Joint War Committee, which outlined risks to be taken into account in hull insurance.
61. The Shipowner Vice-Chairperson expressed concern that the term "high-risk area" lacked a formal definition, and that several differing definitions were used by different institutions and groups. For example, "high-risk areas" were not the same as "war risk zones". The IBF agreement was specific to certain negotiations and should probably not serve as a reference in the present context. It was difficult to discuss this matter if it was not known precisely what was meant by "high-risk area".
62. The observer representing the Government of Japan noted the objective data such as IMB reports about the areas in which hostage and kidnap incidents occurred. These areas were very limited, so the applicable areas would need to be identified accordingly if mandatory provisions were examined on this subject. The observer representing the Government of Denmark considered that it was very difficult to define specific high-risk areas. Cases had occurred of hostages being taken outside what were considered to be high-risk areas. In practice, if a situation of piracy and/or armed robbery arose, the risk became high. Moreover,

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it was not necessary to define high-risk or war zone areas in relation to the requirement of repatriation. The Government member of Singapore noted that the IMO issued guidance on best practice in relation to piracy and regularly updated information on high-risk areas.

- 63.** The Chairperson, summarizing the discussion, noted certain points of agreement, and particularly that shipowners should continue to pay wages throughout the period of captivity. The existing definitions of the terms “piracy” and “armed robbery against ships” should be used in the proposals. The period of captivity of seafarers ended only when they had been safely repatriated, or their deaths recorded in accordance with national legislation, and particularly the law of the flag State. The term “wages” referred to the contractual wage conditions set out in the employment agreement. Protection against dismissal and against the expiry of the employment agreement should be provided in national legislation, rather than in seafarers’ employment agreements. Guidance on the protection of seafarers affected by piracy and armed robbery could be developed by the social partners. With reference to financial security, existing provisions offered a degree of protection, although there was some concern that security in relation to the abandonment of seafarers only lasted for four months. Finally, the proposals should not be limited to high-risk areas, but should be applicable more generally.
- 64.** The Shipowner Vice-Chairperson requested legal advice on how a contract that expired could be maintained in force by legal means, and also on the best means of including the definitions of piracy and armed robbery in the proposals.
- 65.** The Legal Adviser, in response, said that, in principle, nothing prevented national legislators from providing that, under certain circumstances, a contract shall remain valid, that is that it shall continue to produce its effects, or some of its effects, after it had expired, or that under certain circumstances a contract shall expire at a later date, or that it shall be deemed to have been renewed, or that it shall not be deemed to have ended. There were examples of national legislation providing for such “extended validity” or “deferred termination” of a contract, including Article 19(a) of Danish Act No. 73, which provided that “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”. Article 6(3) of the same Act provided that “if a time limited service agreement expires while the ship is at sea, the agreement shall remain in force until the ship arrives at a port”. Similarly, Article 67 of the Estonian Seafarers’ Employment Act of June 2014 provided that “if the date of expiry of a seafarer’s fixed term employment contract arrives while a ship is at sea, the contract shall be deemed to be extended until the ship reaches the next port”. It should also be noted that, in some cases, the law might implicitly provide that the contract shall remain in force in whole or in part. For example, in accordance with Article 69 of the Indian Bill of 2016 amending the Merchant Shipping Act, “A seafarer shall be entitled to continue to receive the wages at the same rate till such time he returns home if such seafarer is held in captivity including in case of piracy.” He added that collective agreements could also have the same effect, such as the International Transport Workers’ Federation (ITF) standard collective agreement of 2015, which recognized that “the seafarer’s employment status and entitlements shall continue until the seafarer’s release and safe repatriation”. Nevertheless, there was always a possibility that provisions in domestic legislation, such as those referred to above, could be challenged before national courts, possibly as being contrary to freedom of contract. The validity of such provisions therefore depended on the national jurisdiction. In the event that an amendment to the Convention was envisaged by the Working Group, it might be advisable to refer to the shipowner’s obligation to continue to pay wages, instead of making explicit reference to the seafarer’s employment agreement remaining in force, which might raise complex questions (such as whether the employment agreement would remain in force in whole, or only as far as the payment of wages was concerned, or whether the employment agreement could be deemed to be in force if the seafarer were held captive ashore and was no longer physically on board the ship).

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66. In response to the request by the Seafarers' group for a legal opinion on whether the kidnapping of seafarers could qualify as an act of piracy under the definition of piracy set out in Article 101 of UNCLOS, he recalled that kidnapping was generally understood to mean abducting a person and holding him/her as a hostage without his/her consent, by force or fraud, often for ransom. In accordance with Article 101 of UNCLOS, piracy consisted of any illegal act of violence or detention, committed for private ends by the crew of a ship and directed, on the high seas, against persons on board another ship either on the high seas or in a place outside the jurisdiction of any State. It would therefore appear evident that, based on that definition, kidnapping qualified as an "illegal act of violence or detention", within the meaning of the relevant provision of UNCLOS, on condition that all the remaining constitutive elements of piracy were also present, and in particular that: the act of kidnapping was "committed for private ends", in contrast with political ends; it was committed "by the crew of another ship", therefore excluding mutiny or acts by terrorists on board the same ship; and it was committed "on the high seas or in a place outside the jurisdiction of any State", which excluded acts committed in the territorial waters of a State. The expression "kidnapping of seafarers" seemed to be widely used in relevant publications, such as IMB publications on piracy. Dedicated so-called "kidnap and ransom" marine insurance policies had also been developed to respond to the need to cover ransom demands not explicitly addressed by Protection and Indemnity (P&I) clubs, as the modus operandi of pirates had changed from raiding and looting ships to boarding and taking the crew hostage for ransom. In conclusion, present day acts of piracy did involve the kidnapping of seafarers, but not all acts of the kidnapping of seafarers would automatically qualify as piracy. He added that the definitions of "piracy" in UNCLOS and of "armed robbery against ships" under IMO Resolution A.1025(26) were practically identical, and only differed in their spatial scope of application. Piracy covered illegal acts of violence or detention committed for private ends and directed against persons on board a ship on the high seas or in a place outside the jurisdiction of a State, whereas armed robbery referred to illegal acts of violence or detention also committed for private ends, but only when the ship was in the territorial waters of a State. Consequently, the abduction of a seafarer would qualify as an act of piracy if it occurred on the high seas or in a place outside the jurisdiction of a State, and as an act of armed robbery against ships if it occurred within the territorial waters of a coastal State.

### ***Form of the proposals***

67. The Shipowner Vice-Chairperson recalled that the proposals developed by the Working Group might well contain more than one potential solution. Just because the Convention could be amended, did not mean that it should be amended, unless it could be clearly demonstrated that it was deficient in some respect. There was broad agreement within the Working Group on the general principles. However, in the view of the Shipowners, all of the issues raised were already covered by the Convention, as amended. There was also a danger that amendments which would cover specific circumstances might end up inadvertently excluding other circumstances or that placing emphasis on certain elements might give the erroneous impression that other elements were of less importance. The Convention was still very new and was still in the process of being implemented. The proposals prepared by the Working Group were intended for further consideration by the next meeting of the STC. If the Working Group proposed the amendment of the Convention, its proposals would still have to be put forward in accordance with Article XV, and would therefore have to be formally proposed by a sufficient number of Governments or by the groups. Finally, he reaffirmed that any acceptance by the Shipowners that proposals could go forward in the report of the Working Group for consideration by the STC did not presuppose that they would then be supported by the Shipowners' group, which might oppose them when the time came.

68. The Seafarer Vice-Chairperson said that it was clear from the terms of reference of the Working Group approved by the STC that the proposal or proposals that went forward must

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include an amendment of the Convention. It was also clear that the amendment would be submitted in accordance with the Article XV procedure. He emphasized that a mandatory provision was essential. Although responsible shipowners maintained payment of wages and other entitlements in the event of the captivity of the seafarer, less scrupulous shipowners did not, and the latter would take little notice of guidance, whether or not it was part of the Code. Moreover, if there were no mandatory provision, failure to pay the wages and other entitlements of seafarers unlawfully held captive would be likely to increase the burden on the welfare systems of flag and labour supply States. Turning to the proposals contained in paper 2 for an amendment to the Code, the Seafarers supported the proposed new text in Standard A2.2. With regard to the definition of piracy and armed robbery, they noted the opinion of the Legal Adviser. While the legal clarification had been helpful, taking into account the proposal by the observer representing the Government of the Russian Federation, consideration might be given to a simpler definition, such as “unlawfully held captive”. The Seafarers also supported alternative new subparagraph (k) in Standard A2.1, paragraph 4. However, they were more focused on the outcome being mandatory than the exact form of words. They therefore welcomed the strong support expressed by the Government group for a mandatory provision, which was required to give seafarers confidence that they would be paid, that allotments would be maintained to their families and that their employment would not be terminated during captivity. It was a matter of common sense that a voluntary provision would perpetuate a situation in which irresponsible shipowners were able to drive down standards and undermine the level playing field that was one of the fundamental objectives of the MLC, 2006. It was therefore difficult to understand the view of the Shipowners’ group that the Convention should only be amended if it was deficient. The very reason that the MLC, 2006, could be amended was because everyone agreed that it should stay abreast of developments and not become calcified, which presupposed a process of continuous improvement in the minimum standards of the Convention, which had a direct impact on the working lives of seafarers.

69. The Chairperson of the Government group said that the Working Group had clear terms of reference. The lack of agreement between the Shipowners’ group and the Seafarers’ group on whether an amendment to the Convention was needed was disappointing, even though there was consensus on the serious nature of the problem. The Shipowners’ group claimed that the principles examined by the meeting were already covered by the Convention. In view of the doubts that persisted on that subject, he called on them to indicate the precise provisions of the Convention that covered each aspect of the problem. Very strong support had been expressed by the Government group for the amendment of the Convention. However, it was important that no new terms were used that were not already in the MLC, 2006. For example, the term “contractual wages” might cause confusion. Another important principle was that, whatever form the changes to the Convention were to take, they should not require changes to seafarers’ employment agreements, which would be extremely complex to administer. There was some support within the Government group for the proposed amendment to Standard A2.2, and very strong support for the proposed amendment to Standard A2.1, although the current wording of new subparagraph (k) would need some reformulation to ensure that changes were not required to seafarers’ employment agreements. It was also considered that it would be simpler if an amendment were only made to one Standard. The Government group had also expressed limited support for the proposed amendments to the Guidelines of the Code of the MLC, and very limited support for the development of Office guidelines. Finally, it would be necessary to take into account the need to align the different language versions of the proposals.
70. The observer representing the Government of the Dominican Republic reiterated his understanding that an act of kidnapping that occurred on the high seas constituted piracy in accordance with UNCLOS, while kidnapping in territorial waters constituted armed robbery against ships. The observer representing the Government of Denmark added that it was essential to cover incidents occurring both on the high seas and in territorial waters. Moreover, both hostages who were kept at sea and those who were taken ashore should be

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covered. The Government member of France clarified that proposed new subparagraph (k) referred to contracts expiring during the period of captivity, rather than the dismissal of seafarers during that period.

- 71.** The Shipowner Vice-Chairperson noted that it was the location of the act of piracy or armed robbery against ships, and not where the seafarer was subsequently held, that was important for the definition. In response to the request for clarification concerning the provisions of the Convention that already covered the issues examined by the Working Group, he specified that the principle that wages should be paid during the entire period of captivity was covered by Regulation 2.2, paragraph 1, which provided that “All seafarers shall be paid for their work regularly and in full in accordance with their employment agreements.” In addition, Standard A2.2 contained provisions on the intervals between payments, allotments and accounts of wages, and encompassed any periods of captivity, as there were no exceptions. The existing definitions of piracy and armed robbery against ships were not in the Convention, but were established elsewhere. The principle that the period of captivity ended when the seafarer was released and safely repatriated in accordance with Standard A2.5.1 was not in the Convention, although Regulation 2.2 covered the point adequately and there was no need to define the period of captivity. The term “wages” meant contractual wages and allotments, in accordance with Standard A2.2. The principle that seafarers should be protected from the termination of their employment agreements by the shipowner when held captive and that their agreements should continue to be applicable if they were due to expire during captivity was covered by Standard A2.5.1, which provided that if the seafarers’ employment agreement expired while they were abroad, or if it was terminated by the shipowner, they had an immediate right to repatriation. Shipowners could not validly terminate an employment agreement, or allow it to expire, unless they were in a position to repatriate the seafarers concerned, which was not the case if they were held captive. Under the terms of the proposal, it was for national laws to determine the time of death, which was not therefore covered by the MLC, 2006. Recognized guidance for shipowners on how to support seafarers in the event of piracy and armed robbery against ships existed, but was not in the Convention. Finally, the principle of the protection of other contractual benefits, as provided in the employment agreement, was covered by Standard A2.1, and particularly paragraphs 4(g) and 6 respecting termination, under which it was clear that all contractual benefits applied until notice to terminate the agreement had properly been given. What had not yet been discussed was the obligation of administrations to ensure the implementation of the requirements set out in the MLC, 2006.
- 72.** The Seafarer Vice-Chairperson said that it was clear that Governments were expected to give effect to the provisions of the Convention in national legislation. In the view of the Seafarers’ group, the provisions of the MLC, 2006, were not sufficiently clear with regard to the very exceptional circumstances under discussion. The explosion in the number of cases of kidnapping of seafarers had not been foreseen when the Convention was drafted, or the Seafarers’ group would have sought the inclusion of provisions covering the subject at that time. The Seafarers’ group supported the proposal that amendments should be adopted to both Standards A2.1 and A2.2.
- 73.** The Shipowner Vice-Chairperson said that he saw no reason for the amendment of Standard A2.2. There was nothing in the Convention indicating that wages could be stopped in the event of captivity. With reference to the proposed amendment to Standard A2.1, he said that the remedy for termination of the employment agreement lay in national legislation. With reference to the proposed new subparagraph (k) in Standard A2.1, paragraph 4, he noted the reluctance expressed by Governments concerning changes affecting employment agreements.

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***Amendments to the Guidelines of the Code of the MLC, 2006, and guidelines or other documents outside the MLC, 2006***

74. The Chairperson drew attention to paragraphs 99–102 of paper 2.
75. The Shipowner Vice-Chairperson said that the proposed amendments to the Guidelines of the Code of the MLC, 2006, followed on from the proposed amendments to the Code itself, and the Shipowners were opposed to both proposals. Their preferred option was guidance outside the scope of the Convention. With reference to the elements set out in paragraph 102 of the background paper, he said that the term “safely” repatriated was new and should be replaced by the language of the Convention, namely “duly” repatriated. The expression “released and safely repatriated” could be shortened to “duly repatriated”. He added that the inclusion of reference in the employment agreement to the shipowners’ obligations and/or conditions that would apply in the event of captivity should only apply to certain ships which were likely to enter high-risk areas. Moreover, the expression “protection should be provided for other contractual benefits” in the employment agreement was very vague. In general, the Shipowners’ group was happy with the guidance that already existed, to which reference could be included in Part B of the Code.
76. The Seafarer Vice-Chairperson favoured the inclusion of guidance in Part B of the Code, which should reflect the emerging consensus on the issues under discussion. It would also be useful to refer to the guidance that should be developed by the social partners in the industry.
77. The Chairperson of the Government group noted that, if amendments were adopted to Standards, it would be likely that there would also be amendments to Part B of the Code. The Government group supported an amendment to a Standard. However, if such an amendment were not adopted, there would be little point in amending only Part B of the Code. The Guidelines were not mandatory and it would be likely that there would be an uneven response by States to their implementation, which would in turn lead to a more uneven playing field, adversely affecting the industry as a whole. He added that the guidelines outside the MLC, 2006, could consist of guidance prepared by the Office, to which reference could be made through a resolution.
78. The observer representing the Government of Denmark agreed that note could be taken of industry guidelines and their development could be encouraged, but the question arose of how they could be reflected in Part B of the Code. Even though Part B was not mandatory, there was a requirement for its provisions to be taken into account. The observer representing the Government of Norway said that an amendment to either the mandatory or the non-mandatory provisions of the MLC, 2006, was acceptable. If an amendment were to be adopted to Part A, he doubted that further work would be required on Part B. He added that there were already several sets of guidance outside the Convention, including that adopted by the Working Group 3 of the Contact Group on Piracy off the Coast of Somalia. There was therefore a risk of confusion, especially as the numbers of cases were fairly limited.
79. The observer representing the Government of the Islamic Republic of Iran considered that Guidelines within the MLC, 2006, would send a stronger message than guidance developed outside the Convention.
80. The observer representing the IMO supported the analysis made during the discussion of the definitions of piracy and armed robbery against ships. It was clear that the definition of piracy used should be that set out in the UNCLOS. With reference to armed robbery, some explanation would be needed, and the precise term “armed robbery against ships” should be used.

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**81.** The Chairperson proposed that the text of the proposals be reviewed by a drafting committee, which could adapt them in light of the discussions, highlight any further elements that could be proposed for inclusion in the Guidelines and examine the possibility of referring to industry or Office guidance.

**82.** The Working Group appointed a drafting committee to review the proposals related to the protection of seafarers' wages during captivity with the following members:

*Government:* Mr Yann Becouarn (France)

Adviser – Mr Martin Marini (Singapore)

*Shipowners:* Mr Tim Springett (United Kingdom Chamber of Shipping)

Adviser – Mr Charles Darr (Cruise Lines International Association)

*Seafarers:* Mr Jesus Sale (Associated Marine Officers' and Seamen's Union of the Philippines)

Adviser – Mr Ruwan Subasinghe (International Transport Workers' Federation)

### ***Consideration of the draft proposals reviewed by the drafting committee relating to the protection of seafarers' wages during captivity***

**83.** The Chairperson drew attention to the proposal to insert a new paragraph 7 in Standard A2.1 – Seafarers' employment agreements.

**84.** The Seafarer Vice-Chairperson, while agreeing with the proposed text, raised the question of whether a reference to a non-binding IMO resolution in relation to the definition of armed robbery against ships could properly be included in a proposal for a binding provision of the MLC, 2006.

**85.** The Chairperson of the Government group expressed very strong support for the insertion of a new paragraph in Standard A2.1. However, he wondered whether the elements to be considered when drafting the accompanying Guideline were really necessary.

**86.** The Legal Adviser indicated that while there could be a direct reference to the definition of "piracy" in UNCLOS within the text of the amendment, it would be better not to refer directly to a non-binding IMO resolution. It would therefore be advisable to include the full definition of "armed robbery against ships", namely "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 of or intentionally facilitating an act described above". A reference to the IMO resolution containing this definition could be set out in a footnote. The definitions, in line with the practice throughout the Convention, should be set out in a new paragraph 1 in Standard A2.1.

**87.** The Chairperson drew attention to the proposal to insert a new paragraph 7 in Standard A2.2 – Wages.

**88.** The Seafarer Vice-Chairperson considered the proposed new paragraph to be an important addition to the amendment to Standard A2.1. Together they would cover both seafarers' employment agreements and wages. In that context, the terms used should be "acts of piracy or armed robbery against ships", and it should be fully understood that those terms included kidnapping.



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- 89.** The Chairperson of the Government group indicated that there was some support among Governments for the inclusion of the new paragraph. One issue raised by the proposal concerned the certification of the time of death of the seafarer. Clarification was needed on which country would be responsible for certification. The Government member of Singapore suggested that certification should be by the flag State. The observer representing the Government of Denmark noted that, in view of the multiplicity of situations that might arise in relation to a seafarer who died during captivity, it would be necessary to leave open the options of which State would be responsible for issuing the death certificate.
  - 90.** The Chairperson suggested that the issue of the determination of the date of death should be covered in the Guideline.
  - 91.** The Seafarer Vice-Chairperson agreed that the time of death should be determined by national legislation, but not necessarily the national legislation of the flag State. Although the flag State clearly had some responsibility in the matter, it was ultimately for the country of residence of the seafarer to issue the death certificate, on the basis of information supplied by the flag State.
  - 92.** The observer representing the Government of Latvia noted that many Latvian nationals sailed on vessels registered in different flag States and that under current legal regulation it was the responsibility of Latvian court to certify the death of the country's residents when they were missing. Other countries may have similar regulations with respect to certification of the death of their residents in this case. The observer representing the Government of the Islamic Republic of Iran agreed that different situations might arise in which the courts might have final responsibility for determining the applicable national legislation. The observer representing the Government of Algeria said that in general, if a death occurred on a ship, the responsibility for certifying the death lay with the flag State, which then informed the country of residence so that the information could be registered. The observer representing the Government of Panama indicated that under Panamanian law there was an assumption of death when a person had been missing for five years. The observer representing the Government of Japan agreed that there could be many different situations relating to the case of the death of a seafarer and noted that, if the seafarer was kidnapped and taken away from the ship, the case would be dealt with by the State in which the seafarer was held captive.
  - 93.** The Shipowner Vice-Chairperson, in light of the discussion, proposed that the Guideline could refer to the "national legislation of the flag State or the seafarer's State of residence, as applicable".
  - 94.** The Chairperson invited the Working Group to examine the proposed elements to be incorporated into Office guidelines outside the MLC, 2006.
  - 95.** The Seafarer Vice-Chairperson expressed a preference for guidance to be developed within the industry by the social partners. A reference to such guidance could be included in the Guideline.
  - 96.** The Chairperson of the Government group said that Office guidelines were not seen as being central to the proposals, although some of the proposed elements could be useful, especially when they were not captured in the proposed amendments, such as the reference to industry guidance. One issue that arose concerned seafarers who had not nominated the person or persons to whom allotments should be paid, but who might wish to do so during captivity. The observer representing the Government of Denmark suggested that the unions should encourage seafarers to make arrangements for the payment of allotments. She added that any guidance provided by the ILO should not be less descriptive than IMO guidance, for example on support after captivity.

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- 97.** The Shipowner Vice-Chairperson said that experience made shipowners very reluctant to pay allotments without the specific instructions of seafarers. Family and other situations could be very complex and, in the absence of a court order, the payment of allotments which were not authorized by the seafarer could give rise to disputes.
- 98.** The Chairperson noted that seafarers should be encouraged to ensure that arrangements were in place in relation to allotments. She invited the Working Group to discuss the manner in which the three elements of the proposals could be considered.
- 99.** The Shipowner Vice-Chairperson confirmed that he did not support the proposed amendments and that his group preferred the development of guidance. He also reminded the Working Group of the clarification made in paragraph 150 of the report of the second meeting of the STC where it was stated that: “The Chairperson expressed the understanding that the working group could examine a range of options, including amendments, guidelines or statements. He added that all the amendments proposed during the meeting, and the comments made on those proposals, would be submitted to the working group for examination. The working group would then make a recommendation based on the proposals and comments reflected in the report, which could be an amendment to the Code, guidelines or a different solution.”
- 100.** The Seafarer Vice-Chairperson considered that both of the proposed amendments were necessary, as the principle of the continued payment of seafarers’ wages during captivity needed to be included in the sections on employment agreements and on wages. The proposed amendments had been considered in accordance with the terms of reference of the Working Group.
- 101.** The Chairperson of the Government group said that the proposals contained three different options, and it was therefore necessary to decide which was to be accepted. There was strong support by Governments for the amendment of Standard A2.1, with most Governments happy to adopt just the single amendment.
- 102.** The Shipowner Vice-Chairperson considered that the heading of the proposal should clearly indicate that it was an outcome of the discussion of the Working Group and that the proposal should include an introductory paragraph explaining that the outcome reflected the various types of proposals discussed, and was without prejudice to the positions of any government or group.
- 103.** The Seafarer Vice-Chairperson failed to understand why the Shipowners’ group repeatedly challenged the terms of reference agreed to by the STC, which called on the Working Group to prepare proposals, including an amendment to the Code of the Convention. They considered that such an introductory paragraph merely explained what was already very obvious.
- 104.** The Chairperson of the Government group agreed that what was proposed in the introductory paragraph was indeed obvious.
- 105.** The draft proposals, as amended in light of the discussion, are contained in Appendix I to this report.

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## **VI. Improvements to the process for preparing proposals for amendments to the Code of the MLC, 2006**

- 106.** The Chairperson invited the Working Group to consider the proposals set out in paper 1.
- 107.** The Shipowner Vice-Chairperson recalled that this discussion had its origins in the comments made on an amendment proposed to the second meeting of the STC with a view to recommending improvements in the process for preparing proposals for amendments to the Code of the MLC, 2006. In accordance with Article XV of the MLC, 2006, and the Standing Orders of the STC, an amendment to the Code could be proposed by any Member of the Organization, with the necessary support, or by the group of Shipowner or Seafarer representatives. The proposal then had to be promptly communicated by the Director-General to all Members of the ILO. Under article 11, paragraph 2, of the Standing Orders of the STC, when the proposal was communicated by the Director-General, it could be accompanied by any comments or suggestions deemed appropriate. The Standing Orders contained the procedural obligations for the operation of the STC, and did not extend the obligations set out in the Convention. Accordingly, he emphasized that it was not the role of the Office, or a working group set up by the STC, to make actual proposals for amendments, or to provide information in support of such proposals. The intent of Article XV of the Convention was to provide a fast track method of amending the Code. It was important for that intent to be respected. But it was also important that any proposal for amendment was properly supported by relevant information so that the STC could readily understand the background to the proposal and why it was perceived to be necessary, or in other words, to clearly explain which provisions of the Convention were considered to be inadequate and how they should be revised. Any procedure that was adopted for the preparation of proposals for amendments should facilitate, not obstruct, the timely adoption of relevant and necessary amendments to the Code of the Convention. It should ensure that, when a proposal came before the STC, it had cleared all the necessary technical hurdles, so that the STC could focus on the merits of the proposal and reach a decision more smoothly. He therefore welcomed the proposal for a template for proposals, and supported the idea that the Officers of the STC had a role to play in ensuring that proposals were sufficiently detailed and would provide a basis for constructive discussion, without any reference to the substantive nature of the proposal, which left the door open for proposals to be made in the form wished by the proposer.
- 108.** The Seafarer Vice-Chairperson expressed support for the objective of improving the process of preparing proposals for amendments to the Code of the Convention, but reiterated that the ILO was a very different organization to the IMO and that such improvements could not be at the cost of restricting the possibility of making amendments, which would be contrary to the intent of Article XV. He wondered whether the proposed improvements went beyond what was foreseen in Article XV. While happy to lead the way in innovating, as the MLC, 2006, had done, the Seafarers' group would not agree to anything that undermined tripartism and effective social dialogue, and the right to submit proposals for amendments to the Code of the Convention. Accordingly, anything agreed upon which had an impact on Article XV could only have the status of recommendatory guidelines to be adopted on a voluntary basis. In that respect, the proposed template demonstrated common sense and could in general and with a few deletions be supported. The Seafarers' group had some concerns with the proposal for additional elements; in particular, highlighting the relevance of the Joint Maritime Commission, they noted that the ILO Governing Body did not impose such requirements; they were especially concerned about the suggestion of a proportionality test; they believed that if such a test had been applied earlier, the MLC, 2006, would not have been developed.
- 109.** The Chairperson of the Government group agreed that there should be some form of procedure for the submission of proposals for amendments to the MLC, 2006. The proposals

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set out offered the opportunity to think carefully about the procedure to be followed, which should include opportunities to examine the legal, technical and social impact of proposals, and even for a cost/benefit or financial analysis. Following the submission process, the representatives of Governments then needed to be able to convince national parliaments and governments concerning the consequences and implications of the amendments. He recalled that the issues dealt with by the MLC, 2006, were not confined to technical maritime regulations, but included social and employment issues, which generated debate concerning complex questions involving competing demands, against the background of limited resources. The preparation of proposals for amendments should be as thorough as possible, and the list of elements set out in paragraph 33 of paper 1 was very useful. Finally, he noted that the Officers of the STC would have an important role to play in facilitating the submission and examination of proposals, and in assessing whether they were suitable to follow the Article XV process, or required further reflection, for example by an inter-sessional working group.

- 110.** The Government member of Canada indicated that he had proposed the template as the representative of the Americas, and that the observer representing the Government of Panama had greatly assisted in its development.

## Template

- 111.** The Chairperson drew attention to the additional elements for inclusion in the template set out in paragraph 33 of paper 1.
- 112.** The Shipowner Vice-Chairperson indicated, firstly, that the proposed template should indicate in its title that the process concerned the submission of amendments in accordance with Article XV of the MLC, 2006. It should also include space to identify the name of the organization or proposer of the amendment, followed by a contact person. It would also be useful to have a box for an ILO reference number. The following box could be reworded to make it clear that it represented those supporting the amendment. With regard to the additional elements proposed in paper 1, he said that they could constitute an indicative list of information that would make the process of the submission of amendments smoother, but were not compulsory.
- 113.** The Seafarer Vice-Chairperson agreed with the comments of the Shipowners' group, but raised certain concerns relating to the proposed additional elements. With reference to previous bipartite or tripartite international discussions on the subject, he suggested that such discussions could be held in the Joint Maritime Commission with a view to reaching agreement on proposals before they were presented to the STC. With respect to the "possible (financial, administrative and legislative) implications of the proposal", he noted that the Governing Body did not insist on such requirements for new instruments, and they had no place in the process of amendment of the Code of the Convention. He expressed particular concern regarding the call for an analysis of the proposal, "including its practicability, feasibility and proportionality". If those requirements had been imposed during the process of drafting the MLC, 2006, it would have made its development impossible. They had no place in the process for its amendment. It should also be noted, as indicated in paragraph 17 of paper 1, that there were no rules or guidance for the manner in which the Governing Body considered proposals by constituents for new or revised instruments, and the same should apply to the process of amending the Code of the Convention.
- 114.** The Chairperson of the Government group said that the proposed additional elements were useful, but should not be mandatory, and certainly did not constitute threshold tests. They included information that should be provided in support of any well thought-out proposal, and which would be necessary for implementation at the national level. Financial and economic analysis of the impact of the proposals would also be very useful, as would some

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indication of the projected timescale for adoption and implementation, together with an idea of whether the proposals would have an impact on the Maritime Labour Certificate and the other documentation required under the Convention. It should also be borne in mind that proposers of suggested amendments might need technical assistance for the provision of some of the information requested.

- 115.** The observer representing the Government of Norway said that the information supplied would depend on the type and content of the proposals. The most important impact of such proposals was in administrative terms. Most amendments to the Convention would require implementation through national legislation. But the most complex implementation issues, especially for States with large fleets, arose when changes were needed in the various documents required for the certification of ships, including, for example, the list of items for inspection. The Government member of Canada said that the proposed elements were intended to facilitate the provision of the necessary information, but were not intended to make the amendment process more difficult, and should not be used for the rejection of proposals. The observer representing the Government of Denmark recalled that it was not possible to change the amendment procedure through the template, which was merely intended to facilitate the provision of useful information.
- 116.** The Shipowner Vice-Chairperson noted that there were significant differences between the procedure followed by the ILO for the adoption of international labour instruments and the Article XV amendment procedure, and the two should not therefore be compared.
- 117.** The Seafarer Vice-Chairperson considered that the use of words such as “practicality, feasibility and proportionality” was unfortunate. It should be made clear that the template was not intended as a test or a threshold for proposals for amendments, and that the information indicated was intended to facilitate understanding of the impact of the proposal. The template should assist the Article XV process, and some explanation should be included on its purpose.
- 118.** The Chairperson, with reference to paragraph 36 of paper 1, invited the meeting to discuss the role that could be played by the Officers of the STC in the process of the submission of proposals for amendments to the Code of the Convention.
- 119.** The Shipowner Vice-Chairperson agreed that the Officers of the STC could play a useful role in the process of the submission of proposals, particularly by requesting further information when considered necessary. However, there should be no requirement placed upon proposers, who should retain the right to submit the original proposal unchanged. Any potential lack of agreement between the Officers would not raise problems, as they were not making decisions in that regard.
- 120.** The Seafarer Vice-Chairperson recalled that, under the terms of Article XV, the Director-General was required to communicate promptly any proposal for amendment to all Members of the ILO. It was difficult to see how the proposed role for the Officers of the STC could fit in with this process. The only possibility would be if the proposers requested the Officers to look at their proposal. Moreover, any comments made by the Officers at that stage should be confidential.
- 121.** The Chairperson of the Government group considered that the Officers of the STC could play an advisory role, which should not amount to gatekeeping. They could provide assistance and help in the development of proposals with a view to avoiding obstacles, such as those experienced at the last meeting of the STC. The observer representing the Government of Denmark agreed that any role played by the Officers of the STC should be covered by confidentiality. She recalled that the duties of the Officers were set out in article 7 of the Standing Orders of the STC and that care should be taken to ensure that no change was required in the Standing Orders.

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- 122.** The Chairperson said that it was her understanding that any role played by the Officers of the STC in relation to proposals for amendments should be at the request of the proposers. The Officers could advise the proposers whether any further information would be useful in supporting the proposal, but that should not have the effect of holding up the communication of the proposal to all ILO Members.
- 123.** The Seafarer Vice-Chairperson warned that it was not possible to introduce a proposal that had no legal standing. The Office was already required to ensure that proposals were properly submitted, in accordance with Article XV. The Officers of the STC could therefore only play an informal role in facilitating and expediting the process, and in identifying weaknesses in the proposal. Their intervention should not delay the communication of proposals for amendments, and should be direct and confidential between the proposers and the Officers.
- 124.** The Shipowner Vice-Chairperson considered that changes to the Standing Orders of the STC should not be envisaged. The role of the Officers of the STC would be confined to fine-tuning proposals and should remain on a voluntary basis. It could be set out in a resolution proposed to the STC.
- 125.** The observer representing the Government of Denmark agreed that a resolution would give the Officers the necessary mandate to fulfil their role in this respect.
- 126.** The Chairperson invited the meeting to discuss the possible development of a procedure to enable the STC to refer an amendment proposal to an inter-sessional working group or other subsidiary body for further consideration prior to resubmission to a subsequent session of the STC (paragraphs 38–41 of paper 1).
- 127.** The Shipowner Vice-Chairperson expressed concern that such a procedure was not covered by the provisions of the Convention or the Standing Orders of the STC. Although, under the Standing Orders, the STC could establish a working group as a subsidiary body, there were no clear provisions on the role to be played by such a body, as was clear in the case of the present Working Group. It was therefore difficult to see how such a procedure might work.
- 128.** The Seafarer Vice-Chairperson agreed that it was difficult to understand how such a procedure might work within the context of Article XV.
- 129.** The observer representing the Government of Norway said that there was a lack of a specific procedure to work on proposals for amendments. Without such a procedure, dealing with future amendments would be difficult.
- 130.** The Chairperson noted that there were no comments on the proposals contained in paragraphs 42 and 43 of paper 1 concerning preliminary discussions of proposed amendments. She added that the proposals discussed could be submitted to a drafting committee, which could examine the template in light of the comments made during the discussion, including the inclusion of a reference to Article XV, the non-mandatory status of the template, the inclusion of further indicative elements that the STC might wish to discuss, and their wording. With regard to the role of the Officers in receiving proposed amendments, the drafting committee could prepare a draft resolution for submission to the STC.

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- 131.** The Working Group appointed a drafting committee to review the recommended improvements to the process of preparing proposals for amendments to the Code of the MLC, 2006. The drafting committee was composed as follows:

<i>Government:</i>	Mr Sami Sakaa (Canada) Adviser – Mr Abidaun Olusegun (Nigeria)
<i>Shipowners:</i>	Gerardo Borromeo (Filipino Shipowners’ Association) Adviser – Mr Stewart Inglis (International Chamber of Shipping)
<i>Seafarers:</i>	Mr Albert Ole Philipsen (CO-SEA/Dansk Metal) Adviser – Mr Jonathan Warring (International Transport Workers’ Federation)

### **Examination of the draft proposals as reviewed by the drafting committee**

- 132.** The Chairperson invited the Working Group to examine the proposed draft resolution concerning improvements to the process for preparing proposals for amendments to the Code of the MLC, 2006.
- 133.** The Seafarer Vice-Chairperson, in response to a comment from the Shipowner Vice-Chairperson that the Officers of the STC could provide comments to the authors of proposals for amendments both directly or upon request, emphasized that such an exchange should be held on a confidential basis. The text of the resolution proposed by the drafting committee was adopted with minor amendments to take these comments into account, and is reproduced as Appendix II to the present report.
- 134.** The Chairperson invited the Working Group to examine the proposed draft template for submitting proposals for amendments to the Code of the MLC, 2006, as reviewed by the drafting committee.
- 135.** The Seafarer Vice-Chairperson referred to the words “social” and “financial”, which had been left in square brackets in the section on relevant considerations. He emphasized that it would be very difficult to assess the financial implications of a proposed amendment to the Code of the Convention, and that it would also be fairly difficult to assess its social benefits and implications. The two terms in square brackets should therefore be omitted.
- 136.** The Shipowner Vice-Chairperson noted that the information requested in the section on relevant considerations was not mandatory and would only be provided “if applicable”. Under those conditions, the square brackets could be removed and the two words retained.
- 137.** The Chairperson of the Government group considered that the two terms “social” and “financial” could be retained, and the square brackets removed. The Government member of Canada suggested that “economical” might be used instead of “financial”.
- 138.** The Seafarer Vice-Chairperson said that “economical” would be worse. It was not helpful to the process of amending the Code of the Convention to identify the consequent burdens. Most of the related burdens had already been accepted when the existing Conventions had been combined into the MLC, 2006, which now covered over 90 per cent of the world shipping fleet. If the term “financial” were retained, it should be left in square brackets.
- 139.** Shipowner Vice-Chairperson also called for the term “social” to be left in square brackets. Those issues would be examined by the next meeting of the STC.

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140. The observer representing the Islamic Republic of Iran said that new terminology not already used in the MLC, 2006, should be avoided. For example, there was no reference in the Convention to “strategic objectives”.
141. The Seafarer Vice-Chairperson said that, although the term “strategic objectives” was not used in the MLC, 2006, it was clear that there were such objectives. For example, one very important strategic objective, which had brought the social partners together and led to the development of the MLC, 2006, was to achieve a level playing field in the industry.
142. The Chairperson of the Government group called for the inclusion of a reference to the timeline for implementation in the section on transitional measures, and a clarification in the respective note that the process of consultation with the Officers of the STC should not delay the prompt communication of the proposal for amendment to all ILO Members, as required by Article XV, paragraph 3.
143. The text of the draft template, as reviewed by the drafting committee, was adopted as amended to take these comments into account, and is reproduced as Appendix III to the present report.

## VII. Shipowner statement on the abandonment of seafarers

144. The Shipowner Vice-Chairperson recalled that the ILO and IMO had established a database of reported cases of abandonment of seafarers. It was important for the database to be kept current to provide an accurate reflection of the status of abandonment cases. The contents of the database were of concern in 2016, because many cases that had been resolved were still listed as being outstanding. The Shipowners’ group was very grateful for the assistance of the Seafarers’ group, as well as the IMO and ILO secretariats, in reviewing and updating the cases in the database. They sincerely hoped that this cooperation and review would continue in order to ensure that it was possible to focus on cases in which further intervention was required. It was unfortunate that there remained many cases that still demanded attention. They emphasized their concern at the health and welfare of the crew on board the vessel *Bramco 1*, a case which was very familiar to the ILO secretariat. The International Chamber of Shipping (ICS) and ITF had jointly requested the assistance of both the ILO and IMO secretariats to remind both flag and port States of their responsibilities in the handling and resolution of this situation, because they were greatly concerned that those States were not honouring their obligations under the MLC, 2006, or the *Joint ILO/IMO Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers*. The Shipowners were delighted that the IMO had been able to be particularly vocal on the subject, and would very much welcome the intervention of the ILO secretariat so that everyone could work together to resolve what was clearly a serious humanitarian need on board the vessel.
145. The Seafarer Vice-Chairperson welcomed the fact that attention had been drawn to the situation of the *Bramco 1* and expressed a willingness to continue cooperation between the social partners. He also drew attention to the case of the *Geo Star*, which had been abandoned in the port of Constanta South Agigea, with its crew of 11 suffering severely depleted water and food supplies. United action by the social partners was required on this matter.



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## VIII. Closing remarks

- 146.** The Shipowner Vice-Chairperson welcomed the fact that, despite the time pressure, the Working Group had fulfilled the objectives entrusted to it by the STC. The Shipowners enthusiastically supported the key principle as laid out in paper 2. Their objection was not to the principles, but to the need to amend the Convention on this subject. The MLC, 2006, was clearly setting a new direction for the industry and for the ILO. As progress was being made along this new path, procedures were being discovered and developed to assist understanding of the nature and continuous improvement of the Convention.
- 147.** The Seafarer Vice-Chairperson welcomed the fact that the spirit of tripartism and the traditions of the ILO were alive and well, and that the Working Group had been able to fulfil its terms of reference and make good progress. He recalled that the MLC, 2006, was a journey, not a destination, and that the task of all those in the industry was to foster the continuous improvement of minimum standards in order to preserve the level playing field in the most global of all globalized industries. The purpose of the work carried out was to protect the interests of seafarers and their families, and the progress made on the issue of the protection of seafarers' wages when held captive was to be welcomed. He regretted that the scourge of Somali pirates appeared to have returned with a vengeance, as there had been several attacks over the past week. The measures adopted in response needed to be maintained. All in the industry should ensure that the protection of seafarers was foremost in their planning before entering any high-risk areas. On the issue of improving the amendment process, the Seafarers' group did not see the need or legal basis for the introduction of overly bureaucratic requirements, such as a cost benefit analysis or for an economic justification.
- 148.** The Chairperson of the Government group was pleased that the Working Group had fulfilled its terms of reference and expressed gratitude to the social partners for their cooperation and spirit of tripartism. The meeting was closed at 4 p.m. on Wednesday, 5 April 2017.



## Appendix I

INTERNATIONAL LABOUR ORGANIZATION

STCMLC/WG/2017/D.1

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

Geneva  
3–5 April 2017

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### **Proposals from the outcome of the discussion of the Working Group related to 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**

The text that follows reflects the various types of proposals discussed and is without prejudice to the positions of any government or group. These outcomes should be considered and treated as not replacing or obstructing the need for proposals to be submitted to the Director-General of the International Labour Office in accordance with Article XV, paragraph 2 of the Maritime Labour Convention, as amended (MLC, 2006).

#### **(a) Amendments to Standard A2.1 of the MLC, 2006, and the accompanying Guideline**

Insert new paragraph 1 in Standard A2.1 – Seafarers' employment agreements, as follows:

For the purpose of this 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.<sup>5</sup>

Insert new paragraph 7 in Standard A2.1 – Seafarers' employment agreements, as follows:

Each Member shall adopt laws or regulations establishing that a seafarers' 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.

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<sup>5</sup> IMO Resolution A.1025(26).

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Elements to be considered when drafting the accompanying Guideline:

- (1) The Guideline should point out that a shipowner is not in a position to repatriate seafarers while they are in captivity and hence cannot validly terminate the seafarers' employment agreement should the shipowner wish to do so.
- (2) (Point to be inserted in Standard or Guideline): clarification on the period of captivity and the date of death, the latter to be defined in accordance with the applicable national legislation of the flag State or the seafarer's State of residence as applicable.

**(b) Amendments to Standard A2.2 of the MLC, 2006, and the accompanying Guideline**

Insert a new paragraph 7 in Standard A2.2 – Wages, 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 as indicated in the seafarers' employment agreement 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, or until the death of the seafarer while in captivity.

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Elements to be considered when drafting the accompanying Guideline:

- (1) Elaboration of the definition of armed robbery against ships to make sure that kidnapping is covered.
- (2) No provision in Standard A2.2 enables the shipowner to terminate the seafarers' employment agreement during the period of captivity.
- (3) Recommendation that the entitlement to repatriation cannot lapse while the seafarer is held captive.
- (4) (Point to be inserted in Standard or Guideline): clarification on the period of captivity and the date of death, the latter to be defined in accordance with the applicable national legislation of the flag State or the seafarer's State of residence as applicable.

**(c) Elements to be incorporated into Office guidelines outside the MLC, 2006**

1. Shipowners should continue to pay seafarers' wages and provide all other entitlements in accordance with their seafarers' employment agreements, when seafarers are held captive on or off the ship as a result of acts of piracy or armed robbery against ships.
2. For the purpose of these guidelines, "piracy" has the same meaning as in the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and "armed robbery against ships" has the same meaning as in IMO Resolution A.1025(26).
3. The shipowner's obligations under paragraph 1 above should continue until the seafarer is released and duly repatriated, in accordance with the provisions in Standard A2.5 and Guideline B2.5; or until the date of death if the seafarer dies while in captivity. The date of death should be defined according to the applicable national legislation.
4. The shipowner should continue to remit allotments to the person or persons nominated by the seafarer in accordance with Standard A2.2(4) of the MLC, 2006.
5. The shipowner should not terminate the seafarers' employment agreement while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

Where the seafarers' employment agreement has been made for a fixed period and it expires while the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the shipowner should treat the seafarers' employment agreement as continuing to have effect until the period of captivity ends.

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Where the shipowner has already served notice of termination of the seafarers' employment agreement to the seafarer and the date of termination occurs while the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, the shipowner should ensure that the seafarers' employment agreement continues to have effect until the period of captivity ends.

6. There should be a reference to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents, for example the International Seafarers Welfare and Assistance Network's Good Practice Guide for Shipping Companies and Manning Agents, Humanitarian Support of Seafarers and their Families in cases of armed robbery and piracy attack.
7. Encouragement of seafarers to conclude arrangements on allotments.
8. Support for post-traumatic stress disorder for seafarers.

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## Appendix II

INTERNATIONAL LABOUR ORGANIZATION

STCMLC/WG/2017/D.2

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

Geneva  
3–5 April 2017

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### **Proposed draft resolution concerning improvements to the process for preparing proposals for amendment to the Code of the Maritime Labour Convention, as amended (MLC, 2006)**

The third meeting of the Special Tripartite Committee (STC) of the Maritime Labour Convention, 2006, having received the recommendations of the Working Group established by the second meeting of the STC and endorsed by the Governing Body at its 326th Session (March 2016), on improvements to the process for preparing proposals for amendment to the Code of the MLC, 2006, in accordance with Article XV of the Convention:

- (i) decides to recommend the use of the attached template to serve as guidance for the preparation and submission of proposal(s) for amendment, and in this connection;
- (ii) suggests that the STC Officers can, either directly or upon request, provide feedback and comments on a confidential basis to the author(s) of the proposal(s) for amendment with a view to facilitating any subsequent discussion(s) in the STC; and
- (iii) emphasizes that the voluntary communication to the STC Officers should not obstruct the right to submit a proposal(s) for amendment, as provided for in Article XV, paragraph 2, of the Convention and should not delay the prompt communication of the proposal(s) for amendment to all Members of the Organization as required by Article XV, paragraph 3.

## Appendix III

INTERNATIONAL LABOUR ORGANIZATION

STCMLC/WG/2017/D.3

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

Geneva  
3–5 April 2017

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### **Template for submitting proposals for amendment to the Code of the Maritime Labour Convention, 2006, as amended (MLC, 2006) in accordance with article XV**

*This template, to be used on a voluntary basis, contains an indicative list of information to facilitate consideration by the STC of a proposed amendment to the Code of the MLC, 2006*

Reference (for ILO Office use only)

#### **Part A**

**Date:** day/month/year

**Topic**

**Proposal submitted by** (please tick as appropriate)

Government(s) of .....  
(supported by: .....)

Shipowners

Seafarers

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**Contact details**

Name:.....

Position:.....

Email:.....

Telephone:.....

**Part B****Background**

Please explain the background of the *proposal* (by providing, for example, relevant international instruments or discussions, data or statistics, action by international organizations, activities in other fora, etc.)

**Purpose**

Please provide the reason(s) for the proposal (by explaining, for example, the need for an amendment to either Standards (Part A of the Code), Guidelines (Part B of the Code) or both, and how this amendment meets the objectives of the MLC, 2006).

**Relevant considerations**

Please explain the benefits and implications ([social], [financial], practical/administrative, or other) of the proposal, if applicable.



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**Part C**

**Proposed amendment(s)**

<b>Standard</b>	<b>Guideline</b>	<b>Proposed text</b> (amendments in track changes)

**Part D**

**Transitional measure(s), if applicable**

Please specify any suggested transitional measure(s) that should be adopted with the proposed amendment and the preferred timeline for implementation.

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Please attach any relevant materials or references in support of the proposal.

[*Note:* Proposer(s) may wish to informally and confidentially discuss Parts B and D above with the STC Officers prior to the official submission of the proposal(s) for amendment. This process should not delay its prompt communication to all Members of the Organization as required by Article XV, paragraph 3 of the MLC, 2006.]

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## Amendments to the Code

### *Article XV*

1. The Code may be amended either by the procedure set out in Article XIV or, unless expressly provided otherwise, in accordance with the procedure set out in the present Article.

2. An amendment to the Code may be proposed to the Director-General of the International Labour Office by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed by, or be supported by, at least five governments of Members that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

3. Having verified that the proposal for amendment meets the requirements of paragraph 2 of this Article, the Director-General shall promptly communicate the proposal, accompanied by any comments or suggestions deemed appropriate, to all Members of the Organization, with an invitation to them to transmit their observations or suggestions concerning the proposal within a period of six months or such other period (which shall not be less than three months nor more than nine months) prescribed by the Governing Body.

4. At the end of the period referred to in paragraph 3 of this Article, the proposal, accompanied by a summary of any observations or suggestions made under that paragraph, shall be transmitted to the Committee for consideration at a meeting. An amendment shall be considered adopted by the Committee if:

- (a) at least half the governments of Members that have ratified this Convention are represented in the meeting at which the proposal is considered; and
- (b) a majority of at least two-thirds of the Committee members vote in favour of the amendment; and
- (c) this majority comprises the votes in favour of at least half the government voting power, half the Shipowner voting power and half the Seafarer voting power of the Committee members registered at the meeting when the proposal is put to the vote.

5. Amendments adopted in accordance with paragraph 4 of this Article shall be submitted to the next session of the Conference for approval. Such approval shall require a majority of two-thirds of the votes cast by the delegates present. If such majority is not obtained, the proposed amendment shall be referred back to the Committee for reconsideration should the Committee so wish.

6. Amendments approved by the Conference shall be notified by the Director-General to each of the Members whose ratifications of this Convention were registered before the date of such approval by the Conference. These Members are referred to below as “the ratifying Members”. The notification shall contain a reference to the present Article and shall prescribe the period for the communication of any formal disagreement. This period shall be two years from the date of the notification unless, at the time of approval, the Conference has set a different period, which shall be a period of at least one year. A copy of the notification shall be communicated to the other Members of the Organization for their information.

7. An amendment approved by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention.

8. An amendment deemed to have been accepted shall come into force six months after the end of the prescribed period for all the ratifying Members except those which had formally expressed their disagreement in accordance with paragraph 7 of this Article and have not withdrawn such disagreement in accordance with paragraph 11. However:

- (a) before the end of the prescribed period, any ratifying Member may give notice to the Director-General that it shall be bound by the amendment only after a subsequent express notification of its acceptance; and

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(b) before the date of entry into force of the amendment, any ratifying Member may give notice to the Director-General that it will not give effect to that amendment for a specified period.

9. An amendment which is the subject of a notice referred to in paragraph 8(a) of this Article shall enter into force for the Member giving such notice six months after the Member has notified the Director-General of its acceptance of the amendment or on the date on which the amendment first comes into force, whichever date is later.

10. The period referred to in paragraph 8(b) of this Article shall not go beyond one year from the date of entry into force of the amendment or beyond any longer period determined by the Conference at the time of approval of the amendment.

11. A Member that has formally expressed disagreement with an amendment may withdraw its disagreement at any time. If notice of such withdrawal is received by the Director-General after the amendment has entered into force, the amendment shall enter into force for the Member six months after the date on which the notice was registered.

12. After entry into force of an amendment, the Convention may only be ratified in its amended form.

13. To the extent that a maritime labour certificate relates to matters covered by an amendment to the Convention which has entered into force:

- (a) a Member that has accepted that amendment shall not be obliged to extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member which:
  - (i) pursuant to paragraph 7 of this Article, has formally expressed disagreement to the amendment and has not withdrawn such disagreement; or
  - (ii) pursuant to paragraph 8(a) of this Article, has given notice that its acceptance is subject to its subsequent express notification and has not accepted the amendment; and
- (b) a Member that has accepted the amendment shall extend the benefit of the Convention in respect of the maritime labour certificates issued to ships flying the flag of another Member that has given notice, pursuant to paragraph 8(b) of this Article, that it will not give effect to that amendment for the period specified in accordance with paragraph 10 of this Article.



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**List of participants**  
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**Lista de participantes**



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