



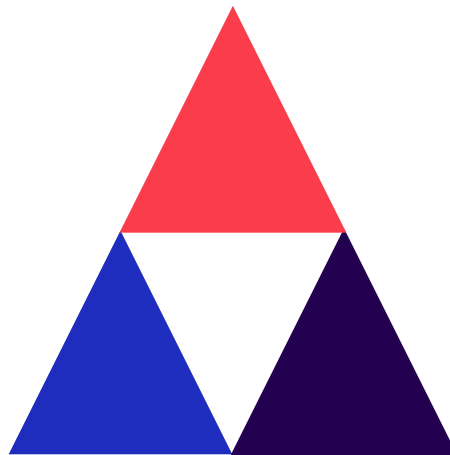
International
Labour
Organization



▶ STCMLC/Part II/2022/2

▶ Background paper for discussion

Fourth meeting (Part II) of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006, as amended (Geneva, 5–13 May 2022)



International Labour Standards Department
Sectoral Policies Department
Geneva, 2022

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► I. Introduction

1. As of 1 February 2022, the Maritime Labour Convention, 2006, as amended (MLC, 2006), has been ratified by [98 Members](#).
2. The Special Tripartite Committee (STC) was established by the 318th Session (June 2013) of the Governing Body of the International Labour Organization (ILO), in accordance with Article XIII of the MLC, 2006.
3. At its 340th Session (November 2020), the Governing Body [decided](#) that the fourth meeting of the STC would be held in two parts. [Part I](#) took place in a virtual format (online) from 19 to 23 April 2021. Part II is scheduled to take place from 5 to 13 May 2022, in a hybrid format.

► II. Tasks of the fourth meeting (Part II) of the Special Tripartite Committee

4. As set out in the [agenda](#) of the meeting, the first task of the STC will be to consider proposals for amendments to the Code of the MLC, 2006. Second, the Committee will examine any request for consultation presented under Article VII of the MLC, 2006 by Members where representative organizations of shipowners or of seafarers do not exist. Finally, any other business could be considered, including any draft resolutions submitted during the meeting.

(a) Consideration and possible adoption of proposals for amendment of the Code of the MLC, 2006

5. The function of the STC with respect to the consideration of amendments to the Code of the MLC, 2006, is set out in Article XV of the Convention. This procedure has been used in 2014, 2016 and 2018.
6. In 2021, the International Labour Office received 12 proposals for amendments to the Code: 5 joint proposals from the Seafarers' and Shipowners' groups, 5 proposals from the Seafarers' group, and 2 from a number of governments.
7. All Members of the Organization were invited to provide observations or suggestions regarding those proposals in accordance with the Convention not later than 28 February 2022. A synthesis of those comments will be made available online prior to the meeting.
8. The complete information received regarding each proposal is reproduced below.

Proposal No. 1 (Seafarers' and Shipowners' groups)

1. Topic

Personal protective equipment.

2. Background

The conclusions of the [ILO Sectoral Meeting on Recruitment and Retention of Seafarers and the Promotion of Opportunities for Women Seafarers](#) have highlighted the need for the industry to facilitate women's employment in the maritime industry.

Among other issues, the Seafarers' group, in consultation with the Women's Department of the International Transport Workers' Federation (ITF), has conducted a brief survey through the women's transport network on personal protective equipment (PPE) provided to transport workers to mitigate the risks of occupational accidents and diseases. The results showed that one of the issues was that the PPE is often provided in sizes that are suitable for bigger persons; this makes it difficult to wear and can potentially contribute to an increased risk hazard, especially when close to rotatory machines and in enclosed spaces. The same issue can also be a problem for younger seafarers and seafarers from geographical regions who have a smaller body frame.

3. Purpose

To ensure that due consideration is given to provide, store and maintain a suitable amount of PPE in different sizes to fit different body frames, to ensure a safer environment and contribute to widening job opportunities to a larger spectrum of possible candidates who seek employment in the maritime industry, including women.

4. Relevant considerations

Social impact and safety impact.

5. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|---|-----------|---|
| A4.3, paragraph 1, add text to subparagraph (b) | | (b) reasonable precautions to prevent occupational accidents, injuries and diseases on board ship, including <u>through the provision of all necessary appropriately sized personal protective equipment and</u> measures to reduce and prevent the risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may arise from the use of equipment and machinery on board ships; |

Proposal No. 2 (Seafarers' and Shipowners' groups)

1. Topic

Food and catering.

2. Background

Access to drinking water is a human right. The link between drinking water and well-being, including mental health, is well-documented and researched by internationally recognized health

and medical organizations. Many governments have issued guidelines in respect of welfare at work for employees, recommending to provide water to employees and encourage frequent drinking breaks to replenish the likely 1.7 litres of water a human body disperses during the day. (HSE guidelines, UK Government).

The environment in which seafarers are operating is often either of extreme heat, in enclosed spaces and of a physical nature or physically and mentally demanding, therefore the loss of fluid is even greater and can affect attention and concentration levels, as well as contribute to fatigue, in addition to slowing down the supply of oxygen to the bloodstream which can all have dramatic consequences on seafarers’ well-being. It is a duty of care, which is highlighted in Article IV of the MLC, 2006, that every seafarer has a right to decent working and living conditions on board ship that we believe also extends to providing drinking water and encouraging seafarers to take frequent drinking breaks.

3. Purpose

Standard A3.2 addresses the matter of food supplies, which have to be provided free of charge and must be of quality and appropriate nutritional value. However, water, which forms up to 60 per cent of body mass, is mentioned in paragraph 1 of that Standard without an express indication that it has to be provided free of charge. Research has also shown that seafarers working in an engine room environment may also suffer from kidney stones due to inadequate drinking of water in a hot environment and regular drinking of water is encouraged to avoid this.

4. Relevant considerations

Drinking water to be provided to seafarers on board, alongside educational information about the benefits this has on the human body and raising awareness that this can contribute to improving seafarers’ well-being.

5. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|--|-----------|---|
| A3.2, paragraph 2, add text at the end of subparagraph (a) | | 2. Each Member shall ensure that ships that fly its flag meet the following minimum standards: (a) food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and the duration and nature of the voyage, shall be suitable in respect of quantity, nutritional value, quality and variety, <u>and shall be provided free of charge during the period of engagement;</u> |
| A3.2, paragraph 2, add text to subparagraph (b) | | (b) the organization and equipment of the catering department shall be such as to permit the provision to the seafarers of adequate, varied, <u>healthy</u> and nutritious meals prepared and served in hygienic conditions; and |
| A3.2, paragraph 7, add text to subparagraph (a) | | (a) Supplies, <u>quantity, nutritional value and quality</u> of food and drinking water; |

Proposal No. 3 (Seafarers' and Shipowners' groups)

1. Topic

Repatriation.

2. Background

With the experience gained since the implementation of the provisions in Standard A2.5.2, it has been clear that the provisions adequately provide for support to abandoned seafarers through a mechanism of financial security. However, in practice and on many occasions which are well-documented, the efforts of the financial security provider to repatriate the stranded crew have been frustrated by the port authorities in the country where the ship is abandoned. In several cases, local authorities have prevented the stranded crew from leaving the ship, which aggravates an already distressing situation and puts seafarers at serious financial default since the provisions in the Standard only provide for up to four months' wages compensation. This along with the difficulties to access medical care, especially during the pandemic, can also increase the risk to the seafarers' mental and physical health.

3. Purpose

The proposed paragraph will better define the mechanism to access financial security and the multi-stakeholder responsibility to facilitate a smooth and rapid resolution of the situation. It also takes into account the existing provisions of the Convention in relation to free movement and travel for seafarers as well as other international instruments such as the Seafarers' Identity Documents Convention, 1958 (No. 108), the Seafarers' Identity Documents Convention (Revised), 2003, as amended (No. 185), and the International Maritime Organization (IMO) Convention on Facilitation of International Maritime Traffic, 1965, as amended (FAL).

4. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|--------------------------------------|-----------|--|
| A2.5.1, paragraph 8, add new text | | 8. In particular, a Member shall not refuse the right of repatriation to any seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace a seafarer. <u>In circumstances where applicable laws require the presence on board of seafarers to guarantee safety, national seafarers shall be engaged, and if there are no qualified seafarers available, non-national seafarers shall be engaged to comply with the obligations of this Standard.</u> |

Proposal No. 4 (Seafarers' and Shipowners' groups)

1. Topic

Medical care ashore.

2. Background

Regulation 4.1, paragraph 3, requires each Member to ensure that seafarers on board ships in its territory who are in need of immediate medical treatment are given access to the Member's medical facilities on shore. Paragraph 4 of this Regulation states that the provisions in the Code

aim to provide seafarers with health protection and medical care as comparable as possible to that which is available to workers ashore.

Even before the outbreak of the COVID-19 pandemic, there were reports of seafarers being denied disembarkation for urgent medical treatment, which led to considerable suffering by the seafarers, excessive costs for shipowners and considerable disruptions to trade. The situation deteriorated further during the pandemic despite the clear provision in Regulation 4.1, paragraph 3.

3. Purpose

It would be helpful to restate and clarify the mandatory requirement of Regulation 4.1, paragraph 3, in Part A of the Code. Guidance, particularly in circumstances in which a seafarer should be deemed in need of immediate medical treatment, would be of benefit to Members, shipowners and seafarers and may contribute to full and effective compliance with this requirement.

4. Relevant considerations

The benefits for seafarers include prompt treatment for the medical conditions of any who require disembarkation ashore, and protection from infection for the remaining crew members in the case of a seafarer with a communicable disease. For the shipowner, it would provide reassurance that seafarers needing immediate medical treatment will be disembarked and treated promptly, enabling the shipowner to arrange for a replacement crew member to join the ship and not to need to seek an alternative port of call in another country in which to disembark seafarers for treatment. It will benefit charterers and cargo owners by avoiding disruptions to trade and costs associated with ship diversions. Finally, it will give Members greater confidence that their nationals who are seafarers will be provided with prompt medical treatment overseas when necessary and also that the remains of seafarers who have died overseas are promptly repatriated in accordance with the wishes of their next of kin.

5. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|---------------------------|-----------------------------|--|
| A4.1, add new paragraph 5 | | <u>5. Each Member shall ensure that seafarers in need of immediate medical care are promptly disembarked from ships in its territory and admitted to medical facilities ashore for the provision of appropriate treatment.</u> |
| A4.1, add new paragraph 6 | | <u>6. Where a seafarer has died during a ship's voyage, the Member in whose territory the death has occurred, or, where the death has occurred on the high seas, into whose territorial waters the ship next enters, shall facilitate the repatriation of the body or ashes, in accordance with the wishes of the next of kin.</u> |
| | B4.1.3, add new paragraph 4 | <u>4. Each Member should ensure that seafarers are not prevented from disembarking for public health reasons, and should have access to stores, fuel, water, food and supplies.</u> |

| Standard | Guideline | Proposed text (amendments in track changes) |
|----------|-----------------------------|--|
| | B4.1.3, add new paragraph 5 | <p><u>5. Seafarers should be considered to be in need of immediate medical care in case of:</u></p> <p><u>(a) any life-threatening injury or disease;</u></p> <p><u>(b) any communicable disease which poses a risk of transmission to other members of the crew;</u></p> <p><u>(c) any injury involving broken bones, severe bleeding, broken or inflamed teeth or severe burns;</u></p> <p><u>(d) severe pain which cannot be managed on board ship (taking account of the operational pattern of the ship, the availability of suitable analgesics and the health impacts of taking these for an extended period);</u></p> <p><u>(e) danger of suicide; and</u></p> <p><u>(f) a tele-medical advisory service has recommended treatment ashore.</u></p> |

Proposal No. 5 (Seafarers' and Shipowners' groups)

1. Topic

Financial security in situations of abandonment.

2. Background

The proposal aims at overcoming problems arising from how the MLC, 2006 was initially drafted and has subsequently evolved. The Declaration of Maritime Labour Compliance (DMLC) has not been amended since 2006 when the definition of the term "shipowner" in Article II(1)(j) was agreed. This definition may have suited the unamended MLC, 2006, by identifying the person or entity responsible for maintaining living and working conditions on board the ship, but it does not work in the context of an insured person and the name of the shipowner on the financial security certificates. Some port State control officers (PSCOs) in some jurisdictions issue deficiency notices to ships calling at their ports for alleged non-compliance with Standards 2.5.2 and 4.2 on the grounds that the shipowner named on the financial security certificate must be the party named on the DMLC, and if not, it is a non-compliance issue. This is not appropriate.

3. Purpose

When a shipowner severs ties with the crew and the ship, his/her identity as reflected in the DMLC may prove of little help. What is important to crew members if this occurs is to have recourse to the financial security provider in order to be repatriated and receive maintenance and support while remaining on board as well as owed wages and entitlements.

Protection and Indemnity Clubs cannot issue certificates in the name of parties who are not insured persons, or those not related to the club. To do so would cause regulatory difficulties which could result in heavy sanctions from the regulatory supervisor. To mitigate the risk of PSCOs issuing such deficiencies, a suitable solution would be to amend the information to be contained on certificates Appendix A2-I(g) and A4-I(g) by adding the words "or the registered owner" so (g) would read: "name of the shipowner or the registered owner". This would resolve the problem that has arisen since 2017 when the 2014 amendments entered into force for those States to which it applies and it would be clear to enforcement officers that naming the registered owner is consistent with and therefore compliant with the MLC, 2006.

4. Relevant considerations

This should help to expedite action in cases of abandonment by clarifying who is responsible.

5. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|---|-----------|--|
| Appendix A2-I, add text to subparagraph (g) | | (g) name of the shipowner <u>or the registered owner</u> ; |
| Appendix A4-I, add text to subparagraph (g) | | (g) name of the shipowner <u>or the registered owner</u> ; |

Proposal No. 6 (Seafarers' group)

1. Topic

Communications.

2. Background

In the conclusions of the ILO Sectoral Meeting on Recruitment and Retention of Seafarers and the Promotion of Opportunities for Women Seafarers it was expressly recommended to provide seafarers access to the internet and social communication.

It should also be taken into account that at the time the MLC, 2006 was adopted, the use of the internet and social communication was extremely limited compared to today, where it has become a form of social interaction between people and is normally provided free of charge in the workplace, airports, hotels, restaurants and commercial premises to give access to an uninterrupted connectivity to everyone.

3. Purpose

To facilitate seafarers' interaction with friends and family and as an incentive for companies to explore opportunities for training and e-learning to upskill seafarers. During COVID-19, a number of major shipping companies extended to the crew free unlimited access to the internet and social communication utilizing the ship's communication system as an incentive to cope with the crew change crisis. Providing access to the internet and social communication would be a strategic approach to attract to the industry the next generation of seafarers, who have grown up in an environment where social interaction through the use of social connectivity is indispensable.

4. Relevant considerations

Social impact by providing seafarers with a connection to their families; well-being to be able to interact with families and friends when needed and to be able to receive emotional and practical support during difficult situations; practical for companies to be able to provide consistent training throughout the fleet; direct communication to seafarers to inform of the company's policies or other essential information.

5. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|---|---|--|
| Standard A3.1, paragraph 17, add subparagraphs (a), (b) and (c) | | <p>17. Appropriate seafarers’ recreational facilities, amenities and services, as adapted to meet the special needs of seafarers who must live and work on ships, shall be provided on board for the benefit of all seafarers, taking into account Regulation 4.3 and the associated Code provisions on health and safety protection and accident prevention. <u>In particular, with respect to social connectivity:</u></p> <p><u>(a) seafarers shall be provided with access to ship-to-shore communications, including internet facilities free of charge;</u></p> <p><u>(b) the competent authority shall, in consultation with seafarers’ and shipowners’ organizations, issue guidance on the recommended individual time to access the internet, taking into account the seafarers’ rest hours and the need to avoid social isolation; and</u></p> <p><u>(c) each Member shall provide internet access free of charge within its ports and associated anchorages.</u></p> |
| | B3.1.11, paragraph 4, delete subparagraph (j) | (j) reasonable access to ship to shore telephone communications, and emails and Internet facilities, where available, with any charges for the use of these services being reasonable in amount. |

Proposal No. 7 (Seafarers’ group)

1. Topic

Seafarers’ employment agreement.

2. Background

Although the MLC, 2006 clarifies the meaning of shipowner and its responsibilities, the ITF has been advised of frequent situations where the employer is not the owner of the ship. This is a common situation in the cruise industry but also for seafarers in the catering department on ferries and/or cargo ships. The shipowner does not always follow up on cases where the employer of the seafarer does not grant seafarers contractual entitlements.

3. Purpose

To ensure seafarers are informed of their rights in respect of the provisions of the MLC, 2006, and guaranteed against losses in case their employer does not fulfil their contractual obligations.

4. Relevant considerations

The financial losses sustained by seafarers whose employers do not fulfil their obligations are a reality. The bouncing of responsibility and liability between the shipowner and the employer of the seafarers causes much distress, and leads to a lengthy process without the guarantee that, at the end, the seafarers concerned will obtain what they are due. The proposed amendment has a social and financial implication.

5. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|--|-----------|---|
| A2.1, paragraph 4, add new subparagraph (k) | | <u>(k) where the shipowner is not the employer of the seafarer, a signed undertaking by the shipowner, or the representative of the shipowner, indemnifying the seafarer for the monetary loss that may be incurred as a result of any failure by the employer to meet its obligations to the seafarer under the seafarers' employment agreement; and</u> |

Proposal No. 8 (Seafarers' group)

1. Topic

Repatriation.

2. Background

During the COVID-19 pandemic the issue of seafarers left without financial or medical assistance has been highlighted as well as the common practice whereby seafarers are signed off at the country of residence exit point regardless of the fact that they may have to travel from that point to their actual residence address. This is an issue particularly common for Filipino, Indian and Indonesian seafarers.

The travelling costs to and from home to the exit point can be quite onerous and during that time (which can vary from one to several days, depending on the mode of transportation) the seafarers concerned are not covered by insurance or means of comfort. The MLC, 2006 provides under Regulation 2.5 – Repatriation – that seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code.

3. Purpose

The recent events related to COVID-19 have highlighted a gap in the Convention whereby the options available under the Standard and the Guidelines on the final destination of a signing-off seafarer and the obligations of the shipowner toward them allow for different interpretations and, as a result, seafarers are penalized. In most cases, the shipowner or the manning agent's liability toward the seafarers concerned ceases at the entry point of the destination country and not at the domicile of the seafarer.

4. Relevant considerations

The proposal will clarify the responsibility that both the shipowner and the recruitment agent have towards seafarers until they reach their final destination at their home address with the consequent benefit of insurance until such destination is reached.

5. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|--------------------------------|---|---|
| A2.5.1, add new paragraph 3 | | <p><u>3. Notwithstanding paragraph 2 of this Standard, each Member shall ensure that:</u></p> <p><u>(a) seafarers are entitled to pay, allowances, food and accommodation, and necessary medical treatment from the moment they leave the ship until they reach the destination of repatriation; and</u></p> <p><u>(b) where the destination of repatriation is the seafarer's home location, or other mutually agreed place, the cost of repatriation shall be borne by the shipowner, until the seafarer's arrival at that place or location.</u></p> |
| | B2.5.1, paragraph 6, delete subparagraph (a) | (a) the place at which the seafarer agreed to enter into the engagement; |
| | B2.5.1, paragraph 6, replace some text in subparagraph (c) | (c) the seafarer's country of residence <u>home location</u> ; |

Proposal No. 9 (Seafarers' group)

1. Topic

Recruitment and placement.

2. Background

During the recent COVID-19 pandemic and also in previous circumstances, seafarers found themselves on the way to ships after signing seafarers' employment agreements (SEA). Regrettably and for reasons independent from the seafarers concerned, the employment did not occur.

Seafarers found themselves away from home and with considerable financial losses. Even though the relevant paragraph in the MLC, 2006 does provide for a solution to this occurrence, it has been difficult for seafarers to get action from or even reach the provider of the insurance or to avail themselves of an equivalent appropriate measure for the compensation they are entitled to.

3. Purpose

The proposal's aim is to provide additional information and to clarify the steps necessary for a seafarer to access the means to address the claim.

4. Relevant considerations

The proposed amendment provides social benefit for a seafarer including financial access in the event the employment opportunity does not materialize.

5. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|--|-----------|---|
| A1.4, paragraph 5, add text to (c)(vi) | | (vi) establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them, <u>and provide adequate information to seafarers about that system, including details on how to make a claim, prior to or in the process of engagement.</u> |

Proposal No. 10 (Seafarers' group)

1. Topic

Financial security.

2. Background

The amendments relating to financial security for cases of abandonment have now been in force for almost four years. During this period, many cases of abandonment have been successfully resolved.

However, the ITF has observed that a large number of cases are not resolved in time to allow seafarers to receive all wage amounts owed to them. This is due to a number of factors, including the failure of seafarers to report cases in good time, port States and port facilities refusing to allow crew to leave the vessels, the failure of financial security providers to act quickly to pay wages and other delays caused by the parties concerned.

3. Purpose

The proposed amendment would increase the maximum amount of wages for which the financial security provider is responsible under the relevant Standard of the MLC, 2006. This will give abandoned crew members more security in those cases which cannot be resolved quickly.

4. Relevant considerations

The proposed amendment will reduce the financial difficulties experienced by seafarers in case of abandonment. Many seafarers are forced to borrow to support their families when they are not paid. It is hoped that by increasing the maximum number of months of unpaid wages/entitlements covered by the financial security, the burden on seafarers and their families can be reduced.

5. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|--|-----------|--|
| A2.5.2, paragraph 9, replace terms in subparagraph (a) | | (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four <u>eight</u> months of any such outstanding wages and four <u>eight</u> months of any such outstanding entitlements; |

**Proposal No. 11 (Governments)
Australia, France, Kenya, New Zealand, Norway, Panama**

1. Topic

Mandatory reporting of seafarer fatalities at sea.

2. Background

Currently there is no single international data set that appropriately captures and categorizes all fatalities that occur at sea. While there is a requirement for flag States to report operational-related fatalities to the IMO (refer to the International Convention for the Safety of Life at Sea (SOLAS), 1974, Chapter 1, Regulation 21), there are no such requirements that cover fatalities attributed to medical events, natural causes, lost overboard or suicide.

There is currently no provision in any ILO document for such data to be supplied and consolidated. Standard A4.3, paragraph 5, of the MLC, 2006 requires occupational accidents and injuries to be adequately reported by the competent authority but does not specify how they should be reported, or to whom.

Additionally, the *Guidelines for implementing the occupational safety and health provisions of the Maritime Labour Convention, 2006* specify that occupational accidents, injuries and diseases are reportable incidents. However, again there is no guidance with respect to collating this information in a usable single international data set.

As all fatalities at sea are not categorized in a consistent format, it makes it difficult, if not impossible, to identify trends. This leaves a gap in the identification of areas of concern where interested stakeholders could direct analyses and attention to address these concerns.

In the context of an increased awareness about the importance of mental health and well-being at sea, issues related to psychosocial risks experienced by seafarers have recently gained more traction due to the impact of the COVID-19 pandemic. Anecdotal evidence does suggest an increase in persons overboard and suicides during the COVID-19 pandemic. Unfortunately, availability of international data on this is scarce, fragmented and inconsistent.

Hence, having this fatality data available as a global database would facilitate better evaluation of deaths at sea with a view to better targeting areas of concern, such as mental health.

3. Purpose

The need for categorizing seafarer fatalities data.

There is emerging evidence to support the fact that seafarers have experienced high levels of psychological distress, depression and anxiety during the COVID-19 pandemic.¹ In addition, recent research identified that the impact of the COVID-19 pandemic has exacerbated some of the pre-existing challenges, while also posing new challenges for the maritime industry.² These studies indicate that the wide array of challenges caused by the COVID-19 pandemic may add to the high level of stressors already existing in maritime workplaces prior to the pandemic, thus producing a fertile environment for mental health problems such as anxiety and depression.

Considering the current issues of mental health at sea (now more challenging than ever with the COVID-19 pandemic situation) this gap in available data potentially presents an issue, as it negates the possibility of analysing and identifying seafarer welfare issues of international concern.

The nature of this data set best suits with the ILO, as it is a seafarer welfare and workplace health and safety matter; and having this information available as a global data set will allow for better evaluation of fatalities at sea, enabling interested stakeholders (namely, seafarer representatives, company representatives, governments, researchers, etc.) to take a more targeted approach towards areas of concern, such as mental health.

Hence, the purpose of this proposal is to amend the MLC, 2006 to provide the ability to capture all deaths at sea data in a meaningful format and to place a responsibility on the competent authority to report all fatalities to the ILO. To ensure this is captured adequately, an amendment is proposed to both the Standards and Guidelines of the MLC, 2006. In addition, the *Guidelines for implementing the occupational safety and health provisions of the Maritime Labour Convention, 2006* should be updated accordingly.

4. Relevant considerations

Having this information available as a global data set will allow for better evaluation of fatalities at sea allowing for a more targeted approach towards areas of concern.

The proposed amendment will achieve the above aims without placing a large administrative burden on competent authorities.

5. Proposed amendment(s)

It is proposed that a simple global taxonomy be used to capture, classify and record all fatalities at sea. This will need to be accompanied by the ship's details (IMO number, location, date and time of incident, etc.). This will allow for a more holistic approach to bringing international data together in a meaningful format for further analyses.

Maintaining the confidentiality of seafarers will need to be considered as part of this approach.

Before being made public, all seafarer fatality data shall be anonymized and free of any information that could identify seafarers, therefore exact dates, vessel details and location of fatality shall be redacted.

¹ Fereshteh Baygi et al., "Prevalence and Associated Factors of Psychosocial Distress among Seafarers during COVID-19 Pandemic", *BMC Psychiatry* 21, Article No. 222 (2021); and Wenzhe Qin et al., "Prevalence and Risk Factors of Depression Symptoms among Chinese Seafarers during the COVID-19 Pandemic: A Cross-sectional Study", *BMJ Open* 11, No. 6 (2021).

² Desai Shan, "Occupational Health and Safety Challenges for Maritime Key Workers in the Global COVID-19 Pandemic", *International Labour Review* (forthcoming).

The following simple taxonomy in the table is proposed as a basis for further classifying the fatality data:

► **Table. Simple taxonomy for classifying fatalities at sea**

| | |
|-------------------|--------------------------------------|
| Seafarer fatality | Illness/disease |
| Seafarer fatality | Natural cause |
| Seafarer fatality | Person overboard (presumed deceased) |
| Seafarer fatality | Occupational accident |
| Seafarer fatality | Suicide |
| Seafarer fatality | Alleged suicide |
| Seafarer fatality | Other |

An amendment to the MLC, 2006, Part A of the Code (mandatory standards) and Part B (non-mandatory guidance), is proposed to support the collation of this data set by the ILO. The intent would be to strengthen reporting requirements by the competent authority under Standard A4.3, paragraph 5, of the MLC, 2006, with a view that this be revised to allow the data to be collated and reported appropriately to the ILO.

| Standard | Guideline | Proposed text (amendments in track changes) |
|---|--|---|
| A4.3, paragraph 5, add new subparagraph (a) | | 5. The competent authority shall ensure that: <u>(a) all fatalities are adequately recorded and classified as per B4.3.5, paragraph 3, and reported on an annual basis to the International Labour Organization to be captured in a global fatalities at sea register;</u> |
| | B4.3.5, add new paragraphs 3 and 4 | <u>3. The competent authority shall report all fatalities (classified as per below) to the International Labour Organization on an annual basis:</u> <u>(i) illness/disease;</u> <u>(ii) natural cause;</u> <u>(iii) person overboard;</u> <u>(iv) occupational accident;</u> <u>(v) suicide;</u> <u>(vi) alleged suicide;</u> <u>(vii) other.</u> <u>4. The fatality data should be accompanied by the following information: type of fatality (as per classification above), IMO number, location of fatality (at sea, in port, at anchorage), and seafarer rank (officer (deck/engine), rating, etc.).</u> |

Proposal No. 12 (Governments)

Australia, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden

1. Topic

Clarification on the seafarers' maximum period of service on board.

2. Background

The COVID-19 pandemic has had devastating effects worldwide, particularly on crew changes. Many seafarers have been denied their right to be repatriated after 11 months on board and phenomena of physical and mental exhaustion, anxiety, sickness and even suicides have been reported.

Seafarers' and shipowners' representatives and governments have repeatedly called for action to address this issue, at national and international levels.

The MLC, 2006 currently provides seafarers with an entitlement to be repatriated when the maximum duration of service periods on board is reached – such periods to be less than 12 months (Standard A2.5.1, paragraph 2(b)).

Nevertheless, this provision is not sufficient to protect seafarers and avoid situations where seafarers remain on board beyond this maximum duration of service periods on board. Four main reasons explain why many seafarers remain on board ships after 11 months' service:

- (a) the default 11-month maximum period is not expressly provided for in the MLC, 2006, but results from a reiterated interpretation by the CEACR;³
- (b) seafarers can choose to not exercise this entitlement when it arises (unless the flag State law prohibited such a choice being made), and remain on board after 11 months;⁴
- (c) broad exceptions have been granted by flag States to forgo the annual leave, and remain on board after 11 months, on the basis of Standard A2.4, paragraph 3;
- (d) the maximum duration of service periods on board is not a matter of flag State inspection for certification (Appendix A5-I) and port State control inspections (Appendix A5-III).

Due to the above reasons, there are numerous seafarers remaining on board beyond 11 months and therefore there is a need to further clarify the current Standards on annual leave and repatriation in order to limit situations where seafarers are allowed to remain on board beyond this maximum duration.

³ ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, ILC.108/III(A), 2019, paras 105–113 (General Report); this interpretation has been reiterated in the [Information note on maritime labour issues and coronavirus \(COVID-19\)](#), revised version 3.0, 3 February 2021, paras 43–45.

⁴ ILO, *Maritime Labour Convention, 2006, as amended (MLC, 2006) – Frequently Asked Questions*, International Labour Standards Department, fifth edition, 2019, C2.5.1.g.

3. Purpose

Staying on board for longer than 11 months poses a risk to seafarers’ health and safety and also impacts the safety of maritime navigation. To address this issue and bridge the gaps, there should be an express, binding provision on the maximum duration of seafarers’ service periods on board, set at 11 months (to be addressed in Standard A2.4, Standard A2.5.1 and Guideline B2.5.1).

Exceptions to this maximum duration of service periods should be granted only if several conditions are met: in duly justified exceptional cases provided by the competent authority on a case-by-case basis, and with the informed consent of the seafarer concerned in writing.

After the expiration of these 11 months, seafarers must be repatriated (to be addressed in Standard A2.5.1 and Guideline B2.5.1).

Furthermore, the maximum duration of service periods on board should also be enforced by flag State inspectors for ships’ certification and by PSCOs (Appendices A5-I and A5-III). The maximum duration of service periods defined by flag States should be specified in the DMLC (as a 17th item – Appendix A5-II).

4. Relevant considerations

Please see above.

5. Proposed amendment(s)

| Standard | Guideline | Proposed text (amendments in track changes) |
|---|-----------|---|
| A2.4 – Entitlement to leave, paragraph 3, addition and deletion to the text | | 3. Any agreement to forgo the minimum annual leave with pay prescribed in this Standard, except in cases provided for by the competent authority, shall be prohibited. <u>In duly justified exceptional cases provided for by the competent authority on a case-by-case basis and with the informed consent of the seafarer concerned in writing, a seafarer may remain on board for a limited time period. The minimum annual leave with pay may not be replaced by an allowance in lieu, except in cases where the employment relationship is terminated. Wages and other entitlements under the seafarers’ employment agreement, relevant collective bargaining agreement and applicable national laws, including the remittance of any allotments as provided in paragraph 4 of Standard A2.2, shall continue to be paid during the additional period of service on board and until the seafarer is duly repatriated in accordance with Standard A2.5.1.</u> |
| A2.5.1 – Repatriation, paragraph 1, add new subparagraph (d) | | <u>(d) in any event, at the end of the maximum duration of service periods on board.</u> |

| Standard | Guideline | Proposed text (amendments in track changes) |
|---|---|---|
| A2.5.1 – Repatriation, paragraph 2, add text to subparagraph (b) | | (b) the maximum duration of service periods on board, <u>including any training periods on board,</u> following which a seafarer shall be repatriated is entitled to repatriation—such periods, shall not exceed to be less than 12-11 months; and |
| | B2.5.1 – Entitlement, paragraph 8, add new text | 8. The entitlement to repatriation may lapse if the seafarers concerned do not claim it within a reasonable period of time to be defined by national laws or regulations or collective agreements, except where they are held captive on or off the ship as a result of acts of piracy or armed robbery against ships. The terms <i>piracy and armed robbery against ships</i> shall have the same meaning as in Standard A2.1, paragraph 7. <u>However, the entitlement to repatriation should not lapse when the seafarer is to be repatriated in accordance with Standard A2.5.1, paragraph 2(b).</u> |
| Appendix A5-I, add new text | | The working and living conditions of seafarers that must be inspected and approved by the flag State before certifying a ship in accordance with Standard A5.1.3, paragraph 1: Minimum age Medical certification Qualifications of seafarers Seafarers’ employment agreements Use of any licensed or certified or regulated private recruitment and placement service Hours of work or rest <u>Maximum duration of service periods on board</u> Manning levels for the ship Accommodation On-board recreational facilities Food and catering Health and safety and accident prevention On-board medical care On-board complaint procedures Payment of wages Financial security for repatriation Financial security relating to shipowners’ liability |
| Appendix A5-II, Declaration of Maritime Labour Compliance – Part I, add new point 17 | | <u>17. Maximum duration of service periods on board (Regulation 2.5)</u> |
| Appendix A5-II, Declaration of Maritime Labour Compliance – Part II, add new point 17 | | <u>17. Maximum duration of service periods on board (Regulation 2.5)</u> |

| Standard | Guideline | Proposed text (amendments in track changes) |
|----------------------------------|-----------|---|
| Appendix A5-III, add new text | | General areas that are subject to a detailed inspection by an authorized officer in a port of a Member carrying out a port State inspection pursuant to Standard A5.2.1: Minimum age Medical certification Qualifications of seafarers Seafarers' employment agreements Use of any licensed or certified or regulated private recruitment and placement service Hours of work or rest <u>Maximum duration of service periods on board</u> Manning levels for the ship Accommodation On-board recreational facilities Food and catering Health and safety and accident prevention On-board medical care On-board complaint procedures Payment of wages Financial security for repatriation Financial security relating to shipowners' liability |

6. Transitional measures

Transitional measures will be required as the amendment has an impact on the documentation.

(b) Tripartite consultations under Article VII

9. The MLC, 2006 is a Convention that is founded on encouraging tripartism at the national level. A number of its provisions, particularly with respect to national "determinations" in specific cases of application and exemptions under Title 3, require tripartite consultation by the government with the shipowners' and seafarers' organizations concerned, as part of the process of implementation. However, some Members do not yet have such organizations. Article VII of the MLC, 2006, therefore provides that in such cases the government is to consult the STC.
10. Procedures for consultation under Article VII of the Convention are provided for in article 14 of the Standing Orders of the Committee; requests for consultation are to be addressed to the Chairperson of the STC through the International Labour Office.
11. No requests for consultations under Article VII of the MLC, 2006 have been submitted to the fourth meeting of the STC.