
Proposal for the development of ILO guidelines outside the Maritime Labour Convention, 2006, as amended (MLC, 2006) submitted by the group of Shipowner representatives

(26 August 2017)

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

Background

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 to, inter alia, 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 a possible amendment to the Code of the MLC, 2006, to address these issues.

The Working Group of the STC established under the MLC, 2006, met at the ILO from 3 to 5 April 2017. The outcome of their discussion was outlined in document STCMLC/WG/2017/D.1 which sets out various types of proposals for potential consideration of the STC. These proposals are without prejudice to the positions of any government or group and not to be considered or treated as replacing or obstructing the need for proposals to be submitted to the Director-General of the ILO in accordance with Article XV, paragraph 2, of the MLC, 2006.

The Shipowners' group is therefore submitting one of the proposals which it made to the Working Group, using the proposed draft template prepared at the Working Group meeting (see document STCMLC/WG/2017/D.3).

The proposal is found at paragraph (c) of document STCMLC/WG/2017/D.1, and provides elements that could be incorporated into Office guidelines outside of the MLC 2006, on the protection of seafarers' wages when the seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships. These elements are reproduced below:

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).

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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.

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.

Purpose

The Shipowners' group recognizes the importance of ensuring the protection of seafarers' wages when a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, and supports examination of this issue by the STC. However, as advised in the Working Group, the Shipowners' group notes that the number of cases of piracy where seafarers have not received their wages is extremely small, with most of the cases reported being prior to the 2014 amendments to the MLC, 2006 (related to financial security), entering into force. Furthermore, many of the cases drawn to the attention of the Working Group related to vessels that fall outside the scope of application of the MLC, 2006, namely fishing vessels, dhows and junks, or registered with the flags of States that had not ratified the MLC, 2006, or did not comply with its requirements. The Shipowners' group also considers that the MLC, 2006, covers situations when SEAs cannot be terminated or wages cease to be paid when a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

Therefore, the Shipowners' group:

- considers that an amendment to the Code of the MLC, 2006, would not assist those affected, be appropriate, or be the most effective or proportionate response;
- recalls that the MLC, 2006, has only recently entered into force (including some amendments already adopted) and needs more time to be fully implemented;

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- considers that the most appropriate, effective and proportionate response would be to develop Office guidelines on the protection of seafarers' wages when a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships; and
 - proposes that the guidance could be developed to be broad in scope and address all personnel onboard seagoing vessels, and not just those within the scope of the MLC, 2006.

Furthermore, such guidance would also ensure that the current statutory requirement and practice of shipowners continuing 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 is clear and unquestioned. Any amendment to the Code of the MLC, 2006, on this issue could have the unfortunate and unintended consequence of negatively affecting current practice or lead to confusion about existing requirements under the MLC, 2006, related to payment of wages and SEAs.

Relevant considerations

The STC is invited to note relevant existing guidance produced by a number of stakeholders within the industry as part of the ISWAN Maritime Piracy Humanitarian Response Programme (MPHRP) ¹ programme. It is entitled *Good Practice Guide for Shipping Companies and Manning Agents: Humanitarian support of seafarers and their families in case of armed robbery and piracy attack*.

The Shipowners' group does not propose that the document should be the Office guidelines as it has not been produced by a formal tripartite setting, however it could form a good starting point and resource for the necessary discussions along with the elements found at paragraph (c) of document STCMLC/WG/2017/D.1. It can be accessed at <http://seafarerswelfare.org/piracy/mphrp>, where it is available in both English and French.

Copies of the ISWAN guidance are also attached to this submission for ease of reference. Using the ISWAN guidance would assist the Office in preparing for the tripartite meeting convened to produce guidelines, therefore reducing the associated financial and administrative burdens involved. It would also have the benefit of incorporating the considerable experience and lessons learned by those having been involved in handling such regrettable situations.

Proposed amendment

Development of ILO guidelines outside the MLC, 2006, 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, incorporating the elements indicated in paragraph (c) of document STCMLC/WG/2017/D.1.

¹ MPHRP was established in 2011 as a not-for-profit alliance of maritime industry partners, maritime unions and welfare associations (<http://seafarerswelfare.org/piracy/mphrp>). The aim of MPHRP was to provide assistance to seafarers and their families affected by maritime piracy. In addition to assisting seafarers and their families with their recovery and rehabilitation, MPHRP developed guidance, provided training programmes for companies and seafarers, and established a network of trained welfare responders to assist families and seafarers affected by piracy.

Transitional measures

The ISWAN guidance could be used in the interim until new formal ILO guidelines outside the MLC, 2006, 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, can be developed.