

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

### 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

#### *Replies to the first round of questions*

Responders	Questions and responses
<b>Question 1</b> Part I – Content of the proposal Scope and definitions	<b>Should the proposal provide that shipowners should continue to pay seafarers' wages when seafarers are held captive on or off the ship as a result of:</b> (a) only acts of piracy or armed robbery; or (b) acts of piracy, armed robbery or other similar situations? If yes, please specify.
Americas/Canada	Yes. We support that shipowners should continue paying seafarers' wages when seafarers are held captive on or off the ship following any acts of piracy, armed robbery or other similar situations. (a) Nil. (b) Yes.
Asia-Pacific/Singapore	The proposal should be restricted only to acts of piracy or armed robbery committed against the ship.
Europe/Netherlands	The Netherlands prefers option (a) only acts of piracy or armed robbery.
Europe/United Kingdom	We consider that provision should be made to protect seafarers' wages in any situation where: (a) crew is unlawfully denied control of the vessel; or (b) crew is unlawfully removed from the vessel. A distinction needs to be made between lawful and unlawful removal or denial of control.
Seafarers	We prefer (b) and for the entire period in which the seafarer is unlawfully held captive on board or off the ship.
<b>Question 2</b> Part I – Content of the proposal Scope and definitions	<b>Should the definitions of the terms "piracy" and "armed robbery" be included in the proposal?</b>
Americas/Canada	Yes. Hostage situation.
Asia-Pacific/Singapore	Yes. For piracy, the Working Group (WG) may consider using the definition under Article 101 of the UNCLOS. For armed robbery, the WG may consider the definition under IMO Assembly Resolution A.1025(26).
Europe/Netherlands	The Netherlands is of the opinion that the definitions should not be included in the proposal, when there is a consensus among all parties that piracy is defined in Article 101 of the UNCLOS and armed robbery is defined in Resolution A.1025(26) (Annex paragraph 2.2) on the IMO's Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships. Otherwise it will be difficult to verify whether a member State to the MLC, 2006, has fulfilled its obligation to implement the amendment when it comes into force.

<b>Responders</b>	<b>Questions and responses</b>
Europe/United Kingdom	Any use or definition of the term “piracy” or “armed robbery” should be consistent with other international instruments. However there is a risk that situations arise which fall outside the definition in force. We would therefore favour a broader scope for any provisions to avoid this problem.
Shipowners	No. Definitions of these terms are found elsewhere, such as “piracy” is in the UNCLOS Article 101.
Seafarers	No. They are widely known and the preamble to the MLC, 2006, contains a reference to the UNCLOS.
<b>Question 3 Part I – Content of the proposal Scope and definitions</b>	<b>Should the proposal state that the expression “period of captivity” is understood to have ended when the seafarer has been released and safely repatriated or at the time of the death of the seafarer?</b>
Americas/Canada	Yes. The “period of captivity” shall be properly defined to identify the specific moment it has ended. We support that the “period of captivity” ends when the seafarer has been released and safely repatriated.
Asia–Pacific/Singapore	The “period of captivity” can be understood to end when the seafarer is released and safely repatriated, in accordance to the provisions in Standard A2.5 and Guideline B2.5 regarding “Repatriation”, or at the time of the death of the seafarer while in captivity, whichever occurs first.
Europe/Netherlands	The Netherlands agrees with the proposal under (3) first paragraph: Time of death should be defined according to the applicable legislation. Not necessary to define in the amendment the time of death of the seafarer, should be defined by MS when a person is considered to be dead (and there is no need for a specific regulation for a time of death of a seafarer). So no criteria defined in the amendment.
Europe/United Kingdom	In principle, we believe that the seafarer should be protected (including payment of wages) until they are safely home, or have died, and that the seafarer therefore should retain a link with the employer, and the vessel with the flag State, to that point in time. Current repatriation provisions in the MLC, 2006, do not allow for this sort of situation (e.g. the SEA may expire during a period of captivity but the seafarer is not released for many months later). One possible way forward is to amend the current MLC provisions relating to repatriation to ensure they are not excluded.
Seafarers	Yes, although if the seafarer dies the exact date may not be known and it is highly unlikely that the body will be repatriated. Part B of the Code could elaborate on what information would be needed to trigger the death in service compensation. Like the 2014 amendments to Standard A4.2 of the MLC, the contractual compensation shall be without prejudice to any other claims.
<b>Question 4 Part I – Content of the proposal Scope and definitions</b>	<b>Should the term “wages” in the proposal be understood as referring to:</b> <b>(a) The contractual wages as indicated in the seafarers’ employment agreement?</b> <b>(b) Payments as provided in Standard A2.2 or payment of the basic wage as defined in Guideline B2.2 of the MLC, 2006 or payment of the consolidated wage as defined in Guideline B2.2 of the MLC, 2006?</b> <b>(c) Payments as provided for in paragraph 1 of Standard A2.2 of the MLC, 2006, including any allotments?</b> <b>(d) Any other elements or items (including compensation)? Please specify.</b>
Americas/Canada	(a) Yes. However if there is any mutual agreement, we believe that this situation of piracy and armed robbery should be debated and clarified between the two parties. (b) Nil. (c) Nil. (d) Nil.

Responders	Questions and responses
Asia Pacific/Singapore	If the ship and its crew are covered by a valid CBA that continues to remain in force, then the term “wages” in the proposal should refer to all elements and items covered by this CBA. In the absence of such a CBA, the term “wages” should refer to (a), the contractual wages as indicated in the SEA, provided that the SEA is MLC-compliant. If the SEA is not MLC, 2006-compliant, the term “wages” should then refer to the payments provide in Standard A2.2, including “basic wage” and “consolidated wage” as defined in Guideline B2.2.
Europe/Netherlands	The Netherlands prefers option (a) contractual wages as indicated in the seafarer’s employment agreement.
Europe/United Kingdom	We believe that: <ul style="list-style-type: none"> <li>– the level of wages to be referred to in the proposal should be agreed between Seafarer and Shipowner representatives, but as a minimum this should be basic wages, with allotments continuing to be paid as normal;</li> <li>– there should be further discussion to establish whether the proposal should refer to wages or to compensation payments in lieu of wages.</li> </ul>
Seafarers	We prefer (a) and (c) as per the SEA and including allotments and other accrued contractual benefits, as per A2.5.2(9)(a) and should be as per the SEA and not be based on the MLC, 2006, minimum standards.
<b>Question 5</b> <b>Part I – Content of the proposal</b> <b>Time limitations</b>	<b>Should the proposal indicate that the obligation to pay seafarers’ wages:</b> <b>(a) cover the entire period of captivity?</b> <b>(b) not exceed a maximum period? If yes, please specify what this maximum period should be.</b>
Americas/Canada	We shall keep in mind that support for seafarers’ families is needed during this period. (a) Yes. No limitations. (b) No. No limitations.
Asia–Pacific/Singapore	We think that pirate captivity is unlikely to be indefinite and that an average period of captivity can be estimated using reported periods of captivity of merchant ships. We propose 18 months as a minimum. We further propose to require shipowners to obtain financial security to cover, for a minimum period of 18 months, wages paid during captivity. If captivity prolongs beyond this minimum period that is covered by financial security, the obligation to continue paying wages should fall on the shipowners.
Europe/Netherlands	The Netherlands is not in favour of time limitations.
Europe/United Kingdom	The seafarer and their family should not suffer detriment however long the situation continues. However, we recognize that shipowners may have limited funds available if, through an act of piracy, a ship is unable to earn revenue. We understand that most periods of captivity due to piracy do not extend beyond five months. We would welcome further information in this regard being available to the WG for its meeting, so that consideration could be given to whether it is possible to agree an acceptable minimum period for payment of wages as defined in question (4) above.
Seafarers	We prefer (a) and that it cover the entire period in which the seafarer is unlawfully held captive on board or off the ship and the obligation to pay continues past the expiry date of the SEA.
<b>Question 6</b> <b>Part I – Content of the proposal</b> <b>Seafarers’ employment agreement</b>	<b>Should the proposal indicate that the seafarers’ employment agreement expressly refers to the shipowner’s obligations and/or conditions that would apply in the event of captivity?</b>
Americas/Canada	Yes. Conditions shall be clearly indicated to seafarers at the time of the seafarer’s employment agreement.

<b>Responders</b>	<b>Questions and responses</b>
Asia-Pacific/Singapore	We prefer for “wages during captivity” to be expressly indicated in the SEA, along with the other items required under Standard A2.1(4).
Europe/Netherlands	The Netherlands is of the opinion that these obligations should be a part of all seafarer’s employment agreements.
Europe/United Kingdom	The SEA should include the shipowner’s obligations and conditions that would apply but only where a seafarer is engaged to work in a high risk area or other area with known risk, SEA/CBA should make clear what they can expect.
Seafarers	Yes. The flag State should provide that the payment obligation extends until repatriation and past the SEA’s expiry date.
<b>Question 7 Part I – Content of the proposal Protection against termination</b>	<b>Should the proposal state that the employment of seafarers may not be terminated during the period of captivity?</b>
Americas/Canada	Yes. We shall keep in mind that support for seafarers’ families is needed during this period.
Asia-Pacific/Singapore	Yes. The seafarers should remain under employment until repatriation. We think that this is reasonable as the amendments of 2014 ensure that shipowners will be able to fulfil their obligation to repatriate their seafarers.
Europe/Netherlands	The Netherlands agrees that the seafarer’s employment agreement may not be terminated during a period of captivity due to piracy or armed robbery.
Europe/United Kingdom	The fact that a seafarer has been taken hostage, or a ship hijacked should not ever be a reason for terminating a relationship with the seafarer. Is it continued employment or other arrangement? The WG should consider whether compensation equivalent to basic wages could be a possibility.
Seafarers	Yes, and past the date of expiry and until their release and repatriation.
<b>Question 8 Part I – Content of the proposal Financial security</b>	<b>Should the proposal provide that there may be a financial security system in the form of a social security scheme or insurance or a national fund or other similar arrangements (for instance similar to the one provided in Standard A2.5.2 by the 2014 amendments of the Code of the MLC, 2006) to cover the shipowner’s liability for the payment of wages to seafarers held captive? If yes, please specify.</b>
Americas/Canada	No. There will be a complexity to establish this requirement: <ul style="list-style-type: none"> <li>– There is no specific zone of high risk of piracy or situation of captivity.</li> <li>– Today Zones may change in the future.</li> <li>– Determining Zones will aim at discriminating certain locations over others.</li> </ul> The obligation shall remain to shipowners, i.e. decision to set financial security shall be discretionary.
Asia-Pacific/Singapore	Yes, there should be a form of financial security system to cover a shipowner’s liability for payment of wages during captivity. Please also see our response to question 5. An option is to adopt the requirements of the amendments of 2014, which requires shipowners to obtain a financial security cover against the abandonment of seafarers.
Europe/Netherlands	The Netherlands is not in favour of a provision of a financial security system, because of the decline of the incidents.
Europe/United Kingdom	While the security of funds is desirable, we have a concern that a danger of having mandated financial security is that it provides an incentive to pirates etc., to hold out for payment. The WG should consider the wider ramifications of this possibility.
Shipowners	No, this would not be appropriate in any circumstance.

<b>Responders</b>	<b>Questions and responses</b>
Seafarers	Yes, there may be a financial security system in the form of a social security scheme or insurance or a national fund or other similar arrangements.
<b>Question 9 Part I – Content of the proposal Maritime lien</b>	<b>Should the proposal make reference to maritime liens for the purpose of the protection of wages of seafarers held captive? If yes, please specify.</b>
Americas/Canada	Yes. Amend Article 8 of the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages 1926 to include protection of wages of seafarers held captive.
Asia–Pacific/Singapore	Yes. Similar to claims for unpaid wages, claims for wages earned during captivity should be protected by a maritime lien as well.
Europe/Netherlands	The difficulty of a maritime lien is that the ship is often also in the hands of the pirates or robbers, so the Netherlands cannot see the added value of a maritime lien.
Europe/United Kingdom	If wages are being paid, the lien is not an issue. We cannot see that this is helpful during an incident if the ship is held.
Shipowners	The Shipowners' group notes that maritime liens are already referred to in Guideline B2.2.2(4)(l) of the MLC, 2006. We would again like to see evidence of appropriate cases before responding further.
Seafarers	No it is not necessary.
<b>Question 10 Part I – Content of the proposal Others</b>	<b>Please indicate any other element that should be included in the proposal.</b>
Americas/Canada	Nil.
Asia–Pacific/Singapore	Nil.
Europe/United Kingdom	A reference to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents may be useful – for example, provisions for repatriation, medical assessment on return, including PTSD.
Shipowners	The Shipowner group notes there is existing guidance on the pastoral care of the families of seafarers held captive by pirates, such as relevant IMO Assembly resolutions and the ISWAN–MPHRP programme, which may be beneficial.
Seafarers	The payment of any other accrued contractual benefits as set out in the SEA.
<b>Question 11 Part II – Form of the proposal Scope and definitions</b>	<b>Should the issue of the protection of seafarers' wages when seafarers are held captive on or off the ship as a result of acts such as piracy or armed robbery be dealt with by way of:</b> <b>(a) an amendment to the Code of the MLC, 2006? If yes, should the amendment refer to a Standard(s) or a Guideline(s) or both? Please specify.</b> <b>(b) Office guidelines outside of the MLC, 2006?</b> <b>(c) both (a) and (b)?</b>
Americas/Canada	(a) No. (b) No. (c) Yes. The framework of the requirement and basic conditions shall be addressed as a requirement under the MLC, 2006. The decision shall remain with shipowners on the implementation, i.e. financial security.

<b>Responders</b>	<b>Questions and responses</b>
Asia–Pacific/Singapore	(a) To ensure a level playing field among member States, amendments should, where applicable, refer to both the Standards and Guidelines of the MLC. This issue should not be dealt with differently from other wage issues. (b) Not preferred.
Europe/Netherlands	An amendment to the Code of the MLC, 2006, to be stipulated in a Standard. The Netherlands wants a level playing field. An amendment to the MLC, 2006, is the best way forward to achieve this.
Europe/United Kingdom	An ILO guideline not linked to the Code of the MLC 2006 would limit the impact of the policy. We think that making clarifications of how existing provisions of the MLC, 2006, apply in such an incident, and ensuring that they do not allow a loophole in the protection of seafarers held captive could be a way forward, for example: <ul style="list-style-type: none"> <li>– Standard A2.1 – SEA to include conditions applying in event of an incident where the vessels is operating in high risk area/other area of known risk;</li> <li>– Guideline B2.5 – Add to circumstances where seafarer entitled to repatriation.</li> </ul> A separate document could be developed to provide a guide to best practice in the event of an incident occurring.
Seafarers	In Part A of the Code.
<b>Question 12 Miscellaneous</b>	<b>Please indicate any other suggestions that should be considered by the WG.</b>
Americas/Canada	Repatriation shall be addressed; Depending on the final document, if we consider that the “employment agreement” expires during a “period of captivity” or on the meaning of the expression “period of captivity”, it is worth mentioning that repatriation of a released or deceased seafarers shall be addressed.
Asia–Pacific/Singapore	Nil.
Seafarers	We should include something on the role of the flag State and that it is important that the vessel retains the nationality even if the annual fees are not paid. Panama removed the Iceberg 1 on the grounds that the fees were not paid.

## Replies to the second round of questions

Responders	Questions and responses
General comments	General comments/replies received to the second round of consultations are found at the end of this table. Note that in certain places and for clarity, some comments have been repeated.
Further questions 1 and 2 Scope and definitions	Whether the proposal should cover, in addition to acts of piracy and armed robbery, “other similar situations”. If so, what should be the elements to be included in the definition of “other similar situations”?
Americas/Canada	Canada considers that the proposal should only address acts of piracy and armed robbery. Canada considers that it is not feasible to correctly define “other similar situations”; introducing this concept opens the door to a number of interpretations and may oblige certain administration to take position on issues that do not fall under their jurisdiction. Canada believes that, if there is a need for an adjustment, the change or introduction of other similar situations shall be addressed directly within the definition of “piracy” or “armed robbery”.
Americas/Panama	Panama considers that the proposal should provide that shipowners should continue to pay seafarers’ wages when seafarers are held captive on or off the ship as a result of acts of piracy and/or armed robbery (restricted only to acts of piracy and/or armed robbery).
Asia–Pacific/Singapore	We note that in practice, there are many similar situations where seafarers are held in captivity in addition to acts of piracy or armed robbery. The proposal can consider including other similar situations based on a principle approach. Guidance can be provided based on the principle that seafarers’ wages shall be protected in situations whereby seafarers are held captive not due to their fault.
Asia–Pacific/Philippines	Yes, the proposal should include “other similar situations”. Among these “other similar situations” would be human trafficking or forced labour of seafarers that involve the element of deprivation of liberty through violence or use of force.
Europe/Netherlands	The Netherlands wants to limit the proposal to piracy and armed robbery as defined in the UNCLOS and in the IMO Resolution A.1025(26) (Annex paragraph 2.2) on the IMO’s Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships.
Europe/Norway	Norway would not be in favour of extending the conditions for the requirement to become effective to “other similar situations”; if piracy and armed robbery are considered too limiting, then a possible extension would be “or for other unlawful reasons”.
Europe/United Kingdom	We consider that provision should be made to protect seafarers’ wages in any situation where; (a) crew is unlawfully denied control of the vessel; or (b) crew is unlawfully detained against their will, whether on board or ashore. A distinction needs to be made between lawful and unlawful detention, removal or denial of control.
Shipowners	It is important to clarify that the Shipowners’ group are currently only considering a definition of pure piracy and not including hostage-taking, illegal detention, or other instances where a ship is held within this scope. We believe the further issues are likely to be separately discussed during the WG meeting and we will give an appropriate response on these matters following considered debate. ... The scope should be limited to situations of piracy as there are no instances of non-payment that we are aware of in relation to situations of armed robbery which are resolved after much shorter periods of time. Likewise there is no need to broaden the scope to cover any other areas as well.
Seafarers	Yes. All situations where a seafarer is unlawfully held captive on board the vessel or ashore. The IMB 2016 Annual Piracy Report has just been released and their press release under maritime kidnappings notes that 62 people have been kidnapped and held for ransom. “Just over half were captured off West Africa, while 28 were kidnapped from tugs, barges, fishing boats, and more recently merchant ships, around Malaysia and Indonesia.”

Responders	Questions and responses
<b>Further question 3 Scope and definitions</b>	<b>Whether the proposal should expressly provide that the payment of allotments, as provided under Standard A2.1(4) should be continued?</b>
Americas/Canada	Canada considers that the payment of allotments, as provided under Standard A2.1(4) should be continued. Canada considers that a reference to “wages” is a reference as set out in the seafarer’s employment agreement and complies with the provisions of Standard A2.1(4).
Americas/Panama	Panama considers that the “wages” referred to are those set out in the seafarer’s employment agreement. By including the term “seafarers’ employment agreement” within a proposal that may become part of the Code of the MLC, 2006, we must understand that “seafarers’ employment agreement” shall comply with the provisions of Standard A2.1(4).
Asia–Pacific/Singapore	If the ship and its crew are covered by a valid CBA that continues to remain in force, then the term “wages” in the proposal should refer to all elements and items covered by this CBA. In the absence of such a CBA, the term “wages” should then refer to the payments provided in Standard A2.2 and should include payment of allotment.
Asia–Pacific/Philippines	Yes. The proposal should also expressly provide not just the payment of allotments, but also other accrued contractual entitlements.
Europe/Netherlands	The Netherlands presumes that the reference to be made is to Standard A2.2(4) Measures to ensure that seafarers are able to transmit their earnings to their families include: (a) a system for enabling seafarers, at the time of their entering employment or during it, to allot, if they so desire, a proportion of their wages for remittance at regular intervals to their families by bank transfers or similar means; and (b) a requirement that allotments should be remitted in due time and directly to the person or persons nominated by the seafarers. If this is correct then allotments should continue, unless the seafarer agrees otherwise with the shipowner in the seafarers’ employment agreement.
Europe/United Kingdom	Precise wording will depend on the outcome on other questions, but the principle that seafarers’ families should continue to get financial support must be correct. If still paying wages, there should be no need to specify that allotments continue – this should happen automatically.
Seafarers	Yes – it is essential to ensuring the well-being of the family who depend on it in order to pay the rent, buy food, send any children to school and meet the cost of any medical treatment.
<b>Further question 4 Scope and definitions</b>	<b>If the proposal includes a reference to “compensation payments in lieu of wages”, what this expression encompasses?</b>
Americas/Canada	Canada considers that a reference to “compensation payments” should mean a lump-sum payment made to the family that will include wages and may include compensation for financial or professional loss, disability, and medical treatments, as well as family or survivor benefits. Canada considers that the decision to include “compensation payments in lieu of wages” shall be further discussed, as this will have significant impacts for ship operators or certain governments.
Americas/Panama	Panama considers that the proposal should not include reference to compensation payment in lieu of wages.
Asia–Pacific/Singapore	Nil.
Europe/Netherlands	The Netherlands prefers option (a) contractual wages as indicated in the seafarer’s employment agreement.
Europe/United Kingdom	Precise wording will depend on the outcome on other questions, but the principle that seafarers should not lose income while they are held captive through no fault of their own should be upheld. The difficulty of defining this could be a good argument for requiring that the seafarer remains employed, and that wages continue to be paid. Referring to payment in lieu of wages might render seafarers legally unemployed, which may have other implications in



Responders	Questions and responses
	terms of social security contributions or pension contributions, disadvantaging them in the long term.
Shipowners	The initial paper made reference to payment of wages so we see no need to broaden the scope of coverage beyond this issue. If existing contracts go beyond this then these should be appropriately honoured.
Seafarers	All the benefits that the seafarer and their family would otherwise have enjoyed.
<b>Further question 5 Time limitations</b>	<b>What information would be needed to establish the death of the seafarer during captivity, in particular if the exact date of the death is not known?</b>
Americas/Canada	<p>Canada considers that a "Death Certificate" is the relevant information required to establish the death of the seafarer during captivity. Canada considers that in the case of the disappearance of a seafarer, including when the exact date of death of the seafarer is unknown, it shall be left to each administration, through their legal system, to establish the mandatory requirements to issue a "Death Certificate".</p> <p>In Canada, the declaration of death can be issued after the disappearance of persons in circumstances of peril, based on proof that the individuals have disappeared in such circumstances, they have not been heard from since their disappearance, and there is sufficient evidence to find that the individuals are deceased.</p>
Americas/Panama	Panama considers that when the exact date of death of seafarers is unknown, a maximum period of time or limit should be established. It really is difficult to establish this state. The civil laws of our country state that a person's death presumption is declared when five years have passed since the person was last seen, but definitely is not possible pay wages to continue to pay the person for five years. This topic should be carefully considered at the meeting of the WG.
Asia-Pacific/Singapore	In practice, date of death is established through official document or police report submitted. This can be used as supporting document to establish the exact date of death.
Asia-Pacific/Philippines	There should be reasonable grounds determined by a competent authority to establish the seafarer's death during captivity, and that wages and other contractual benefits and allotments shall be paid until that point of conclusive death.
Europe/Netherlands	Time of death should be defined according to the applicable legislation. Not necessary to define in the amendment the time of death of the seafarer, but it should be defined by the MS when a person is considered to be dead (and there is no need for a specific regulation for a time of death of a seafarer). So no criteria defined in the amendment.
Europe/United Kingdom	It would be helpful to have some information provided on how death has been established/notified in previous incidents. This is an area that needs further discussion concerning what is practical in the circumstances. In normal circumstances the United Kingdom would expect the master to record and notify the incident in the official logbook. Where this is not possible, we should consider statements from other crew after release; statements from those holding the ship/seafarers, if supported by other evidence.
Seafarers	There should be reasonable grounds to conclude that the seafarer had died and the date that it is possible to reach such a conclusion should be deemed to be the date of the death. Wages, other contractual benefits and the allotments shall continue until that date.
<b>Further question 6 Time limitations</b>	<b>Whether the proposal should establish a minimum period for such payments of wages under certain conditions, and what those conditions should be?</b>
Americas/Canada	<p>Canada considers that the proposal should establish that such wages be paid immediately upon the receipt of the information that the seafarer has been captured, and should be paid until the cessation of the captivity of the seafarer or the submission of a "Death Certificate". Canada considers that there should not be any limitation to the period of payment.</p> <p>The family of the captured seafarer in most cases is dependent on these payments and, in some countries, can only obtain compensation after a declaration of death is issued by a legal authority. Therefore, we believe that the payment of wages for a captured seafarer can only</p>

Responders	Questions and responses
	be stopped upon the cessation of the captivity or the issuance of the declaration of death of the seafarer.
Americas/Panama	Panama considers it feasible for the proposal to include a maximum period for the payment of wages under certain conditions, one of which may be the death of seafarers or when the captivity exceeds a certain time. It is also important to consider that there may be captivity that exceeds six or eight months.
Asia-Pacific/Singapore	We are of the view that seafarers should continue to receive wages when they are held in captivity through no fault of the seafarers and it is the shipowner's responsibility to ensure that seafarers continue to be paid for as long as the crew is in captivity. This is based on the premise that the seafarers are held captive as a result of the employment provided by the employer, carrying out instructions that led to the ship and its crew to be in captivity. Therefore, shipowners should be motivated to protect its interests to secure a quick release of the ship and its crew from captivity. It would run counter to this principle if the shipowner is only obliged to continue paying wages up to a minimum number of months of captivity.
Asia-Pacific/Philippines	Payment of wages should continue for the entire duration of captivity, and should be a direct liability of the shipowner. For a country with labour-supplying responsibilities such as the Philippines, the responsibility to pay wages during captivity may be covered by adequate financial security.
Europe/Netherlands	No minimum period.
Europe/United Kingdom	We consider it reasonable that wages should be paid for up to two months after cessation of an incident covered by the proposal. This is comparable to the compensatory payments in Standard A2.6 and Guideline B2.6 of MLC, 2006, which provides for adequate compensation for subsequent unemployment arising from a ship's loss or foundering. However, if this is not acceptable the minimum period would be until the seafarer is released and repatriated, or until their death in captivity (after which compensation should be payable under Standard A4.2).
Shipowners	It would however be important to agree a time limit at the meeting particularly for cases where the status of the crew and the vessel become unknown after a defined agreed period of time. The period of captivity will need to be discussed at both meetings. There will also need to be a discussion as to whether there should be an agreed exception when the employment may be considered reasonable to terminate if there has been no evidence of the safety and well-being of the crew and ship after a long-agreed period of time. This would link into the question related to the specific information which would be required to establish the death of crew members. A full discussion of this issue would be helpful at the meeting.
Seafarers	They should be paid for the duration of captivity and until repatriation.
<b>Further question 7 Seafarer's employment agreement</b>	<b>Whether the express reference to shipowners' obligations in the event of captivity should be included in all seafarers' employment agreements, or only certain agreements, and, if so, how to determine to which agreements this would apply?</b>
Americas/Canada	Canada considers that the proposal should indicate that the seafarers' employment agreement should expressly refer to the shipowner's obligations and/or conditions that would apply in the event of captivity.
Americas/Panama	Panama considers that the proposal should indicate that the seafarers' employment agreement should expressly refer to the shipowner's obligations and/or conditions that would apply in the event of captivity.
Asia-Pacific/Singapore	We propose it to be explicitly included along with other items required under Standard A2.1(4). This is with the view that without explicit mentioning, the Convention's text may consider that the seafarer is no longer in employment given that the seafarer may be prevented from carrying out his/her duties during captivity.
Asia-Pacific/Philippines	Such express reference should be included in all seafarers' employment agreements. The Philippine Standard Employment Contract shall be revised for this purpose.

Responders	Questions and responses
Europe/Netherlands	All seafarers' employment agreements.
Europe/United Kingdom	Provision could be made in a seafarer's employment agreement if the vessel is scheduled to enter a high risk area or areas known to have heightened risk, according to information published by the IMB. It may be useful for discussion to have information about whether any incidents reported to the IMB took place outside high risk areas/areas already identified as "risky"/requiring vigilance.
Seafarers	Yes, as it would provide clarity that there was a contractual right.
<b>Further question 8 Financial security</b>	<b>Whether the proposal should include the possibility of providing protection through a financial security system in the form of a social security scheme or insurance or a national fund or other similar arrangements?</b>
Americas/Canada	Canada considers that the proposal should not include the possibility of providing protection through a financial security system in the form of a social security scheme or a national fund or other similar arrangements. Canada considers that there will be complexity in establishing a financial security system in the form of a social security scheme or a national fund or other similar arrangements. The determination of the specific high-risk zones of piracy or captivity may: (1) result in discriminating certain locations over others; and (2) change in the future. The Shipowners shall maintain financial security, in the form of a private insurance system, depending on the voyage intended.
Asia-Pacific/Singapore	We recognize that the intent of the proposal in protecting seafarers' wages is to ensure that seafarers continue to be paid and that their family members do not have to suffer from hardship due to non-payment of wages in the event seafarers are held in captivity. While it is the shipowner's obligation to ensure that seafarers continue to be paid during periods of captivity, we recognize that shipowners might have limited resources to continue carrying out their obligations, especially when the ship is held captive and not earning revenue. Mandating shipowners to have insurance coverage would therefore act as a safety net for both seafarers and shipowners. Based on data provided in the report, we understand that there has been a huge variance in the period of captivity even though the average period ranges from six to nine months. Instead of mandating insurance coverage for the whole period of captivity, consideration can be given to mandate shipowners to have insurance coverage for a minimum period of time to ensure short-term relief for family members of the seafarers.
Asia-Pacific/Philippines	Yes, financial security emphasizing a shipowner's direct liability to pay wages and contractual entitlements during captivity should be in place.
Europe/Netherlands	No.
Europe/Norway	As the issue concerns the employment agreement, the financial security already provided for in the MLC, 2006, should be sufficient. Therefore we would not support any requirement for additional financial security.
Europe/United Kingdom	Given that some P&I clubs already offer cover we do not think that there is a need for a mandatory requirement to have cover for such (hopefully) rare incidents. It should remain up to the shipowner to decide whether they want to take out specific cover for this risk. We have a concern that there could be a risk of increasing the attractiveness of piracy and hostage-taking if it was known that all shipping companies routinely insured against such incidents. This could jeopardize seafarers' safety rather than secure it.  If a seafarer's wages was not paid for two months, this would fall into the definition of abandonment under Standard A2.5.2; the MLC, 2006, amendment provisions on abandonment would then apply, so no need for additional provisions regarding financial security.
Shipowners	We see absolutely no reason to put in place financial security measures, which would unreasonably and adversely affect our industry.
Seafarers	Yes.

Responders	Questions and responses
<b>Further question 9 Others</b>	<b>Whether the proposal should provide protection for other contractual benefits as provided in the seafarers' employment agreement (for example, as set out in Standard A2.1(4)(h) * and (i) ** of the MLC, 2006. Please specify.</b>
Americas/Canada	Canada considers that the proposal should include the possibility of providing protection for other contractual benefits as provided in the seafarers' employment agreement. Canada believes that when a mutual agreement is in place, conditions related to these situations shall be negotiated and clarified between the two parties.
Asia-Pacific/Singapore	Contractual benefits as per SEA/CBA should continue to be in place during the period of captivity even if the SEA has expired during this period.
Europe/Netherlands	As long as the contractual wages are paid there is a social security coverage. But as the contractual wages continue to be paid, there is no entitlement to social security benefits. Medical care insurance by the employer could be maintained. Question is whether the seafarer may benefit from it in captivity.
Europe/United Kingdom	We suggest that the current discussion is limited to wages (which would then automatically protect other directly related benefits accruing such as payment of national social security contributions, allotments) and repatriation.
Seafarers	Yes
* <i>"the health and social security protection benefits to be provided to the seafarer by the shipowner".</i> ** <i>"the seafarer's entitlement to repatriation".</i>	
<b>Further question 10 Others</b>	<b>Whether there are other elements that should be considered for inclusion in the proposed solution.</b>
Americas/Canada	Canada considers that the United Nations Office on Drugs and Crime (UNODC) is one of the first instances in providing support to victims of piracy and their families, and securing their safe release and repatriation. The proposal should include references to the UNODC's Hostage Support Program. Canada believes that a reference to the UNODC's Hostage Support Program shall be contained within the proposal when considering any additional humanitarian support to seafarers held captive and their families. We could consider, in addition to the proposed solution, to make requirements for financial support from Shipowners' and Seafarers' groups to the UNODC.
Asia-Pacific/Singapore	Nil.
Europe/Netherlands	No.
Europe/United Kingdom	An addition could be made to Guideline B2.5, to make clear that a seafarer is entitled to repatriation at the end of a piracy/armed robbery/hostage incident.
<b>Further question 11 Others</b>	<b>If the proposed solution should include a reference to existing guidance to shipowners on best practice to support seafarers and their families during or after piracy incidents, or to similar or related guidance, what guidance (and, if only certain parts of such guidance, which parts) should be referred to? Please specify.</b>
Americas/Canada	Canada considers that the UNODC is one of the first instances in providing support to victims of piracy and their families, and securing their safe release and repatriation. The proposal should include references to the UNODC's Hostage Support Program.  Canada believes that a reference to the UNODC's Hostage Support Program shall be contained within the proposal when considering any additional humanitarian support to seafarers held captive and their families. We could consider, in addition to the proposed solution, to make requirements for financial support from Shipowners' and Seafarers' groups to the UNODC.
Asia-Pacific/Singapore	We agree that it would be useful to include existing guidance of best practices in the event of piracy incidents and similar incidents in the Guidelines.

Responders	Questions and responses
Asia-Pacific/Philippines	Yes. For instance, recruitment intermediaries should be required to provide anti-piracy training based on international best practices. Also, psychosocial counselling may be provided to victimized seafarers and their families.
Europe/Netherlands	Not in a Standard but can be done in a Guideline to the MLC, 2006.
Europe/United Kingdom	Do not consider this a priority for this meeting.
Seafarers	What do you think as there could be a reference to the Contact Group paper on Interim Guidelines on Measures Relating to the Welfare of Seafarers and their Families Affected by Piracy Off the Coast of Somalia (IMO MSC 93/16/1)?
<b>Further question 12 Form of the proposal</b>	<p><b>Should the issue of the protection of seafarers' wages when seafarers are held captive on or off the ship as a result of acts such as piracy or armed robbery be dealt with by way of:</b></p> <p><b>(a) an amendment to the Code of the MLC, 2006? If yes, should the amendment refer to a Standard(s) or a Guideline(s) or both? Please specify.</b></p> <p><b>(b) Office guidelines outside of the MLC, 2006?</b></p> <p><b>(c) both (a) and (b)?</b></p>
Asia-Pacific/Singapore	To ensure a level playing field among member States, amendments should, where applicable, refer to both the Standards and Guidelines of the MLC, 2006. We concur with the United Kingdom's proposal to cover incidents of piracy or armed robbery on existing provisions of the MLC, 2006, using both Standards and Guidelines, where applicable.
Asia-Pacific/Philippines	Protection of seafarers' wages during captivity as a result of piracy, armed robbery or "other similar situations" should be through an amendment to the Code of the MLC, 2006.
Europe/Netherlands	<p>(a) Amendment should regulate in a Standard what the obligation is for the shipowner when a seafarer is held captive by an act of piracy or armed robbery. A Guideline can make reference to guidance documents.</p> <p>(b) No, as this should be dealt with within the MLC, 2006, requirements. We have a unique instrument and we should, as much as possible, keep it. This is to maintain a level playing field worldwide.</p> <p>(c) No, only (a).</p>
Europe/Norway	<p>Norway wishes to propose that this issue is resolved in a simple and effective manner. We would not support amendments either to the employment agreement or to extend the list of items to be inspected in connection with the Maritime Labour Certificate. The problem identified is not of such magnitude that it would warrant such measures.</p> <p>The issue is primarily about the conditions under which the seafarer's employment agreement with the shipowner is terminated, and specifically, if it terminates during a seafarer's unlawful captivity. In our legislation, a termination under such conditions would most probably be deemed as unfair dismissal, cf Section 5-6 of the Ship Labour Act 2013.</p> <p>Therefore, the only amendment that we could see a need for would be an added paragraph in Standard A2.1 stating that captivity due to piracy or armed robbery does not constitute a valid reason to terminate an employment agreement. Norway would not be in favour of extending the conditions for the requirement to become effective to "other similar situations"; if piracy and armed robbery are considered too limiting, then a possible extension would be "or for other unlawful reasons".</p> <p>For the reason stated above, we do not favour amending Standard A2.1.4, i.e. the format of the employment agreement. It is sufficient to formulate an absolute requirement in the MLC, 2006, thereby obviating the need to amend each and every employment agreement. However, a new paragraph in Standard A2.1 would be the best solution.</p> <p>For the obligation on the shipowner to become effective, the seafarer must be captured during the period of validity of the employment agreement, in order for the shipowner to have clarity and predictability with regard to his obligations.</p> <p>We do not see that any further issues are involved that need addressing in the MLC, 2006, other than possibly requiring that the shipowner's obligation should run for a reasonable</p>

Responders	Questions and responses
	<p>amount of time. It would probably be too ambitious to try to determine such a period with more exactitude.</p> <p>As the issue concerns the employment agreement, the financial security already provided for in the MLC, 2006, should be sufficient. Therefore we would not support any requirement for additional financial security.</p>
Europe/United Kingdom	<p>(a) We prefer mandatory amendments to ensure seafarers are not left without protection by default. Guidelines could expand on how mandatory elements would apply in case of piracy/armed robbery/hostage-taking.</p> <p>In regard to (b) and (c) we are not clear what the implications, if any, of issuing Office guidelines either in preference to, or alongside, Guidelines within the Code would be.</p>
Shipowners	<p>If it was felt that the only option was an amendment to be made to the MLC, 2006, this could take the following form under Standard A2.1:</p> <p>“Any statement in a Seafarer’s Employment Agreement or Collective Bargaining Agreement which has the effect of permitting the cessation of payment of wages in a situation of piracy shall be void”.</p> <p>This could then be accompanied by appropriate supporting text in Guideline B2.1.</p> <p>It is also recognized that an amendment to the MLC, 2006, would only assist for cases which are covered by the scope of the Convention and therefore stand-alone guidance for all parties may be a better option if it is felt important also to provide recommendations to cover merchant vessels, fishing vessels and domestic trading vessels such as dhows and junks. The proposed amendment to Standard A2.1 refers to “situations of piracy”.</p>
Seafarers	(a) Standard.
<b>Further question 13 Miscellaneous</b>	<b>Please indicate any other points that should be considered by the Working Group.</b>
Asia-Pacific/Philippines	<p>Attention of the Office is called to documented cases of seafarers held for “further investigation” by police authorities of the port State after an accident/incident. The seafarers in these cases were not been formally charged in courts or legal tribunals and were not detained or incarcerated, but were nevertheless barred from rejoining ships or leaving the port State. In such situations, the seafarer should be paid his/her wages for the entire period that he/she is held by the authorities, even after the expiration of the employment contract, until he is released and repatriated back to the point of hire, or until he is formally charged for an offence in that jurisdiction.</p>
Europe/United Kingdom	None
Shipowners	<p>The Shipowners’ group is grateful that the office has been able to contact both the IMB and ISWAN regarding the data that they hold regarding piracy incidents. The feedback received demonstrates that there is still unfortunately a vacuum in the information which is readily available to confirm the size and complexity of the issue. While the IMB has done an excellent job in centrally maintaining a database of all cases reported, it is not set up to collate information into contractual matters relating to crew members. Therefore, it is difficult to ascertain how many of the reported cases of piracy are further impacted by non-payment of wages.</p> <p>However, it is hoped that, as the MPHRP gains more global visibility, now that it is being administered through ISWAN, seafarers and their families who are affected by non-payment in the future will be able to report these cases so that prompt assistance can be given and more accurate data kept for reporting purposes. The information held to date has predominantly come from one region and it is hoped that this too will change with wider publicity of the ISWAN mechanism.</p> <p>Given that the paper recognizes that the real number of cases is small we are still unsure if formal action by way of an amendment to the MLC, 2006, is really necessary.</p>