

(As delivered)

**“Piracy, the curse of maritime transport”  
Seminar on Piracy and Armed Robbery at Sea  
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**Session 3 “The human cost of piracy”  
Keynote speech by Ms. Natalie Shaw, ICS**

Presentation to European Commission on Piracy and the Maritime Labour Convention

Mr. Chairman, Distinguished delegates, it is my pleasure to address you today on behalf of the International Chamber of Shipping and the International Shipping Federation. Both organisations over the last few years have invested considerable time and energy in reviewing the Piracy Situation, highlighting its gravity, and in trying to find ways to give practical assistance to Seafarers and Shipowners in this regard.

I have been asked to address you today on the Impact of the Maritime Labour Convention 2006 in relation to piracy and I hope to give you some food for thought over the next twenty minutes.

The International Labour Organisation’s Maritime Labour Convention 2006 is an important new framework Convention seeking to bring social justice and fair competition but it will only truly be tested by the experiences of seafarers serving on vessels affected by it once it enters into force. It has a bold agenda aimed at creating change both onboard and in international practice and aims to place minimum international labour and social standards for seafarers, alongside the other pillar conventions of SOLAS, Marpol and STCW.

Upon adoption in 2006 the Convention was expected to take approximately 5 years to gain the ratifications needed to come into force. However, we still need 5 ratifications for the Convention to enter into force 1 calendar year after the 30<sup>th</sup> ratification is received.

To date the following European Countries have ratified alongside Norway: - Denmark, Spain, Luxembourg, Bulgaria, Latvia, and The Netherlands. Yet the initial expectation that more European Countries would have ratified by now as expected when the Social Partners Agreement was introduced has not materialised largely due to the global economic downturn.

Therefore it is still too early to see whether it will be successful in achieving its initial aspirations and achieve real change transcending from being a paper document to become a successful international legal instrument. This will largely depend on effective national implementation. Tools are available to do this namely ILO’s traditional tripartite approaches, independent labour inspection, complaints systems, the ILO supervisory system, an international maritime regulatory regime based on ship inspections and certification and port state control and no more favourable treatment. However, without doubt its effectiveness lies in good faith implementation of legal obligations by ratifying states and their ability to ensure sufficient globalised technical knowledge and capacity.

The Convention comprises 5 main titles covering:-

- The main Requirements for seafarers to work on a ship
- Conditions of Employment
- Accommodation, Recreational Facilities, Food and Catering
- Health protection, medical care, welfare and social security protection
- And Compliance and Enforcement.

Interestingly piracy is not mentioned at all within the convention. This may be a specific area for future review however it would be difficult to effectively achieve as every piracy incident has its own specific circumstances and challenges. Countries transposing the Maritime Labour Convention into their own national laws may supplement them with piracy related clauses but the specific issues arising in each case must be reviewed in the context of national law.

I should state that given the limited time allocated it is impossible for me to cover the whole Convention. However it should be reviewed in its entirety. The key point is that it may be impossible to fulfil the obligations within it given possible volatile circumstances on board arising in situations of piracy. To illustrate this point I will now highlight various areas within title 2.

Regulation 2.1 – covers Seafarers’ employment agreements and aims to ensure these are fair. It Terms and conditions must be set out or referred to in a clearly written legally enforceable agreement which the seafarer can review and seek advice on before signing. If compatible with national law and practice, the agreements shall incorporate applicable collective bargaining agreements. They must be signed by both the seafarer and the shipowner or their representative and the seafarer must be given a signed original copy.

This illustrates the need for a seafarer to properly review and seek advice on their contractual terms and to seek clarification on issues such as contract duration, payment conditions, repatriation coverage etc. The seafarer may need to ask what the company will do in a piracy situation should the contractual period end during a hostage incident to fully understand their contractual entitlements. It is hoped that a responsible employer would cover such situations but this is not a legal requirement even if there is a moral obligation to do so.

National laws and regulations need to specify matters within employment agreements including:

- the seafarer’s full name, date of birth or age, and birthplace;
- the ship owner’s name and address;
- the place where and date when the agreement is entered into;
- the capacity in which the seafarer is employed;
- the amount of the seafarer’s wages or, where applicable, the formula used for calculation;
- the amount of paid annual leave or, where applicable, the formula used for calculation;
- the termination of the agreement and its conditions, including:
- If the agreement is for an indefinite or definite period, the date fixed for its expiry; and
- if the agreement was for a voyage, the port of destination and time which must expire after arrival before the seafarer should be discharged;
- health and social security benefits to be provided to the seafarer by the shipowner;
- the seafarer’s entitlement to repatriation;
- reference to the collective bargaining agreement, if applicable; and
- other particulars required by national law.

National laws or regulations establish minimum notice periods for both seafarers and shipowners to terminate an employment agreement early. Minimum periods can be determined after consultation, but not less than seven days. Shorter notice may be given in circumstances recognized under national law or regulations or applicable collective bargaining agreements as justifying earlier termination. However the state must ensure that a seafarer's need to terminate the agreement earlier without penalty for compassionate or other urgent reasons is considered.

Regulation 2.2 on wages aims to ensure seafarers are paid for their services regularly and in full at least monthly as in their employment agreements or any applicable collective agreement. Seafarers shall receive a monthly account of payments due and amounts paid, including wages, additional payments and the exchange rate used. Shipowners must provide seafarers with a means to transmit all or part of their earnings to their families, dependants or legal beneficiaries. These measures include a system to enable seafarers, either entering employment or during it to allot some of their wages for remittance at regular intervals to their families by bank transfer or other means; and a requirement that allotments are remitted in due time directly to the seafarer's nominee.

The terms basic pay or wages, consolidated wage; hours of work and Overtime are defined. Guidance is also given for seafarers whose remuneration includes separate compensation for overtime worked stating that normal hours of work should not exceed eight hours a day and to calculate overtime, national laws or regulations should prescribe the number of normal hours per week covered by wages if not stated within collective agreements. These should not exceed 48. Overtime compensation should be at least one and one-quarter times basic pay; and all overtime records should be kept by the master or person assigned and endorsed by the seafarer at least monthly. It may well be difficult to properly administer such records in a piracy situation where the master and crew are separated. Only time will tell if issues will arise as a result.

For seafarers with fully or partially consolidated wages the employment agreement should clearly specify the number of hours of work expected and any additional allowances due apart from the consolidated wage, and the circumstances. National laws or collective agreements may compensate for overtime or work performed on the rest day and public holidays by at least equivalent time off duty away from the ship or additional leave in lieu of remuneration or other compensation provided. Again, this may be difficult to record during piracy incidents. Wages should be paid either by bank transfer, bank cheque, postal cheque or money order. On termination of a contract all remuneration due should be paid without delay and adequate penalties or other appropriate remedies may be imposed where shipowners' unduly delay or fail to pay everything due. It remains to be seen what will happen when a contract expires during a hostage period. This will be down to national laws and regulations and how the employment contracts are drafted.

Wages should be paid directly to seafarers' designated bank accounts unless requested otherwise in writing and a shipowner should impose no limit on a seafarer's freedom to allocate this. This may prove unhelpful in piracy situations where seafarers normally wire money back to their family members and have initially chosen not to send remittances directly back to their families. Remuneration deductions are only permitted if there is an express provision within national laws or regulations or an applicable collective agreement and the seafarer is informed. If seafarers' claims for wages and other employment costs are not secured in line with the International Convention on Maritime Liens and Mortgages, 1993, claims may be protected under the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).

Regulation 2.3 – Hours of work and rest aims to ensure seafarers have regulated hours of work or rest and establishes maximum or minimum hours of rest over given periods. The terms hours of

work and hours of rest are defined and do not include short breaks. Normal working hours comprise an eight-hour day with one day of rest per week and rest on public holidays. National laws must consider seafarer fatigue especially for those whose duties involve navigational safety and safe and secure ship operation. A seafarer on call shall have an adequate compensatory rest period if the normal rest period is disturbed by call-outs to work. Seafarers' work hour records must be kept in a standardized prescribed format to monitor compliance. The seafarer shall receive a copy jointly endorsed by the master, or designated person, and the seafarer. However it is important to recognise that this is qualified by a statement that nothing will impair the master's right to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or to give assistance to other ships or persons in distress at sea. Accordingly, a master may suspend the work and rest hours schedule and require a seafarer to perform any hours of work necessary until the normal situation is restored. The question here is how long it would be considered appropriate to classify as such a situation. If a ship was held hostage for many months would it be appropriate and should companies have clearly documented procedures for such circumstances? It is also worth noting that normally in piracy situations the levels of work required will normally be less than in a seafarer's normal routine.

Regulation 2.4 – Entitlement to leave aims to ensure seafarers have adequate leave. It states that seafarers shall be given paid annual leave under appropriate conditions meeting national provisions. They shall also be granted shore leave to benefit their health and well-being. This is laudable in normal situations but may be impossible to fulfil during a piracy incident – clearly payments can be made in line with contractual responsibility but the real concern is the recognition of the importance of leave which clearly will be impossible and at a time when the seafarers may need it most.

Service off-articles should contribute to service. Pay during annual leave should be at the seafarer's normal level of remuneration under national law or as in the applicable employment agreement. For seafarers employed for under a year or in the event of termination of employment, leave entitlement should be pro-rata. In addition payment is required for public and customary holidays recognized by the flag State, periods of incapacity for work resulting from illness or injury or maternity and compensatory leave, under conditions determined by national law.

Although unlikely this raises the question whether a seafarer who was ill or injured during a piracy attack or who was in the early stages of pregnancy before the ship was taken hostage would be able to receive the support accorded by the convention? I would sincerely hope they would but only time will tell and I suspect this will depend on each specific case and national laws and regulations.

The convention also suggests special measures for those under 18 having served six months or less under a collective agreement or seafarers' employment agreement without leave on a foreign-going ship which has not returned to their country of residence since, and which will not return for at least three months. These could comprise repatriation at no expense to the country of residence to take leave earned during the voyage. This provision will be impossible to facilitate in situations when cadets are onboard a vessel attacked by pirates. Mechanisms may need to be established to support cadets in such situations.

Regulation 2.5 – Repatriation aims to ensure seafarers can return home and repatriated at no cost to them. Financial security to ensure due repatriation must be given:

- if the seafarers' employment agreement expires while they are abroad;
- when the seafarers' employment agreement is terminated:
- by the shipowner; or by the seafarer for justified reasons; and also
- when seafarers can no longer conduct their duties under their employment agreement or due to the specific circumstances. Appropriate provisions are required in either national

laws and regulations, other measures or collective bargaining agreements, prescribing the circumstances for entitlement to repatriation, the maximum duration of service periods on board after which repatriation can be paid – no longer than 12 months; and the precise entitlements given by shipowners for repatriation considering the destination, mode of transport, expenses and other arrangements to be made.

Shipowners must not require seafarers to make an advance payment for repatriation at the start of their employment, and cannot recover the cost from the seafarers' wages or other entitlements except where a seafarer is in serious default of their employment obligations. National laws and regulations shall not prejudice any right of the shipowner to recover the repatriation cost under third-party contractual arrangements.

If a shipowner fails to cover or meet the repatriation cost of seafarers so entitled the flag state shall arrange to repatriate seafarers concerned. If it does not, the State from which the seafarers are repatriated or the State of nationality may arrange repatriation and recover the cost from the flag state. Costs incurred shall be recoverable from the shipowner by the flag state. This may be difficult in situations of insolvency arising from a piracy attack. Noting applicable international instruments, including the International Convention on Arrest of Ships, 1999, a Member which has paid repatriation costs may detain, or request the detention of ships of the shipowner concerned until reimbursement is made. States shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board. States must not refuse repatriation to any seafarer due to the ship owner's financial circumstances or due to their inability or unwillingness to replace a seafarer.

A seafarer is also entitled to repatriation if a ship is bound for a war zone, as defined by national laws or regulations or seafarers' employment agreements where the seafarer does not agree to go. It is important to point out that a piracy zone is not the same as a war zone and these are not under the Scope of the MLC. Some countries have separate agreements with their unions specifically regarding arrangements for entering such a zone but these are purely down to local agreement.

The shipowner should pay the following Repatriation costs:

- passage to the repatriation destination;
- accommodation and food for seafarers who leave the ship until they reach their required destination;
- pay and allowances once the seafarers leave the ship until they reach the repatriation destination, if stated in national laws or regulations or collective agreements;
- transportation of 30 kg of personal luggage to the repatriation destination; and
- medical treatment when necessary until the seafarers are medically fit to travel

Time spent awaiting repatriation and travel time should not be deducted from paid leave accrued. Shipowners should continue to cover repatriation costs until the seafarers reach the prescribed destination or are provided with suitable employment on board a ship proceeding there.

Repatriation should be by the most appropriate and expeditious means normally by air. Seafarers should have the right to choose their destination either to the country that the seafarer has a substantial connection with including the place where the contract started; the place stipulated by collective agreement; the seafarer's country of residence; or any other place mutually agreed upon at engagement. Repatriation entitlement may lapse if seafarers do not claim it within the time stipulated under legislation or collective agreements.

If young seafarers under 18 have served for at least four months on their first foreign-going voyage and it is clear they do not suit life at sea they should be allowed to be repatriated at no expense to

themselves from the first suitable port of call with appropriate consular services. This too would be impossible to facilitate in situations of piracy attack.

Regulation 2.6 – Seafarer compensation for the ship's loss or foundering aims to ensure seafarers are compensated when a ship is lost or has foundered and dates back to a convention introduced in 1920 following the first world war at a time when such incidents were more common. It states that seafarers are entitled to adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or foundering and that each member shall make rules ensuring that, in every case, the shipowner shall pay an indemnity against unemployment resulting to each seafarer on board . This should not prejudice any other rights a seafarer may have under national law for losses or injuries arising. The indemnity should be paid for the days during which a seafarer remains unemployed at the same rate as the wages payable under the employment agreement, but the total payable to any one seafarer may be limited to two months' wages. Each Member should ensure seafarers have the same legal remedies to recover such indemnities as they have to recover wage arrears earned during service. One may ask why these provisions were not extended to piracy when introduced. This may need to be reconsidered at some point, but as I stated earlier would be extremely difficult given the diversity of national laws and regulations.

Regulation 2.7 on Manning levels aims to ensure seafarers work on board ships with sufficient personnel for safe, efficient and secure ship operation noting concerns about fatigue and the nature and conditions of the voyage. Every ship shall be manned by a crew that is adequate, in size and qualifications, to ensure its safety and security under all operating conditions, consistent with the minimum safe manning document or an equivalent document. When determining, approving or revising manning levels, the competent authority shall try to avoid or minimize excessive hours of work to ensure sufficient rest and to limit fatigue, as well as principles within other international instruments, especially within the IMO on manning levels and consider the requirements in Regulation 3.2 for food and catering. Each Member should also maintain, or satisfy itself that there is a system to investigate and settle complaints or disputes about manning levels on board.

I hope I have given you a flavour of just some of the areas covered within the MLC. It is clear that some parts will be easier to facilitate in piracy situations and only time will tell as to which areas may need to be tightened up in the future.

Many thanks for your attention.