

INTERNATIONAL LABOUR ORGANIZATION

Sectoral Activities Programme

**Sub-Group of the High-Level
Tripartite Working Group
on Maritime Labour Standards
(first meeting)**

The structure of the new instrument: Allocation
between principles and details

Geneva, 2002

INTERNATIONAL LABOUR OFFICE GENEVA

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Working paper for discussion at the

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Background

1. At its first meeting (December 2001), the High-Level Tripartite Working Group on Maritime Labour Standards endorsed eight “preferred solutions”¹ concerning the proposed new instrument – an instrument that is to consolidate, in so far as possible, the corpus of international maritime labour standards that are sufficiently up to date. This paper, suggested by the Sub-Group at its informal meeting after the High-Level Group’s meeting in December 2001, elaborates on two of the solutions: that “the consolidated instrument should consist of a number of Parts setting out the key principles of international maritime labour standards” and that those Parts “should be complemented by Annexes setting out detailed requirements for each of the Parts”. Such a division is in fact essential for the next “preferred solution” on the list that there should be a simplified amendment procedure for updating the Annexes.
2. A draft paper on a simplified amendment procedure has been prepared for the second meeting of the High-Level Tripartite Working Group and is submitted to the Sub-Group for its consideration.² This procedure would provide that if the main substance of the instrument were to be adopted by the Conference and submitted to Members for ratification, the detailed implementation of those main provisions may be regulated by another procedure, to be laid down in the instrument. By placing a particular provision in a Part or an Annex, the International Labour Conference would be deciding, respectively, which provisions may only be changed by following the procedures set out in article 19 of the ILO Constitution and the relevant provisions of the Conference and Governing Body Standing Orders and which may be the subject of a simplified amendment procedure.

General approach

3. But how does one decide whether any given provision of an existing Convention should be considered as relating to a principle or a detail? One approach would be to agree on a clear demarcation between what constitutes a principle and what constitutes a detail. Such an approach might however not be very helpful; first, because definitions of this kind might be difficult to agree; and second, because a preliminary survey of existing maritime Conventions has shown that few provisions actually appear as principles.
4. A pragmatic approach on the following lines appears preferable: the drafters of the new instrument would first examine the substance of the “family” of Conventions to be included in a particular Part, rather than the wording used, and agree on the key principles that flow from the Conventions concerned. They would then draft the respective Part of the new instrument on the basis of the principles that have been identified and applying the following criteria, which are derived from the rationale for the simplified amendment procedure, referred to in paragraph 2 above:

¹ ILO: High-Level Tripartite Working Group on Maritime Labour Standards (first meeting), doc. TWGMLS/2001/1 (Geneva, 2001), para. 3.23, pp. 17-18.

² ILO: Sub-Group of the High-Level Tripartite Working Group on Maritime Labour Standards (first meeting), doc. TWGMLS/2002/1 (Geneva, 2000).

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- (a) the provisions of the Parts would be drafted in terms that are sufficiently general and comprehensive as to be likely to obviate the need for any amendment or additions over the coming decades;
 - (b) at the same time, the text of the Parts would be sufficiently specific with respect to the intentions of the International Labour Conference and the objectives to be achieved, so as to provide clear parameters for each implementing provision to be included in the Annex and for any future amendments of those provisions.
 5. The Annexes would contain more or less the same text as that contained in the existing Conventions to which they relate, with the deletion of any material that coincides with the provisions of the Part concerned.
 6. The above approach is illustrated in the appendices to this paper. Appendix A contains the text of a hypothetical existing Convention (so as not to prejudge the actual work on the new instrument) relating to the promotion of leisure activities. Appendix B shows how the substance of that same Convention might appear in the new instrument. It consists of a component that would go into a Part and the corresponding component for an Annex.
 7. In the first place, the Part takes over the Preamble to the existing Convention without change. The Preamble is an important element for making clear the general intention behind the provisions. The main obligation, set out in Article 3 of the Convention (Appendix A), is for the shipowner to provide facilities for the sports and games listed in that article. In Appendix B, this obligation appears in Article 3 of the Part, without the actual list of sports and games (which is transferred to Rule 1 of the Annex), but with extra wording (in bold type) to set parameters inherent in the list. Thus, any addition to the list, made in accordance with a simplified amendment procedure, must be a sport or game of skill which is generally accessible and affordable and be in keeping with the intention of developing seafarers' proficiencies as set out in the Preamble. Articles 3 and 4 of Appendix A appear without change in Articles 3 and 4 of Appendix B, as they relate to general principles which are unlikely to need updating. Articles 5 to 11 of the Convention in Appendix A appear to relate to matters of detail and are covered in the Annex in Appendix B as Rules 2 to 6. The parameters for these details are set out in a new Article 5 of Appendix B. Each of the detailed provisions in the Annex is based on a general provision in the Part. This basis is indicated in square brackets after the detailed provision or provisions concerned.
 8. The Sub-Group may wish to review the above general approach – especially in the context of a simplified amendment procedure. Information and advice from Government representatives would be particularly helpful on the question of the extent to which the Annex in Appendix B exemplifies material that might be included in subsidiary legislation and could be updated whenever necessary without resort to an Act of Parliament.

Future work

9. To the extent that the Sub-Group agrees with the above approach, the following steps would be suggested with respect to the drafting of the substantive Parts and their corresponding Annexes:
 - (a) determination of each “family” of Conventions to be included in a Part of the new instrument;
 - (b) identification of the provisions of those Conventions whose substance is to be included in a given Part and its Annex;

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- (c) distillation of the principles and rights underlying those provisions, for inclusion in the Part concerned;
 - (d) arrangement of the text of the existing provisions in the corresponding Annex, with adjustments:
 - (i) to avoid overlap inside the Annex and to remove any wording that is already included in the Part;
 - (ii) to incorporate proposals for essential updating;
 - (e) review of the Part to ensure:
 - (i) that it is fully consistent with the provisions of the Annex;
 - (ii) that its formulation provides a sufficient basis for each provision in the Annex.

Appendix A

Hypothetical existing Convention

Promotion of Leisure at Sea Convention

The General Conference of the International Labour Organization,

...

Recognizing the right of all seafarers to maintain contact, while at sea, with the leisure activities available to workers onshore;

Noting the considerable increase in the spare time of seafarers that has arisen over the past years on account of the mechanization of numerous aspects of seafaring;

Considering that all seafarers should be given full opportunities to constantly develop their physical and intellectual proficiencies while at sea;

Having decided upon the adoption of certain proposals with regard to the promotion of leisure activities for seafarers while at sea;

...

Having determined that these proposals shall take the form of an international Convention, adopts, this [date], the following Convention, which may be cited as the Promotion of Leisure at Sea Convention:

Article 1 [Definitions]

Article 2

Effect shall be given to this Convention by national laws or regulations, collective agreements, works rules, arbitration awards or court decisions or other means appropriate to national conditions.

Article 3

1. Each Member shall by national laws or regulations make shipowners responsible for maintaining free of charge onboard ship the necessary facilities for traditional shipboard games, as well as such sports or games as football, baseball, basketball, hockey, tennis, table tennis, gymnastics, bridge, whist, chess, draughts and backgammon, modified where necessary to take account of the special conditions onboard ship.
2. The specific sports and games for which facilities shall be maintained on any given ship to which this Convention applies shall be prescribed by the competent authority taking into account such factors as the type of vessel, the number and nationalities of the persons onboard and the nature, destination and duration of voyages.

Article 4

Each Member shall ensure that measures providing for leisure activities for seafarers onboard ship are adopted which –

- (a) aim at providing seafarers with facilities that are as comparable as possible to those which are generally available to workers ashore;
- (b) guarantee seafarers the right, subject to the overriding needs of the ship, to take part in international and national competitions in sports or games in which they are particularly proficient;

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- (c) devote particular attention to the development of the seafarers' fitness and proficiency in sports and games, encouraging them to play an active part in enhancing not only their own abilities and skills but also those of the other seafarers onboard.

Article 5

1. Every ship to which this Convention applies shall carry the necessary material and equipment for the sports and games for which facilities are to be provided.
2. The material and equipment shall be properly maintained and inspected at regular intervals, not exceeding 12 months, by responsible persons designated by the competent authority, who shall ensure that the material and equipment is complete and in good order and shall pay particular attention to defects, whether due to wear and tear or malfeasance, that could give players an advantage over others.
3. The ship shall ensure that the material and equipment for each activity is kept separately from that for the other activities and shall maintain a list itemizing the material and equipment and indicating its location for each activity.

Article 6

1. Every ship to which this Convention applies shall be required to carry a compendium of the rules of all common sports and games, written in the principal languages spoken on the ship.
2. In addition to the rules, the compendium shall provide information on the principal variants of the rules as well as on the best practices and tactics during play.
3. In adopting or reviewing the ship's compendium, the competent authority shall, after consultation with the most representative organizations of shipowners and seafarers, make such modifications to the rules as are necessary to take into account conditions onboard ship.
4. The laws and regulations shall empower the master, and any member of the crew to whom the latter has delegated this power, to officially recognize any sporting or gaming prowess constituting a record.

Article 7

1. All ships to which this Convention applies carrying 100 or more seafarers and ordinarily engaged on international voyages of more than three days' duration shall carry, as members of the crew, at least one professional coach for an outdoor game for which facilities are to be provided and at least one professional coach for an indoor game for which facilities are to be provided.
2. National laws or regulations shall determine which other ships shall be required to carry coaches as members of the crew, taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers onboard.

Article 8

1. All ships to which this Convention applies shall, to the extent that they do not carry a coach versed in the particular sport or game, make arrangements to provide the necessary knowledge and expertise to one or more members of the crew in charge of providing training and advice to the other seafarers as part of their regular duties.
2. Persons in charge of sports and games onboard who are not professional coaches shall have satisfactorily completed a course approved by the competent authority of theoretical and applied training in at least one sport or game, as well as training in first aid for sports injuries.
3. Persons referred to in paragraph 2 of this Article and such other seafarers as may be required by the competent authority shall undergo refresher courses to enable them to maintain and increase their knowledge and skills and to keep abreast of new developments, at approximately five-year intervals.
4. All seafarers, during their maritime vocational training, shall receive instruction on the most common sports and games, especially with a view to ensuring that there are sufficient numbers of persons to make up the required teams or to allow the game concerned to take place.

Article 11

1. In any ship of 500 or more gross tonnage, carrying 15 or more seafarers and engaged in a voyage of more than three days' duration, at least one separate location shall be made exclusively available for sports or games. The competent authority may relax this requirement in respect of ships engaged in coastal trade.
2. The area made available shall be sufficient in size, solidity, lighting and ventilation to enable each of the sports and games for which facilities are to be provided to be played properly, safely, comfortably and in all weathers. On the occasion of competitions and, in general, for sports and games requiring particular concentration, special measures shall be taken to protect the players from outside distractions.
3. Changing rooms and showers, whose number shall be prescribed by the competent authority. shall be provided for the exclusive use of the players, either as part of the area made available or in close proximity thereto.

Appendix B

An example illustrating how the allocation between principles and details (Appendix A) would be reflected in the new instrument

Part ...

Promotion of Leisure at Sea

Recognizing the right of all seafarers to maintain contact, while at sea, with the leisure activities available to workers onshore;

Noting the considerable increase in the spare time of seafarers that has arisen over the past years on account of the mechanization of numerous aspects of seafaring;

Considering that all seafarers should be given full opportunities to constantly develop their physical and intellectual proficiencies while at sea;

Article 1

[Definitions adding to or varying from the definitions in the main part of the instrument]

Article 2

[Effect shall be given to this Convention by national laws or regulations, collective agreements, works rules, arbitration awards or court decisions or other means appropriate to national conditions.] *This Article, valid for all ILO Conventions, would be in the main Part of the new instrument.*

Article 3

1. Shipowners **shall be** responsible for providing free of charge onboard ship the necessary facilities for all traditional shipboard games, as well as such sports or games **of skill**, modified where necessary to take account of the special conditions onboard ship, **as are generally accessible and affordable to workers on shore.**
2. The specific sports and games for which facilities shall be provided on any given ship covered by this Convention shall be prescribed by the competent authority taking into account such factors as the type of vessel, the number and nationalities of the persons onboard and the nature, destination and duration of voyages.

Article 4

Each Member shall ensure that measures providing for leisure activities for seafarers onboard ship are adopted which –

- (a) aim at providing seafarers with facilities that are as comparable as possible to those which are generally available to workers ashore;
- (b) guarantee seafarers the right, subject to the overriding needs of the ship, to take part in international and national competitions in sports or games in which they are particularly proficient;
- (c) devote particular attention to the development of the seafarers' fitness and proficiency in sports and games, encouraging them to play an active part in enhancing not only their own abilities and skills but also those of the other seafarers onboard.

Article 5

The facilities to be made available for the sports and games shall include:

- (a) the necessary material and equipment, properly maintained;**
- (b) the text of appropriate rules and relevant reference material; and**
- (c) in so far as possible having regard to such factors as the duration, nature and conditions of the voyage concerned and the number of seafarers onboard:**
 - (i) professional training provided to seafarers individually; and**
 - (ii) appropriately constructed, furnished and equipped premises for the exercise of the leisure activities concerned.**

Annex to Part ... of Appendix B

Promotion of Leisure at Sea

Rule 1

In prescribing the games for which facilities are to be provided onboard ship, in accordance with Article 3 of Part ..., the competent authority shall give particular attention to traditional shipboard games, as well as such sports or games as football, baseball, basketball, hockey, tennis, table tennis, gymnastics, bridge, whist, chess, draughts and backgammon, modified where necessary to take account of the special conditions onboard ship. [Basis: Art. 3]

Rule 2

1. Every ship shall carry the necessary material and equipment for the sports and games for which facilities are to be provided.
2. The material and equipment shall be properly maintained and inspected at regular intervals, not exceeding 12 months, by responsible persons designated by the competent authority, who shall ensure that the material and equipment is complete and in good order and shall pay particular attention to defects, whether due to wear and tear or malfeasance, that could give players an advantage over others.
3. The ship shall ensure that the material and equipment for each activity is kept separately from that for the other activities and shall maintain a list itemizing the material and equipment and indicating its location for each activity. [Basis: Art. 5(a)]

Rule 3

1. Every ship shall be required to carry a compendium of the rules of all common sports and games, written in the principal languages spoken on the ship. [Basis: Art. 5(b)]
2. In addition to the rules, the compendium shall provide information on the principal variants of the rules as well as on the best practices and tactics during play. [Basis: Art. 5(b)]
3. In adopting or reviewing the ship's compendium, the competent authority shall, after consultation with the most representative organizations of shipowners and seafarers, make such modifications to the rules as are necessary to take into account conditions onboard ship. [Basis: Art. 5(b) read with Art. 3(1)]
4. The laws and regulations shall empower the master, and any member of the crew to whom the latter has delegated this power, to officially recognize any sporting or gaming prowess constituting a record. [Basis: Art. 4(a)]

Rule 4

1. All ships carrying 100 or more seafarers and ordinarily engaged on international voyages of more than three days' duration shall carry, as members of the crew, at least one professional coach for an outdoor game for which facilities are to be provided and at least one professional coach for an indoor game for which facilities are to be provided.
2. National laws or regulations shall determine which other ships shall be required to carry coaches as members of the crew, taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers onboard. [Basis: Art. 5(c)(i)]

Rule 5

1. All ships to which this Convention applies shall, to the extent that they do not carry a coach versed in the particular sport or game, make arrangements to provide the necessary knowledge and

expertise to one or more members of the crew in charge of providing training and advice to the other seafarers as part of their regular duties.

2. Persons in charge of sports and games onboard who are not professional coaches shall have satisfactorily completed a course approved by the competent authority of theoretical and applied training in at least one sport or game, as well as training in first aid for sports injuries.
3. Persons referred to in paragraph 2 of this Rule and such other seafarers as may be required by the competent authority shall undergo refresher courses to enable them to maintain and increase their knowledge and skills and to keep abreast of new developments, at approximately five-year intervals.
4. All seafarers, during their maritime vocational training, shall receive instruction on the most common sports and games, especially with a view to ensuring that there are sufficient numbers of persons to make up the required teams or to allow the game concerned to take place. [Basis: Art. 5(c)(i)]

Rule 6

1. In any ship of 500 or more gross tonnage, carrying 15 or more seafarers and engaged in a voyage of more than three days' duration, at least one separate location shall be made exclusively available for sports or games. The competent authority may relax this requirement in respect of ships engaged in coastal trade.
2. The area made available shall be sufficient in size and solidity and lighting and ventilation to enable each of the sports and games for which facilities are to be provided to be played properly, safely, comfortably and in all weathers. On the occasion of competitions and, in general, for sports and games requiring particular concentration, special measures shall be taken to protect the players from outside distractions.
3. Changing rooms and showers, whose number shall be prescribed by the competent authority, shall be provided for the exclusive use of the players, either as part of the area made available or in close proximity thereto. [Basis: Art. 5(c)(ii)]