

International Labour Organization

Sectoral Activities Programme

First meeting of the Sub-Group of the High-Level Tripartite Working Group on Maritime Labour Standards

Geneva, 2002

Note by the Norwegian Government to the first meeting of the
Sub-Group of the High-Level Tripartite Working Group
on Maritime Labour Standards

Enforcement mechanisms in the new ILO framework Convention

Note by the Government of Norway

Introduction

1. Enhanced enforcement mechanisms are regarded as the key to improved working and living conditions for seafarers. Enforcement mainly concerns shipowners' implementation of rules and regulations, although it also involves monitoring flag States' application of internationally agreed standards, such as ILO Conventions.
2. This position paper will mainly focus on control mechanisms available to maritime administrations in their capacities as either flag States or port States.
3. Port state control is also of importance, and its influence is growing. It is aimed at both shipowners and flag States. It has grown out of a need to check on flag States perceived to be neglecting their duty to maintain internationally agreed minimum standards, as well as a direct relationship to shipowners and their vessels.
4. For those States already bound by particular ILO Conventions, flag state control has therefore always been a requirement. The new Convention should look to enhancing flag state control.

Flag state control

Problem

5. Flag States have a strategic responsibility for ensuring compliance with required minimum standards. That responsibility includes promulgation of the necessary legislation as well as control.
6. Flag state control is the most comprehensive and arguably the most important. The flag State has the ultimate authority to impose its rules and regulations on vessels flying its flag. Its aim is to ensure that ships, shipowners and seafarers act within the regulatory framework of the flag State.
7. Flag state control includes many different types of control mechanisms such as surveys, audits, and unscheduled inspections. Control can take many forms, including surveys, inspections and audits.

Proposal

8. The standards of the Labour Inspection (Seafarers) Convention, 1996 (No. 178), should be incorporated into the new Convention.
9. Flag States should also be required, if authority is delegated to recognized organizations, to maintain and document a monitoring capability. In most cases that should entail an ability to carry out audits of organizations carrying out inspections on behalf of the flag State.

Management system certification – Putting maritime labour standards into a system

Problem

10. In our opinion, shipboard operations and management rest on three pillars:
 - (1) safety;
 - (2) environmental protection;
 - (3) working and living conditions.
11. We should like to see enforcement mechanisms move beyond traditional mechanisms such as onboard inspections. Shipowners should be required to have their management systems and procedures that take care of seafarers' working and living conditions to be independently verified against an international quality standard.
12. The ISM Code addresses (1) and (2) directly, and (3) indirectly. In our opinion, this leads to an imbalance, and management systems do not adequately address the need for proper systems and procedures.
13. Systems and procedures concerning working and living conditions should be designed in such a way that they may be independently audited, verifiable, and should be independently certified.
14. There are a multitude of advantages in adopting such an approach. From the shipowners' point of view, it would greatly ease the management of vessels leading, inter alia, to greater delegation of authority while requiring more formal reporting procedures to top management.
15. From the seafarers' point of view, shipping companies' operations should become more transparent; if they see that a company has been certified, they will have greater certainty that that company deals with working and living conditions in a professional and serious manner. Some systems based on ISO standards require that employees have access to the company's various policies.
16. From the maritime administrations' point of view, it would make labour inspections more systematic and targeted to get at the root of problems. Quality systems require companies to have systems in place to detect and correct non-conformities, which greatly assists flag state administrations in their work because deficiencies and non-conformities can more easily be detected and there is a greater probability that something will be done about rectifying the non-conformities; at the very least, administrations will know the procedures that companies adopt in order to comply with administrations' directives.
17. Administrations may withdraw any certificates if a company is found to be not serious about providing its seafarers with adequate working and living conditions.
18. Even when a shipowner has obtained an "off-the-shelf" system that does not reflect practice in the company or on board, such a system is better than no system at all; this is because the shipowner will be required to bring systems in line with the certified system. Quality systems require companies to devise policies and standards for their suppliers. In shipping terms, for example, that could mean requiring manning agents to apply the standards of ILO Convention No. 179.

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19. Quality systems place the responsibility for good working and living conditions squarely where it belongs – with the shipowner.
 20. What role would the administrations play in such a scenario? Both auditor (for example a classification society) and auditee (the shipping company) would be targets for control and inspections from administrations. The auditor would be subject to monitoring and audits to ensure that they are doing the job they are supposed to do. Regular spot checks would be made by visiting vessels to ensure that working and living conditions conform to rules and regulations.
 21. Shipowners should be given much latitude as to how they choose to implement labour standards in the framework of a quality system. However, they have to be able to demonstrate that the systems actually work.
 22. One way is to expand the scope of the ISM Code. This does not necessarily entail any amendments to SOLAS and the Code itself. This can be done at the national level: Norwegian shipowners will be required to integrate working and living conditions as listed in ILO Convention No. 178 into their ISM systems.
 23. ISM requires, inter alia, that “... the safety management system should ensure compliance with mandatory rules and regulations; ...” and requires that systems and procedures be established to prevent accidents.
 24. Using ISM has several advantages – one of which being that it would not require an extra certificate. Another advantage is that shipowners would have one system on board addressing the three pillars of shipboard management and operations mentioned above. The disadvantage is that there would be flag States that will not choose to follow such a route, which could lead to an uneven playing field.
 25. The other approach could be to develop a separate standard. Such a standard would have to be compatible with ISM, which means that it would have to be based on the ISO system of quality standards. One example is ISO 14001 on environment management systems. Some classification societies already offer “package deals” of ISM and ISO 14001.
 26. Currently there exist quality standards covering labour standards, some specializing in occupational safety and health, while others are more general. For instance, the United States-based organization Social Accountability International has developed, on a tripartite basis, the standard SA 8000 (SA = Social Accountability) covering, inter alia, companies’ compliance with ILO fundamental Conventions, wages, etc.
 27. The purpose of the above discussion has been to demonstrate that it is possible to incorporate labour standards in quality systems, as well as to show the advantages that may be derived from such an approach. We do not at this stage wish to prescribe what kind of approach be adopted in the new framework Convention – be it ISM or a specialized standard.
 28. We are not proposing that controlling compliance with labour standards be left to classification societies or other institutions without adequate oversight. Flag state responsibility cannot be delegated. What we are proposing is that we should involve all parties in monitoring compliance of working and living conditions, in a way that is transparent and promotes accountability. This approach will not solve all problems or root out all problem ships and shipping companies.

Proposal

29. Our proposal is that the new framework Convention should require shipowners to have their management systems and procedures covering seafarers' working and living conditions independently audited. It should be left open to administrations/flag States as to how this will be done.

Port state control

Problem

30. The problem with port state control is that it is up to the individual regional port state control agreement to agree on which areas they want to inspect. Currently, the list of ILO standards subject to port state control is limited to medical certificates and accommodation. The question then becomes how the new framework Convention can assist in increasing the scope of standards subject to port state control. The challenge is to make the standards more amenable to port state control. That means clearer and less ambiguous standards. Port state control of working and living conditions has been more difficult. The reasons seem to be that many ILO Conventions are not clear enough for a port state control inspector; there is too much room for national interpretation.
31. ILO Conventions tend to leave a lot of discretion to ratifying States as to how the standards shall be implemented. The standards themselves are often open to interpretation at the national level and therefore it is difficult – if not impossible – for port state control inspectors to take appropriate action, even in cases where there are glaring deficiencies. Port state control (PSC) only considers international standards, not national interpretations contained in national legislation. The new Convention should attempt to draft standards that lend themselves to port state control by addressing, inter alia, the abovementioned shortcomings.
32. The areas covered today include medical certificates and accommodation. In our opinion, PSC is most suited to shipboard employment conditions. Standards covering social security, pensions, recruitment and others are not suitable for port state control. Ways should be found to isolate shipboard employment conditions in order to make it clear to port state memoranda which standards are subject to PSC and which are not.
33. The new Convention should not go too far in prescribing methodology of port state control, as this is the province of the port state control memoranda. Suffice it to say at this point in time that the scope of standards subject to port state control should be extended. However, the way to do this is to define shipboard employment conditions, and then to ensure that the standards in the annexes are enforceable. That means, inter alia, clear and unequivocal standards not open to national interpretation. IMO Conventions should be a model here.
34. Port state control should be limited to shipboard employment and living conditions. We derive this term from the term employed in ILO Convention No. 147, i.e. shipboard employment conditions and living arrangements; however, for reasons set out below, we should like to see a different term used.
35. Convention No. 147 is not clear as to which issues should be considered shipboard employment conditions and living arrangements. The 1990 report by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) seemed to conclude that the term was not limited to material aspects of employment physically on

board ship. There is latitude for interpretation by the State in the context of Convention No. 147 in that it includes everything not deemed to be a safety-related issue which has to be regulated in the form of legislation. Shipboard employment conditions and living arrangements may be “left” to collective agreements, and therein lies the significance of the separation in the Convention. The standards that the CEACR thus includes under the heading “shipboard employment conditions, etc. ...” are annual leave, hours of work, wages, identity documents, crew accommodation, and food and catering.

Proposal

36. PSC should include a greater part of seafarers’ working and living conditions.
37. The framework Convention should be structured with PSC in mind; i.e. those standards that are considered important in a PSC context should be in the same chapter.
38. PSC should primarily be limited to shipboard working and living conditions. The following standards could be considered for inclusion in the term shipboard working and living conditions: articles of agreement; medical examination; crew accommodation; food and catering; identity documents; hours of work/periods of rest; prevention of accidents.

Monitoring the application of the standards of the Convention

39. Naturally the ILO will have an important role to play in monitoring the application of the framework Convention. The ILO system functions well, but is cumbersome. If the Convention is to function efficiently a tripartite body should be set up that could meet annually. One possible agenda item could be a review of the application of the Convention.

Sanctions

40. Not only control methods but sanctions should be discussed as well, such as under which conditions vessels should be detained, reporting mechanisms, etc. However, as mentioned under the port state control section concerning methodology of control, sanctions are also part of port state control memoranda’s remit. Therefore, the Convention should not become too prescriptive as far as sanctions are concerned.
41. It is appropriate, however, to suggest new approaches to sanctions, such as points systems, or “three strikes and you’re out”. More transparency and greater access to information about detentions and deficiencies to outside interested parties should also be considered, although only as recommendatory texts.

Location of enforcement clause(s) in the new Convention

42. Ideally, a general clause such as that found in Convention No. 147 should be placed in Part I because it will cover all standards contained in Parts II to V. This clause should deal with both port and flag state control. It should be based on Conventions Nos. 147 and 178 and must be aligned with procedures for port state control as outlined in PSC memoranda and IMO Resolutions.

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43. The problem will be to find a way of limiting the scope of PSC in the framework Convention. If not, then different solutions (i.e. limitations) will be found by each PSC region. This could be dealt with in the mandatory part of the text covered by tacit acceptance.

Conclusion

44. The whole range of available enforcement mechanisms should be used in order to ensure decent working and living conditions. However, some differentiation is needed in that control mechanisms must be appropriate to the standard in question.