
INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

**High-level Tripartite Working Group
on Maritime Labour Standards
(Second meeting)**

**ISF submission to the High-level Tripartite Working Group
on Maritime Labour Standards**

Geneva, 2002



INTERNATIONAL LABOUR OFFICE GENEVA

INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities programme

**High-level Tripartite Working Group
on Maritime Labour Standards
(Second meeting)**

**ISF submission to the High-level Tripartite Working Group
on Maritime Labour Standards**

Geneva, 2002

INTERNATIONAL LABOUR OFFICE GENEVA

Executive summary

1. Organization of work

Given the short time left before a complete draft text of the new consolidated Convention ought to be finalized, the International Shipping Federation (ISF) suggests that the Tripartite Working Group (TWG) should consider at an early stage how it intends to organize the future work programme. This consideration should include the establishment of working groups to address particular issues since there will be insufficient time for the necessary detailed discussion to take place in plenary.

2. Key issues

The ISF suggests there are at least six key issues which are not necessarily raised directly in the papers prepared for the meeting by the ILO but which will require detailed consideration during the October meeting. With certain of these issues it will be difficult for progress to be made until final agreement is reached. These issues are:

- ship certificates (paragraph 2.3 below);
- quality standards (paragraph 2.4 below);
- crew complaints (paragraph 2.5 below);
- crew certification (paragraph 2.6 below);
- scope of application (paragraph 2.7 below);
- flexibility (paragraph 2.8 below).

This ISF submission comments on these key issues and makes proposals for consideration by the TWG.

Introduction

After the October meeting of the TWG, there are just two further meetings scheduled, in June-July and December 2003. Two meetings of the Subgroup have also been scheduled for February and October 2003. The ISF envisages that the June-July TWG meeting will be expected to virtually complete work on the substance of the draft consolidated Convention so that the December meeting is confined to relatively minor drafting improvements.

It is of particular importance that the October TWG meeting should reach broad agreement on a number of critically important issues relevant to the overall structure, substance and content of the new Convention. This will be necessary if the work of reviewing, amending and, where necessary, updating over 200 pages of detailed text concerning existing ILO maritime standards (based on document STWGMLS/2002/6) is to proceed on schedule.

The ISF therefore proposes that at the October meeting:

- (i) the TWG should consider at an early stage how it intends to organize the work programme for the TWG, the future scheduled meetings, and the intervals between these meetings, taking account of the administrative resources which are likely to be available in order to ensure that the work is accomplished in time;
- (ii) the TWG should take firm decisions on a number of key issues relevant to the overall structure, substance and content of the new instrument so that work can then proceed more easily on the detailed provisions of the texts.

The ISF's views on the two issues raised above are as follows.

1. Organization of work

1.1. At the first meeting of the TWG, from 17 to 21 December 2001, and at the Subgroup meeting from 24 to 28 June 2002, all formal discussion took place in plenary session, supplemented by group meetings as appropriate. This was necessary as the Shipowners' and Seafarers' groups were already agreed on their overall objectives, so it was important for the individual Government representatives to express their views in plenary on the proposals which had been made.

1.2. However, this meeting of the TWG is distinctly different because the views of Government representatives who attended the two previous meetings are now on record and the objective of delivering an instrument which consolidates and updates as many as possible of the existing ILO instruments, and which is widely ratified and properly enforced by all of the major flag States and labour supply countries is agreed by each of the three parties.

1.3. But, having agreed the overall objectives, all parties now must move on to agree the equally important, and potentially much more difficult, task of adding flesh to the bare bones of the framework agreement that each of the players in the tripartite ILO process has accepted.

1.4. In section 2 of this submission, the ISF raises six key issues on which it will be necessary for the TWG to reach decisions before the work of developing the detailed

provisions of the new instrument can be finalized. Members of the TWG may well identify several other issues to add to this list.

1.5. In addition to the key issues, consideration must be given to a review of the text of the existing instruments and to the amendment and updating of these texts where necessary. These texts have been grouped into five “families” of subjects covering a number of separate areas which are likely to require consideration by specialists from several different disciplines and different government departments, for example with regard to provisions concerning crew accommodation at one end of the scale and social security provisions at the other end.

1.6. If the debate remains confined to plenary sessions, the ISF does not believe that there will be sufficient time available during the next TWG meeting, or during the remaining meetings which have been scheduled, to allow for the detailed discussion which will be needed before decisions can be taken on all of these issues.

1.7. The ISF therefore believes that at the next meeting of the TWG early consideration must be given to the establishment of working groups to discuss certain of the key issues raised below. In addition, the ISF believes that, in the case of the detailed content of the new instrument, consideration must be given to the establishment of working groups which, if necessary, can meet or correspond between the Subgroup and TWG meetings. If the TWG agrees to the establishment of these working groups, it will also be particularly important to establish in advance clear terms of reference and reporting procedures.

2. Key issues

2.1. The draft papers prepared by the ILO for the TWG meeting, which were considered at the Subgroup meeting, 24-28 June, contained a number of proposals which will have a material impact on the structure and substance of the new instrument. The draft papers also triggered some discussion at the Subgroup of other key issues which were not raised directly in the papers, for example concerning the scope of application of the instrument.

2.2. It was not within the terms of reference for the Subgroup to reach any conclusions on these issues so the discussions were inevitably very general. However, the ISF considers that these issues raise questions and concerns which are crucial to the outcome of the work of consolidating the existing instruments and which must be addressed before the review of the texts can be finalized.

2.3. Ship certificates

2.3.1. The draft papers prepared by the ILO for consideration by the Subgroup contained the proposal that ships should be issued with certificates covering labour standards, just as they carry certificates concerning certain technical standards. It was envisaged that the certificates would be issued by the flag State and that the requirement would be introduced in the new consolidated Convention as one of a number of measures intended to ensure that the labour standards set by the Convention are properly enforced.

2.3.2. The paper prepared by the ILO suggested that such a provision could:

- (a) apply pressure on flag state administrations to ratify the new instrument;

-
- (b) be attractive to port state control authorities, because a certificate could provide a degree of evidence of compliance with labour standards which are particularly difficult to enforce;
 - (c) be attractive to shipowners, because a certificate might reduce the number of port state inspections or limit their duration.

2.3.3. Some delegates at the Subgroup meeting expressed a degree of cautious interest in this proposal. But whatever the merits of the proposal, many difficult questions arise concerning how such a certification system might work in practice. The following are a few:

- (i) what should such a certificate testify? Should the certificate indicate that the labour and social standards on board are fully in compliance with the standards set by the flag State in conformity with the terms under which that state has ratified the Convention, or that company **procedures** are in place to ensure that the standards are complied with on board (i.e. as per the approach adopted in the IMO ISM Code)? This distinction between **certified compliance** and the **certification of procedures** to ensure compliance is crucial to the question of the process by which the envisaged certificate should be granted. The distinction is also critical in considering the necessary qualifications and experience of the persons responsible for authorizing the issue of the certificate;
- (ii) what would be the period of validity of a certificate? The nationality of the crew of particular ships and the trading pattern can change regularly and quickly and this would affect many of the important labour and social standards, e.g. work hour regulations and social security;
- (iii) would the certificate be issued to the ship, or to the owner or manager in respect of a fleet of ships?
- (iv) which labour and social conditions would be covered by the certificate? Presumably the easiest issues to cover would be the most objective, ship-specific standards, e.g. confirmation that records of work hours are being maintained; that a copy of the crew agreement is held on board; that a written crew contract is available, etc. But, there are many ILO standards which are very detailed, such as crew accommodation requirements, or which cover issues not within the control of the ship operator, nor in the control of the flag State if a foreign crew is engaged, such as the licensing of manning agents;
- (v) what procedures would be involved in the issue of such a certificate? This issue is covered in the next section of this submission;
- (vi) would a port state control inspector be obliged always to accept the validity of the certificate as prima facie evidence of compliance with ILO instruments? If not, in what circumstances might an inspection still be required?

2.3.4. The ISF members do not have a clear view at this stage on the merits or otherwise of this proposal. However, they are prepared to explore the proposal further provided that time is made available for a proper discussion of the detailed questions which are raised above, and any others which may arise during the debates, if necessary by referring the issue to a special working group.

2.4. Quality standards

2.4.1. The ILO papers for the Subgroup meeting referred generally to the possibility that the ship certificate mentioned above might be issued to confirm compliance with some form of quality assurance system, as in Regulation I/8 of the IMO STCW Convention. But, a paper submitted by the Norwegian Government went much further and proposed that labour standards might be brought within the ISM Code.

2.4.2. There was little detailed debate on this proposal at the Subgroup. However, while the ISF representatives expressed a degree of cautious interest in the establishment of some form of auditing system to be established by the flag State to provide for verification that the labour standards specified by the flag State were observed, they were unwilling to accept that this auditing system should be confined, on a mandatory basis, to the ISM regime.

2.4.3. At this stage, and without the benefit of detailed discussion on this issue or of having seen the paper which is to be submitted by the IMO, the ISF members remain interested in, but decidedly cautious of, the proposal to incorporate an auditing function into labour and social standards established by the new instrument. This caution is because of the difficulty of auditing labour standards as distinct from technical ones. They are even more cautious of incorporating such an auditing function within the ISM system as they have little confidence that auditors primarily responsible for ISM audits have any knowledge or experience of labour or social standards established by the ILO.

2.4.4. However, the ISF members consider that it would be considerably less difficult to introduce a uniform international auditing regime if the audit was confined to confirmation that the necessary documentation was held on board and that company **procedures** were in place to ensure compliance with the agreed standards, rather than to audit compliance with the standards themselves (this concerns the point made in paragraph 2.3.3(i) above).

2.4.5. Following detailed discussion, it may prove possible to identify the provisions of the new instrument which would be appropriate for auditing purposes, the qualifications and experience needed by those responsible for conducting the audits and what provisions might be necessary within the IMO regulatory regime, or conceivably within the ILO, to incorporate labour standards within the IMO ISM system. But until these crucial questions have been addressed, the ISF members do not support incorporation of labour and social standards within the ISM auditing system.

2.5. Crew complaints

2.5.1. As part of the discussion during the Subgroup meeting on enforcement of the standards established by the new instrument, many Government representatives referred to the need to ensure that crew members had the means to bring complaints about sub-standard labour conditions to the attention of the proper authorities. This right is, of course, established in ILO Convention No. 147 with regard to port state inspections.

2.5.2. The Government representatives who spoke stressed that any complaints procedure established by the new instrument must start with complaints being dealt with on board. Only if the complaint did not prove possible to resolve at this level, or after referral to shore management, should port or flag States become involved.

2.5.3. In principle, the ISF members support the concept of the establishment of some form of institutional mechanism for dealing with crew complaints, which reinforces (but does not supersede or interfere with) normal company procedures for resolving on-board

disagreements. This is, however, a sensitive issue and one which, if we are not careful, could create an administrative nightmare for employers and government officials alike.

2.5.4. Therefore, while sympathetic to the overall concept, the ISF considers that much further discussion is needed of how such a complaints mechanism might work in practice before the concept can be accepted within an international mandatory instrument.

2.6. Crew certification

2.6.1. During the Subgroup meeting, 24-28 June, questions were raised as to whether or not the three remaining ILO Conventions dealing with crew certification, i.e., officers' certificates No. 55, able seamen, No. 74 and ships' cooks, No. 69, should be included in the consolidated Convention. The Seafarer representatives supported the transfer of these instruments to the IMO and incorporated within the IMO STCW Convention and several of the Government speakers at least tentatively supported this position.

2.6.2. The ISF members consider that the STCW Convention has now superseded the ILO Convention dealing with officer certification almost in its entirety. Therefore, if anything remains valid in ILO Convention No. 55 which is not covered by the STCW Convention, it could be identified quite easily and, if necessary, incorporated in the STCW through the normal amendment procedures. However, the ISF members consider that arrangements for the certification of ships' cooks and able seamen raise somewhat different issues.

2.6.3. With regard to ships' cooks, the issues principally concern the identification of the skills that the crew member (or crew members) responsible for food preparation on board today's generation of ships actually requires, which is not covered in Convention No. 69, and the drafting of these requirements in the STCW functional format. This should not prove to be a complicated or contentious process; it is more a question of the time involved and identifying the most appropriate venue for the discussions.

2.6.4. With regard to the certification of able seamen, the situation is more complex in the view of the ISF members, and requires consideration to be given to the overall manning requirements of today's generation of ships as well as to the technical knowledge required of the ratings on board.

2.6.5. The IMO STCW Convention, comprehensively revised in 1995, with detailed requirements as to the training needs and knowledge requirements for both officers and ratings, makes no reference to the grade of able seamen. The Convention refers only to the skills and knowledge requirements needed by ratings forming part of the navigational (and engine) watch.

2.6.6. ILO Convention No. 74, which deals with the certification of able seamen, does not specify the skills and knowledge required by an AB, nor does it provide any indication of the duties undertaken by that rating. Therefore, it is not clear whether the AB as provided in Convention No. 74 is the same grade of rating as the rating forming part of the navigational watch specified in STCW, or is to be regarded as a rating with superior skills and knowledge to the STCW rating. If the latter is the case, it is reasonable to question what are the superior skills and knowledge that are required.

2.6.7. The ISF therefore considers that there needs to be an in-depth discussion of manning responsibilities at the operational level before it is agreed to transfer the ILO able seamen requirements to the IMO STCW Convention.

2.6.8. In the meantime, however, to allow time for the necessary discussions over these issues and to avoid delays in the work of consolidating the ILO instruments into the new Convention, the ISF suggests that ILO Conventions Nos. 69 and 74, dealing with ships' cooks and able seamen, should be excluded from the work of consolidation. In the meantime, of course, both Conventions will remain in force and valid until a decision is made as to their future location and status.

2.7. Scope of application

2.7.1. The Subgroup discussed the question of definitions to be used in the new instrument and the application of the provisions to particular ships, e.g. fishing vessels, and to particular persons on board, e.g. hotel staff and riggers.

2.7.2. In the view of the ISF, however, potentially the most important issue in this area concerns the extent to which the provisions of the new instrument will apply to ships trading purely in domestic waters. While all representatives at the Subgroup meeting appeared to accept that ships trading internationally should satisfy the same international minimum labour standards, the ISF considers that if the domestic fleets of many key countries, particularly those in the developing world, are to be expected to satisfy the same international standards, it will not prove possible for these countries to ratify the new Convention.

2.7.3. ILO instruments generally do not include a specific exclusion for ships confined to coastal or near coastal voyages. However, the definition of "seagoing ships" covered by a Convention is usually left to be determined by national laws and regulations of the ratifying State and this may allow for States to exclude coastal shipping as appropriate.

2.7.4. There are, however, many precedents in IMO instruments, such as SOLAS and the Athens Convention, for the specific exclusion of ships trading in coastal or near coastal areas. So, the principle that such ships should be subject to a different regime from that which applies to ships trading internationally has already been widely accepted.

2.7.5. The ISF therefore recommends for pragmatic reasons that the TWG should agree that ships engaged in coastal or near coastal voyages should be excluded from the new Convention. The ISF also recommends that this issue is clarified at an early stage in order to make it easier to proceed with discussions on the substance of the provisions of the instrument without any uncertainty over the proposed scope of application.

2.8. Flexibility

2.8.1. The extent to which the standards established by the new instrument should offer a degree of flexibility concerning the means of compliance was not discussed by the Subgroup as a specific issue, but it surfaced indirectly in several debates.

2.8.2. What seemed to emerge from these debates, at least from the Government representatives, was that the core principles, or rights, covering each "family" of labour standards should be accepted unconditionally by all countries which ratify the new Convention, e.g. the employment contract should be in writing, or the seafarer should be entitled to free hospital care if taken ill during a voyage. But the details specifying how such principles should be applied in practice, which will be included in rules, could be subject to some form of selection. In this respect several Government representatives referred to the IMO MARPOL Convention which has five annexes of which only two need to be accepted at the time of ratification.

2.8.3. In addition, the Government of the United States emphasized that, in their case, ratification of ILO Convention No. 147 had only proved possible because of the provision in that instrument concerning “substantial equivalence”, which allows a degree of flexibility with regard to the precise manner in which the detailed requirements are complied with, provided the overall objective of the standard is achieved. A number of other governments are understood to have ratified ILO Convention No. 147 on the same basis.

2.8.4. It must also be recalled that the first meeting of the TWG endorsed the recommendations of the Joint Maritime Commission that the objective should be to “bring together into a consolidated text as much of the existing body of ILO instruments as it proves possible to achieve”, i.e. not necessarily all of them.

2.8.5. It should not be forgotten, therefore, that if it is considered that particular problems might arise if certain existing instruments were to be included in the new instrument, the option remains to avoid introducing excessive flexibility into the text by simply excluding those instruments from the consolidation exercise.

2.8.6. The ISF considers that widespread ratification of the new Convention and proper enforcement of the standards it sets are two of the most important objectives. In the context of widespread ratification, the inclusion of the concept of “substantial equivalence” in the new instrument and the ability for administrations to select certain of the “families” of labour standards set out in the rules, but not necessarily all, are essential if the instrument is to be widely ratified.

2.8.7. But, the ISF is anxious to avoid a situation where excessive flexibility might result in the adoption of standards which are unenforceable. In view of this we suggest that consideration should be given to:

- (a) producing guidance to administrations on the interpretation of the term “substantial equivalence” so as to avoid confusion arising as to its meaning;
- (b) producing guidance for port state officials to ensure that they understand clearly the labour and social standards which they are expected to ensure are observed on foreign vessels visiting their ports when flexibility is allowed concerning the selection of the rules provided in the instrument;
- (c) the exclusion of certain instruments from the consolidation process should it be agreed that including them would create particular problems.