
INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

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

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

Geneva, 2002



INTERNATIONAL LABOUR OFFICE GENEVA

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Introduction

1. The Seafarers' group has not submitted any papers to date and has sought to listen to the views of the Government group. It is now perhaps timely that we set out our vision for the new instrument. We have previously stressed the need for widespread ratification of the new instrument and that the end result should provide an international minimum standard, comparable to the technical and environmental standards established by the IMO, which addresses the social dimension. In doing so it will address the decent work deficit which was identified as an urgent issue by the May 2002 Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers which recognized that conditions of employment, social protection, social security and social dialogue, including collective bargaining, are matters that require particular attention. That means that the new instrument should make a difference to those employed on ships and provide a tool which will complement the efforts being made to eliminate substandard shipping and establish a benchmark for entry into and participation in international shipping.
2. The meetings to date have generally been positive and have indicated a high level of commitment to the process by all parties, including the Governments. It has been notable that the idea of a framework Convention that consolidates all the existing ILO maritime Conventions has attracted wide support. However, there have been a number of caveats, the most important of which relates to demands for flexibility, for less prescriptive details to be included and for the impediments which currently prevent widespread ratification of the existing instruments to be removed. These considerations and the proposed new structure will ensure that the new instrument will be very different from the current maritime Conventions, both in style and in content. It was against this background that the Seafarers' group adopted the "Seafarers' Bill of Rights" approach, which would establish a number of unambiguous rights and principles, which would be strictly implemented, and link the negotiating process to the ILO decent work programme. The Seafarers' group has stressed the importance of the inclusion of enhanced enforcement mechanisms which ensure implementation, the inclusion of a novel amendment process, which would draw on previous experience, and the potential problems widespread ratification can cause in updating existing international instruments, which are all prerequisites for establishing a new regime.
3. The adoption of this approach has certain implications for the structure, style and organization of the further work of the High-level Working Group (HLWG).

Structure

4. The Seafarers' group is broadly in agreement with the new proposed structure which we have noted is similar to that found in the revised STCW Convention. That being the case, the Articles should establish the format and set out the legal basis of the new instrument and also address a number of general administrative issues. The regulations should consist of the principles and rights which are found in the existing ILO maritime instruments, including, where appropriate, other ILO instruments, as is the case in ILO Convention No. 147. The rights and principles should merely set out the rights and principles and leave Part A and Part B of the Code to develop them. A possible example, using the right to repatriation, might be:

Seafarers shall, in accordance with the relevant sections of the Code, be entitled to repatriation at no expense to themselves.

The mandatory Part A of the Code should build on the rights or principles and establish the functional requirements which must be met and, wherever possible, leave the prescriptive and more detailed provisions to the recommendatory Part B of the Code. However, it is clear that some of the measures can be more readily addressed using this approach than others, where there will be a need for more detailed specifications in Part A if the rights and principles are to be made meaningful and readily enforceable.

5. This approach has implications for the amendment process and the Seafarers' group believes that, while the rights and principles need to be entrenched, there is also a need to be able to secure the possibility of amending or adding to them in the future. It is suggested that this could be accomplished by permitting them to be revised using the novel amendment process but requiring that it could only be done through the convening of a Maritime Labour Conference. The Seafarers' group suggests the following:
 - Articles – revision by a Maritime Labour Conference and requiring express ratification (as is the case now for new and revised ILO instruments). If the new instrument is to be amenable to change, the provisions in the Articles should be kept to a minimum as experience within the IMO has shown that if they are too detailed they can limit the further elaboration of the instrument in the future.
 - Regulations or rights and principles – revision by a Maritime Labour Conference with the possibility of using the tacit amendment procedure.
 - Parts A and B of the Code – amendment by a new tripartite maritime committee and endorsement by a plenary session of a general International Labour Conference and entry into force through tacit acceptance.
6. The new structure and style is likely to be less prescriptive and will be more flexible as to how the established rights and principles are actually delivered, the key being that the rights and principles are actually delivered and make a difference to those on board ships.

Enforcement

7. The discussions to date on enforcement have been instructive and it is clear that there is a need for a comprehensive package which draws on best practice, both within the Organization and from elsewhere. It is clear that the package must provide for enforcement by flag States, labour-supplying States and port States. Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS) provides that every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters (including labour conditions and taking into account the applicable international instruments) over ships flying its flag. The new instrument must conform to the central tenets of international law and therefore the primary obligation must lie with the flag State. This would, for example, require the flag State to satisfy itself that the oversight of manning agencies obligations which fall on labour-supplying States are in practice being met. In order to meet the practicalities involved, it is clear that there is a need for an auditing system, the results of which could be communicated to the Organization and which could be relied on by a flag State. The procedures and practices established by the IMO in the case of the STCW “Whitelist” could be helpful in this regard, although the functions assigned to a panel of experts could better be undertaken using the existing ILO machinery.
8. The concept of labour inspection is well established with the ILO and within its maritime instruments. Similarly the concept of a certification system is well established within the instruments adopted by the IMO and extends not just to technical hardware standards but

also to management and crew certification requirements. It is also the case that port State control inspectors are familiar with the certification regime found in the maritime industry. The Seafarers' group therefore strongly supports the establishment of a linkage between flag State labour inspections and the issuance of a certificate for a vessel which would provide prima facie grounds for verifying compliance with the new Convention's requirements, unless there were clear grounds to the contrary.

9. The Seafarers' group cannot agree to the incorporation of labour and social standards within the ISM auditing system and believes that the ILO should build on its existing oversight systems. The Seafarers' group also believes that there is, in practice, too much self-regulation within the shipping industry which has driven down standards and that there is a significant lack of compliance with current international standards by a significant number of ship operators, while many member States, including traditional maritime countries, act insufficiently upon justified complaints in the social field. The May 2002 Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers adopted a consensual statement which stressed the need for the strongest possible national and international measures to be taken against breaches of international labour standards, including violations of freedom of association and the right to organize and collective bargaining, which undermine decent living and working conditions for seafarers. Therefore the new Convention should require certified compliance rather than anything comparable to the ISM-type regime, which is based on certification of procedures and amounts to de facto self-regulation.
10. Notwithstanding the above, it is also clear that the new Convention should provide for enhanced enforcement by port state control. The arguments related to port state control are well known and need not be repeated here. During the discussions in the various meetings it has been suggested that some aspects are more readily enforceable by port state control than are others. While this may be the case and this aspect might need to be addressed within the various sections of Part A of the Code, the adoption of a certification system, reinforced by an auditing regime, should go a considerable way to addressing such considerations.

Flexibility and scope of applications

11. The Seafarers' group notes that the Government group has raised the need for flexibility and stressed the removal of the problems there are with the existing Conventions which have prevented ratification. It is hoped that the "Seafarers' Bill of Rights" approach would provide sufficient accommodation in this regard and therefore there is no need for pick-and-choose annexes or for a MARPOL-type approach. The Seafarers' group is of the view that the adoption of a MARPOL-type approach would render the new instrument unenforceable by port state control and it would certainly not meet the aspirations of the Seafarers.
12. There have even been suggestions that the new Convention should expressly exclude vessels (and therefore the seafarers employed or engaged on them) which are trading on coastal or near coastal voyages. The Seafarers' group has examined the ILO Constitution and the Declaration concerning the aims and purposes of the International Labour Organization, adopted 10 May 1944, commonly referred to as the Philadelphia Declaration (see Annex), and believes that the exclusion of such a group of workers would be incompatible with it or with the ILO initiative on decent work. While such an exclusion may be permitted within the IMO, which address technical or carriage requirements on board ships, it would be unacceptable if the ILO was to adopt a system which provided such a blanket exclusion to seafarers' rights and which would be akin to institutionalizing a system of maritime apartheid.

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13. The Seafarers' group is not unsympathetic to the issues which have been raised but cannot agree to any such blanket denial of rights to a significant group of seafarers. It would be better to consider the matter on a case-by-case basis and, if necessary, to have a scope of application clause in all the sections of the Code.

Substantial equivalence

14. The Seafarers' group has acknowledged that the inclusion of the concept of substantial equivalence was material to securing the current level of ratifications of ILO Convention No. 147 and has agreed to its inclusion within the new Convention. As there is uncertainty as to what is meant by substantial equivalence, guidance on its interpretation could be built into the new Convention, in Part B of the Code.

Vocational training and certification

15. The international community has stressed the need for cooperation between intergovernmental organizations and the need for clarity in the formulation of international rules and standards. The development of the IMO STCW Convention, its high level of ratification and almost comprehensive scope indicate that the residual vocational training and certification requirements contained in ILO maritime Conventions would be better addressed through the revised STCW Convention. While the revised ILO Convention should contain an express reference to the STCW Convention in terms of decent and safe work, and perhaps even require ratification of it, as is the case in Article 5 of ILO Convention No. 147 for other widely ratified IMO instruments, the residual ILO requirements found in Convention No. 69 (ships' cooks) and ILO Convention No. 74 (able seamen) should be transferred to the IMO. Moving these two instruments into the IMO STCW Convention would provide greater clarity for national administrations, seafarers and maritime training institutions alike. Of course such a course of action would require the IMO to agree and the ILO to ensure that the measures were indeed incorporated into the STCW Convention by evaluating the amendments to the STCW Convention.
16. The Seafarers' group recommends that the HLWG invite the ILO Governing Body to request the Director-General to communicate with the IMO Secretary-General to ascertain whether the IMO would be agreeable to incorporating the provisions contained in ILO Conventions Nos. 69 and 74 into the STCW Convention and, if the IMO is agreeable, to ensure the active involvement of the ILO in the revision process.

Organization of work

17. The "Seafarers' Bill of Rights" approach has implications for the future organization of the work of the HLWG and clearly requires the distillation of the rights and principles from the existing ILO maritime instruments and the formulation of the functional requirements to give effect to them, rather than cutting and pasting the existing text. The interlinkage between the rights and principles and the more detailed functional requirements which give effect to them need to be developed within the same body. The Seafarers' group is also mindful of the fact that the ILO Constitution establishes the functions of the International Labour Office and these include preparing the documents for the various items of the agenda for meetings of the International Labour Conference. The HLWG therefore needs to exercise caution that it facilitates the role of the Office and does not seek to usurp it.

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18. The Seafarers' group has stressed the need for the involvement of governments and for a frank exchange on the impediments to the ratification of current ILO maritime Conventions. Therefore there is a need, given that many of the Government delegations are of limited size, for the sessions which provide the necessary guidance to the Office to be inclusive.
 19. It is for these reasons that the Seafarers' group cannot agree to the establishment of correspondence groups and would prefer the bulk of the work to be undertaken in the plenary, on the basis of text prepared by the Office.
 20. The Seafarers' group is also aware of the fact that many of the general or non-maritime specific ILO instruments also apply to seafarers and stresses the need to ensure that their integrity is maintained and that they are not in anyway inadvertently undermined. The Office is therefore requested to be vigilant in this regard and bring to the attention of the HLWG any such inconsistencies or contradictions with generally applicable ILO instruments.

Requested action

21. The Seafarers' group hopes that this document provides an informative elaboration of its position and will be fully taken into consideration during the further work in developing the new instrument.

Annex

Philadelphia Declaration

The General Conference of the International Labour Organization meeting in its Twenty-sixth Session in Philadelphia, hereby adopts this tenth day of May in the year nineteen hundred and forty-four the present Declaration of the aims and purposes of the International Labour Organization and of the principles which should inspire the policy of its Members.

I.

The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that:

- (a) labour is not a commodity;
- (b) freedom of expression and of association are essential to sustained progress;
- (c) poverty anywhere constitutes a danger to prosperity everywhere;
- (d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

II.

Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organization that lasting peace can be established only if it is based on social justice, the Conference affirms that:

- (a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;
- (b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;
- (c) all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;
- (d) it is a responsibility of the International Labour Organization to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;
- (e) in discharging the tasks entrusted to it the International Labour Organization, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate.

III.

The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve:

- (a) full employment and the raising of standards of living;

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- (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;
 - (c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;
 - (d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;
 - (e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
 - (f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
 - (g) adequate protection for the life and health of workers in all occupations;
 - (h) provision for child welfare and maternity protection;
 - (i) the provision of adequate nutrition, housing and facilities for recreation and culture;
 - (j) the assurance of equality of educational and vocational opportunity.

IV.

Confident that the fuller and broader utilization of the world's productive resources necessary for the achievement of the objectives set forth in this Declaration can be secured by effective international and national action, including measures to expand production and consumption, to avoid severe economic fluctuations to promote the economic and social advancement of the less developed regions of the world, to assure greater stability in world prices of primary products, and to promote a high and steady volume of international trade, the Conference pledges the full cooperation of the International Labour Organization with such international bodies as may be entrusted with a share of the responsibility for this great task and for the promotion of the health, education and well-being of all peoples.

V.

The Conference affirms that the principles set forth in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilized world.