

Current Maritime Labour Law Issues – An Internationally Uniform Identity Document for Seafarers

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Abstract

This article¹ reviews the achievements of the recently adopted Convention on Seafarers' Identity Documents (Revised) 2003, (No.185) adopted by the International Labour Conference of the International Labour Organization. Convention No.185 constitutes a pioneering, comprehensive and sophisticated response to security concerns in the modern world, including the necessary safeguards for individual rights. The objective of the Convention is to ensure that seafarers can be trusted and their hardship minimized.

Key words: maritime security, human rights, ILO, biometric, seafarers identity document

1 Introduction

One of the most important functions of the International Labour Organization (ILO)² is the setting and adoption of international labour standards.³ In June 2003, the International Labour Conference adopted a new international labour Convention,

¹ I wish to acknowledge the assistance provided for work on this article by Martin Georg Hahn during the period of his internship at the International Labour Office. This article does not necessarily represent the official views of the International Labour Office.

² The ILO is a specialised agency of the United Nations and was created in 1919. It has a membership of 175 States. It is the only organization of the United Nations system with a tripartite structure, composed of governments, employers and workers. It is composed of three organs: the International Labour Conference, its plenary organ which meets once a year; the Governing Body, the executive organ which meets three times a year; and the International Labour Office, its permanent secretariat based in Geneva. In the maritime field, between 1920 and 1996, the ILO adopted a very comprehensive body of maritime labour standards, among which are to be found 39 maritime labour Conventions, 29 Recommendations and a Protocol. The ILO has a standing bipartite body made of shipowners and seafarers, the Joint Maritime Commission, which has been in existence since 1926. It advises the ILO Governing Body on maritime questions, including on items for inclusion on the agenda of Maritime Sessions of the International Labour Conference, which has in the past met on an average every ten years. The ILO launched in 2001 a process to consolidate the then existing body of 69 maritime labour instruments into a single consolidated maritime labour Convention – the Super Convention – which is expected to be adopted in 2005.

³ These standards take the form of Conventions and Recommendations. Conventions have to be ratified by member States to become binding. Recommendations normally supplement Conventions and provide guidance on how the provisions of Conventions can be implemented. They can also be stand-alone instruments. Recommendations are non-binding. The Organization has adopted to date 185 international labour Conventions and 194 international labour Recommendations.

the Seafarers' Identity Documents Convention (Revised), (No.185).⁴ The Convention was adopted with 392 votes in favour, no votes against and 20 abstentions. The significance of that Convention lay in the balance it achieves between the current concerns for enhanced security, the facilitation of international commerce and the facilitation of seafarers' professional movements as well as their basic rights. It reflects the ILO's response to the increased threats to global security, in particular the need for security on ships and in ports. It ensures for seafarers their ability to pursue their profession, take shore leave and ensure that the industry could continue to attract and retain trained and qualified seafarers as well as a maritime skill base in all maritime countries. For shipowners, whose business is international trade, it is important that their ships are not subject to unnecessary delay. For governments, it gives them the security they need in order to accept and meet the commitments to allow seafarers the essential facility of shore leave as well as the facility necessary for them to perform their professional tasks.

2 Responding to Global Security in the Maritime Field: Enhancing the Security of Seafarers' Identification

2.1 Increased Interest in Maritime Security Issues

Following the events of September 11, 2001, a number of measures were engaged at the international level to enhance security. In the area of maritime security, the International Maritime Organization (IMO) held a Diplomatic Conference on Maritime Security in December 2002 and adopted amendments to the Convention for the Safety of Life at Sea (SOLAS), 1974 as amended.⁵ These amendments included the adoption of the International Ship and Port Facility Security (ISPS) Code. It became apparent in the preparatory discussions on the amendments to SOLAS that a substantial number of countries would require "positive verifiable identification" before they were prepared to grant special facilities enabling seafarers to carry out the professional moves necessary both for their work (such as rapidly joining a ship or transferring to another ship) and for their well-being (in particular, shore leave, whose denial would result in severe hardship and intolerable privation for seafarers at sea for long periods). As a consequence, seafarers' movements were becoming more difficult and subject to increased control. In the course of the discussions held

⁴ See, *Provisional Record No.20A. International Labour Conference, 91st Session*. Geneva: ILO, 2003. Three reports were prepared as required by the Standing Orders of the International Labour Conference for preparation of a standard-setting item. See, *Improved Security of Seafarers' Identification, Report VII (1), International Labour Conference, 91st Session*. Geneva: ILO, 2003; *Improved Security of Seafarers' Identification, Report VII (2A), International Labour Conference, 91st Session*. Geneva: ILO, 2003; and *Improved Security of Seafarers' Identification, Report VII (2B), International Labour Conference, 91st Session*. Geneva: ILO, 2003. The Convention as well as the above reports are available on the ILO website at the following address: <http://www.ilo.org>.

⁵ The SOLAS 1974 Convention and a list of its amendments can be found on the IMO's website at: http://www.imo.org/Conventions/contents.asp?topic_id=257&doc_id=647.

at the IMO, it was agreed that the question of improved security of seafarers' identification could more appropriately be dealt with by the International Labour Organization.⁶

2.2 Why an Identity Document for Maritime Workers?

Shipping employs today 1.2 million seafarers of mixed nationalities, many of whom come from developing countries or countries in transition. It is vital to world commerce and trade in that some 90 percent of world trade is carried by sea. Seafarers are unique among industrial workers today, in that they essentially live at their place of work. Most seafarers spend an average of nine months a year at sea. It is therefore fundamental to the working lives of seafarers that, after long periods at sea, they are able to go ashore when their ships visit foreign ports, or to join their ships or to return to their homes.

Since a ship is a confined environment, it lacks most of the facilities that workers ashore may take for granted. Therefore, seafarers need to be able to take shore leave while their ships are in port. They may require it for personal reasons or medical treatment, or simply for a well-earned recreational break. Furthermore, shore leave is often the only opportunity for seafarers to contact their families and to receive social services. Confinement to the ship will have adverse effects on seafarers' welfare and may add to fatigue problems, with obvious safety implications for both seafarers and the ship. What could therefore be considered as amenities for some, are vital necessities for others.⁷ Similarly, in order to enable them to perform their professional duties, it is essential that seafarers be given facilities to join or for transiting to join their vessels, as well as for purposes of repatriation.

Traditional systems of border control (passport and visas) cannot meet these demands. Even if costs were not an issue, traditional visa application processes are based on requirements seafarers can seldom comply with. Standard consular practice requires the application to be made through the embassy or mission of the issuing country in the applicant's country. This lengthy and often expensive process does also frequently require physical presence – a requirement seafarers would most often be unable to meet as their ships may be in different parts of the world. There is consensus in the industry that the requirement for individual visas is impractical for its operations and may have a strong impact on economic and operational issues. Due to unexpected changes in ships' itineraries, seafarers often need to join other ships. This leads to

⁶ The IMO Diplomatic Conference held in December 2002 also adopted a resolution (No.8) concerning the enhancement of security in cooperation with the International Labour Organization. The resolution endorsed and supported the work in the ILO and States were invited to participate in the International Labour Conference and to give favourable consideration to the ratification, acceptance, approval or accession to the new instrument once adopted as early as possible.

⁷ An extensive study on the current living and working conditions of seafarers is under publication. *The Global Seafarer*. Geneva: ILO Publications, 2003 or early 2004.

ever shifting crews and gives rise to another problem: since the validity of visas is generally set on a reciprocal basis, some seafarers in such a multinational crew might and some might not require visas. Moreover, different periods of validity might apply and further complicate logistics.

With advanced cargo-handling technology and ports working 24 hours/day, there has been a dramatic decrease in “turnaround time” of ships (the time a ship is in port). An ILO report⁸ estimated that in 1998, 27 % of ships spent less than 12 hours in port, 45 % of ships spent 12–24 hours in port, 70 % turned around within 24 hours, and only 4 % of ships remained in port more than 3 days. The increased speed of operations and the consequent shortening of ships’ turn-around time in ports have made shore leave for seafarers spending long periods at sea even more important.

Therefore, a solution had to be found, which would allow seafarers’ professional movements as well as enable them to take shore-leave without undue delay, while addressing security concerns at the same time.

2.3 The ILO’s Response

In response to an urgent request from the IMO, the Governing Body of the ILO, at its 283rd Session in March 2002, placed on the agenda of the 91st Session of the International Labour Conference (June 2003), an urgent item concerning improved security of seafarers’ identification with a view to the adoption of a Protocol to the Seafarers’ Identity Documents Convention, 1958 (No.108). The ILO Governing Body decided that this question should be governed by the single-discussion procedure.⁹ It took fifteen months between the time the item was placed on the agenda by the Governing Body and the adoption of the new Convention by the Conference. The Conference decided that the new instrument should take the form of a Convention rather than a Protocol as had originally been proposed. The reason for this was to enable the automatic denunciation of Convention No.108 when the new instrument came into force for a member State that had ratified the former Convention. It was felt that member States who had ratified Convention No.108 would need to be released from certain of their obligations to permit them to ratify the new Convention. Furthermore, they would not have been able to denounce Convention

⁸ *Report for discussion at the 29th Session of the Joint Maritime Commission – The impact on seafarers’ living and working conditions of changes in the structure of the shipping industry [JMC/29/2001/3]*. Geneva: ILO Publications, 2001, p.72.

⁹ International labour Conventions and Recommendations adopted by the International Labour Conference are normally subject to a double-discussion by the Conference, i.e., two readings. A single discussion is normally used for the adoption of limited revisions, normally in the form of a Protocol to a Convention. It normally takes 39 months from the time of placing an item on the agenda of the International Labour Conference with a view to the adoption of a normative instrument (a Convention and/or a Recommendation) and the adoption by it of that instrument.

No.108 before 19 February 2011 and the use of a Protocol as an instrument in the ILO would not have made this automatic denunciation possible.¹⁰

The importance given to the subject in the G8 summits in Kananaskis¹¹ and Evian¹² lent further support to this work.

2.4 The ILO Convention on Seafarers' Identity Documents, 1958 (No. 108): A Precursor

The ILO had, as early as 1958, already adopted an international standard providing for an identity document for seafarers – the Convention on Seafarers' Identity Documents, 1958 (No.108). The idea of creating an international identity document for seafarers under ILO auspices was first put forward in 1954 by the International Workers' Federation and the United Kingdom Navigators' and Engineer Officers' Union (now NUMAST). It was intended to serve a number of useful purposes and, in particular, could help to establish the status of *bona fide* merchant seafarers in foreign countries. In view of the difficulties being experienced with immigration regulations in foreign countries at the time, they called for an internationally recognized seafarers' passport or similar document designed to establish a seafarers' identity and which immigration officials worldwide would recognize instantly.¹³

However, Convention No.108 fell short of the expectations of its sponsors. It required ratifying States to issue seafarers' identity documents corresponding to criteria set by it and to recognize similar documents issued by other parties to the Convention. Every State would therefore issue its own national seafarers' identity document. Thus, apart from the particulars required, the document's form and content were determined *nationally*. On the basis of such documents, the parties to the Convention were required to grant certain facilities to seafarers, such as temporary shore leave and transit to join and leave merchant vessels.

Although it did not lead to the creation of an internationally uniform identity document, Convention No.108 facilitated the professional movements of seafarers for over 40 years. With 61 ratifications representing approximately 60.7 per cent of world

¹⁰ For further clarification on this aspect, see, *Improved Security of Seafarers' Identification, Report VII(1), International Labour Conference, 91st Session*. Geneva: ILO, 2003, pp. 45–47. This report is available on the ILO website, at the following address: <http://www.ilo.org>.

¹¹ Kananaskis summit (2002). *Cooperative G8 action on transport security*. http://www.g8.fr/evian/english/navigation/g8_documents/archives_from_previous_summits/kananaskis_summit_-_2002/cooperative_g8_action_on_transport_security.html.

¹² G8 action plan to "Enhance transport security and control of man-portable air defence systems (MANPADS)" http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/enhance_transport_security_and_control_of_man-portable_air_defence_systems_-_manpads_-_a_g8_action_plan.html.

¹³ See, *Improved Security of Seafarers' Identification, Report VII (1), International Labour Conference, 91st Session*. Geneva: ILO, 2003, pp.2–3. The report is available on the ILO website, at the following address: <http://www.ilo.org>.

gross tonnage, it enjoyed – in relation to other ILO standards – wide acceptance. Moreover, the IMO Convention on the Facilitation of Maritime Traffic (FAL Convention) of 1965 incorporated the fundamental principles of Convention No. 108 and provided for shore leave without the need for a visa. The documents issued pursuant to Convention No.108 were also *de facto* accepted by many States which did not ratify Convention No.108, since States having ratified the FAL Convention can issue national identity documents meeting the same criteria.

2.5 Goals of the Revision of the 1958 Convention

As indicated above, Convention No.108 covered the physical aspect of the document and contained provisions concerning facilitation of seafarers' movements. The recently adopted Convention No.185 would go further. It would create an internationally uniform identity document and cover the security aspects of the basic infrastructure of the issuance and verification process for identity documents. This was an entirely new aspect for an ILO Convention and even for any international instrument to date.

An important point of departure was the need to take into account and balance three basic interests. The *first* interest was the security of the seafarers themselves, as well as of their ships and working environment. The *second* related to the facilitation of maritime commerce and the movement of ships and of seafarers (professional movements). The *third* related to decent working and living conditions (shore leave).

To ensure widest possible acceptability, the new Convention No.185 has a twofold purpose:

- to *strengthen the reliability* of the seafarers' identity document as well as of the related national procedures and infrastructures and
- to *maintain the obligations* relating to the rights and facilities to be granted to seafarers (i.e. facilitation of their professional movements and of the exercise of their rights at work, to the maximum extent compatible with the needs for enhanced security).

Concerning the security component, six objectives for the revision of Convention No. 108 were identified:

- positive and verifiable identification by means of a standard ensuring both the identity between document recipient and holder and the validation of authenticity by a source;
- uniformity by means of a universal standard;
- acceptability by means of a convenient, user-friendly, cost effective and not commerce-hindering standard;
- reliability by means of a practicable standard;
- security by means of a standard ensuring that the system is resistant to compromise; and

- inter-operable exchange of information among member States, using database technology to allow immediate access.

Building on the success of Convention No.108, Convention No.185 seeks to create an identity document in which countries will have real confidence and which will facilitate maritime commerce without placing an undue burden on seafarers.

2.6 From a National to an Internationally Uniform Seafarers' Identity Document: the Seafarers' Identity Documents Convention, 2003, (No.185)

2.6.1 An Outline of Convention No.185

Convention No.185 contains 18 Articles and three Annexes. The Annexes are an integral part of the Convention. The Articles contain matters of principle that are expected to remain valid for many years. The Articles contain provisions relating to: definition and scope; the issuance procedures (who can issue seafarers' identity documents and to whom); the content and form of the identity document; national electronic database requirements; quality control and evaluation requirements; facilitation of shore leave, transit and transfer of seafarers; continuous possession and withdrawal of the identity document; amendment procedure for the Annexes; and transitional provisions. Nine of the 18 articles deal with the final clauses (procedural provisions) of the Convention. The three Annexes contain technical details, which could be the subject of more regular updating and deal with:

- the model for the seafarers' identity document;
- the electronic database; and
- requirements and recommended practices concerning the issuance of seafarers' identity documents.

The following sections outline some of these elements.

2.6.2 To Whom Can a Seafarers' Identity Document Be Issued

Article 2 of Convention No.185 requires a member State that has ratified the Convention to issue a seafarers' identity document to each of its nationals who is a seafarer and makes an application to that effect. Article 1 defines the seafarer as "any person who is employed or engaged or works in any capacity on board a vessel, other than a ship of war, ordinarily engaged in maritime navigation". This is a very broad definition of seafarers, extending the term seafarer to persons working on board a ship who may not be ship's crew. It covers all those who work on a ship and need an identity document for the purposes of shore leave, joining ship or transit to join a ship or repatriation.

While there had initially been an overwhelming majority that favoured that seafarers' identity documents should only be issued to nationals of the member State, it was eventually agreed that member States would also be allowed to issue identity documents to non-nationals, if these seafarers enjoyed the status of permanent residents

in the ratifying member State concerned (Article 2, paragraph 3). The rationale was that States can generally ensure a positive verifiable identification of such persons. Permanent residents however would in all cases have to hold national passports in addition to the seafarers' identity document to be able to enjoy the facilities granted by the Convention.

2.6.3 The Legal Nature of The Seafarers' Identity Document Under Convention No.185

Much discussion took place during the Committee on Seafarers' sittings at the International Labour Conference concerning the status of the identity document and its relationship to a passport.¹⁴ Article 3, paragraph 5 (a) and (b) of the Convention resolves this question by clearly providing that it is a stand-alone identity document and not a passport. Although the seafarers identity document is neither a travel document nor a passport, its purpose is to identify the holder as a seafarer and to allow, subject to refusal in individual cases, the admission on a foreign territory for purposes that would be limited in time and space: i.e., for purposes of shore leave and professional movements.

Concerning the validity of the seafarers' identity document, Article 3, paragraph 6 provides for a maximum validity of ten years. However, the document must be renewed after five years.

2.6.4 Characteristics of the Seafarers' Identity Document

One of the primary security objectives of the new document is to enable an immigration or other competent official to easily verify, with the maximum of certainty, that the holder of a seafarers' identity document, temporarily within the territorial jurisdiction of the country concerned, is the person identified on the document and that he/she is a seafarer. To that end, Article 3 of the Convention sets out the specific criteria for the identity document. It requires that the seafarers' identity document be designed in a simple manner and made of durable material with due regard to conditions at sea. As regards the materials to be used, it specifically provides that they shall prevent tampering or falsification and enable easy detection of alterations. These materials must also be easily accessible to all Governments at the lowest cost consistent with reliability, while achieving the objectives of preventing tampering and falsification.

Convention No.185, unlike its predecessor Convention No.108, creates an internationally uniform seafarers' identity document. Article 3, paragraph 1 of Convention No.185 provides that the seafarers' identity document shall conform in its content to the model set out in Annex 1 of the Convention. The Convention covers the seafarers'

¹⁴ See, *Provisional Record No.20 (Part I), International Labour Conference, 91st Session*. Geneva: ILO, 2003, paragraphs 9 to 41. See, in particular, paragraph 40.

identity document's physical characteristics and sets out clear and detailed criteria to allow consistent conformity. The form of the document and the materials used are also to be consistent with the specifications set out in that Annex. Both content and form are thus to be uniform.

During the discussions at the Conference, different models were envisaged and scrutinised.¹⁵ Two options were examined. One was a smart card with an embedded integrated circuit (IC), which would enable information to be accessed without the use of physical contacts (e.g. induction);¹⁶ the other was for a more traditional document (without IC). The solution favoured was for a more traditional-type document. Article 3, paragraph 3 provides that the seafarers' identity document shall be no larger than a passport. Annex I of the Convention allows either of two formats: passport format or card-type format. Annex I sets out the security features to be included: ICAO specifications for Document 9303 and at least one of the following other security features (watermarks, ultra-violet security features, use of special inks and special colour design, perforated images, holograms, laser engraving, micro-printing and heat-sealed lamination). The integration of ICAO specifications into Convention No.185 is intended to make Convention No.185 attractive to ratify. The seafarers' identity document must therefore conform to international standards for machine-readable travel documents (MRTDs), which are contained in Document 9303 Part 3 (2nd edition, 2002) or Document 9303 Part 1 (5th edition, 2003).¹⁷ Member States already issuing documents according to these specifications can therefore build on their own know-how and previous experience.

2.6.5 Inclusion of a Biometric

The issue of a biometric in the seafarers' identity document was one of the most controversial issues discussed and agreed upon. A biometric is an electronic recording of a unique physical identifier allowing immigration authorities to automatically match the document and its bearer.¹⁸ The question was whether the identity document

¹⁵ See the explanations provided by ICAO on its work on machine-readable travel documents. *Provisional Record No.20, International Labour Conference, 91st Session*. Geneva: ILO, 2003, paragraphs 138–145.

¹⁶ A technology used for prepaid telephone cards in some countries like France or Brazil.

¹⁷ Further information on these standards can be obtained online at: <http://www.icao.int/icao/en/atb/fal/mrtd/guide.htm>.

¹⁸ A recent ICAO definition states: "Biometrics is a means of identifying a person by biological features unique to the individual, using advanced computerized recognition techniques". Another of its technical documents states "Biometrics are the automated means of recognizing a living person through the measurement of distinguishing physiological or behavioural traits". The biometrics being considered by ICAO are facial recognition, fingerprints and iris scan. See *Op.Cit. 15*, paragraph 138. An overview over existing technologies and their suitability for identity documents is: ICAO New Technologies Working Group (NTWG). *Biometrics Deployment of Machine Readable Travel Documents – Technical Report – Version 1.9*. Montreal: ICAO, 2003. Available online: <http://www.icao.int/icao/en/atb/fal/mrtd/ntwg.pdf>.

should contain any biometric other than a photograph and if it did whether such a requirement would be mandatory or optional. The Conference discussions had the assistance of experts from ICAO and the G8 Roma and Lyon Group on biometric applications for international travel documents. It also had cognisance of the G8 communiqué on the issue as well as the decision taken in May by the ICAO Technical Advisory Group on Machine Readable Travel Documents (TAG/MRTD) and the ICAO Council's Air Transport Committee (ATC) in May 2003 to adopt a global harmonized blueprint for the integration of biometric identification information into passports and other machine-readable travel documents. It had recommended facial recognition as the globally interoperable biometric preferred option.

Taking into account strongly voiced concerns of the seafarers and to provide transparency for the end user, the International Labour Conference decided upon adopting a biometric template based on a fingerprint printed as numbers in a bar code conforming to standards to be developed. It was agreed that this option would enable correct identification, while at the same time keeping production costs for the cards low and ensuring the widest possible adherence to existing standards.

As regards the contents of a seafarers' identity document, all possible data entries are restricted to an exhaustive number of particulars provided for in Article 3, paragraph 7 and Annex I of Convention No.185. These are: full name, sex, date and place of birth, nationality, any special physical characteristics that may assist identification, digital or original photograph and signature. Paragraph 8 of Article 3 additionally provides that a template or other representation of the holder that meets the specification provided for in Annex I of the Convention shall also be required for inclusion in the seafarers' identity document. Thus, while most data to be contained in the seafarers' identity document is identical to that of a usual passport, the inclusion of biometric data is groundbreaking. This is the first time such a requirement is being made mandatory at the international level. As indicated by the representative of ICAO during the discussions in the Conference Committee, at present, the ICAO specifications are technical blueprints and have the force of recommendations. The International Standards Organization (ISO) normally endorses them as standards.¹⁹

The Conference Committee took into account all the elements and advice available to it as well as the concerns of seafarers who opposed the inclusion of a magnetic strip or a chip on the grounds that it could be misused against the seafarer by the inclusion of hidden data. It is for this reason that Article 3, paragraph 9 specifically provides that all data concerning the seafarer that are recorded on the document have to be visible and that where such information is not eye-readable, seafarers are to have convenient access to machines to enable them to inspect the data. Article 3,

¹⁹ *Op.Cit.* 15, paragraphs 140 and 143.

paragraph 8 of the Convention concerning the biometric²⁰ was given effect to in Annex I. Section III (k) of that Annex provided for a “biometric template based on a fingerprint as numbers in a bar code conforming to a standard to be developed”.

At the time of the adoption of the Convention, no global interoperable standard had as yet been developed for the biometric chosen. In ICAO, work was on-going on the technical specifications for a facial recognition biometric. The ILO choice of the fingerprint template was favoured due to considerations on transparency, reliability and production costs.

In order to give effect to the biometric chosen, the International Labour Conference adopted a Resolution concerning the development of the global interoperable biometric. The resolution took note of the on-going work of ICAO in the field and stressed the need for the ILO to develop guidelines on standards of the technology to be used which will facilitate the use of a common international standard. It invited the ILO Governing body to request the Director-General “to take urgent measures for the development by the appropriate institutions of a global interoperable standard for the biometric template adopted in the framework of the Seafarers’ Identity Documents Convention (Revised) 2003, particularly in cooperation with the International Civil Aviation Organization.”²¹

2.6.6 Improved Reliability at Every Stage of the Process

Enhancing the reliability of the seafarers’ identity document was an important and indispensable objective of Convention No.185. It had been stressed in the various discussions and consultations that the reliability of the document itself depended on the security of the procedures for issue of the document. This would be dependent on the procedures established by each country for producing and issuing the identity documents. Member States would only support and accept the new identity

²⁰ Paragraph 8 of Article 3 sets on a number of criteria for the selection of the biometric. It sets the following preconditions:

“(a) the biometric can be captured without any invasion of privacy of the persons concerned, discomfort to them, risk to their health or offence against their dignity;

(b) the biometric shall itself be visible on the document and it shall not be possible to reconstitute it from the template or other representation;

(c) the equipment needed for the provision and verification of the biometric is user-friendly and is generally accessible to governments at low cost;

(d) the equipment for the verification of the biometric can be conveniently and reliably operated in ports and in other places, including on board ship, where verification of identity is normally carried out by the competent authorities; and

(e) the system in which the biometric is to be used (including the equipment, technologies and procedures for use) provides results that are uniform and reliable for the identification of identity.”

²¹ *Provisional Record No. 20, Part II, International Labour Conference, 91st Session*. Geneva: ILO, 2003, p. 109.

document, if they could safely assume that the issuance process was properly designed to prevent error or fraud. The Convention therefore provides for ensuring reliability of: the document itself, the infrastructure and the document production and issuance processes, the audit of production and issuance systems as well as the national databases, and the review and evaluation by the ILO and its publication of a list of countries meeting the requirements of the Convention.

Concerning the reliability of the issuance process, Article 5 of Convention No.185 provides for minimum requirements concerning processes and procedures for the issue of seafarers' identity documents, including quality control procedures that have to be met by ratifying States issuing these documents. These are designed to minimise vulnerabilities with regard to the handling and issuance process. The minimum requirements are mandatory and are set out in Part A of Annex III as mandatory results to be achieved in implementing the system of issuance of seafarers' identity documents. This is complemented by Part B of Annex III which sets out the recommended procedures and practices for achieving the results provided for in Part A. Annex III thus contains a comprehensive set of requirements to ensure reliability of every stage of the process.

Monitoring and evaluation both at the national and international level is provided for. The aim of evaluation and monitoring is to ensure that reliable evaluation procedures and quality control systems are in place to ensure that seafarers' identity documents are secure and the system cannot be compromised. In formulating the requirements, three elements were considered essential. The first was flexibility with regards to the means (evaluations, rather than audits were required). The second was integrity which needed to be based on the independence of the evaluations. The third was periodicity of the evaluations to ensure regular opportunities to detect and correct shortcomings.²² Article 5, paragraph 4 of Convention No. 185 therefore requires member States to carry out regular (at least every five years) and independent evaluations of their systems for issuance and they are to provide these assessments to the Director-General of the ILO. These periodic evaluations are to be made available to other member States, thus providing for a transparent process. Importantly, Article 5, paragraph 6 empowers the ILO's Governing Body to evaluate the information provided and to publish a list of member States that fully meet the minimum requirements concerning the processes and procedures for the issue of seafarers' identity documents, including the quality control procedures. The Conference also adopted a Resolution concerning the establishment of a list of member States complying with the Seafarers' Identity Documents Convention (Revised), 2003.²³ The

²² See, *Provisional Record, No.20 (Part 1), International Labour Conference, 91st Session*. Geneva: ILO, 2003, paragraph 526.

²³ See, *Provisional Record, No.20 (Part II), International Labour Conference, 91st Session*. Geneva: ILO, 2003, p. 110.

Resolution requests the ILO Governing Body to make arrangements for representatives of governments which have ratified the Convention as well as shipowners' and seafarers' organizations to be involved in the review of the reports and the maintenance of the list of States meeting the requirements.

The approach to set out minimum requirements in Part A of Annex III and an ideal way of implementing these in its Part B, is notable, because it combines the advantages of both rules- and results-based approaches. While clear indication is given on ways to ensure that the minimum requirements are achieved, Article 5, paragraph 2 of the Convention sets out the broad areas that these processes and procedures are to cover. Member States are given some flexibility on how best to achieve the results, while ensuring at the same time that the procedures adopted are suitable and well managed.

By introducing such dependable and transparent procedures, member States will be able to safely rely on the seafarers' identity documents.

2.6.7 External Means of Verifying Authenticity

While the biometric allows the verification that the person presenting the document is its owner, the database required under Article 4 of Convention No.185 ensures that the authenticity of the document itself can be verified. Member States are able to verify whether the document presented was indeed issued by the other member State and can obtain further information on whether the document is currently valid, suspended or withdrawn.

As timing is of the essence to avoid delays in joining, transiting or transferring to a ship, the possibility for rapid verification needed to be ensured. Article 4, paragraphs 1 and 2 of Convention No.185, therefore require every ratifying member State issuing seafarers' identity documents to maintain an electronic database containing details which are essential for verifying a seafarer's identity document or the status of the seafarer. Paragraph 5 of Article 4 sets out the details that are required to be maintained in the database and are to be made permanently accessible to immigration authorities or other competent authorities either through electronic interrogation or through a focal point.²⁴

2.6.8 Rights and Facilities

The question of facilities to be accorded to seafarers was certainly the most controversial of the issues on which agreement had to be reached. The issue of facilitation

²⁴ Annex II of the Convention sets out the details to be included in the electronic database. They are to be restricted to: issuing authority named on the identity document; full name of the seafarer as written on the identity document; unique document number of the identity document; date of expiry or suspension or withdrawal of the identity document; biometric template appearing on the identity document; photograph; and details of all enquiries made concerning the seafarers' identity document.

of the professional movements was central of the provisions of Article 6 of the Convention No.185. It sought on the one hand to maintain the facilities provided for in Article 6 of Convention No.108, and on the other, to strengthen the provisions by taking account of the basic security concerns. The question was whether the Convention should expressly provide for the admission to shore leave without a visa as is required by Section 3.45 of the IMO's Convention on Facilitation of International Maritime Traffic, 1965 (FAL), or whether, there should be some relaxation where member States requiring visas granted them promptly and without charge. The balance sought was one that retained the principles of Convention No.108 regarding the facilities to be granted to seafarers and would at the same time accommodate those States which had not been able to ratify Convention No.108 due to security concerns.

Article 6 therefore distinguishes between shore leave and transit or transfer. In the case of shore leave, Article 6, paragraph 3 requires advance notice to be given prior to the holder's arrival. This allows member States to do the necessary verification and any related enquiries and formalities, thus enabling immigration authorities to expeditiously process the request for entry and to grant shore leave on arrival of the ship in port unless there were clear grounds for doubting the authenticity of the seafarer's identity document or for reasons of public health, public safety, public order or national security. Article 6, paragraph 6 states that the seafarer shall not be required to hold a visa for purposes of shore leave. The same provision however recognizes that certain countries may not be in a position not to require visas. In such cases, the Convention adopted the concept of "substantial equivalence" found in the ILO's Merchant Shipping (Minimum Standards) Convention, 1976 (No.147) and in the draft of the new consolidated Maritime Labour Convention. Paragraph 6 therefore continues: "... Any Member which is not in a position to fully implement this requirement shall ensure that its laws and regulations or practice provide arrangements that are substantially equivalent". Such a provision suggests that visa requirements for seafarers' entry could be considered compatible with the Convention's aims, if visas allowing entry were granted promptly and without charge to holders of the seafarers' identity document. This formulation specifically preserved practices in some member States relating to crew list visas or visa-waiver programmes.

Unlike the provisions for a minimum advance notice to facilitate shore leave, the arrival processing procedures do not foresee such notice for transit or transfer. It was considered that joining a ship, transit and transfer could normally be planned. Article 6, paragraph 7 provides for the expeditious handling of requests for entry for these purposes, but requires that the seafarers' identity document be supplemented by a passport. Paragraph 9 permits the member State to require satisfactory evidence, including documentary evidence of the seafarer's intention and ability to carry out that intention.

As indicated earlier, seafarers who hold identity documents issued by their country of permanent residence are also required to be in possession of their national passports at all times, including for the purposes of shore leave.

Having reviewed both sets of provisions under Article 6, there is one common thread between them. This relates to the one of the main purposes of the seafarers' identity document, which is undoubtedly to confirm that the bearer is a genuine seafarer. The facilities accorded by the provisions of article 6 are based on this principle. Article 6, paragraph 1 creates the bridge between the two sets of provisions by providing that the holder of a valid seafarers' identity document is to be recognized as a seafarer unless there are clear grounds for doubting the authenticity of the seafarers' identity document.

2.6.9 Addressing Human Rights Issues

The Convention, in addressing the important security concerns, also sought to ensure that fundamental rights such as privacy and freedom from discrimination were duly taken into account. The Preamble of the Convention refers to the United Nations General Assembly Resolution concerning the protection of human rights and fundamental freedoms while countering terrorism.²⁵

Concerning the identity document itself, Article 7, paragraph 1 provides that the seafarer is entitled to keep the document in his or her possession at all times, unless it is held for safekeeping by the master of the ship concerned with the seafarer's written consent. This is an important guarantee for the seafarer as the seafarers' identity document is a personal document and its retention for reasons other than what is provided for could give rise to allegations of forced labour. Article 2, paragraph 5 grants to seafarers a right to an administrative appeal in the case where their application for a seafarers' identity document is rejected. Paragraph 6 of Article 2 safeguards the rights of refugee seafarers or seafarers who become stateless.

Concerning the biometric, the Convention (Article 3, paragraph 8) requires that the biometric be captured without "any invasion of privacy of the persons concerned, discomfort to them, risk to their health or offence against their dignity". Paragraph 9 of the same article requires that seafarers are able to see all the data concerning them that are recorded on the identity document either because they are visible or by providing them access to machines enabling them to inspect such data.

As regards the national databases, Article 4 of the Convention contains a number of protective provisions to guarantee the human rights of seafarers. The data to be included in the databases must be consistent with the seafarers' right to privacy and meet all applicable data protection requirements (Article 4, paragraph 2). The seafarers have a right to examine and check the validity of all the data that is held or stored in the database which relate to him or her and to provide for correction if necessary (Article 4, paragraph 3). Before any data, in particular photographs, are exchanged, Article 6, paragraph 6, requires that a mechanism be in place to ensure that applicable data protection and privacy standards are adhered to.

²⁵ See, *United Nations General Assembly Resolution A/RES/57/219*. New York: United Nations, 18 December 2002.

2.6.10 Entry into Force Requirements

Article 12 of the Convention provides for the entry into force of Convention No.185 six months after that date on which the ratification of two Members has been registered with the Director-General of the ILO. This provision departs from the standard period of 12 months. This shortened period was intended to promote the rapid and wide ratification and implementation of the measures adopted in order to reverse the mounting hardship being faced by seafarers. It was also designed to be consistent with Article 8, which regulates the simplified amendment procedure for the Annexes to the Convention. Article 8 provides for a period of six months from the date of adoption of an amendment to the Annexes to the Convention for a member State to indicate whether the amendment would not enter into force with respect to it.

2.7 Normative Innovations

Convention No.185 contains several innovations and features that are new to the ILO. They relate to the structure of the Convention itself; the requirement for an internationally uniform document (the new seafarers' identity document); the special procedure it establishes for international oversight; and a simplified amendment procedure.

2.7.1 Structure

The first innovation is a visible one – Convention No.185 is structured so that its different elements are reflected. While the Articles provide basic principles and rules, the Annexes contain detailed provisions or technical details (e.g. the content of the database, procedures on production and issuance of seafarers' identity documents etc.). While the body of the Convention is subject to the normal revision procedure of the ILO and the ratification process, the Annexes are subject to a simplified amendment procedure. As regards the Annexes, one of them, Annex III contains two parts. Part A is mandatory while Part B is non-mandatory. Annex III specifically provides that Part B recommends procedures and practices for achieving the results of Part A. It further states that Part B is to be given full consideration by Members, but is not mandatory. The Annexes form an integral part of the Convention despite the differing status of Parts A and B of Annex III.²⁶

2.7.2 A Comprehensive International Oversight System

The Convention establishes a special procedure for an international oversight in order to reassure countries that other ratifying States are issuing documents on the basis of secure processes and procedures. The independent national evaluation reports to be submitted to the ILO are made subject to a separate reporting requirement. It is made clear in Article 5, paragraph 4 of the Convention that technical oversight is to be without prejudice to the normal reporting obligations of member States under

²⁶ The non-binding nature of Part B of Annex III was confirmed by the Legal Adviser of the Conference. See, *Provisional Record No.20, (Part II), International Labour Conference, 91st Session*. Geneva: ILO, 2003, paragraph 719.

Article 22 of the ILO Constitution.²⁷ These reports are to be used by the ILO as well as other relevant information to establish a list of countries complying with the requirements of the Convention. This will be the first time that the ILO will be called upon to establish a list of compliant countries. This is indeed necessary as Article 6, paragraph 9 conditions the recognition of seafarers' identity documents issued by a member State to its compliance with the minimum requirements of the Convention.

2.7.3 Simplified Amendment Procedure

Article 8 of Convention No.185 introduces a simplified amendment procedure for the three Annexes to the Convention. It provides for amendments to be made to these Annexes by the International Labour Conference, acting on the advice of a duly constituted tripartite maritime body of the ILO. The decision needs to be taken by a two-thirds majority vote at the Conference, including at least half of the countries that have ratified the Convention. The amendments adopted will not require ratification but a provision is included permitting a member State that has ratified the Convention to opt out or to delay entry into force with respect to it. Such notification must be given within six months of the date of adoption of the amendment. This feature enables the details of the Convention to be easily updated in order to keep pace with constantly changing technologies.

The legal basis for this amendment procedure is that legislators concerned are not required to set out all the details of the norms they are establishing, but can leave such provisions to be developed through a simpler procedure or subsidiary legislation. The procedure is in accordance with the Constitution, since control remains with the International Labour Conference, as required by Article 19 (2) of the ILO Constitution. This simplified amendment procedure is inspired by provisions, which are to be incorporated in the Consolidated Maritime Labour Convention under discussion and were based on international instruments such as SOLAS 1974.

2.8 Fast Track Standard-setting

As indicated above, this item on the agenda was considered an urgent item and the ILO Governing Body agreed to the use of the single-discussion procedure for the adoption of international labour standards. When one considers the nature of the instrument adopted, its complexity and sensitivity of the issues dealt with, it was indeed remarkable that the results could have been achieved in this very short space of time. A number of factors accounted for the urgency: the events of September 11; the need to complement provisions adopted by the IMO in December 2002, itself having followed an expedited revision of SOLAS, the fact that those amendments are due to enter into force in 1 July 2004; the declarations adopted by the G8 Leaders

²⁷ Article 22 of the ILO Constitution provides for reporting on ratified Conventions by member States. These reports are examined by the ILO Committee of Experts on the Application of Conventions and Recommendations.

in Kananaskis and Evian; the impediments the industry was facing in the ports of certain countries; the costs being faced by the industry in the wake of tightened security measures for entry into those countries; and the increasing hardship being faced by seafarers in the ports of these countries. These all contributed to the need for an urgent regulatory and mandatory response.

The very procedure used by the ILO was also expeditious. It adopted shortened time-limits for complying with every stage of the procedure. The law and practice report²⁸ prepared by it was unique in many ways. It innovated on the traditional format of the law and practice report required by the rules of procedure of the Conference, as the law and practice in many States were only then in the process of being reviewed. A consultation meeting was held in May 2002 and provided the ILO with the elements for that report.²⁹ The questionnaire appended to the law and practice report, which is required by the rules, was for the first time in ILO preparatory process for a standard-setting activity, accompanied by a preliminary draft of possible provisions. The draft was intended to provide an illustration of how the propositions on which the questions were based might be expressed in a legal instrument. In addition to the responses to the questionnaire received from Governments, Shipowners' and Seafarers' organizations, three further consultation meetings were held prior to the discussion by the International Labour Conference in June 2003.³⁰ The Conference Committee on Seafarers set up by the Conference to discuss this item, held 20 sittings over a period of 10 days and considered 207 amendments, including an even higher number of sub-amendments. These were discussed in the plenary of the Committee, as well as in three Working Parties set up by it to consider specific issues.

2.9 Future of the Convention

2.9.1 Outlook

Throughout the preparatory work on Convention No.185, there was a strong consensus that the new instrument needed to be widely ratified to attain the desired impact. Special care was therefore given to achieving the widest possible acceptability. The new Convention not only embodies the views of the majority, but also takes into account strong minority positions. This consensual approach should allow for fast and wide ratification of the Convention. In order to achieve speedy and wide ratification, certain countries that are not parties to the present 1958 Convention (No. 108) need to make adjustments to their legislation in order to be able to ratify the new Convention. Adjustments of this kind are usually necessary to make ratification possible; the difference here is that they are to be made in the sensitive area of national security. The strong and positive attitude taken by a number of countries is

²⁸ See, *Improved Security of Seafarers' Identification, Seventh item on the agenda, Report VII(1), International Labour Conference, 91st Session*. Geneva: ILO, 2003.

²⁹ *Ibid.* pp. 64–67.

³⁰ These were held in June/July 2002, October 2002 and February 2003. These reports can be accessed through the ILO website, <http://www.ilo.org>.

encouraging. The Evian G8 statement on transport security also provided specific endorsement for the new ILO Convention.

In addition, the International Labour Conference adopted four Resolutions³¹ supplementing Convention No.185. They relate to the facilitation of shore leave and professional movements of seafarers; technical cooperation; the development of the global interoperable biometric; and the establishment of a list of member States complying with the Convention. From these four Resolutions, two are especially interesting and point to the way forward.

2.9.1.1 Development of a Global Interoperable Biometric

In view of the fact that no international specifications exist to date meeting the requirements of the Convention, the ILO is continuing its cooperation with ICAO and other organizations and Governments to ensure the speedy development of the technical specifications required to permit their adoption by the ILO for incorporation into seafarers' identity documents. It is hoped that such a technical standard for the biometric template of the fingerprint could be made available in the shortest period of time.

2.9.1.2 Technical Cooperation

A number of countries do not have sufficient resources and sufficiently advanced technologies to implement the sophisticated systems required by the new Convention for the issue of identity documents. The solution proposed by the Conference is technical cooperation among member States to pool resources and cooperation with the ILO.

3 Conclusion

Convention No.185 will have a direct impact on every seafarer, since it ensures that his/her need for speedy access to shore leave, for transit, transfer or repatriation can be met. The internationally uniform seafarers' identity document (a physical document) created under Convention No.185 will facilitate entry into countries and the crossing of borders, while at the same time allowing better control by immigration authorities, thereby giving countries the security they need to meet these commitments. The simplified amendment procedure and the mechanism for international oversight are additional important new features of this Convention and for an ILO instrument.

³¹ The Resolutions are as follows: Resolution concerning decent work for seafarers; Resolution concerning technical cooperation relating to seafarers' identity documents; Resolution concerning the development of the global interoperable biometric; and the Resolution concerning the establishment of a list of member States complying with the Seafarers' Identity Documents Convention (Revised), 2003. See, *Provisional Record No.20, (Part II), International Labour Conference, 91st Session*. Geneva: ILO, 2003, pp. 107–110.

The Convention has provided a practical solution for a sensitive problem. Work on this Convention was complicated, because of the nature and the issues raised. Technical solutions were needed as well as expertise in a myriad of legal areas. Labour law issues, questions of immigration law and border control had all to be addressed and differing, sometimes strongly held, political interests had to be respected. The Convention has managed to reconcile these positions and to achieve a remarkable step forward.

Convention No.185 constitutes a pioneering, comprehensive and sophisticated response to security concerns in the modern world, including the necessary safeguards for individual rights. It however remains an ILO Convention combining security concerns with the equally important social dimension: shore leave and facilitation for transit and transfer of seafarers, thus taking on also an economic dimension, namely facilitation of international commerce.

In adopting Convention No. 185, the ILO has not only fulfilled its mandate, but has also taken an important step to innovate and modernize not only maritime labour standards but also international labour standards in general.