



MARITIME SAFETY COMMITTEE
76th session
Agenda item 4

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MEASURES TO ENHANCE MARITIME SECURITY

Submitted by the ICFTU

SUMMARY

Executive summary: Comments and suggested amendments by the ICFTU

Action to be taken: Paragraphs 16 and 17

Related documents: MSC 76/ISWG/3/1, MSC 76/4/1, MSC 76/4/1/Add.1,
SOLAS/CONF.5/5 and DE 45/27

1 The ICFTU notes that, despite a number of IMO Assembly resolutions, the human element-related aspects of the draft chapter XI-2 and the associated Code have not been considered. The only identifiable reference to the human element is in paragraph 8.3 (4) of part A of the Code which identifies the weaknesses, including human factors, in the infrastructure, policies and procedures. This omission has, in our opinion, led to an imbalance in the document which could have serious and unintended ramifications for the shipping industry.

2 The changes in international shipping over the last decade or so, some of which relate to measures adopted by the Organization and some others to aspects which the Organization and other competent bodies have failed to address, have made seafaring a difficult and unattractive job. This has led to a skills shortage and projected growing deficit in suitably trained and qualified seafarers. There is much in the current text which will make this significantly worse. Seafarers live and work on board ships and are deprived of many of the basic facilities we all here take for granted while they are at sea and are increasingly unable to secure access to them while in port. This has profound implications for ships' morale and, consequently, the ability of seafarers to perform their duties, including security duties, which prejudices the fundamental aims of the Organization to promote safer seas and cleaner oceans. There also appears to be a presumption in the text that we the seafarers are at best a risk and at worst criminals.

3 The ICFTU is gravely concerned by the omissions and implications which pervade much of the text and the failure to address the human element issues. It is our fear that these measures will result in many seafarers deciding to go ashore and thereby exacerbating the growing maritime skills shortage.

Regulation 9

4 The ICFTU is concerned that paragraph 3.3 (.2) is too narrow, open to misinterpretation and liable to cause confusion. We would, therefore, suggest the deletion of the words "to sustain human life".

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Shore leave

5 Seafarers work and live on ships involved in international trade, often for over six months at a time. The ability to go ashore is essential for joining and leaving the ship after the agreed period of service and for the enjoyment of shore leave. Shore leave is one of the most time honoured maritime customs and is undoubtedly one of the elements vital to the well-being of seafarers, in terms of living and working conditions. Shore leave, however, is under threat, both in law and in practice, and the growing problems many seafarers now face while their vessel is in port in certain countries has been widely reported. Not only are seafarers being denied shore leave and therefore access to shore based welfare facilities, but there are also frequent instances of armed security guards being posted to ensure that they do not leave the vessel. The issue of shore leave is expressly provided for in the IMO Convention on Facilitation of International Maritime Traffic (1965).

6 The ICFTU is greatly concerned by the surprising deletion of the text found in the preamble to part A of the ISPS Code (in document MSC 76/ISWG/3/1), which provided general guidance, to the effect that:

“Contracting Governments, Designated Authorities and Companies when developing ship or port security plans shall pay due cognizance to the fact that ships crew members live and work on the vessel and are entitled to and need shore leave and access to shore based seafarers welfare facilities.”

has been deleted. The removal of such a provision would lead those reading the Code, especially the guidance found in part B, to only take security issues into consideration and could, in practice, lead to many ships becoming, while they were in port, little more than prisons confining seafarers.

7 The ICFTU strongly urges that this text should be reinstated as it provides essential guidance to those developing ship and, more importantly, port facility security plans. We would also suggest access to medical facilities should be added so that the revised text would be as follows:

“Contracting Governments, Designated Authorities and Companies when developing ship or port security plans shall pay due cognizance to the fact that ships crew members live and work on the vessel and are entitled to and need shore leave and access to shore based seafarers welfare facilities, including access to medical care.”

8 However, this would not in itself be sufficient or fully address this crucial human element issue and therefore the ICFTU further strongly urges the adoption of the attached (annex) Conference resolution, which would be addressed to Contracting Governments rather than those charged with drafting port facility security plans.

Human element

9 The Organization has adopted IMO Assembly resolution A.772 (18) on the Fatigue Factors in Manning and Safety and published “Guidelines on Fatigue” (ISBN: 92-801-5128-2). Central to both is the concept of excessive workload. Fatigue and under-manning are of great concern to seafarers and have been raised in many fatigue studies. The new chapter XI-2 and the ISPS Code will further increase the workload of already overstretched seafarers, a point we also made at DE 45 (see paragraph 2.14 of DE 45/27). The ICFTU is therefore surprised that the

following text, which was previously found in the preamble (in document MSC 76/ISWG/3/1), has also disappeared in the text provided in MSC 76/4/1:

“The Administration shall in implementing regulations V/14 take into account any additional work load which will result from implementing the ship security plan at the appropriate security levels and ensure that the ship is sufficiently and effectively manned for such eventualities. The Administration will also ensure that the Company implements the hours of rest and other measures to address fatigue which have been developed by the Organization in implementing the ship’s security plan.”

10 The ICFTU does not consider that section 6.2 of the Code (under obligations of the company), which only addresses the provision of the “necessary support”, adequately addresses this real concern. Therefore, the ICFTU strongly urges the reinstatement of the following equivalent text, which should provide general guidance and which should be included in section 4 of part B of the ISPS Code:

“The Administration should in implementing regulation V/14 of the Convention take into account the additional workload which will result from implementing the ship security plan at the appropriate security levels, especially security level 1, and ensure that the ship is sufficiently and effectively manned for such eventualities. The Administration should also ensure that the Company implements the hours of rest and other measures to address fatigue which have been developed by the Organization in implementing the ship’s security plan, in the context of the other shipboard duties which are assigned to the various shipboard personnel.”

11 In addition the ICFTU would strongly suggest the following addition to the operative paragraph in Draft Conference resolution 3 (Further work by the International Maritime Organization pertaining to the enhancement of maritime security):

“(f) revision of IMO Assembly resolution A.890(21) (principles of safe manning)”.

12 The Organization has rightly attached a considerable importance to establishing and maintaining a safety culture on board ships and has even made it the theme (IMO: Safer shipping demands a safety culture) for this year’s World Maritime Day. However, there are provisions and practices contained in the ISPS Code which have the potential to cause grave divisions between the ship’s complement and thereby irreparably damage the cohesion and the morale of the ship’s crew. Seafarers live and work on the vessel, which means that the vessel is also their home. The idea that any crew member should routinely search the personal effects of a fellow crew member every time they join the ship or return from being ashore, which could have included a visit to a doctor or visiting a trade union representative, is totally unacceptable and likely to cause severe problems on most ships. At the September intersessional the ICFTU proposed the inclusion of the following text in part B on security level 1, relating to access control (B/9.13):

“as a general rule, the baggage and personal effects of persons employed for the business of the ship, should not be inspected by fellow crew members, including the SSO, unless there are clear grounds in case of an individual to require such inspection”.

13 Paragraph 3.122 of MSC 76/4/1 indicates the ISWG supported the principle and sentiment of the proposal. The text found in paragraph 9.15 of MSC 76/4/1/Add.1 does not meet our concerns and puts an altogether different slant on the matter. Seafarers are no more likely to be terrorists than any other group of people and we join the shipowners in strongly refuting the

implication that seafarers are somehow guilty until proven innocent. It should also be recalled that regulation I/14 (Responsibility of companies) of the STCW Convention requires each Administration to ensure that every company ensures that :

- each seafarer holds the appropriate certificates; and
- the document and data relevant to a seafarer employed on a ship is maintained and readily accessible, this includes documentation and data related to the seafarers experience, training, medical fitness and competency.

Moreover, regulation I/9 (Medical standards – Issue and registration of certificates) of the STCW Convention requires that, as part of the process, all candidates applying for the issuance of a certificate of medical fitness should provide satisfactory proof of their identity.

14 If the logic of the current text is to be followed, the ICFTU would suggest that there is a need to undertake an inventory of the potential weapons commonly found on board ships, which are often tools, appliances and other essential equipment. The logic of only providing plastic cutlery, which is currently found in the aviation industry and which is applied to passengers cannot be exported to the shipping industry and certainly not to the seafarers who are employed or engaged in the business of the ship. It is self evident that many of the provisions of the new chapter XI-2 and the ISPS Code will be implemented by seafarers, who are also expected on occasion to risk their lives by protecting the lives of those at risk at sea and in the protection of the ship and the property it carries. There is a need for proportionality and a recognition of the essential role seafarers play and such considerations should be fundamental to a maritime security provision. Seafarers can play a crucial role and make a significant contribution to enhancing maritime security if the issues are addressed in a proper manner. We hope, even at this late stage, that the Organization will, in addressing the human element and the needs and sensitivities of seafarers, enable seafarers to play such a role, much of which cannot be legislated for. The suggestion that seafarers and their personal effects should be routinely searched, even under security level 1, would extend many of the aspects commonly associated with a prison regime to the seafarers serving on ships while a vessel is in port, would infringe their right to privacy and would deny them their basic human dignity. Many ships now have multinational crews and there is the potential that the measures could be applied in a discriminatory manner. The ICFTU is gravely concerned that the current text would result in the infringement of the inherent and often inalienable human rights of seafarers, which is something the Organization should avoid.

15 The ICFTU strongly urges that the current text provided in paragraph 9.15 of MSC 76/4/1/Add.1 be replaced by a provision which supports the principle and sentiments of our original proposal and suggests the following alternative text:

“At security level 1, as general rule, the baggage and personal effects of the ship’s personnel should not be inspected by a fellow crew member, including the SSO, unless the Master has clear objective grounds to require such an inspection in the case of an individual. Any such search shall be undertaken in a manner which fully takes into account the human rights of the individual and preserves their basic human dignity.”

Action requested of the Committee

16 The Committee is invited to take into account the suggestions of the ICFTU when it considers the ISPS Code and dilute the draconian and over prescriptive guidance provided in part B of the Code and, in doing so, to ensure that the text does not in any way infringe seafarers’ human rights and basic human dignity. International human rights instruments oblige States to

protect individuals and their rights. The challenge for States is therefore not to promote security at the expense of human rights but rather to ensure that all people properly enjoy respect for the full range of rights. The key is to strike a proper balance between the two.

17 The Committee is also invited to amend:

- section 3.3 (.2) of regulation 9 as suggested in paragraph 4 above;
- insert the text provided in paragraph 7 above into the preamble to part A of the ISPS Code;
- insert the text provided in paragraph 10 above into section 4 of part B of the ISPS Code;
- add the additional text provided in paragraph 11 above into the operative paragraph in Draft Conference resolution 3 (Further work by the International Maritime Organization pertaining to the enhancement of maritime security); and
- replace the current paragraph 9.15 of MSC 76/4/1/Add.1 with the text provided in suggested be paragraph 15 above.

ANNEX**DRAFT CONFERENCE RESOLUTION [10]
(adopted on [-.] December 2002)****HUMAN ELEMENT RELATED ASPECTS AND SHORE LEAVE FOR SEAFARERS**

THE CONFERENCE,

HAVING ADOPTED amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (hereinafter referred to as the Convention), concerning special measures to enhance maritime [safety and] security,

RECOGNIZING that the shipping industry and the smooth transfer of goods are essential to world trade;

RECALLING that IMO Assembly resolution A. 907 (22) established the long term work programme of the Organization (up to 2008) and that the human element was an important item;

RECALLING ALSO the provisions of the Convention on Facilitation of International Maritime Traffic (1965) which, inter alia, established a general right for foreign crew members to be entitled to shore leave while the ship on which they arrived is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order;

RECALLING FURTHER the generally accepted principles of international human rights applicable to all workers, including seafarers;

CONSIDERING that, given the global nature of the shipping industry, seafarers need special protection;

BEING AWARE that seafarers work and live on ships involved in international trade and that shore leave is a vital element of seafarers' general well-being and, therefore, to the realisation of safer seas and cleaner oceans;

BEING AWARE ALSO that the ability to go ashore is essential for joining and leaving a ship after the agreed period of service;

URGES Contracting Governments to take the human element, the need to afford special protection to seafarers and the critical importance of shore leave into account when implementing the provisions of chapter XI-2 of the Convention and the International Code for the Security of Ships and Port Facilities;

ENCOURAGES Member States and non-governmental organizations with consultative status to report to the Organization any instances where the human element has been adversely impacted by the implementation of the provisions of chapter XI-2 of the Convention and the International Code for the Security of Ships and Port Facilities; and

REQUESTS the Secretary-General to bring to the attention of the Council and, through it, the Maritime Safety Committee and Facilitation Committee, any human element related problems which have been communicated to the Organization as a result of the implementation of chapter XI-2 of the Convention.
