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CHAPTER 11

The ILO's *Seafarers' Identity Documents Convention (Revised), 2003 (n° 185)* after more than a decade: Ahead of its time or case of good intentions gone wrong?¹

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Résumé: Ce chapitre examine la Convention de l'OIT (révisée), (n° 185) de 2003, relative aux pièces d'identité des gens de mer, ainsi que le contexte politique et de sécurité frontalière en vertu duquel elle a été rapidement élaborée et adoptée. Il fournit également un aperçu des exigences de la Convention et son champ d'application et l'impact des propositions examinées en 2016, en vue de sa mise à jour, afin d'aligner la pièce d'identité des gens de mer (PIM) ou Seafarers' Identity Documents (SID) plus étroitement avec les normes internationales en vigueur pour les documents de voyage et passeports. Le chapitre explore la question de savoir pourquoi plus de dix ans après son adoption enthousiaste en 2003, la convention n° 185 n'a pas réussi à attirer plus de ratifications, notamment de la part des États du port. Malgré les bonnes intentions, les obstacles à l'application étendue de la Convention, sont dans une large mesure attribuables à la dynamique de la fragmentation institutionnelle au niveau international et national. Dans le même temps, malgré une sécurité renforcée dans les pratiques de contrôle des frontières, dans la plupart des cas, il semble que les marins se voient toujours accorder des facilités dans les ports étrangers en vue de leur débarquement et de leurs transits terrestres et aériens, en vue de leurs déplacements professionnels, sans mise en œuvre

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généralisée de la convention n° 185. Une mise à jour du système complexe et coûteux établi en vertu de la convention n° 185 est nécessaire; une carte d'identité fiable des marins, universellement reconnue et les facilités accordées à ses porteurs par les États du port, demeure un élément essentiel de l'expédition internationale et, surtout, du bien-être des gens de mer.

Abstract. *This chapter considers the ILO's Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and the heightened political and border security agenda under which was rapidly developed and adopted. It also provides an overview of the Convention requirements and the potential areas and impact of proposals, to be considered in 2016, to update it to align the Seafarers' Identity Documents (SID) more closely with current international standards for travel documents and passports. The chapter explores the question of why, more than decade after its enthusiastic adoption in 2003, Convention No. 185 has not succeeded in its attracting widespread ratifications, particularly by port States. It is argued that, despite good intentions, the problems the Convention faces are to a large extent attributable to the dynamics of institutional fragmentation at the international and national levels. At the same time, despite enhanced security in border control practices, in most cases it appears that seafarers are still being granted facilities in foreign ports for shore leave and for transit for professional movements, without widespread implementation of Convention No. 185. This chapter argues that, while there may be a question as to whether, even if updated, the elaborate and costly system established under Convention No. 185 is, in fact, necessary, some form of reliable universally recognized seafarers' identity card and the facilities accorded to its bearers by port States remains essential to the international shipping and, importantly, to seafarers' well-being.*

1. Introduction and Background

International shipping is essential to the functioning of international trade and the economy of all countries and also has an important economic impact because of the, increasingly international, ocean resource exploitation and recreation/tourism industries. The maritime sector and its work force –the seafarers– without whom ships could not operate or provide these commercial services –are frequently described as «globalized». This term captures the core features of the industry– the shipowners/employers and the seafarers and the clients or customers are drawn from across the globe and, the site of work –the ship– is itself mobile. Because these elements commonly operate outside the territorial and legal jurisdiction of any single State this is an industry which, historically², has had a very high degree of regulation at the international level, in part to ensure a level of uniformity and predictability. As discussed at length in chapter 5³ this includes international instruments establishing minimum standards for the working and living conditions for this mobile workforce. International shipping depends on the fact that seafarers both live and work on board ships, usually for months at a time as ships voyage to ports in different countries to unload or load cargo or passengers. International shipping today relies on the possibility of seafarers being able to quickly join or leave ships in these ports, which usually are not in their home countries. In addition, to their transit for professional movement, seafarers have enjoyed what is sometimes described as a «right» to shore–leave, that is they go ashore for short periods of time when in a foreign port and if seafarers are sick or injured they have usually been able to go ashore quickly in foreign countries and receive medical care. As explained by the representative of an organization advocating for seafarers' rights and well-being.

Shore leave is an ancient and cherished seafarers' right that should not be denied except for compelling reasons. [...]

Seafarers' Right to Shore Leave : For as long as mariners have gone to sea on merchant ships, shore leave has been a cherished right—but it is not an absolute right. Like most individual rights, shore leave must be balanced against other interests such as the vessel's operational schedule and safety requirements. Merchant mariners' right to shore leave existed in customary maritime law long before articulation in the earliest written maritime codes of the Middle Ages. The traditional rule is that a ship's master has the discretion to grant or deny shore leave. The decision to grant shore leave should not be at the master's personal whim, nor should a master deny shore leave as a punishment. The law recognizes

2) Dating back to the 12th century early maritime codes to facilitate merchant shipping and trade such as the *Code of Wisby*, (Articles XVII and Article XXX.) and (Article XX) and, earlier, the *Rolls of Oleron*. See: <<http://www.admiraltylawguide.com/documents/oleron.html>>

3) Chapter 5 of this book: «A delicate balance: The seafarers' employment agreement, the system of the Maritime Labour Convention, 2006 and the role of flag States.»

the necessity of shore leave for maintaining a mariner's health and for the safe and efficient operation of the vessel. ⁴

However, while access to shore is a «right», albeit subject to the ship's operational needs *vis-à-vis* the ship's master⁵, as the above points out, under international law this access is still a privilege *vis-à-vis* the port and the country in question. It is clear⁶ that all countries exercise border control over their territories and, unless they have accepted treaty obligations modifying this position, may, as a matter of general international law refuse to admit aliens as an aspect of State sovereignty. As a matter of practice this privilege was granted to seafarers with few or no formalities until the 1950s. However the emergence of a large number of new flag States with no or few restrictions on the nationality of the crew on their ships combined with the

4) Stevenson, D.B, (2005) «Restrictions on Shore Leave: Any movement on this issue?» Presentation to Marine Log's Maritime and Port Security 2005, Washington, D.C., February 2, 2005.

Available at: <<http://www.marinelog.com/DOCS/PRINTMMV/MMVmarstev1.html>>

The author, an international advocate for seafarers' rights, is the Director, Center for Seafarers' Rights, Seamen's Church Institute of NY & NJ, goes on to note:

The United States Supreme Court decided in the 1943 case of *Aguilar v Standard Oil Company* that:

«The assumption is hardly sound that the normal uses and purposes of shore leave are 'exclusively personal' and have no relation to the vessel's business. Men cannot live for long cooped up aboard ship without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore, 'the superfluous is the necessary...to make life livable' and to get work done. In short, shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion.» 318 US 724, 87 L Ed 1107, 63 S Ct 930, 143 AMC 451.

5) It is now contained in the *Maritime Labour Convention, 2006* (MLC, 2006) <<http://www.ilo.org/global/standards/maritime-labour-convention/lang-en/index.htm>>

Regulation 2.4, which is directed to flag States, provides that:

2. Seafarers shall be granted shore leave to benefit their health and well-being and consistent with the operational requirements of their positions.

The provision has been misunderstood by some commentators as directed to port States however it is clear that this is a flag State obligation. The complementary provisions relating to port State obligations to allow access are set out in other provisions in the MLC, 2006 relating to facilitating repatriation (Regulation 2.1) and providing access to medical facilities (Regulation 4.1) and shore-based welfare facilities (Regulation 4.4).

6) As noted in the ILO report *Improved Security of Seafarers' Identification, Report VII (1), International Labour Conference, 91st Session*. Geneva: ILO, 2003 at p 6 «Under customary international law, the reception of aliens is a matter of discretion, and every State is, by reason of its territorial sovereignty, competent to exclude aliens from the whole, or any part, of its territory.» citing L. Oppenheim: *Oppenheim's International Law* (London and New York, Longman, 1996), 9th edition, pp. 897-898. The Report is available at:

<<http://www.ilo.org/public/english/standards/reim/ilc/ilc91/pdf/rep-vii-1.pdf>>

This is despite some questions in the last few years in connection with refusals to allow access to ports as a place of refuge when a ship has had an accident.

political tensions after World War II gave rise to increased border control concerns, including greater control over access to their ports and port areas, by many States. This created problems for seafarers and shipowners, particularly in connection with visa requirements for entry as voyage routes were not always predictable and visas often took time to obtain. The result was that, in the 1950s, the idea of creating an officially recognized international document for border control confirming the *bona fides* of a seafarer as a seafarer for the purpose of accessing on-shore privileges or facilities was proposed. As noted in an ILO report in 2003⁷:

The idea of creating an international identity document for seafarers was first put forward by the International Transport Workers' Federation (ITF) and the United Kingdom Navigators' and Engineer Officers' Union in 1954. ITF wanted the introduction of an international identity document for seafarers, under ILO auspices, which could serve various useful purposes in helping to establish the status of bona fide merchant seafarers in foreign countries.

In 1954, the Navigators' and Engineer Officers' Union «Conference» adopted a resolution which was also submitted to the 1955 session of the Joint Maritime Commission, referring to «the difficulties being experienced with immigration and security regulations in foreign countries» and calling for the introduction of «an internationally recognized seafarer's passport or similar document designed to establish a seafarer's identity as such» and «which would be recognized instantly by immigration officials» worldwide.

The instrument which finally emerged — Convention No. 108 — fell short of the expectations of its sponsors. Instead, the Convention as adopted set uniform international standards for the issuance and content of seafarers' national identity documents and provided for their reciprocal recognition

Despite the above noted concerns Convention No. 108, which was adopted in 1958, has, as of February 2016, been ratified by 64 States.⁸ As a result of further support

7) *Ibid*, note 6 at p.2.

8) *Seafarers' Identity Documents Convention, 1958* (No.108). Available at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312253:NO> Interestingly it has only been denounced by eight States as a result of their ratification of Convention No.185 (Azerbaijan, Brazil, France, India (will be denounced as of 9 April 2016), Luxembourg, Moldova, Russian Federation, Spain) (Lithuania appears to be counted as «ratified» (of the 31 States that have ratified Convention No. 185 as of February 2016) but only provisionally applies Convention No.185 and remains bound by Convention No. 108.) This means that 23 States ratified Convention No.185 but did not ratify No. 108 (Bahamas, Bangladesh, Bosnia and Herzegovina, Congo, Croatia, Georgia, Hungary, Indonesia, Jordan, Kazakhstan, Kiribati, Republic of Korea, Luxembourg, Madagascar, Maldives, Marshall Islands, Nigeria, Pakistan, Philippines, Turkmenistan, Vanuatu, Yemen. See: <http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312330> Conversely it means the following 56 * of the 64 States that had ratified Convention No. 108 have not

by the industry for these concerns the IMO *Convention on the Facilitation of International Maritime Traffic (FAL Convention)*⁹, which deals with wide range of topics in connection with uniform practices and documents for the arrival and departure of ships from ports in order to facilitate easier movement of goods and people by sea, also included provisions directed to port States with respect to permitting shore leave/port access to seafarers with identification as seafarers. The combination of these two instruments, both of which had high ratification levels, means that, in general, seafarers were, and still are, granted the necessary access to «facilities» by port States.

It is well known that the terrorist actions which resulted in the destruction of the World Trade Centre in the city of New York in the United States of America altered border control and security practices around the world dramatically and rapidly. This included, in particular, concerns about providing security in the international transportation sector (aviation and maritime). The result can only be described as a

moved to Convention No.185: Algeria, Angola, Antigua and Barbuda, Barbados, Belarus, Belize, Bulgaria, Cameroon, Canada, Cuba, Czech Republic, Denmark, Djibouti, Dominica, Estonia, Fiji, Finland, Ghana, Greece, Grenada, Guatemala, Guinea-Bissau, Guyana, Honduras, Iceland, Islamic Republic of Iran, Iraq, Ireland, Italy, Kyrgyzstan, Latvia, Liberia, Lithuania* (provisionally applies C185 but remains bound by C108) , Malta, Mauritius, Mexico, Morocco, Norway, Panama, Poland, Portugal, Romania, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Slovenia, Solomon Islands, Sri Lanka, Sweden, Tajikistan, Tanzania (Tanganyika) , Tunisia, Turkey, Ukraine, United Kingdom, Uruguay. One as yet unresolved question which will need to be considered by the ILO supervisory system relates to the reporting obligations of ILO Members that have ratified the *Protocol 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976* as it lists Convention No.108 as one of the Conventions to be implemented. The Protocol is not revised by Convention No.185. The issue was discussed at the International Labour Conference in 2003 when it adopted Convention No.185, see: ILO Doc. *Provisional Record No.20, (Part II), International Labour Conference, 91st Session , paragraphs 721 and 722, Available at <<http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/pr-20p2.pdf>>*

721. The Government member of Greece referred to Article 10 in connection with the final clauses relating to the entry into force of the Convention for a member State and the consequent automatic denunciation of Convention No. 108. The Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), included Convention No. 108 in Part B of its Supplementary Appendix. The ratification of the new instrument, while implying the automatic denunciation of Convention No. 108, would not, however, relieve a country from the obligation under the 1996 Protocol to submit reports on Convention No. 108, as required under article 22 of the Constitution of the ILO. He asked whether this question had been dealt with by the Drafting Committee.

722. The Legal Adviser explained that it was difficult to solve this problem. In principle, the only solution would be the revision of the 1996 Protocol. However, a practical solution could be to bring this question to the attention of the ILO Committee of Experts on the application of Conventions and Recommendations with the understanding that no report concerning Convention No. 108 should be requested from member States who were parties to the 1996 Protocol in case they had ratified the new instrument...

9) Adopted in 1965 the FAL Convention (see: <http://www.imo.org/en/OurWork/Facilitation/Pages/Home.aspx>) has been ratified by 115 States representing 91.45 per cent of the world merchant fleet based on GT. (as at 11 February 2016) <[http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/ Default.aspx](http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx)>

phenomenon. In a two-year period a number of international organizations mobilized in order to quickly to develop and adopt international standards for enhanced security and border control. In December 2002 the IMO held a Diplomatic Conference on Maritime Security and moved to adopt stringent requirements for security practices for ships and for port areas in the form of amendments to one of the most ratified of its maritime Conventions.¹⁰ The International Civil Aviation Organization¹¹ (ICAO) also took action to further develop its technical standards to ensure more secure passports and other travel documents.¹² Not surprisingly the question of seafarer

10) A new chapter XI-2 was added to the International Convention for the Safety of Life at Sea (SOLAS), 1974 as amended. The chapter was on special measures to enhance maritime security and also included adoption of International Ship and Port Facility Security (ISPS) Code. They were adopted by the IMO Conference on SOLAS in December 2002 and entered in force on 1 July 2004. This security regime like other IMO Conventions is based on inspection and certification of ships. SOLAS has been ratified by 162 States representing 98.53 per cent of the world merchant fleet based on GT. (as at 11 February 2016 <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>>

11) As explained in ICAO Doc No. TAG-MRTD/17-WP/16 (6/1/07) (Version 1) at p. 6, Presented by the New Technologies Working Group (NTWG), *Machine Readable Travel Documents (MRTDs): History, Interoperability, and Implementation*, available at: <http://www.icao.int/Meetings/TAG-MRTD/Documents/Tag-Mrtd-17/TagMrtd17_WP016.pdf> ICAO was created

... in 1946 as a specialized agency under the United Nations. ICAO's mandate to develop standards and specifications stems from the *Convention on International Civil Aviation* (Chicago Convention) of 1944 which created ICAO. The Organization promotes the safe and orderly development of international civil aviation throughout the world. It sets standards and regulations necessary for aviation safety, security, efficiency and regularity, as well as for aviation environmental protection. ICAO has grown to an organization with, at the time of this writing, 190 Contracting States. It provides the forum whereby requirements and procedures in need of standardization may be introduced, studied, and resolved. ICAO's mandate to develop travel document standards is provided by Articles 13 (*Entry and Clearance Regulations*), 22 (*Facilitation of formalities*), 23 (*Customs and immigration procedures*), and 37 (*Adoption of international standards and procedures*) of the Chicago Convention, which oblige Contracting States to develop and adopt international standards for customs, immigration, and other procedures to facilitate the border-crossing processes involved in international air transport.

191 States are members of ICAO, see: <<http://www.icao.int/about-icao/Pages/default.aspx>>

12) However it is important to note that a move to international uniformity - «global interoperability» and the use of modern technology including the development of machine readable travel documents and also biometrics was already underway in ICAO well before 2001. As explained in the ILO report to the Conference in 2003, *ibid* note 6, p. 5:

Work on developing a new generation of machine-readable travel documents (MRTDs) started in 1968 at the International Civil Aviation Organization (ICAO) with the establishment of a Panel on Passport Cards. This Panel developed recommendations for a standardized passport book or card that would be machine-readable to accelerate the clearance of passengers through passport controls. The technology retained was optical character reading (OCR). In 1980 ICAO published *A passport with machine-readable capability* (ICAO Document 9303 [Ed.Note. This was the first edition. As of 2015 there are now seven editions], which became the basis for the issuance of machine-readable passports by Australia, Canada and the United States. The ICAO technical specifications were endorsed by the International Organization for Standardization (ISO) as ISO Standard 7501, which is now the international reference for machine-readable travel documents.

ICAO: *Machine readable travel documents — Technical report— Selection of a globally interoperable biometric for machine-assisted identity confirmation with MRTDs* (2001), p. 3.

access to port areas and expedited professional movement through national borders was raised. In the context of the IMO preparatory work for the December 2002 Conference the view was taken that either the ILO needed to rapidly update¹³ Convention No.108 to provide for enhanced security or else the necessary requirements for verifiable seafarer identification would be adopted under the auspices of the IMO.¹⁴ In March 2002 the ILO agreed to move forward more rapidly and made

For a summary historical background see also ICAO Document 9303, *Machine Readable Travel Documents*, Seventh Edition, (2015) at p1. Available at: <<http://www.icao.int/publications/pages/publication.aspx?docnum=9303>>

The standards set out in ICAO Document 9303 now covers «a family of MRTDs. Now included in that family are Passports (ID-3 size), Visas in Format A (sized to fit in an ID-3 Passport), Format B Visas (ID-2 size), Travel Document 1 Cards (ID-1 size), and Travel Document 2 Cards (ID-2 size).» See: ICAO Doc No. TAG-MRTD/17-WP/16 (6/1/07) (Version 1) at p. 7, Presented by the New Technologies Working Group (NTWG), *Machine Readable Travel Documents (MRTDs): History, Interoperability, and Implementation*, available at: http://www.icao.int/Meetings/TAG-MRTD/Documents/Tag-Mrtd-17/TagMrtd17_WP016.pdf

13) Although national seafarer identity cards issued under Convention No. 108 were widely accepted there were a number of specific border security related concerns that came to the forefront especially after 2001. The issues were summarized as follows in the ILO Working Paper *Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) – Harmonisation and Collaboration with ICAO*, submitted to an ICAO meeting. TECHNICAL ADVISORY GROUP ON MACHINE READABLE TRAVEL DOCUMENTS (TAG/MRTD) TWENTIETH MEETING, Montréal, 7 to 9 September 2011, ICAO Doc No. TAG-MRTD/20-WP/15 at page 5. Available at: < http://www.icao.int/Meetings/TAG-MRTD/Documents/Tag-Mrtd-20/TagMrtd-20_WP015_en.pdf>

The 1958 Convention No. 108 sets out few standards that give a proper assurance that the SIDs issued under it are authentic or that their holders are legitimate seafarers. Also no uniformity is required with respect to the size or form of the document. This lack of uniformity can make it difficult for the authorities in the countries of entry, presented with diverse national SIDs, to immediately find the information they need to see. In addition, under Convention No. 108, countries can issue SIDs, not just to their own nationals, but also to foreign seafarers serving on ships registered in their territory or to foreign seafarers registered at employment offices in their territory, thus reducing even further the reliability of the SID issued to those seafarers. There are no requirements for SIDs to include modern security features and there is no means (other than visual inspection of the photograph (or signature) on the document) to verify that the individual presenting the document is the seafarer to whom it was originally issued. There are also no international requirements or even guidelines on the security or quality of the issuance process. The goal in revising the Convention was to address all of these issues in a single update.

14) As noted in the ILO Report to the Conference in 2003, *ibid*, note 6 at p 1:

The ILO has been actively participating in the relevant meetings of the IMO, starting with a working group established in February 2002 on the initiative of the IMO Assembly, since one of the issues considered crucial for improving maritime security is ensuring that seafarers have documents enabling their «positive and verifiable identification» — «positive» meaning that the document holder is the person to whom the document was issued and «verifiable» implying the validation of the authenticity of the document by reference to a source. The kinds of measures involved in properly implementing this concept go beyond the requirements of the relevant ILO Convention, namely the Seafarers' Identity Documents Convention, 1958 (No. 108). Seafarers are directly involved in the international transport of goods, including dangerous goods, as well as in the carriage of passengers. They also have access to ports, including restricted areas. While there was a proposal that this issue also be handled by the IMO, it has been agreed in the various competent IMO bodies and in the ILO Governing Body that it could more appropriately be dealt with by the ILO, on the expectation that

use of an expedited procedure to update the requirements in Convention 108 with a view to adoption of the instrument by June 2003.

The urgency of the issue and timelines involved for all three organizations was articulated by a G8¹⁵ Summit in Canada in June 2002¹⁶ which adopted the following action plan:

Cooperative G8 Action on Transport Security

The terrorist attacks on September 11, 2001 illustrated the critical yet fragile nature of the international transport system. For the global economy to flourish, this system must continue to provide safe, secure, efficient and reliable services to travellers and customers in all parts of the world.

We have therefore agreed on a set of cooperative actions to promote greater security of land, sea and air transport while facilitating the cost-effective and efficient flow of people, cargo, and vehicles for legitimate economic and social purposes. The G8 will:

People

- Implement as expeditiously as possible a common global standard based on UN EDIFACT for the collection and transmission of advance passenger information (API).
- Work towards granting reciprocal bilateral access, on a voluntary basis, to departure and transit lounges, including timely implementation of a pilot project.
- Work towards agreement by October 2002 on minimum standards for issuance of travel and identity documents for adoption at ICAO, and by June 2003 on minimum standards for issuance of seafarers' identity documents for adoption at the ILO.

Implementation

In order to ensure timely implementation of this initiative, we will review progress every six months, providing direction as required to G8 experts. G8 experts

the new ILO instrument on the subject could be brought into application in the near future. The IMO bodies have made it clear that if the ILO is unable to meet this expectation, provisions covering the seafarers' identity document will be included in SOLAS, 1974, as amended, and brought rapidly into effect under the simplified amendment procedure provided for in that Convention.

15) «Group of 8». Since 1975 various configurations involving heads of state or government of the major industrial democracies have met annually to consider economic and political issues facing their domestic societies and the international community as a whole. The Group of 8 now comprises Britain, Canada, France, Germany, Italy, Japan, the United States, Russian Federation (suspended in 2014), and the EU See: <http://www.g8.utoronto.ca/what_is_g8.html>

16) Kananaskis, June 26, 2002, Available at: < <http://www.g8.utoronto.ca/summit/2002kananaskis/transport.html>>

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will pursue these priorities and will promote policy coherence and coordination in all relevant international organizations (ICAO, IMO, WCO, ILO), in partnership with industry.

One year later the G8 Summit in France reported¹⁷ on progress:

We, the G8 Leaders, are determined to strengthen our joint efforts to curb terrorist threats against mass transportation. We shall continue to implement the Action Plan we agreed at Kananaskis to ensure safe, secure, efficient and reliable transportation world-wide. We have made important progress in implementing the plan and also have taken a number of new measures.

[...]

People

3.1. We have developed guidelines for the implementation of international standards governing the use of biometrics to verify the identity of travellers and have forwarded them to the ICAO. We endorse the «G8 Roma and Lyon Groups Statement on Biometric Applications for International Travel» and are resolved in our continued support for the ongoing work within ICAO.

3.2. We also agree to develop a secure, verifiable seafarer identity document at the International Labour Organisation (ILO) and are working together towards agreeing on seafarers and port workers security requirements compatible with trade facilitation at the International Maritime Organisation (IMO) and the ILO.

By the end of 2003, a remarkably short time frame for action to be taken by UN organizations, all three international organizations had moved quickly to develop and adopt or were close to adopting international standards which significantly changed security requirements and border controls and practice including the treatment of maritime transport. A key aspect of these efforts was an agreement in May 2003 by G8 senior officials to develop and implement «biometrics», which was described in 2003 as «new biology-based technologies to prevent forgeries of passports and other travel documents.»¹⁸

17) *Enhance Transport Security and Control of Man-Portable Air Defence Systems (MANPADS): A G8 Action Plan*, Evian, June 2, 2003; Available at: <http://www.g8.utoronto.ca/summit/2003evian/transport_en.html>

18) As noted in a press release in May 2003, «G-8 Countries Urge Use of Biometrics in Fight Against Terrorism» regarding the «G8 Roma and Lyon Groups» (emphasis added). Available at: <<http://iipdigital.usembassy.gov/st/english/texttrans/2003/05/20030508104242ikceinawza0.7209436.html#ixzz3ldEBRqRb?>>

Ministers of Justice and Internal Affairs from the Group of Eight (G-8) countries said that biometric technologies «open up new possibilities in the fight against the use of fraudulent documents for criminal or terrorist purposes,» especially in the transportation sector. Biometric techniques for identifying persons rely on computerized recognition technologies linked to databases loaded with

records of such information as fingerprints, measures of hand geometry, or iris and retinal scans. The G-8 ministers announced the establishment of a high-level working group on biometric technologies co-chaired by the United States and France in a final statement issued May 5 at the end of their meeting in Paris. They said that the ultimate objective of this initiative is the development of a common framework and standards within competent international bodies to ensure «perfect» technical interoperability and reliability...[...]

In fact significant discussion and work on technical standards had been underway within ICAO technical working groups since 1995 to incorporate biometric information in travel documents. See: ICAO Doc No. TAG-MRTD/17-WP/16 (6/1/07) (Version 1) at p., Presented by the New Technologies Working Group (NTWG), *Machine Readable Travel Documents (MRTDs): History, Interoperability, and Implementation*, p.10. Available at: < http://www.icao.int/Meetings/TAG-MRTD/Documents/Tag-Mrtd-17/TagMrtd17_WP016.pdf, where it was noted with respect to Document 9303,

Part 1, Volume 2 contains additional specifications for a globally interoperable system of biometric identification and associated data storage utilizing a contactless IC. Its specifications were drawn up following a detailed study carried out over several years by the TAG/MRTD's NTWG, beginning in 1998. The study examined the different biometric identification systems, concentrating on their relevance to traveler facilitation in applying for and obtaining a biometrically enabled passport and in using that passport for travel between States. Additionally, the NTWG examined very carefully the storage media available to most effectively carry both biometric as well as biographic information. Privacy laws applied by States around the world and the requirement for the biometric to be acceptable to the MRP holder strongly favored the use of the holder's face as the globally interoperable biometric, as the face, in the form of a photograph in a passport, is universally accepted as a means of identification.

It is of interest, in terms of the development of ILO Convention No.185 which chose fingerprints as the biometric, to note that the decision to choose facial recognition as the primary /preferred form of biometric was the subject of an ICAO technical working group decision as early as June 2002 when technical working group meeting were also underway at the ILO to develop a new form for a seafarers' identity document that would include a biometric. As noted in ICAO Doc No. TAG-MRTD/17-WP/16 (6/1/07) (Version 1) at p., Presented by the New Technologies Working Group (NTWG), *Machine Readable Travel Documents (MRTDs): History, Interoperability, and Implementation*, p.15 (emphasis added). Available at: <http://www.icao.int/Meetings/TAG-MRTD/Documents/Tag-Mrtd-17/TagMrtd17_WP016.pdf In the **Berlin Resolution** of June 2002, the NTWG unanimously supported its preference for the use of facial recognition as the globally interoperable biometric, noting that

«ICAO TAG-MRTD/NTWG endorses the use of face recognition as the globally interoperable biometric for machine assisted identity confirmation with MRTDs. ICAO TAG-MRTD/NTWG further recognizes that Member States may elect to use fingerprint and/or iris recognition as additional biometric technologies in support of machine assisted identity confirmation.»
[....]

Though facial recognition is the primary globally interoperable biometric element, the NTWG recognized that some States would wish to use more than one biometric element. For example, many States have extensive fingerprint databases, which they might wish to employ to verify the identity of a traveler. Iris recognition was also identified as a reliable method of identification. Though technically commendable, fingerprint and iris recognition each involve a rather more invasive and time-consuming collection of data, both at the original enrollment and at a port of entry. The NTWG therefore decided that it would recommend that fingerprint and iris data should be optional and secondary means of biometric identification.

In addition this information and the view of an ICAO TAG/MRTD recommendation following the Berlin Resolution was also presented by ICAO during the 91 ILC 2003 discussions to adopt the text of Convention No. 185.

See: ILO Doc. No. *Provisional Record 20, Part 1, 91 ILC 2003, para.139*

Available at: <<http://www.ilo.org/public/english/standards/relm/ilc/ilc91/records.htm>>

139. The May 2003 TAG/MRTD meeting had developed a four-part recommendation intended for States that would be using biometrics for passports and other MRTDs. Firstly, it had recommended facial recognition as the globally interoperable biometric for machine- assisted identity confirmation with machine-readable travel documents. Secondly, the storage medium

In 2003 shortly after the *Seafarers' Identity Documents Convention (Revised), 2003* (No.185)¹⁹ was adopted by the 91st Session of the International Labour Conference (ILC)²⁰, a key official of the ILO who was closely involved in the development of the text and subsequent follow-up, commented²¹ on the significance of this instrument:

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.

The author concluded²² optimistically:

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

on MRTDs should be high-capacity, contactless integrated circuit (IC) chips. Thirdly, a specially developed logical data structure (LDS) should be used as the framework for programming data to ensure interoperability of MRTDs. Fourthly, a modified public key infrastructure (PKI) scheme should be used to provide security of data stored in the IC chip against unauthorized alteration or access.

19) *Ibid*, note 8 for the text of the Convention. Additional information relating to follow up meetings and documents can be found on the website for the *Maritime Labour Convention, 2006* at: <<http://www.ilo.org/global/standards/maritime-labour-convention/lang-en/index.htm>> under the «latest news» and also under the «Events» menu which contains links to Convention No.185 implementation documents: <http://www.ilo.org/global/standards/maritime-labour-convention/events/WCMS_301223/lang-en/index.htm>

20) ILC 2003 91st session <<http://www.ilo.org/public/english/standards/relm/ilc/ilc91>>

21) Doumbia-Henry C. (2003) « Current Maritime Labour Law Issues— An Internationally Uniform Identity Document for Seafarers» *WMU Journal of Maritime Affairs*, 2003, Vol. 2, No.2, 129 at p. 130. Available at: <http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—normes/documents/publication/wcms_088012.pdf>

This article prepared almost contemporaneously with the finalization and adoption of the Convention combined with the relevant *travaux préparatoires* provides an excellent insight into the concerns and views of the constituents at that time about the Convention when it was adopted. It is also one of the few substantive articles published on the topic and contains important key references, many of which are no longer easily located on the internet or are archived in secondary locations.

22) *Id*, pp. 146-147.

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

As these comments clearly indicate there was strong support for this new instrument²³ (Convention No. 185) not only by governments but also importantly by the international representatives of workers and employers –the seafarers and shipowner – at the ILO. In addition there was significant interaction between ICAO and ILO at the meetings to develop the technical requirements for the new biometric based seafarer identity document and issuing systems under Convention No.185. In principle, with such clear recognition of the need for coordinated action and a high level of interaction among organizations that were operating, essentially in parallel, the result should have been a seamless approach to the issue, with complementary requirements adopted by ICAO, ILO and IMO.

However, even though Convention No. 185 entered into force in 9 February 2005, albeit with only two ratifications, more than a decade later it still has relatively little uptake²⁴, particularly by developed economy and port State countries²⁵. This is despite continued promotional efforts and urging by the ILO and by the international Seafarers' and Shipowners' organizations and the IMO. At the same time it appears that seafarers have for the most part²⁶ continued to benefit from recognition of seafarers' identity

23) Initially envisaged as a Protocol to Convention No.108, it eventually took the form of a new revising Convention to allow for the automatic denunciation of Convention No.108 by countries agreeing to the new instrument.

24) 31 States (Lithuania has indicated under Article 9 of Convention No. 185 that it provisionally applies Convention No. 185) ratified as of February 2016 seven of which ratified after 2010. See list at <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312330:NO>
See also footnote 8 *supra*.

25) Only two of the G8 Governments that called for it have ratified- France and the Russian Federation.

26) The United States of America is the main exception. However where visas are required for professional movement seafarers from some countries have encountered difficulties obtaining visas in a timely manner to allow for their transit to join ships. This not purely a border control issue, in some cases for economic reasons some countries have closed consulates or embassies in a number of countries, which means seafarers must travel to other countries to obtain the necessary visas for travel to work.

documents irrespective of whether the document is issued by a country operating under the 1958 Convention No. 108 or by a country that has implemented Convention No. 185. From a legal point of view this makes sense given the high level of ratification of Convention No. 108 and the FAL Convention, both of which require that ratifying countries to provide facilities to seafarers with a valid seafarers' identity document.

The ILO has, to the extent possible with limited resources²⁷, promoted ratification and implementation of Convention No. 185²⁸ and since 2010 has held international expert meetings including a key meeting in 2015²⁹ which concluded³⁰ *inter alia* that (emphasis added):

27) *Technical background paper for discussion at the Meeting of Experts concerning Convention No. 185* (Geneva, 4–6 February 2015), ILO. Doc. No. MESICD/2015. Available at: <http://www.ilo.org/global/standards/maritime-labour-convention/events/WCMS_329890/lang-en/index.htm>, states (references removed):

8. When the Convention was adopted in 2003, the participants at the International Labour Conference (ILC) realized that the more technical aspects would need to be developed before the Convention could be fully operational. In a resolution adopted with Convention No. 185, the ILC noted that the success of the Convention would «depend upon the availability in each ratifying Member of the necessary technology, expertise and material resources for the preparation and verification of the new, secure seafarers' identity document, established by the Convention, and for the related database and issuance processes». The resolution not only referred to the use of the Organization's technical cooperation programme, but, in particular, urged ILO Members «to agree among themselves on measures of cooperation which would: (a) enable them to share their technology, expertise and resources, where appropriate, (b) provide for countries with advanced technology and processes to assist Members that are less advanced in those areas». The Office has undertaken numerous technical missions to assist countries interested in ratifying and/or implementing Convention No. 185, but it has not had sufficient budget to provide the type of assistance required by many emerging economy countries that are also home to the world's seafarers, to help them with the expense of deploying the complex and secure document issuance systems required to issue SIDs in accordance with the requirements of Convention No. 185.

28) In fact the ILO took what might seem an unusual step for a UN organization of carrying out testing and approving particular equipment/companies to produce the biometric element of the SID under Convention No. 185: For a summary of these technical activities and various tests related to interoperability over a number of years see ILO Working Paper 2011 *ibid*, note 13, section 1.3. See also : 2008 - *List of the biometric products as the results of the testing for the Standard adopted under the Seafarers' Identity Documents Convention (Revised) (No. 185), 2003*.

Available at: http://www.ilo.org/wcmsp5/groups/public/—ed_dialogue/—sector/documents/publication/wcms_191713.pdf

See also *inter alia*: *ILO Seafarers' Identity Documents Biometric Testing Campaign Report (Part I)*. Available at: <http://www.ilo.org/wcmsp5/groups/public/—ed_dialogue/—sector/documents/publication/wcms_191709.pdf>

29) *Final report*. Available at: http://www.ilo.org/global/standards/maritime-labour-convention/events/WCMS_407638/lang-en/index.htm

30) See: *Outcome of the Meeting of Experts concerning the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)* (Geneva, 4–6 February 2015), ILO Doc. No. GB.323/LILS/4, Appendix «General conclusion of the Tripartite Meeting of Experts on Convention No. 185». Available at: http://www.ilo.org/gb/GBSessions/GB323/lils/WCMS_346449/lang-en/index.htm

XI. The ILO's Seafarers' Identity Documents Convention

1. The Tripartite Meeting of Experts was convened to provide advice to the Governing Body on cost-effective technical and administrative solutions to overcome problems that had arisen in the implementation of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) and to encourage further ratification of the Convention as well as participation in the implementation of the Convention by all ILO Members with maritime interests.
2. The Meeting noted that now, nearly 12 years after the adoption of the Convention, only 30 Members had ratified the Convention or were provisionally applying it, and that this number included few port States. Consequently, countries that had made the considerable investment to properly implement Convention No. 185 could count on only a few countries to recognize the seafarers' identity documents (SIDs) issued under it. The Meeting noted that many other Members, especially those that had ratified Convention No. 108, were prepared to give due consideration to SIDs validly issued under Convention No. 185, but that the authentication of those SIDs was hampered by the fact that the fingerprint technology required for the Convention No. 185 biometric in Annex I to the Convention was not used by the border authorities of the countries concerned because, since 2003, the International Civil Aviation Organization (ICAO) standards for travel documents had been exclusively based on the facial image in a contactless chip as the biometric rather than a fingerprint template in a two-dimensional barcode.
3. It was noted, furthermore, that the fingerprint technology and biometric products developed for the implementation of Convention No. 185 were out of date and, in some cases, not easy to obtain. In fact, only a few countries that had ratified Convention No. 185 were in a position to actually issue SIDs conforming to the Convention.
4. A notable exception was the Russian Federation, which was implementing the Convention. The Government expert of the Russian Federation stated that his country was willing to provide free of charge, to Members requesting it the necessary technology for implementing the biometric requirement for the SIDs to be issued in accordance with Convention No. 185.
5. Having carefully considered the offer from the Government of the Russian Federation, a clear majority of experts at the Meeting concluded that the most feasible way forward was for the Conference to amend Annex I to the Convention and, as necessary, the other Annexes to it, in order to align the biometric under Convention No. 185 with the ICAO standards that were now universally followed for travel and similar documents, but with a suitable transitional period for countries that were already implementing Convention No. 185.
6. The Meeting reiterated the importance of cooperation between ILO Members, especially with respect to assistance by technologically advanced countries to less advanced countries that are establishing their national infrastructure for the issuance or verification of SIDs under Convention No. 185.

As a result of the advice of the experts at the meeting in 2015 an «Ad hoc tripartite maritime body» was constituted by the ILO's Governing Body and met in February 2016 to consider changes that may be necessary to ensure that this Convention No.185 achieves the ambitious goal of a secure globally recognized international identity document for seafarers.³¹ Specifically the meeting in 2016 considered and adopted amendments based on the recommendations in 2015 to change the technical and national infrastructure requirements of the Convention, essentially aimed at aligning it with the current ICAO document practices and standards if or international travel documents such as passports.³² This recommendation to amend, if adopted the ILO in June 2016 is expected to result in more ratifications and national implementation and ultimately enhanced security for SIDs and for countries with a maritime interest.

However given the proposal in 2015 by the meeting of experts and the outcome of the meeting in 2016 to move to align with ICAO biometrics and its document issuance and verification practices and the current level of acceptance of SIDS under Convention No. 108 a question might be asked about the reasons for moving forward on Convention No.185, beyond the obvious interest by the ILO in seeing Conventions that have been developed and adopted succeed in terms of ratification and implementation. The chapter suggests there are important interests in the maritime sector in having special recognition of the still relatively unique situation of seafarers and their need for facilitated border-crossing facilities. Certainly, as explained in section 2 below, it has some important and for its time and, arguably, even ahead of its time, approaches to achieving security in document issuance practices, albeit within an institutional and regulatory regime that increasingly appears «unimplementable» for most countries for reasons related to cost and technological

31) The meeting was attended by 64 representatives appointed by the Governing Body, 32 of whom designated by the Governments; 16 by the Shipowners' group and 16 by the Seafarers' group. See: <http://www.ilo.org/global/standards/maritime-labour-convention/events/WCMS_411197/lang-en/index.htm>

32) *Ibid*, note 30, see:

Recommendation 1: The International Labour Office should prepare a preliminary draft of a revised Annex I and Annex II of Convention No. 185 where the biometric is changed from a fingerprint template in a two-dimensional barcode to a facial image stored in a contactless chip and where the national electronic database is required to contain only the public keys required to verify the digital signatures defined for the contactless chip by ICAO Document 9303. All references to technical standards other than ICAO Document 9303 are to be eliminated, as all of the ISO standards required would now already be referenced within ICAO Document 9303. The references to ICAO Document 9303 should refer to that document, including subsequent amendments of it, so that the Annexes will not require changing in the future as ICAO issues new versions of ICAO Document 9303 and as ePassport technology moves forward. If any of the changes to Annex I and Annex II need to be reflected in changes to the processes and procedures outlined in Annex III (such as, for instance, a need to ensure the quality of the photograph of the seafarer), then these changes may have to be reflected in a preliminary draft of a revised Annex III.

change and also, perhaps most importantly, also national departmental roles and responsibilities.³³ The latter problem arises because border control matters are not usually dealt with at the national level by either labour departments or maritime administrations, either of which would probably have issued SIDs under Convention No.108. Equally, questions of who is genuinely a «seafarer» and verifying this question for purposes of a professional identification document and international queries is not a matter that border control agencies would usually address. In addition the biometric requirements under Convention No. 185 requires products that are no longer available due to a lack of market demand because the biometric and verification system adopted by ILO in Convention No. 185 is based on fingerprint technology and the conventions' issuance and verification system. While not in conflict, it does not follow the contemporary facial recognition biometric and the document verification system adopted by ICAO and its member States, which are usually represented in ICAO by national border control agencies.³⁴ As noted above this has created a disincentive to ratification and, if a State has ratified, to take the costly steps to implement the Convention.

33) These recommendations for amendments to Annexes I, II and III were considered by the Ad Hoc Committee meeting in February 2016 and have been submitted to the International Labour Conference for adoption in accordance with Article 8 of Convention No.185. See: «Proposals for amendments to Annexes I, II and III of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). In addition two resolutions were adopted by the meeting, one related to entry into force and a transitional period (Resolution on the implementation of the Convention No. 185, and entry into force of the proposed amendments to its Annexes, including transitional measures, <http://www.ilo.org/global/standards/maritime-labour-convention/events/WCMS_451725/lang-en/index.htm>, and the other to facilitation of access to shore and transit (Resolution on the facilitation of access to shore leave and transit of seafarers) <http://www.ilo.org/global/standards/maritime-labour-convention/events/WCMS_451726/lang-en/index.htm>

34) ILO *Technical background paper 2015, ibid*, note 27 at paragraph 9 , states (reference removed):
9. From 2004 to 2008, the Office commissioned tests of biometric products developed in accordance with this ILO technical standard. Twelve biometric products from 11 different sources were found to meet the requirements of the technical standard. As a result of changes in technology and the development of border security control standards since the last test of products in 2008, most of the products on the list are no longer available and several of the listed companies no longer exist as independent entities.

See also the conclusions and recommendations of the meeting, *ibid*, note 30, Appendix,

Recommendation 3: In conjunction with the development of the revised Annexes to Convention No. 185, the International Labour Office should prepare a guidance document explaining the impact of the changes and the necessity for SID issuers to now work with the ePassport issuers in their respective countries so that they can share the same certificate authority to manage the signing of the ePassport and the SID. The potential cost savings from sharing a single issuance system for both ePassports and SIDs should be explained. This document should be drafted and circulated along with the draft of the revised Annexes.
[...]

Recommendation 5: The International Labour Office should review its liaison relationship with ISO/IEC JTC-1 SC 37 1 and pursue a closer liaison with ICAO, since all the ISO standards used for the implementation of Convention No. 185 will now be referenced through ICAO Document 9303.

MOIRA L. MCCONNELL

The remainder of this chapter provides an overview of the key requirements of the Convention No. 185. It then considers the implications of the current proposals to amend the technical aspects of the Convention to align them with the ICAO passport and other travel documents requirements.

2. Overview and the Key Requirements of Convention No. 185

Unlike most maritime Conventions, including its predecessor, Convention No. 185 is not directed to States in their role as flag States³⁵ with responsibility for regulating ships and shipowners. The majority of the substantive obligations in the Convention are directed to States in what can be called their labour supplying role - that is the State of nationality or permanent residence of a seafarer. It deals with the obligation to provide these seafarers with a seafarers' identity document (SID) which conforms to the Convention requirements using an issuance and verification/response system to question about document validity which also follows the requirements of the Convention.

The Convention also contains one article providing for obligations on ratifying States in their role as port States or a State of potential transit for seafarers to recognize seafarers identity documents issued by other ratifying States by providing the enumerated facilities to foreign seafarers on ships entering its ports or a seafarer needing to undertake professional movement – that is to transit the State's borders to travel to join or leave a ship either in its ports or in the port of another State. As this indicates the Convention is dealing with an issue relevant mainly to seafarers working outside their state of nationality and to ships engaged in international voyages. For shipowners, although they have no role in implementation, there is an interest in ensuring that seafarers have these facilities.

35) Although as practical matter Article 7 paragraph 1 which provides that the SID to «remain in the seafarer's possession at all times» is usually understood as a «right» of seafarer rather than an obligation placed on the seafarer. See the comment regarding draft Article 8 (now Article 7) in ILO report *Improved Security of Sea farers' Identification, Report VII (2B), International Labour Conference, 91st Session*. Geneva: ILO, 2003 at p. 9

Available at: <<http://www.ilo.org/public/english/standards/reim/ilc/ilc91/pdf/rep-vii-2b.pdf>>

This provision would therefore seem to be a matter for the flag State concerned since the newly added flexibility in Article 7 paragraph 2 to the Convention No. 108 provision (Article 3), allows for a ship's master to hold it for safekeeping with a seafarer's permission, is not matter (if viewed as right on the part of the seafarer) that the issuing State can enforce except if it is a flag States and *vis a vis* ships/ shipowners under its flag.

2.1 The key requirements of Convention No. 185

2.1.1 Overview

Viewed from a structural perspective as explained by Cleopatra Doumbia-Henry³⁶,

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.

While of some importance in 2003 as an «innovation», the possibility of «more regular updating» of «technical Annexes» is now proving to be essential to the success – perhaps even the survival– of Convention No.185. Although the main body of the Convention, the Articles, is subject to usual lengthy ILO Convention revision procedures if they need to be updated, the three technical Annexes can be updated more quickly through a «simplified amendment» procedure set out in Article 8. This procedure is based on the «tacit acceptance» procedure employed by the International Maritime Organization (IMO) and later adopted by the ILO in 2006 in the Maritime Labour Convention, 2006 (MLC,2006), which was under negotiation in the ILO at the same time as the Convention No. 185.³⁷ While the amendments would still take

36) *Ibid*, note 21 p.135.

37) Doumbia-Henry C. , *ibid*, note 21 at p. 145 explains:

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.

time to be developed and considered and require a vote by the International Labour Conference (ILC), a central feature of this approach is that the amendments will then be binding on entry into force on all States that have ratified, unless the State has given written notification to the ILO that it does not agree to be bound. This reduces the problem of a potential «patchwork» in application because of the pace of ratification of the amendments. It may also reduce the time required at the national level to implement amendments as in many cases they may not be required to go through the same legal process and consideration as a new Convention that would need to be ratified. As noted in section 1 above proposals to significantly amend the Annexes will be considered in February 2016.³⁸

The 18 Articles can be understood as falling into three substantive categories: Aside from the scope (Article 1) and the articles relating to amendments to the Annexes, transitional arrangements and the final provisions dealing with entry into force (Articles 8-18), the core substantive provisions are articles 2-7 dealing with the obligation to issue a SID, the content and form of the SID, control of the issuance procedure and provisions for facilities to be given by port /transit States. These provisions are also tied to the three Annexes and the more rapid amendment procedure for the Annexes set out in Article 8. The following table provides a quick overview of the main content and connections between the Articles and the Annexes and the more simplified (rapid) amendment procedure. It also notes the areas where proposals to amend the Annexes were considered and recommended for adoption by the meeting in 2016. These connections are important to be aware of because, as noted above, the Articles, which can only be changed through a new (revising) Convention, establish the core legal obligations and rights and de facto (and in one case expressly) establish constraints on the extent and nature of the amendments that can be made to update the Annexes.

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.

See also comment *infra*, note 43 regarding Article 14 paragraph 3.

³⁸) See *supra* footnotes 29 to 34 and the related discussion.

Article Number	Subject of Article	Connection to Annex	Simple/rapid amend procedure under Art 8 applies
Article 1	Scope - includes one definition - re 'a seafarer'.	-	-
Article 2	Issuance of SID - obligation on State to issue SID	-	-
Article 3	Content/Form - sets out the parameters for the SID - not a passport but a «stand-alone» document - includes particulars to be included on the SID - includes «preconditions» with respect to the nature of the biometric to be included in the SID, including privacy considerations, seafarers' ability to view the data included in biometric, equipment to provided and verify SIDs is «user friendly» and available at a low cost.	Annex I- «Model for SID» (Art 3, para.1) - described as a «model» but is a detailed description of the specific form and content of the SID - a «template or other representative of biometric of seafarer which meets the specifications in Annex I ...and satisfies the listed «preconditions» (Art. 3, para. 8) - SID content and form to take account of international standard referred to in Annex I (Art 3, para. 10).	Yes. Art 3, para. 1 - permits amendments to Annex I, including setting the entry into force date for amendments, so long the amendments are «consistent» with para. 2-11 of Art 3. - in 2016 amendments to replace all of the current text of this Annex with text aligned with ICAO Doc 9303 Seventh Edition 2015 or subsequent publications were considered and proposed for adoption.
Article 4	National Electronic Database - sets out a procedure for national records regarding the SIDS that have been issued and privacy considerations. -also establishes obligation to respond to inquires from other States about validity and authenticity of SIDs.	Annex II «Electronic Database» - lists the 8 points divided into sections 1 and 2 of information that the database is restricted to (Art 4, para. 2).	Yes. Art 4, para. 2 - permits amendments to Annex II. - in 2016 amendments to each line of the current text to align it with ICAO Doc 9303 Seventh edition 2015 or subsequent publications were considered and proposed for adoption.

Article 5	Quality Control and Evaluations - sets minimum procedures for issuance of SIDs - set out requirements for «international oversight» (an independent evaluation of administration of system every 5 years and reported (without prejudice to the ILO supervisory system national implementation reports that are also required) to the ILO to be available to all States - ILO Governing Body to approve a list of States that meet these system requirements. ³⁹	Annex III Requirements and recommended procedures concerning the issuance of SIDs (Art 5, para. 1) Two part Annex - Part A. «Mandatory results» - results to be achieved by issuance system including the database and quality control relating to security and privacy Part B.» Recommended Procedures and Practices» – to be given «full consideration». ⁴⁰	Yes. Art 5, para. 3 - permits amendments to Annex III - in 2016 amendments to the introductory part to require observation of mandatory aspects of the ICAO Document 9303 Seventh Edition 2015 and subsequent publications were considered and proposed for adoption.
Article 6	Facilitation of Shore Leave and Transit and Transfer of Seafarers - obligations port States and States of possible transit of seafarers to provide «facilities» to seafarers with a valid SID - seafarers usually	Annex II, section 1 (Article 6, para. 3) - information set out in Annex II, section 1 to be included in the notice by ship of arrival re holders SID to port State when requesting entry of seafarers for shore leave to allow for verifi-	Amendment possibility not expressly referenced but implicit because of potential amendments under Article 4 (see above) that may affect the information in sections 1 and/ or 2 of Annex II - in 2016 amendments to each line of the cu-

39) As of February 2016 only one State, the Russian Federation, is on this list. It was approved in June 2015. See: ILO Doc. GB.324/INS/7/2, «Report of the Director-General. Second supplementary report: Inclusion of the Russian Federation in the list to be established under Article 5, paragraph 6 of the Seafarers' Identity Documents Convention (Revised, 2003 No.185)». Available at: http://www.ilo.org/gb/GBSessions/GB324/ins/WCMS_373533/lang-en/index.htm.

In 2005 the ILO Governing Body adopted ILO Doc. No. GB. 292/LILS/11, «Arrangements and procedures under Article 5, paragraphs 6-8, of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)». Available at: <http://www.ilo.org/public/english/standards/relm/gb/docs/gb292/pdf/lils-11.pdf> or for the published report dated January 2005. see: http://www.ilo.org/wcmsp5/groups/public/-ed_dialogue/-sector/documents/publication/wcms_191714.pdf.

40) Dombia-Henry C. , *ibid*, note 21 at footnote 26 comments: «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.»

XI. The ILO's Seafarers' Identity Documents Convention

	<p>provided entry based on SID without a visa (some possibility for refusal on specific grounds).</p> <ul style="list-style-type: none"> - provides for transit for joining or leaving a ship with a SID supplemented by a passport. Not expressly addressed but could perhaps be also asked for a visa (some possibility for refusal on specific grounds). 	<p>ation by port State.</p>	<p>urrent text of Section 1 to align it with ICAO Doc 9303 Seventh edition 2015 or subsequent publications were considered and proposed for adoption.</p>
Article 7	<p>Continuous Possession and Withdrawal</p> <ul style="list-style-type: none"> - seafarer's «right» (rather than obligation) to have continuous possession with an exception for safe-keeping - provides for withdrawal by issuing State if person no longer meets conditions for holding a SID. 	-	
Article 8	<p>Amendment of Annexes</p> <ul style="list-style-type: none"> - establishes procedure require a «duly constituted maritime body» to recommend amendments to Annexes - the ILC to vote on recommended amendments- allows a ratifying State to give notice saying amendments will enter into force for them or indicate a later date. 	<p>Linked to Articles 3, 4, 5 (see above), 14 and 16 and Annexes I, II, III.</p>	

<p>Article 9</p>	<p>Transitional Provision - allow a State that has ratified Convention No. 108 but not yet ratified Convention No. 185 to have its SIDS accepted as Convention No. 185 SIDS if taking measures to implement and apply Articles 2-5 and State accepts SIDS from other States (provisional application)⁴¹</p>		
<p>Articles 10-18</p>	<p>Final Provisions - essentially standard provisions⁴² for ILO Conventions adjusted for particulars of the Convention No.185.</p>		

As this foregoing overview illustrates the technical Annexes are frequently referenced in the three Articles which set out the main obligations regarding the SIDS and its issuance systems and are, as a legal matter, essential to the implementation of the Convention, particularly with respect to the SID and the SID issuance system. At the same time the Articles, which as explained earlier set out core obligations for States intended to address both the security concerns of governments and the concerns of the shipping industry with respect to facilitating access to shore and transnational movement of seafarers, also reflects concerns about seafarers' rights, particularly

41) As of February 2016 only one State has applied under article 9 – Lithuania. See comments, *supra* footnote 8.

42) Namely: expressly revises Convention No. 108 (Art 10); ratification to be communicated to Director-General (DG) of ILO for registration (Art 11); enters into force 6 months after 2 registered ratifications, and thereafter 6 months after registered ratification for each State (Art 12); denunciation possible for one year after 10 years after first entry into force date (e.g., 2015) (Art 13); obligation on DG of ILO to notify all States of ratifications, declarations and registration of any amendments and notifications under Art 8 (Art 14); DG of ILO to communicate ratifications to Secretary-General of UN (Art 15); when necessary ILO Governing Body to present a report on the working of Convention to the ILC and to examine desirability of placing on its agenda revision in whole or part taking account of Article 8 (Art. 16); if a new/ revising Convention is adopted then Convention No. 185 is automatically denounced on ratification of new Convention and closed to further ratifications but remains binding on State that have ratified it and not ratified the new Convention (Art 17); authoritative languages (English and French) (Art 18).

with respect to the nature and use of a biometric, and the database and privacy issues. Where some interests were difficult to reconcile, they were to the extent possible in 2003 with the expedited procedure used to develop and adopt the Convention, «resolved», in the «technical» annexes. This means that the two parts of the Convention - the Articles and the Annexes must be read together to fully understand the obligations and rights. Thus the proposal for significant amendments to the Annexes while in art related to updating to address technological changes also appears to reflect a change in views and concerns that directed the solutions adopted in 2003.

Articles 1, 2, 3, and 6 and 7, while repeating the existing basic obligations under Convention No.108 to provide seafarers (as defined) upon application with an identity document which meets fairly minimal requirements as to form and content and to permit entry to seafarers with valid seafarer identity documents for temporary shore-leave when a ship is in port and also facilitate professional movement subject to some conditions. Convention No. 108 leaves many issues regarding the form and content of the document and also acceptance of them for professional movement to be decided nationally. Convention No. 185 both in the Article and the Annexes elaborates on all these matters and is clearly aimed at reaching the objective of a universal card with this standardization a high level of international recognition and security.

The following sections 2.1.2 to 2.1.5 highlight the specific elements and obligations in the Articles taking account of the Annexes and the *travaux préparatoires* leading up to the adoption of the Convention No. 185 and also refer, where relevant, to subsequent reports and meetings.⁴³

2.1.2 Who is entitled to a SID? Who has to issue it? (Articles 1 and 2)

Article 1 although entitled «scope» contains a single definition – that for a «seafarer» who is «any person who is employed or engaged or works in any capacity on board

43) For the purposes of this paper the final numbering and order of Articles in the Convention is used, however it is important to be aware when reviewing, in particular, ILO background papers submitted to the Conference and the *Provisional Records* of the discussion at the ILC when it was adopted that Articles in the draft text under consideration at the Conference were significantly adjusted and reordered with the Articles 11- 18 not appearing in the draft Convention text and not the subject of discussion at the ILC but were presumably added by the Drafting Committee working with the Convention text. There does not appear to be a record, explaining, for example, Article 14 para. 3, which refers to «registration of any amendments». It is not clear what is expected since the Convention does not appear to envisage a procedure leading to registration of an amendment by the Director-General, and since amendments to the Annexes are not subject to ratification and registration of the ratification by the Director-General. The ILO's (revised 2011) *Manual for Drafting Legal Instrument*, also do not appear to explain this wording, see, *inter alia*, para. 85. Available at: <<http://www.ilo.org/public/english/bureau/leg/download/man.pdf>>

a vessel, other than a ship of war, ordinarily engaged in maritime navigation». This definition is essentially the same definition as that set in Convention No. 108 (Art. 1, para. 1) and is also similar to the definition of seafarer found in the MLC, 2006 (Art. 2 para. 1(f)). The main change from 1958 is that by 2003 it was increasingly accepted in the sector that a much wider range of workers, many not involved in navigational or related duties on the ship, were also seafarers, particularly, for example, people working in passenger/hotel service jobs in the cruise ship industry. Given this broader understanding it is of interest to note the recommendation in Annex III, Part B, with respect the proof that could be expected to be provided by an individual that she or he is a seafarer, as it mainly refers to documents that a seafarer engaged in navigational or related duties would have but others – (e.g., musicians or other entertainers) may not have:

3.10. The proof that the applicant is a seafarer, within the meaning of Article 1 of this Convention should at least consist of:

- 3.10.1. a previous SID, or a seafarers' discharge book; or
- 3.10.2. a certificate of competency, qualification or other relevant training; or
- 3.10.3. equally cogent evidence.

3.11. Supplementary proof should be sought where deemed appropriate.

Although the terms «vessel» and «ship» are not defined and, indeed, are used interchangeably in the text even within the same sentence, in light of the lengthy debates during the development and adoption of the MLC, 2006 as to whether it applies to mobile offshore drilling units (MODUs), it is of interest to note that following views (which were not contradicted) in the official record of the ILC in 2003 regarding the assumed application of the Convention to workers on board MODUs as seafarers for purposes of holding SIDs:⁴⁴

102. The Worker and the Employer Vice-Chairpersons preferred to retain the term «vessel». Many vessels, particularly in the offshore support sector, were in fact referred to as «vessels» and not «ships», and the amendment would remove coverage for seafarers on such vessels.

Article 1 also follows the usual ILO approach, which is also found in Convention No. 108, and provides for national tripartite consultation «in the event of any doubt as to whether any categories of persons are to be regarded as seafarers for purposes

44) ILO Doc. No. *Provisional Record 20*, Part 1, 91 ILC 2003.
Available at: <<http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/pr-20p1.pdf>>
Although the worker and employer groups were largely the same composition for the discussions on both Convention No. 185 and the MLC, 2006, which was under development at the same time, this view as to terminology was not repeated in the MLC, 2006 context. The MLC, 2006 uses «ship» as does the major predecessor Convention (Convention No. 147) which expressly envisages application to MODUs

of this Convention». Article 1, paragraph 3 also provides for the possibility of applying the Convention to commercial maritime fishing after consultation with representatives of fishing vessel owners and persons working onboard fishing vessel.⁴⁵ This was not part of Convention No. 108 but recognizes the growth since 1958 in distant water fishing fleets and the fact that workers on those vessels are often in the same position as seafarers in terms of the need for shore-leave or transit. Although addressed in Article 2 paragraph 6 rather than Article 1, it should be noted that the Convention is expressly «without prejudice to obligations of each Member under international arrangement relating to refugees and stateless persons».

As mentioned earlier, in section 1, Article 2 introduced a key change from Convention No. 108 which had also permitted flag States and States where a seafarer is registered at an employment service in its territory to issue SIDS to seafarers that were foreign nationals. The State⁴⁶ that can issue a SID is now limited to the State of nationality of the seafarer and, with some additional limitations, also the State of permanent residence of a seafarer. The latter was controversial and concerns were ultimately resolved by requiring that permanent residents issued with SID «shall in all cases travel in conformity with the provisions of Article 6 paragraph 7» –that is– the SID must be supplemented by a passport⁴⁷.

Under paragraph 1 of Article 2, issuance of a SID is not automatic as the seafarer is required to apply with a right to an administrative appeal if rejected.⁴⁸ After some debate at the 91 ILC it was clarified that the requirement for an application did not prevent a State from imposing a requirement on seafarers to have a SID.⁴⁹ In the flag State context the view was a flag State could also require that all seafarers on its

45) This paragraph was proposed by the workers/seafarers spokesperson at the ILC. One of the reasons for this wording is that the Employer/Shipowners' spokesperson was of that view that they did not represent fishing vessel owners but could agree to this wording. See: paras. 127-128, *ibid* note 44.

46) The Convention does not address the question of which department of a government is responsible. This is one of the more difficult issues that came to the fore in the 2016 discussion with respect to amendments to align with the ICAO standards and practices. The departments representing governments at the ILO were mainly labour departments and for maritime issues also maritime administrations and not the border control departments engaged with ICAO.

47) *Ibid* note 44, para. 200-236. There were many different concerns articulated.

48) Article 7, para. 2. also provides with respect to withdrawal:

2. The seafarers' identity document shall be promptly withdrawn by the issuing State if it is ascertained that the seafarer no longer meets the conditions for its issue under this Convention. Procedures for suspending or withdrawing seafarers' identity documents shall be drawn up in consultation with the representative shipowners' and seafarers' organizations and shall include procedures for administrative appeal.

49) *Ibid*, note 44, paras. 172-182 and specifically.

182. The representative of the Secretary-General confirmed that a member State that ratified the Convention would retain the right to impose on all of its seafarers a requirement to hold a SID in conformity with the Convention, in order to be able to exercise their profession.

ship to have a SID, in which case foreign seafarer would have to request a SID from her or his country of nationality or permanent residence.⁵⁰

The SID is to be issued without «undue delay», however the question of whether seafarers or shipowners could be required to pay the cost of the SID is not addressed in Convention No. 185, other than in Article 6, paragraph 2, which deals with costs related to verification when a request of entry for shore leave or transit is made.⁵¹

This shift to focus on the State of nationality combined with Articles and Annexes regarding the system for issuance and record keeping to allow for verification makes sense and is laudable from an enhanced security point of view. However, with the world's seafaring force increasingly drawn from developing or emerging economy countries, often with various problems of capacity to implement, the cost of the system⁵², partly as it diverged from the ICAO system, proved to be the major barrier to the success of the Convention. These issues of capacity and cost were clearly

50) The potential problem of the State of nationality not being party to Convention No. 185 or even Convention No. 108 does not appear to have been considered.

51) *Ibid*, note 44, paras. 183-195. The issue was extensively debated but a decision was made during the 91 ILC not to address the question as national practice varied and some cost recovery as is the case with passports was a consideration for many governments. If all costs were allocated to governments with no possibility for charging a fee for a SID then it was seen as a possible barrier to ratification. The issue arose again in connection with development of the MLC, 2006 because until 2004 there had still been a possibility that a general requirement relating having a SID would be included in the MLC, 2006. The MLC, 2006, Standard A1.4, paragraph 5 (b), provides in connection with regulation of private seafarer recruitment and placement services and the fees that can be charged to seafarers for gaining employment that:

- (b) require that no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer, other than the cost of the seafarer obtaining a national statutory medical certificate, the national seafarer's book and a passport or other similar personal travel documents, not including, however, the cost of visas, which shall be borne by the shipowner; ...

Although there was some confusion during the Technical Committee discussion of this in 2004, it was understood that the even though the question of whether a SID is a travel document was not unclear, the phrase «other similar personal travel documents» was meant to refer to SIDS, see: *Report of Technical Committee 2, Preparatory Technical Maritime Conference, 2004, Record of Proceedings 5*, ILO Doc. No. PTMC/ 04/3-2/ paragraphs 157-176 and paragraphs 210-233. Available at: <<http://www.ilo.org/public/english/standards/relm/ilc/ilc94/ptmc/pdf/ptmc-04-3-2.pdf>>

52) As noted in the *Technical background paper* in 2015, *ibid*, note 27,

76. Many of the less-developed economy countries do not have the technical expertise to build their own SID issuance system or the available finances to purchase one from a commercial supplier. Especially if they have a small number of seafarers, the cost per seafarer to fully implement all the requirements of Convention No. 185 can be very high.

A complete SID issuance system typically costs anywhere from a few hundred thousand to a few million dollars, depending on the number of seafarers and the number of issuance and enrolment sites. Even after the system is developed or purchased, there are additional costs for training staff and for ongoing operations, which include not just the services to register and enrol seafarers, but the cost of maintaining a continuously available focal point and national electronic database. For

understood in 2003 when the ILC adopting the Convention, also adopted a «Resolution concerning technical cooperation relating to seafarers identity documents»⁵³ which provided;

Noting that the success of the Convention will depend upon the availability in each ratifying Member of the necessary technology, expertise and material resources for the preparation and verification of the new, secure seafarers' identity document, established by the Convention, and for the related database and issuance processes;

1. Urges Members to agree among themselves on measures of cooperation which would:
 - (a) enable them to share their technology, expertise and resources, where appropriate,
 - (b) provide for countries with advanced technology and processes to assist Members that are less advanced in those areas,
2. Invites the Governing Body to request the Director-General to give due priority, in the use of resources allocated to the Organization's technical cooperation programme, to assisting countries with respect to the said technology, expertise and processes.

However as noted above⁵⁴ this level of resources necessary were not forthcoming, perhaps because governments were also working to implement other general border security enhancements requirements in their own countries, with the lead on these initiatives taken by departments other than labour or maritime administrations.

2.1.3 The nature the SID and its form and content

Article 3 deals with the content and form of the SID and, in that respect, revises the content of Article 5 of Convention No.108. However, as explained earlier, the level of detail, particularly with the incorporation by reference of Annex I and the detailed description it contains –«a model»– of the format and content of the SID, was intended to significantly narrow national discretion on these questions in the interests of providing a universally recognizable more secure physical document as well as improving, through the biometric and the related requirements for issuance procedures, a document with more reliable verifiable content.⁵⁵

many ILO Members, these costs and the associated technical complexity of building and maintaining such a system make ratification of Convention No. 185 very difficult.

53) *Ibid.* note 44, page 108.

54) *Supra* note 27.

55) As noted in 2011, *ibid*, note 13 at p.13-14 in connection with the problems with a SID based on the requirements under Convention No. 108 relative to the changes made in Convention No.185.

The SID could be combined with a passport or issued as a separate identity document and could

(b) As indicated in the table set out in section 2.1.1, Article 3 paragraph 1 permits the amendment of Annex I, «in particular, to take account of technological developments», and indeed, significant changes are to be proposed for Annex 1 in 2016, as also explained earlier, to align the SID and the related system for verification with the current and future ICAO standards and system. However Article 3 also includes some important parameters and constraints reflecting the balance struck between enhanced security goals and concerns about seafarers' privacy and also financial impact on governments.

In terms of physical format⁵⁶ Article 3 paragraph 2 follows the wording under Convention No. 108 (Art. 4) in that it requires that the SID be «designed in a simple manner, be made of durable materials» and concerns about alteration or tampering.

However it also adds in the requirements that it be «machine readable» and «be generally accessible to governments at the lowest cost possible» consistent with reliably achieving the purpose of preventing tampering or falsification and easy detection of alterations. Annex 1 provides further details on the physical/security features that are required, namely:

- The seafarers' identity document, whose form and content are set out below, shall consist of good-quality materials which, as far as practicable, having regard to considerations such as cost, are not easily accessible to the general public.
- The data page(s) of the document indicated in bold below shall be protected by a laminate or overlay, or by applying an imaging technology and substrate material that provide an equivalent resistance to substitution of the portrait and other

even be issued to foreign nationals serving as seafarers on board vessels registered in a particular country. Many different types and styles of documents were issued under Convention No. 108, making it very difficult for authorities at borders and at port authorities to determine if a particular SID was a legitimate document. There were also no specific requirements relating to security features and no means to link the seafarer to their document, except for visual comparison of a photograph, which was easy to substitute in a document with minimal or no security features.

[...]

Another important improvement made by defining the content and form of the Seafarers' Identity Document [in Convention No. 185] was that it allowed the data provided on the SID to be constrained. This was intended to eliminate the difficulties caused in authenticating an SID when it could be provided as a stand alone document, as part of a seafarers' passport or even combined with medical information or job qualifications as part of a seaman's book. This is why Annex 1 also contains the following statement:

Data to be entered on the data page(s) of the seafarers' identity document shall be restricted to: ...

56) Doumbia-Henry C. , *ibid*, note 21, p. 137 explains (notes removed):

During the discussions at the Conference, different models were envisaged and scrutinised. 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) the other was for a more traditional document (without IC). The solution favoured was for a more traditional-type document.

biographical data.

The materials used, dimensions and placement of data shall conform to the International Civil Aviation Organization (ICAO) specifications as contained in Document 9303, Part. 3 (2nd edition, 2002) or Document 9303, Part. 1 (5th edition, 2003).

- Other security features shall include at least one of the following features:

Watermarks, ultraviolet security features, use of special inks, special colour designs, perforated images, holograms, laser engraving, micro-printing, and heat-sealed lamination.

Despite these security requirements, the background paper⁵⁷ considered by the ILO Tripartite Meeting of Experts regarding Convention No.185 in 2015, noted that:

42. During the development of ISO/IEC 24713-3:2009, one issue that was noted by the technical experts of SC 37 was that the current SID is not as secure as many other identity documents, such as an ePassport, because it relies entirely on physical security and has no digital security. It also does not have a high level of physical security, making it relatively easy at the present time to produce a SID which will be indistinguishable from a validly issued SID. This has been a perennial problem for passports and has historically resulted in a continuous struggle between document issuers and forgers as ever more elaborate physical security features were introduced. For example, the ePassport was designed to eliminate this problem by relying on the security of digital cryptography which has a known algorithm strength and therefore provides a known (very high) level of security and resistance to forging.

Article 3, paragraph 4 requires that the SID be no larger than a «normal passport» while Annex I elaborates that: «The document shall have no more space than is necessary to contain the information provided for by the Convention.» Despite this vague wording, as noted by Doumbia-Henry C.⁵⁸:

Annex I of the Convention allows either of two formats: passport format or card-type format [...] 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).

Unlike Convention No. 108 which did not set a period of validity for a SID, Article 3,

⁵⁷) *Ibid*, note 27 at para. 42.

⁵⁸) *Ibid*, note 21, p.137.

paragraph 6, while allowing national flexibility on the specific period chosen sets outside parameters, that it «shall in no case exceed ten years, subject to renewal after the first five years.»⁵⁹

The SID is required to have specified mandatory information which is set out in the Article 3, paragraphs 5, 7 and 8 and further explained in Annex I, relating to the issuer of the document, the identification of the seafarer, as well two statements relating to the status of the document to indicate that it is a SID under Convention No. 185 and «is a stand – alone document and not a passport». With respect to last two statements, which are repeated in Annex I, the concern was avoid any confusion with travel documents falling under the auspices of ICAO, by emphasizing the document was related only to the individual's profession as a seafarer, however there was at the Conference some uncertainty over this matter and some questioning of the need for a stand-alone document.⁶⁰

59) *Ibid*, note 44, paras. 344-358. The ICAO recommendation for passports was 10 years but Government generally preferred five years for security reasons. After extensive discussion the following proposal by the Workers was accepted.

355. The Worker Vice-Chairperson recognized that the majority view of Government members was for a period of five years. Whatever decision was taken it should apply to all issuing authorities and not vary among States. He suggested a subamendment «ten years, subject to renewal after five years». That would help to cut costs, as the document could more easily be renewed (with an annotation to the effect that it was a renewal) than reissued.

60) See discussion regarding costs, *supra* note 51. See also *ibid*, note 44, paras. 313-343. The following proposal, which is envisaged in Convention No. 108, was not accepted.

313. The Government member of the United Kingdom introduced an amendment (D.44), submitted by the Government members of Italy, Sweden and the United Kingdom, to add the following new paragraph: «As an alternative to issuing a separate document, a Member may, after consulting the shipowners' and seafarers' organizations concerned, incorporate the seafarers' identity document, by means of a secure sticker, into the national passport, provided that the features required under this Convention are met. A passport so endorsed shall have the same effect as a seafarers' identity document for the purposes of this Convention. The seafarers' identity document so incorporated into the national passport shall conform to the model set out in Annex I.» The purpose was to provide a possible alternative to a stand-alone SID. This could provide important flexibility to member States. It was not in contradiction to the concept that the new SID should simply be an identity document. A travel document would still be required. The SID would be incorporated within the passport by means of a sticker. This should only be seen as an additional option, which could alleviate concerns about cost or paperwork and bureaucracy. The amendment would retain the existing option in Article 2 of Convention No. 108 for a member State to issue a passport with the indication that the holder is a seafarer. It was also in agreement with the IMO's FAL Convention. The proposal could therefore be considered as updating and extending this provision into the new instrument. The Government members of Italy and Sweden added that it was a simpler, less costly option.

314. The Worker Vice-Chairperson said his group opposed the amendment for several reasons. Firstly, seafarers carried their SIDs when going ashore, usually leaving their passports safe onboard. Secondly, it was unclear whether such a provision would lead to decreased cost for member States. Thirdly, it was a matter of concern that the seafarer's occupation would appear on his or her passport, even if it were being used for other purposes, such as private travel. Fourthly, seafarers who were permanent residents of one State would be required to use the passports issued by their home country, and this might create problems.

Article 3 paragraph 7 sets out the particulars with respect to the information about the seafarer to be set out in the SID. An interesting shift in tone from 1958 when the equivalent provision uses the term «include» while, as noted above, in 2003 the wording is «restricted to» the following:

- (a) full name (first and last names where applicable);
- (b) sex;
- (c) date and place of birth;
- (d) nationality;
- (e) any special physical characteristics that may assist identification;
- (f) digital or original photograph; and
- (g) signature.

This list plus issuance related information and the biometric information referred to in the «notwithstanding» paragraph 8 of Article 3, is reiterated with more specific detail in Annex 1 which addresses matters such as language/translations, use of Roman alphabet, order for the statement of names and the way to express dates (i.e., two digit Arabic numerals to refer to day/month/year), in order to help ensure more uniformity.

The required information in paragraph 7 mainly replicates Convention No. 108 and is not controversial. It also recognizes social changes since 1958 in that it adds in the additional item «sex» to include the possibility that a seafarer may be either a man or a woman.

The most difficult provision and the central concern with Annex I and now central aspect of the amendments be considered in 2016, is set out in paragraphs 8 and 9 of Article 3. They reveal the political tension and uncertainty in 2003 with respect to biometrics and technology and their use or potential misuse.

8. Notwithstanding paragraph 7 above, a template or other representation of a biometric of the holder which meets the specification provided for in Annex I shall also be required for inclusion in the seafarers' identity document, provided that the following preconditions are satisfied:

- (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;⁶¹

⁶¹) This is a legal constraint which, in principle, may raise a question for amendments to move to chip technology and facial recognition that will be considered in 2016. The Technical background paper

- (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 authentication of identity.

9. All data concerning the seafarer that are recorded on the document shall be visible. Seafarers shall have convenient access to machines enabling them to inspect any data concerning them that is not eye-readable. Such access shall be provided by or on behalf of the issuing authority.

The views of Shipowners and, importantly in the ILO context, the Seafarers on this matter were summarized in the Report to ILC in 2003⁶² (emphasis added):

considered by the Tripartite Meeting of Experts in 2015, *ibid* note 34, notes:

49. One other element which was included as a possibility in ISO/IEC 24713-3, but which was not fleshed out in detail, was the concept of including a contactless chip in the SID. The main issue with this option is that Article 3(9) of Convention No. 185 states that «All data concerning the seafarer that are recorded on the document shall be visible.» Since the information contained in a contactless chip is only visible through electronic means, the use of a chip could be understood to be inconsistent with this requirement. The solution, however, is to ensure that the chip only contains information about the seafarer which is visible elsewhere on the document. The chip then simply provides a copy of that information which is easier to read at the border using the existing infrastructure designed for ePassports.

[...]

62. There is a legal question that would also need to be considered. Article 3(8)(b) of Convention No. 185 provides that «the biometric shall itself be visible on the document and it shall not be possible to reconstitute it from the template or other representation». The facial image is clearly visible on the document since paragraph 7(f) of that Article requires a «digital or original photograph». The question is whether or not a facial image would also satisfy the requirement that «it shall not be possible to reconstitute it from the template or other representation». Currently, the SID uses a fingerprint minutiae template. While it is possible to reverse engineer a minutiae template to create a synthetic fingerprint which is very similar to the seafarer's fingerprint and which will successfully match with the seafarer's fingerprint, it is not a perfect representation of the seafarer's fingerprint as it will be missing pores and scars and other information unrelated to the minutiae and which will make the difference easily detectable by a human expert or a biometric system with liveness detection. A facial image, considered in the same manner as the fingerprint template, is a two-dimensional representation of a seafarer's face and while it does allow a printed picture which is very similar to the seafarer's face to be generated, it does not permit a proper three-dimensional representation of the seafarer's face to be generated. A printed mask would therefore be distinguishable from the seafarer's actual face by any human observer or by a biometric system with liveness detection. Before accepting the option to replace a fingerprint in a bar code with the facial image in a contactless chip, it is therefore important to consider whether or not a facial image can satisfy the requirements of Article 3(8)(b) of Convention No. 185.

62) *Ibid*, note 6, p. 17.

SHIPOWNERS' AND SEAFARERS' VIEWS

At the Consultation Meeting, both Shipowners and Seafarers insisted on the importance of the visa waiver provision of an internationally standardized and recognized seafarers' identity document. As previously mentioned, the Shipowners' views were submitted as a paper (Annex III, Appendix 3), to which reference has been made. Their concern, however, was that the lack of an identity document should not constitute grounds for ship detention.

The Seafarers' group recognized that there were legitimate concerns regarding security, and agreed that positive identification and verification —nothing more and nothing less— was all that was necessary. They expressed a number of concerns, not least of which was that people whose working and living conditions were already very difficult should be made to feel as if they were criminals (based on the kind of information required for their identity documents), and that the identity document might not facilitate shore leave without, for example, security guard escorts.

There was particular concern regarding data protection and privacy rights. The Seafarers wanted an identity document which was machine-readable, of an international standard format, with no data storage in bar codes, chips or magnetic strips. A national database should be available for checking individual documents in compliance with privacy legislation. The document should be issued by the State of nationality or, in exceptional cases, the State of residence. The Seafarers considered that the purpose of the document was for shore leave, transit and repatriation and the information on the document should be limited to that in Convention No. 108. As to quality control and oversight, the Seafarers felt that the ILO should be able to set up a «White List» audit comparable to the IMO and an oversight system comparable to ICAO.

These views for the most part governed the solution developed on this question of biometric and data in 2003. The following reflection by Doumbia-Henry⁶³, who at that time was the key ILO official involved in the development and adoption of Convention No.185, provide an instructive insight into the rationale and solutions adopted (footnotes removed, emphasis added).

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. The question was whether the identity document 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

63) *Ibid*, note 21, pp.136-137.

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.[...] 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.

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, paragraph 8 of the Convention concerning the biometric 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 ongoing 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 bio-metric. 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.»

Without going into the detail of the later development of the technical requirements for an interoperable biometric standard, as noted earlier the International Labour Office followed up and after testing and in cooperation with the ISO developed an interoperable standard (which was also revised) for the biometric. However, unfortunately, as explained in the *Technical Background Paper* considered by the Tripartite Meeting of Experts in 2015⁶⁴ (emphasis added):

17. The Office has also worked with the International Civil Aviation Organization (ICAO), since Convention No. 185 specifies in Annex I that «The materials used, dimensions and placement of data shall conform to the International Civil Aviation Organization (ICAO) specifications as contained in Document 9303 Part 3 (2nd edition, 2002) or Document 9303 Part 1 (5th edition, 2003).» Although the ICAO secretariat was very supportive of this concept and initially offered to assist governments implementing Convention No. 185 by checking that SIDs were fully compliant with the ICAO Document 9303 specifications; subsequently, the resources were not available to offer this service. Unfortunately, when new editions of ICAO Document 9303 Part 1 and Part 3 were released in 2006 and 2008, respectively, the versions specified in Annex I to Convention No. 185 were withdrawn and are now no longer available to governments seeking to implement Convention No. 185.

18. The Office contacted the ICAO Secretariat to resolve these issues, but did not have the support of the New Technologies Working Group (NTWG) of the ICAO Technical Advisory Group on Machine Readable Travel Documents, which controls the content of ICAO Document 9303.

[...]

27. One issue related to the changes in technology since 2003, which has already been mentioned, is that all of the external standards for technical requirements referenced in both Convention No. 185 and in the related technical documents such as ILO SID-0002 which were available and in use in 2003 and 2004, are produced by other organizations (the ICAO and the ISO). The documents containing these technical standards have been revised over the past decade and are no longer available for use. For example, Annex I to Convention No. 185

64) *Ibid* note 34.

requires that «The materials used, dimensions and placement of data shall conform to the International Civil Aviation Organization (ICAO) specifications as contained in Document 9303 Part 3 (2nd edition, 2002) or Document 9303 Part 1 (5th edition, 2003)». As these versions of Document 9303 are no longer available from the ICAO, it is difficult for Members deploying a SID system to know if they are properly compliant with the Convention's technical requirements. Similarly, the fingerprint template encoded in the two-dimensional bar code, which is specified in ILO SID-0002, is based on a draft version of the standard ISO/IEC 19794-2:2005. The final published version of the standard is slightly different from the draft and since 2005 it has had multiple amendments and corrigenda and in 2011 was replaced by a completely new version of the standard, ISO/IEC 19794-2:2011. The other ISO standards which are referenced in ILO SID-0002, such as the draft version of ISO/IEC 19784 used for the Biometric Application Programming Interface (BioAPI) encoding of the fingerprint template, have also been extensively updated in recent years. The current SID technical standards for Convention No. 185 are outdated as they are no longer in line with the current international standards in use for other biometric and identity document systems.

2.1.4 The SID Issuance system and International Oversight

The area where, from a legal point of view, there is perhaps the most change between Convention No. 108 and Convention No. 185 is the introduction of two Articles (and related Annexes) dealing with the national system for issuing a SID. These have a high level of detail in the Articles and the two Annexes which are related to record keeping (the national database, Article 4 and Annex II) and the national SID issuance and the international oversight system (Article 5 and Annex III). Interestingly they are however, likely to be subject to essentially consequential changes to align with the ICAO Doc. 9303, if the amendments to Annex I to comply with the current (Seventh Edition, 2015) and future ICAO Doc. 9303 requirements relating to chip technology and the biometric (although the related security/verification system and use of the Public Key Directory (PKD) were not accepted by the 2016 Ad hoc Committee meeting) are adopted as recommended in 2016 to the international Labour Conference. The main difficulties with the system under Convention No. 185, aside from the earlier noted issues relating to equipment and the technical standards, is that it requires the institutional commitment to establish the system, including a «permanent focal point» in connection with the national database for SIDs, that can be contacted for authentication/verification requests by any State as well as the need to develop a database with relevant protection to meet privacy and other security concerns. The system under Article 4 is a costly system and, while experience is limited to date as relatively few States have implemented all these elements, may

65) *Ibid*, note 34. See also *supra* note 52.

not operate well in practice, at least in terms of responding to requests for verification. The *Technical background paper* considered at the Tripartite Meeting of Experts in 2015⁶⁵.

68. If the national electronic databases as described in Convention No. 185 are to be effectively used, there needs to be a convenient way for the relevant competent authorities to access them. If, for instance, a border agent encounters a seafarer bearing a SID and has doubts about its authenticity, they will need a way to contact the relevant focal point to validate that SID. Annex I to Convention No. 185 requires that the SID contain the telephone number, email address and website corresponding to the links to the focal point. If a border officer sends an email, however, this may take some time and the seafarer will need to be held at the border until a response email is received. This raises a number of practical problems. For example, if the border agent calls the phone number, there may be a significant difficulty relating to language differences. If they go online and access the website of the focal point, they may gain some information, but there then exists a significant issue about how much information they should be able to receive from a website when they are accessing it as an anonymous user since the seafarer's privacy rights must also be protected. There is also the general problem that if a border officer doubts the authenticity of a particular SID, there is no reason for them to trust the information they receive from a telephone number, email address or website that they only know about because these details are printed on that SID.

69. It should be noted that Article 4(4) also states that «Details of the permanent focal point shall be communicated to the International Labour Office, and the Office shall maintain a list which shall be communicated to all Members of the Organization». This does provide a mechanism for border officers or other agents of competent authorities to know how to contact the relevant focal point to verify a SID. The problem in practice, however, is that a list of information with phone numbers, websites and email addresses for the focal point of every ILO Member which has ratified Convention No. 185 will be quite lengthy and it is unlikely that such a list will be available to every border officer around the world and at every port where seafarers may present their SID.

70. Practically, the best way to make such a system work would be to have a central focal point coordination centre which would be able to respond to inquiries concerning a SID's authenticity and validity that could emanate from any border agent, visa officer or other competent authority. Preferably, such a focal point coordination centre could be available online, as it could then easily be available at all times and in multiple languages to serve the needs of competent authorities from different countries. The ILO would then provide the contact details of the focal point coordination centre to every ILO Member, which would consist of a single website and phone number. Each national focal point under Article 4 of Convention No. 185 would remain responsible

for the accuracy of the information provided by the focal point coordination centre, with respect to the SID data stored in its national electronic database and would need to be available on a permanent basis to respond to any inquiries that were not taken care of by the focal point coordination centre. The national focal point would, to a considerable extent, be relieved of the significant burden of immediately providing responses from anywhere in the world at any time and in conditions that respected the privacy of the seafarer concerned. [...]

72. The cost of establishing a focal point coordination centre would be significant (probably \$1-2 million to develop the software and set up the initial infrastructure) and its ongoing operational costs would be significant (possibly several hundred thousand dollars annually) as it would require 24/7/365 staffing and a very significant security infrastructure to protect seafarers' data and make sure that only queries from authorized entities were accepted.

However if, as recommended by the Tripartite meet of Experts in 2015⁶⁶, an electronic signature is included in the SID then the ICAO system using a Public Key (PKD) could be used for less cost, in particular for countries that are already subscribers to the ICAO PKD system. Although this approach may also have some difficulties depending on which department of government has, or is given the authority to deal with this issue. Interestingly at the Ad hoc meeting in 2016 in light of information provided by the ICAO representative there was a decision to leave aside the question of PKD participation.

The independent evaluation requirement and related international oversight under Article 5 paragraphs 4-8 is the heart of the oversight system⁶⁷. As explained earlier⁶⁸

66) *Ibid* note 30 p.3-4 (emphasis added).

Recommendation 1: The International Labour Office should prepare a preliminary draft of a revised Annex I and Annex II of Convention No. 185 where the biometric is changed from a fingerprint template in a two-dimensional barcode to a facial image stored in a contactless chip and where the national electronic database is required to contain only the public keys required to verify the digital signatures defined for the contactless chip by ICAO Document 9303. All references to technical standards other than ICAO Document 9303 are to be eliminated, as all of the ISO standards required would now already be referenced within ICAO Document 9303. The references to ICAO Document 9303 should refer to that document, including subsequent amendments of it, so that the Annexes will not require changing in the future as ICAO issues new versions of ICAO Document 9303 and as ePassport technology moves forward. If any of the changes to Annex I and Annex II need to be reflected in changes to the processes and procedures outlined in Annex III (such as, for instance, a need to ensure the quality of the photograph of the seafarer), then these changes may have to be reflected in a preliminary draft of a revised Annex III.

It is noted that the reference to «details specified in section 1 of Annex II» in connection with the information that must be included in the advance notice of arrival of a seafarer in a port to request shore leave, under paragraph 3 of Article 6, means that the database may need to contain more information than envisaged in this recommendation.

67) It was developed working group at the Conference. See *ibid* note 44, paras. 526 -541. Paragraph 526

it required the ILO Governing Body to adopt arrangements for the tripartite review of these evaluations, which are to be carried out at «least every five years». This independent evaluation is also essential to the ILO's supervisory system review of the national reports on implementation of the Convention because it would be difficult for a committee comprised of jurists appointed mainly for their expertise in labour law (lawyers, judges) to ascertain whether the many technical and system requirements are met. However as very few countries have actually developed the system and, as mentioned earlier⁶⁸, so far only one has filed an independent evaluation

sets out the Chairperson's summary of the intentions behind the text proposed by the Working Party.

526. The Government member of Denmark, speaking as the Chairperson of the Working Party on Article 6, acknowledged the dedication of the participants and introduced the results of their work for consideration by the Committee contained in document D.210. The aim of the Working Party had been to ensure that reliable evaluation procedures and quality control systems were in place so that SIDs were secure. The Working Party had considered all of the amendments submitted on Article 6 (D.68, 94, 95, 62, 114, 60, 61, 96, 89, 90, 113, 77, 97, 66, 48, and 98) and had examined a consolidated document prepared by the Government member of Japan. Based on the agreement of the social partners, they had then proceeded to work on the basis of the Office text. A heading «Evaluation and Control» had been accepted based on D.68. Paragraph 1 based on the Office text and D.94 concerned the minimum requirements considering processes and procedures for the issue of the SID that must be achieved by Members in the administration of their systems, as set out in Annex III. The mandatory results to be achieved are summed up in paragraph 2. It was considered essential to include them in the Convention where they would not be subject to a simplified amendment procedure. Paragraph 3 provided for the possibility of amending Annex III through a simplified amendment procedure giving enough time to Members to make the necessary revisions in their processes and procedures. Paragraph 4 was based on the Office text as well as amendments D.95, D.60, D.61 and D.114. It established that there should be independent evaluations of the administration of the system for issuing SIDs no less than every five years. Three elements considered essential were flexibility with regard to means (hence evaluations, rather than audits were required), integrity (based on the independence of the evaluation) and periodicity of evaluation to ensure regular opportunities to detect and correct shortcomings. Special reporting requirements in addition to those under article 22 of the Constitution were agreed. Paragraph 5 stated that the reports should be made available to other Members by the Office as agreed by the Working Party on Annex III. With regard to paragraph 6, the speaker drew the Committee's attention to the issue of tripartite examination of reports from Members on their evaluations of issuance systems. As those in the maritime sector wished to be judged by their peers, some special arrangements might need to be made by the Governing Body to involve governments, shipowners and seafarers in the approval of such a list. One possible solution might be the establishment of a tripartite maritime body and a resolution to this effect had been drafted. As such a decision would have financial implications, advice on this matter was sought from the Legal Adviser. According to paragraph 7, the list should be available to Members at all times and updated as information was received. Procedures to deal with a Member's contested inclusion on or possible exclusion from the list were covered in paragraphs 7 and 8. The final paragraph made clear the consequences to seafarers in the event of non-compliance of a Member with the minimum requirements. In closing, the speaker emphasized the need for governments and the social partners to inform the members of the Governing Body of the importance they attached to the establishment of a tripartite maritime body to approve the list of Members and to urge their representatives to support it. She reminded the Committee that the need to create such a body had already been discussed in the High-level Tripartite Working Group on Maritime Labour Standards.

68) *Ibid*, note 39. As mentioned earlier only the Russian Federation has gone through a review.

69) *Id*.

for review to be placed in list of countries approved as «fully meet the minimum requirements» referred to in Article 5 paragraph 1 for processes and procedures to issue SIDs, it is difficult to comment beyond noting that, in principle, it seems to present a good approach to providing some form of a periodic external technical review, essentially an «audit», of the system.

It is important be aware that this system of oversight and validation of the reliability of the national SID issuance system is at the heart of the recognition of a SID under Convention No.185 and, in that respect, indeed the central point of the entire Convention.⁷⁰ Article 5, paragraphs 1 and 9, state (emphasis added):

1. Minimum requirements concerning processes and procedures for the issue of seafarers' identity documents, including quality-control procedures, are set out in Annex III to this Convention. These minimum requirements establish mandatory results that must be achieved by each Member in the administration of its system for issuance of seafarers' identity document.

9. The recognition of seafarers' identity documents issued by a Member is subject to its compliance with the minimum requirements referred to in paragraph 1 above.

2.1.5 Recognition and facilitation

As pointed out above, the heart of the Convention and the *raison d'être* for the SID is recognition by other governments, especially port States, for purposes of shore leave or transit by seafarers. In that respect, despite all the elaborate technical requirements for cards and systems set out in the Article and the Annexes, Article 6, which for the most part reproduces the same provision (also numbered Article 6) in Convention No. 108, is, arguably the most important Article in the Convention No. 185.

Although Article 6 contains a few more details with respect to questions of the cost of verification and grounds for refusal of entry, the main provisions in terms of facilities to be afforded seafarers regarding shore leave and transit remains very similar to the provisions in Convention No. 108.

In the table in section 2.1.1 above, it was noted that Article 6 is only indirectly connected to an Annex and any amendments that may be made in that advance notice of arrival of a seafarer and a request for shore leave must «include the details specified in section 1 of Annex II» (which list the information that can be contained in the national electronic database).

⁷⁰) It is interesting that despite the fact that only one of the States that ratified the Convention is on the list of countries that have been approved, it appears that seafarers with SIDs are in fact usually allowed ashore for leave and also for transit, perhaps because of the provisions in the FAL Convention and under Convention No. 108. See comments *supra* notes 8 and 9.

Despite the fact that shore leave and these facilities have been granted to seafarers since the medieval period and under Convention No. 108 for nearly 50 years (in 2003), it is of interest note the recollection of Doumbia-Henry C.⁷¹ that this was the most controversial of issues at the Conference in 2003 when Convention No. 185 was adopted.⁷²

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 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

71) *Ibid* note 21, pp. 141- 142.

72) Since there were numerous amendments proposed to the draft text a Working Party was also struck to deal with this provision. See *ibid*, note 44, paras. 557-566. The following summary by the Chairperson of the Working Party indicates the intentions of the Working Party with respect to the proposed text:

557 The Government member of Greece, speaking as the Chairperson of the Working Party on Article 7, informed the Committee that the Working Party had considered each of the 27 amendments (D.132, D.166, D.180, D.181, D.173, D.182, D.164, D.174, D.168, D.163, D.169, D.147, D.183, D.184, D.185, D.145, D.170, D.167, D.186, D.158, D.187, D.162, D.161, D.146, D.153, D.188, and D.157) proposed to Article 7 in the Office text as well as ideas generated in the course of their deliberations. Through a process of negotiation, they had developed the text (D.211) placed before the Committee. The aim of the Working Party had been to facilitate the task of the Committee and to move its work forward, rather than to make decisions. Because the SID was not a passport, but a stand-alone identity document, the Working Party considered it useful to distinguish clearly between the minimum advance notice period to facilitate shore leave and the arrival processing procedures for the purpose of transit. These were dealt with separately in paragraphs 3 and 4. A new subparagraph following subparagraph 3(3) stipulated that seafarers would not be required to hold a visa for the purpose of shore leave. Moreover, the Working Party agreed on wording to allow member States that could not meet this requirement to ensure that national laws and regulations or practice would provide substantially equivalent arrangements. With regard to paragraph 7, the Working Party recognized the need for heightened maritime security. It also acknowledged that the fear of detention of a ship was prevalent in the maritime industry. However, it considered that the failure of a seafarer to hold a valid SID was not linked to the welfare of the ship nor of other seafarers on board and therefore did not constitute grounds for detention of the ship in question. Hence, the Working Party agreed not to pursue amendment D.188. Moreover, it recommended the deletion of paragraph 7. The speaker concluded by stressing again that the agreed text was a carefully balanced package. He considered it an honour to have chaired the Working Party and thanked its members for their willingness to move ahead and reach agreement.

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.

As the foregoing extract indicates, as was the case with Convention No. 108⁷³, a distinction is drawn between facilities for shore-leave and transit for professional movement.⁷⁴ In part, because in most cases transit would also include other forms of travel (e.g., air, rail, road) and probably crossing the border at another location for either arrival in or departure from the country to join or leave ship or passing in transit to another country to join a ship or for repatriation. This may also involve more time spent in the country than that envisaged by «temporary shore leave». Thus as noted in the extract above paragraph 9 of Article 6 reproduces the provision found in Convention No. 108 (Article 6 para.3) with respect to documentary evidence that that may be requested as well the possibility of limiting the period of the stay in the country.

An interesting point that is not clear in the Convention, is whether a visa may also be required as well as the SID and the passport for transit. On one legal reading since visas are expressly not required for shore leave (paragraph 6) except for cases of substantial equivalence and the Convention is silent with respect to visas and transit under paragraph 7 then a visa could also be required. Applying the same approach to the question of whether a passport could be required for shore leave, the Convention expressly provides for SID «supplemented by a passport» for transit under paragraph 7 but make not reference to it under paragraphs 3-6 in connection with shore leave; it appears then that a passport could not be required⁷⁵. However it should be noted

73) Albeit with differing requirements, i.e., Article 6, para. 2 of Convention No.108 refers to permitting entry for transit «If the seafarers' identity document contains space for space for appropriate entries» (e.g., more akin to a passport).

74) The Report considered by the ILC in 2003, *ibid*, note 6, p.13ff, explains the distinction drawn by some countries in the context of European Regulations for the regional visa arrangements.

Article 5, paragraph 2, of Schengen requires that aliens who do not meet all immigration conditions must be refused entry, unless a Contracting Party considers it necessary to derogate from that principle due to, inter alia, international obligations. Such would be the case for States parties to Convention No. 108 or FAL. Of the 15 States in the Schengen zone, all are parties to FAL and 11 have ratified Convention No. 108 Council Regulation (EC) No. 539/2001 of 15 March 2001 lists the third countries whose nationals must be in possession of visas and those exempt from the visa requirement when crossing external borders. Article 4(1)(b) and (d) allow visa waivers —regardless of nationality— for civilian air and sea crew and civilian crew of ships navigating in international waters. In practice, these texts are the legal basis for granting visa waivers to seafarers on active service status entering the Schengen zone. The EC Regulation, however, is permissive: it *allows* Schengen States to grant facilities, but does not require them to do so, nor does it create rights for individuals. In legal terms, it facilitates facilitation. If granted, the visa waiver can be for all or some of the facilities set forth in Convention No. 108 or FAL — at the discretion of the receiving State. The Netherlands, for example, grants a visa waiver for shore leave to seafarers who are nationals of States normally requiring a visa, but requires a Schengen visa for transit and/or repatriation. This further illustrates the exceptional character of shore leave as opposed to «entry» or «immigration admission».

75) This appears to be the understanding of those attending the ILC in 2003. For example, see *supra*, note 60, para. 314 as set out in the footnote; and *ibid*, note 44, para. 563 in connection with the text proposed by the Working Party for what is now Article 6.

that Article 6 was the subject of a Working Party, which developed the text substantially from the draft prepared by the International Labour Office, despite being «controversial» was in fact the subject of very little comment other than the Chairperson's report in the Official Record of the Conference.⁷⁶

3. Conclusion: (Re-) Alignment - a way forward?

The chapter has set out the context in which Convention No. 185 was adopted so rapidly as a result of significant government pressure. It has also explored the question of why more than decade later it has not yet been successful Convention in that it has not achieved wide spread ratification particularly by port States. Although 31 State have ratified or agreed to apply it in fact most have not made the institutional and economic investments necessary to implement it. The chapter has also provided an overview of the key requirements of the provisions of this Convention which can appear intimidating. This is largely because of the level of detail in the Annexes and the inclusion of technical requirements and references to other technical documents related to biometrics and electronic methods to ensure document and data security, topics that are not usually dealt with by persons concerned with labour or maritime law.

The chapter has highlighted the fact the despite the push for a seamless approach between ILO, IMO and ICAO in developing standards for enhanced security in the transport sector, in part because of some differences in timing between ICAO process and the ILO and perhaps more importantly the composition of the delegations to each organization. Convention No. 185 adopted an approach which despite referring to ICAO requirements in fact diverged significantly particularly as technology and the ICAO requirements evolved after 2003. Convention No. 185 in developing a biometric standard and a system for validation although citing the then current editions (2002 and 2003) of ICAO Document 9303 did not follow the emerging approach to biometrics with the use of facial recognition and chip technology and was not integrated with the emerging system for verification under ICAO (the use of an electronic signature and the participation in the use of a public key-PKD). While not solely an explanation, as some governments appear to have provided views contrary to the direction under development in ICAO, the tripartite dynamics of the ILO with the strong voice for worker/seafarers and their then very serious concern about use or

563. The Government member of Australia, though generally supportive of the proposed text, emphasized that subparagraph 3(4) did not satisfy Australia's new migration clearance procedures which, as from November 2003, would require all seafarers, including those entering the country on shore leave, to present a valid passport, appropriate seafarers' identification and documentation that linked them to employment on a specific vessel.

76) *Ibid.* note 44, paras. 557-566.

potential abuse of chip technology was clearly influential. The seafarers preferred finger print non chip technology that could be viewed by the seafarer. As mentioned in section 1, since ICAO, as of the Berlin Resolution of 2002 and clearly by mid 2003 and 2004 had gone in another direction, this created problems for governments. While ostensibly consistent, especially as Convention No. 185 explicitly states that a SID is a stand-alone document and not a passport⁷⁷ it still diverged at the level of technology and infrastructure system.

From a legal point of view what has proved to be a difficult issue stems from the reference in the mandatory text of an international convention to specific editions of a technical document under the auspices of another organization (ICAO). The Convention, while clearly recognizing the possibility of future updating /amendment of the technical requirements, including development by the International Labour Office of an interoperable biometric template, this also «locked» the Convention to what proved to be rapidly outdated technical specifications that were under the control of other organizations (ICAO and ISO). This meant that even with the «simplified» amendment process any updating required the decision by its members that the ILO should undertake the costly process of international meetings to develop the text of amendments and then placing this very specialized –even esoteric– topic on the agenda of the International Labour Conference. There are also equity and transition issues for the States that have ratified Convention No. 185, many of which are less developed or emerging economies, and have already taken steps to implement.

This chapter has also noted that this focus on labour-supplying States and the elaboration of both the form and content of the SID to create a standard international document though the issuance and verification system is both its strength as a security instrument but viewed from a decade later is perhaps also proving to be its weakness. The majority of the world's seafarers on ships engaged in international trade are drawn from less developed or emerging economies including countries where there may be concerns about terrorism. In addition, the fact that implementation obligations and costs, again unlike most maritime conventions, falls on governments not on private actors –the shipowners– provided a barrier to ratification and implementation. That fact that the technical standards which Convention No. 185 references is linked to border control agencies and ICAO also poses difficulties for governments in determining which department of government should address this issue.⁷⁸

77) Article 3 paragraph 5 (b) and Annex I.

78) *High Level Tripartite Working Group on Maritime Labour Standards (third meeting)*. Final Report, ILO Doc. TWGMLS/2003/10 (emphasis added). It is available at:

<<http://ilo-mirror.library.cornell.edu/public/english/dialogue/sector/techmeet/twgmls03/twgmls-r-10.pdf>>
321. The representative of the Government of Japan Responding to the intervention by the Shipowners and the delegate of Denmark, he indicated, regarding the possible incorporation of Convention No. 185 into the Consolidated Maritime Convention, that Japan highly considered new Convention No. 185 as a «delicately crafted masterpiece of package agreement», and a great

Although the predecessor Convention No. 108 was similarly focused on governments issuing SIDs, it allowed flag States to issue them to foreign seafarers on their ships or registered in an employment agency. Under Convention No. 108 the cost to issue a SID were relatively small and were in some cases combined with other documents such competency records or discharge books.

There are also other issues other than the impact of changes in technology. As mentioned above at the national level it is not clear which department should issue the SIDs under Convention No. 185 and which expertise and systems should apply. The issue is sensitive in the context of border control and national security. This is a problem of national fragmentation and which, unfortunately, is reproduced at the international / UN agency level through the composition of delegations, often despite best effort by secretariats to cooperate.

As discussed above and earlier in this chapter, the seafarers group had a strong voice in the ILO meetings with respect to Convention No. 185 and clearly influenced the final decisions as to the technical aspects of the SID. Since that time discussion have been held and efforts made, particularly since 2010⁷⁹, regarding potential

achievement. He indicated that Japan would make every sincere effort toward ratification as, no doubt, would many other governments. However, he strongly advised against the inclusion of the new Convention No. 185 into the Consolidated Maritime Convention for a number of reasons. He considered Convention No. 185 as substantially different, by nature, from the components of the Consolidated Maritime Convention. Moreover, he objected that Convention No. 185 contained critical elements directly related to immigration policies, which most maritime authorities could not handle easily. He also observed that, whilst the Consolidated Maritime Convention was designed to ensure that flag States would discharge their responsibilities regarding seafarers' employment and living conditions in compliance with the Convention requirements, and that port States would verify this compliance through port state control, Convention No. 185 was designed to have a totally different structure of responsibilities. He remarked, for example, that flag States would not be entitled to issue seafarers' identification documents for seafarers with nationalities different from the ship's flag. He also recalled that, in the discussion of revising Convention No. 108, it was agreed, after a long debate, that port state control would not be required to arrest a ship in the case of absent or deficient seafarers' ID....He finally observed that the incorporation of Convention No. 185 into the Consolidated Maritime Convention could put at risk a wide ratification and enforcement of the new Convention.

79) The report on the consultations in 2010 is to be found in CSID/C.185/2010/4. Available at: <http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/meetingdocument/wcms_150402.pdf> The *Technical background paper* to the Meeting of Experts in 2015, *ibid*, note 34 commented (references removed):

12. In order to consider how best to respond to the content of ISO/IEC 24713-3:2009, and also to understand why the general pace of ratification of Convention No. 185 had been comparatively slow, the Governing Body made a decision to hold tripartite consultations with governments from Members that had ratified Convention No. 185, or which were seriously considering ratification, and with the international organizations of shipowners and seafarers. These consultations took place in September 2010.
13. The consensus of these consultations included suggestions to accept minor technical changes to the content of the SID, as recommended in ISO/IEC 24713-3:2009, and also some more

changes that could be considered to move the Convention's technical requirements closer to the ICAO standards. Since it appear likely that in 2016 text will be adopted to amend the Annexes of Convention No. 185 to align the Convention requirements regarding the SID with the current ICAO including use of chip technology and facial recognition and electronic signatures. However as also mentioned earlier at the same time it appears that perhaps a result of the FAL Convention and the large number of States that remain bound by Convention No. 108 seafarers are, with a few exceptions, still benefitting from facilities for shore leave and transit.

A question might well be asked as whether ratification of Convention No. 185 is important beyond the more institutional ILO concern about the cost to develop and adopt and an international Convention.

Unless operating practices change significantly in the shipping sector then the importance and value of universally recognized document or some other method irrespective of format that will ensure seafarer are give important facilities to access shore for reason related to their well-being and also for the professional movement that is essential to the industry, remains necessary. With the increased use of e-passports and related e-travel cards it seems likely that the SIDs will in the future need to have similar features, including being machine readable. Whether the particulars of the system under Convention No. 185 are required is, however, a different question.

Will the 2016 proposed amendments to the Annexes to align or re-align Convention No. 185 and the SID with travel documents under ICAO Document 9303 (in its current and future form) solve the problems with Convention and result in more

significant changes to help make the international system of SIDs that were issued and verified by different countries more secure and simpler to implement. The suggestions included:

- (a) an updating of certain details in the two-dimensional bar code on the SID;
 - (b) the modification of the bar code so as to include a digital signature;
 - (c) the establishment of an international centre to coordinate the national focal points or to provide secure access to the national electronic databases referred to in Article 4 of Convention No. 185;
 - (d) with respect to fingerprint data: agreement that, although national databases could only include the biometric template provided for in the Convention, fingerprint images could be stored separately at the request of the seafarer concerned to simplify re-enrolment;
 - (e) the optional addition to the SID of a microchip to allow it to be interoperable with standard ePassport readers; and
 - (f) the development of an international procurement procedure to establish a list of qualified vendors of elements of a low-cost SID issuance system, which might be conducted or facilitated by the Office.
14. The Office attempted to find mechanisms to implement these suggestions, and eventually brought them once again to the attention of the Governing Body.

ratifications and implementation?

Again the answer has to be a cautious – perhaps.

The system developed for issuance and oversight under Convention is, in principle, a very good system if national resources can be allocated to support it. However many governments through their border control agencies are already implementing similar systems even if subject to the same international tripartite oversight to address ICAO requirement relating to border control and travel documents and passports. Perhaps these agencies can also issue and authenticate SIDs or have an arrangement to do so in cooperation with their maritime or labour administrations. However the question is whether a close –even dependent– relationship between two UN agencies with differing constituencies, expertise and mandates can be developed and maintained. The same question would be raised at the national level.

In conclusion although Convention No. 185 has many good ideas with important objectives it is difficult to see a way forward, even if amendments are adopted as there will still be problems of national departmental fragmentation and a lack of capacity. None the less it seems necessary to move forward in some way since, as noted above, even if as result of other Conventions, SIDs are currently accepted it seems likely that this will not remain the case in the future and easy access to shore for, as at a minimum, temporary shore leave, is essential to seafarers' well-being and ultimately to ship safety and security.⁸⁰

80) While it points to a particular situation that Convention No. 185 does not itself solve, the underlying concern expressed in the report considered by the ILC in 2003, *ibid* note 6, p. 9, about the human rights and well-being of the seafarers and the impact of being trapped on a ship for extended periods is relevant:

The most extreme scenario resulting from denial of shore leave has already been seen and was documented in 1955 in an article by the United Nations High Commissioner for Refugees, published in the *International Labour Review*: G.J. Van Heuven Goedhart: «Refugee seamen», in *International Labour Review* (Geneva, ILO), 1955, Vol. LXXII, Nos. 2-3. The article refers to case records of refugee seafarers who had no papers or expired papers and for more than three years never left their ship until their dramatic circumstances finally came to the attention of the Office of the United Nations High Commissioner for Refugees (UNHCR). The danger of prolonged confinement on board ship ultimately inspired the drafting of Article 9 of the 1957 Hague Agreement relating to Refugee Seamen. While not equating the exceptional and extreme circumstances of refugee seafarers with the distress of seafarers denied shore leave now or in the future, the dangerous situation of prolonged confinement on board ship cannot be ignored in the search for a global solution to the facilitation question.

Article 9: «No refugee seaman shall be forced, as far as it is in the power of the Contracting Parties, to stay on board a ship if his physical or mental health would thereby be seriously endangered.»