

Proposed consolidated maritime labour Convention

Frequently asked questions

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The proposed consolidated maritime labour Convention

Frequently asked questions ¹

1. What is the proposed maritime labour Convention?

It is an important new international labour Convention to be adopted by the International Labour Conference of the International Labour Organization (ILO), under article 19 of its Constitution at a meeting in February 2006 in Geneva, Switzerland. It sets out seafarers' rights to decent conditions of work, on a wide range of subjects and is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced. It has been designed to become a global instrument known as the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organization (IMO) such as the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), the International Convention on Standards of Training, Certification and Watch-keeping, 1978 as amended (STCW) and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).

¹ These questions and answers are intended to provide a quick overview of the proposed maritime labour Convention to persons unfamiliar with the new Convention. They do not purport to provide interpretations of any provisions and should not in any way be treated as a substitute for the actual provisions of the draft Convention.

2. Why is it also sometimes called a *consolidated* maritime labour Convention?

The proposed maritime labour Convention contains a comprehensive set of global standards, based on those that are already found in over 60 maritime labour instruments, adopted by the ILO since 1920. The new Convention brings almost all of the existing maritime labour standards and recommendations together in a single new Convention that uses a new format with some updating, where necessary, to reflect modern conditions and language. This will “consolidate” the existing international law on all these matters. The standards addressing the seafarers’ identity documents were recently revised in 2003 and not included in this new Convention.

3. Why do we need a new Convention and is there any need for consolidation of the existing standards?

The decision by the ILO to move forward to create this major new maritime labour Convention was the result of a joint resolution in 2001 by the international seafarers’ and shipowners’ organizations, later supported by governments. They pointed out that the shipping industry is “the world’s first genuinely global industry” which “requires an international regulatory response of an appropriate kind – global standards applicable to the entire industry”. The industry called on the ILO to develop “an instrument which brings together into a consolidated text as much of the existing body of ILO instruments as it proves possible to achieve” as a matter of priority “in order to improve the relevance of those standards to the needs of all the stakeholders of the maritime sector”. It was felt that the very large number of existing maritime Conventions, many of which are very detailed, made it difficult for governments to ratify and to enforce all of the standards. Many of the standards were out of date and did not reflect contemporary working and living conditions on board ships. In addition, there was a need to develop a more effective enforcement and compliance system that would help to eliminate substandard ships and that would work within the well-established international system for enforcement of the international standards for ship safety and security and environmental protection that have been adopted by the International Maritime Organization.

4. What will happen to the existing maritime labour Conventions when the new Convention enters into force?

As the proposed Convention is now worded, countries which ratify it will, as a general rule, no longer be bound by the existing Conventions when the new Convention comes into force for them. Countries that do not ratify the new Convention will remain bound by the Conventions they have ratified, but those Conventions will be closed to further ratification.

5. Will the new Convention deal with subject matter not yet covered in the present Conventions?

The proposed Convention is organized into three main parts: the **Articles** coming first set out the broad principles and obligations. This is followed by the more detailed **Regulations** and **Code** (Parts A and B) provisions. The Regulations and the **Standards (Part A)** and **Guidelines (Part B)** in the Code are integrated and organized into general areas of concern under five Titles:

- Title 1: Minimum requirements for seafarers to work on a ship
- Title 2: Conditions of employment
- Title 3: Accommodation, recreational facilities, food and catering
- Title 4: Health protection, medical care, welfare and social security protection
- Title 5: Compliance and enforcement

These five Titles essentially cover the same subject matter as the existing maritime labour instruments, updating them where necessary. It occasionally contains new subjects, particularly in the area of occupational safety and health to meet current health concerns, such as the effects of noise and vibration on workers, which is not believed to be controversial. The provisions relating to flag state inspections, use of recognized organizations and the potential for inspections in foreign ports (port state control) in Title 5 are based on existing maritime labour standards; however the new Convention builds upon them to develop a more effective

approach to these important issues, consistent with other international maritime regulations.

6. Why do we need effective international standards for seafarers' conditions of work?

In ships flying the flags of countries that do not exercise effective jurisdiction and control over them, as required by international law, seafarers often have to work under unacceptable conditions, to the detriment of their well-being, health and safety and the safety of the ships on which they work. Since seafarers' working lives are spent outside the home country and their employers are also often not based in their country, effective international standards are necessary for this sector. Of course these standards must also be implemented at a national level, particularly by governments that have a ship registry and authorize ships to fly the countries' flag. This is already well recognized in connection with ensuring the safety and security of ships and protecting the marine environment. It is also important to understand that there are many flag States and ship-owners that take pride in providing the seafarers on their ships with decent conditions of work. These countries and shipowners must pay the price of being undercut by substandard ships.

7. How will the new Convention protect more of the world's seafarers?

The Convention aims at achieving worldwide protection. It is estimated that there are around 1.2 million seafarers in the world. Many existing maritime labour Conventions have a low ratification level. The new Convention has been designed to address this problem. More protection of seafarers will be achieved by the early ratification and national-level implementation of the new Convention by the vast majority of ILO nations active in the maritime sector, as is the case of the main Conventions of the International Maritime Organization (IMO): SOLAS, STCW and MARPOL.

8. Who are the "seafarers" covered by the Convention?

The proposed Convention applies to all "seafarers", meaning any persons who are employed or engaged or work in any cap-

acity on board ships covered by the Convention. These ships include all ships ordinarily engaged in commercial activities, other than ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply, and ships engaged in fishing or similar pursuits or ships of traditional build such as dhows and junks. These definitions of ships and seafarers in the Convention are based on definitions found in the existing maritime labour standards. There is however some flexibility regarding application of the Convention standards within the various areas of the Convention. For example, some of the provisions relating to ship board accommodation in Title 3 of the Convention will apply only to ships of a certain type or size, or in certain cases their application may be excluded for small ships. In addition, under Title 5, only ships that are of 500 gross tonnage or over and are engaged in international voyages (or are operating in a foreign country) will have to carry the maritime labour certificate and the declaration of maritime labour compliance to show that the ship is being operated in conformity with Convention requirements. In the case of other ships, the shipowners can also request their flag State to include their ships in the certification system so as to avoid or reduce the likelihood of their being inspected in foreign ports.

9. Will the shipowners' duties and responsibilities cover seafarers whose work does not relate to the navigation or safe operation of the ship?

Yes, shipowners and/or ship operators have the overall responsibility as employers with respect to all seafarers working on their ships. It is understood that they could make arrangements with persons who may also have responsibility for the employment of particular seafarers, enabling the shipowners to recover the costs involved, for example.

10. Why is the new Convention likely to achieve the aim of near universal ratification?

Because of the unswerving support that has been shown for it by the governments and workers and employers (over 500 delegates from more than 80 countries participated in a preparatory

Conference in 2004 to adopt the draft Convention text) who have worked together since 2001 to develop the Convention text. It will also achieve near universal ratification because of its blend of firmness on rights and flexibility with respect to approaches to implementation of the more technical requirements and because of the advantages it gives to the ships of countries that ratify it.

11. How is firmness blended with flexibility?

A major obstacle to the ratification of existing maritime labour Conventions is the excessive detail in many of them. The new Convention will set out the basic rights of seafarers to decent work in firm statements, but will leave a large measure of flexibility to ratifying countries as to how they will implement those standards for decent work in their national laws.

12. What will be the advantages for ships of ratifying countries?

The ships of ratifying countries that provide decent conditions of work for their seafarers will have protection against unfair competition from substandard ships and will benefit from a system of certification, avoiding or reducing the likelihood of lengthy delays related to inspections in foreign ports.

13. How does the new Convention propose to improve compliance and enforcement?

The proposed maritime labour Convention, 2006, aims to establish a continuous “compliance awareness” at every stage from the national systems of protection up to the international system. This starts with the individual **seafarers**, who – under the Convention – will have to be properly informed of their rights and of the remedies available in case of alleged non-compliance with the requirements of the Convention and whose right to make complaints, both on board ship and ashore, will be recognized in the Convention. It will continue with the **shipowners**. Those that own or operate ships of 500 gross tonnage and above that are en-

gaged in international voyages or voyages between foreign ports will be required to develop and carry out plans for ensuring that the applicable national laws, regulations or other measures to implement the Convention are actually being complied with. The **masters** of these ships will then be responsible for carrying out the shipowners' stated plans, and for keeping proper records to evidence implementation of the requirements of the Convention. As part of its updated responsibilities for the labour inspections for ships above 500 gross tonnage that are engaged in international voyages or voyages between foreign ports, the **flag State** will review the shipowners' plans and verify and certify that they are actually in place and being implemented. Ships will then be required to carry a maritime labour certificate and a declaration of maritime labour compliance on board. Flag States would also be expected to ensure that national laws and regulations implementing the Convention standards are respected on smaller ships that are not covered by the certification system. Flag States would carry out periodic quality assessments of the effectiveness of their national systems of compliance, and their **reports to the ILO under article 22** of the Constitution will need to provide information on their inspection and certification systems, including on their methods of quality assessment. This general inspection system in the flag State (which is founded on ILO Convention No. 178) will be complemented by procedures to be followed in countries that are also or even primarily the source of the world's supply of seafarers, which will similarly be reporting under article 22 of the ILO Constitution. The system will be further reinforced by **voluntary measures** for inspections in **foreign ports (port state control)**.

14. What are the maritime labour certificate and the declaration of maritime labour compliance?

The appendices to the Convention contain key model documents: a **maritime labour certificate** and a **declaration of maritime labour compliance**. The certificate would be issued by the flag State to a ship that flies its flag, once the State (or a recognized organization that has been authorized to carry out the inspections), has verified that the labour conditions on the ship comply with national laws and regulations implementing the Convention. The certificate would be valid for five years subject to

periodic inspections by the flag State. The declaration is attached to the certificate and summarizes the national laws or regulations implementing an agreed-upon list of 14 areas of the maritime standards and setting out the shipowner's or operator's plan for ensuring that the standards will be maintained on the ship between inspections. The lists of the 14 areas that must be certified by the flag State and that may be inspected if an inspection occurs in a foreign port are also set out in the appendices to the Convention.

15. What is meant by “no more favourable treatment” for ships of non-ratifying countries?

These words appear in Article V, paragraph 7, of the proposed Convention. The idea, which is also found in IMO Conventions, is that ships must not be placed at a disadvantage because their country has ratified the new Convention. The practical consequence comes out clearly in the “port state control” provisions of Title 5 of the Convention, under which ships of all countries (irrespective of ratification) will be subject to inspection in any country that has ratified the Convention, and to possible detention if they do not meet the minimum standards of the new Convention.

16. Will the standards in the new Convention be lower than existing maritime labour standards?

No, the aim is to maintain the standards in the current maritime labour Conventions at their present level, while leaving each country greater discretion in the formulation of their national laws establishing that level of protection.

17. How will respect for the new Convention actually be enforced?

The new Convention is intended to achieve more compliance by operators and owners of ships and to strengthen enforcement of standards through mechanisms at all levels. For example, it contains provisions for: complaint procedures available to seafarers; the shipowners' and shipmasters' supervision of conditions

on their ships; the flag States' jurisdiction and control over their ships; and port state inspections of foreign ships. By requiring ratifying Members not only to implement the Convention in the national laws but to also document their implementation, the Convention should also enhance the effectiveness of the supervision carried out at the international level, especially by the competent bodies of the ILO.

18. How will the new Convention be kept more up to date than the existing Conventions?

The part of the Convention which is expected to need updating from time to time, namely the Code relating to the technical and detailed implementation of the basic obligations under the Convention, could be amended under an accelerated procedure (provided for in Article XV) enabling changes to come into effect, for all or almost all ratifying countries, within three to four years from when they are proposed.

19. Will ratifying Members be bound by all new amendments?

A ratifying Member will not be bound by an amendment to the Code entering into effect in accordance with Article XV of the Convention if it expresses formal disagreement within a period of normally two years. Amendments under Article XIV, which lays down a procedure to be followed in the case of amendments to the basic provisions, i.e. the Articles and Regulations, can only take effect for countries that ratify the amendment concerned.

20. How do the amendment procedures differ from those in the IMO Conventions?

Both types of amendment procedure – under Article XIV for the Articles and Regulations, and Article XV for the Code – are based to a certain extent on IMO procedures. However, the Article XIV procedure is closer to the present ILO procedure for revising Conventions. The accelerated procedure under Article XV follows

the IMO procedures especially with respect to the submission of amendments to member States and their entry into effect; the main difference relates to the adoption of amendments: here (unlike under the IMO procedures) non-ratifying Members play a role and amendments have to be approved by the International Labour Conference, open to all ILO Members.

21. What are the novel features of the new Convention?

There are several novel features as far as the ILO is concerned. The whole structure of the new Convention differs from that of traditional ILO Conventions. It consists of the basic provisions, i.e. the Articles and Regulations, followed by a two-part Code and divided into five Titles one of which is devoted to compliance and enforcement. The Regulations and the Code, which contains Standards and Guidelines, are organized under the five Titles.

Title 1: Minimum requirements for seafarers to work on a ship

Title 2: Conditions of employment

Title 3: Accommodation, recreational facilities, food and catering

Title 4: Health protection, medical care, welfare and social security protection

Title 5: Compliance and enforcement

There is also an Explanatory note to further assist Members implementing the Convention.

Other innovations are the amendment procedures and the system for the certification of ships. However, most of these novel features are based on those of the instruments of other organizations, especially the IMO. One unique feature relates to the special status of the non-mandatory Part B of the Code and its relationship with the mandatory Part A.

22. What is meant by the special status of Part B of the Code and why is it needed?

The status of Part B of the Code is based on the idea of firmness on principle and rights combined with flexibility in imple-

mentation. Without this innovation the new Convention could never aspire to wide-scale ratification: many of the provisions of existing maritime labour Conventions, which relate to the method of implementing basic seafarers' rights (rather than to the content of those rights), have been transferred to the non-mandatory Part B Guidelines of the Code. Their placement in the mandatory Regulations and Part A (Standards) could have resulted in clear obstacles to ratification.

The special status is reflected in the following agreed set of questions and answers:

Is Part B of the Code mandatory?

Answer: No.

Can Part B be ignored by ratifying Members?

Answer: No.

Is implementation of Part B verified by port state inspectors?

Answer: No.

Does the ratifying Member have to follow the guidance in Part B?

Answer: No, but if it does not follow the guidance it may – vis-à-vis the competent bodies of the International Labour Organization – need to justify the way in which it has implemented the corresponding mandatory provisions of the consolidated Convention.

23. Since Part B is not mandatory, why will it be part of the Convention and not the subject of an international labour Recommendation?

Part A and Part B of the Code are interrelated. The provisions of Part B, called Guidelines, while not mandatory, are helpful and sometimes essential for a proper understanding of the Regulations and the mandatory Standards in Part A. In some cases, the mandatory Standards in Part A are so generally worded it may be difficult to implement them without the guidance in the corresponding provisions of Part B.

24. Can an ILO Convention legally contain non-mandatory provisions?

There is no reason why mandatory provisions should not be complemented by non-mandatory ones. There are precedents in international labour Conventions where the non-mandatory “should” is used rather than the mandatory “shall”.

25. Why does there sometimes appear to be some duplication between the Regulations and Part A of the Code of the Convention?

The Regulations, which will be approved by parliaments or legislatures during the national ratification processes, not only set out the basic rights of seafarers but also govern the content of the Code, including its possible future content after amendment under the accelerated procedure. Every provision of Part A of the Code must come within the general scope of the Articles or Regulations to be valid. This requirement sometimes leads to a measure of duplication.

26. Would the Convention also require ratifying countries to apply the ILO’s core human rights Conventions?

No, but they would – under Article III of the Convention – have to satisfy themselves that their laws and regulations respect, in the context of the Convention, the fundamental rights, such as freedom of association, that are embodied in the core Conventions (there would be no requirement concerning the actual provisions of those Conventions).