
INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

**Sub-Group of the High-Level
Tripartite Working Group on
Maritime Labour Standards
(first meeting)**

The impact of the new proposed Convention on
the Merchant Shipping (Minimum Standards)
Convention, 1976 (No. 147)

Geneva, 2002



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Working paper for discussion at the

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Preface

The task of the Sub-Group of the High-Level Tripartite Working Group on Maritime Labour Standards is to “prepare and consider the working papers” in advance of the Working Group’s next meeting, which is to be held in October 2002. The Office is accordingly now submitting to the Sub-Group, for its consideration, the attached paper on the impact of the new proposed Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

This paper seeks to take into account all the observations that were made on the subject by the Joint Maritime Commission and at the first meeting of the High-Level Tripartite Working Group in December 2001. As suggested by the Sub-Group, the draft ends with preliminary suggestions concerning possible provisions to be included in the proposed new instrument.

The impact of the new proposed Convention on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

1. Convention No. 147 has been ratified by 43 member States of the ILO. In addition, in accordance with article 35 of the ILO Constitution, Convention No. 147 has been made applicable to 25 non-metropolitan territories, bringing within the scope of the Convention about 54.6 per cent of the world shipping fleet in gross tonnage. The Convention has in addition been included in seven of the eight regional agreements on port State control.¹
2. In the document prepared for the Joint Maritime Commission (JMC) “Review of relevant ILO maritime instruments”, the Office stated that Convention No. 147 had become a generally recognized international standard and that every attempt should be made to preserve it.² It also stated that if the new instrument were to be widely accepted, this would eliminate any concerns about the status of Convention No. 147.
3. During the JMC, both Shipowner and Seafarer members referred to the need to ensure that the proposed new instrument would not discourage countries from ratifying Convention No. 147 or discourage those countries that had recently ratified Convention No. 147 from ratifying the new instrument. The Office provided an explanation to the JMC as follows: “the move to the single consolidated instrument was based on the premise that the *capital* of present and any future ratification would remain. This capital would provide the incentive for the ratification of the new instrument”.
4. The first meeting of the High-Level Tripartite Working Group confirmed the importance attached to that Convention. It was considered to contain mandatory requirements at an appropriate level and that its ratification should be promoted during the process of the development of the new instrument. The High-Level Working Group agreed that the capital of ratifications of Convention No. 147 should be retained. In endorsing the eight “preferred solutions” concerning the new instrument on maritime labour standards, the High-Level Working Group agreed in particular that the substance of the provisions of international maritime labour standards “should be incorporated in a single, coherent instrument, seen as part of the general body of standards adopted by the ILO, and fitting in with other international maritime instruments”.³ The High-Level Tripartite Working Group specifically agreed that the new instrument should be based on the existing body of ILO standards, with the provisions of existing ILO instruments taken as a starting point and that the capital consisting of existing rights, updated where necessary, should be faithfully preserved without prejudice to the need for innovation.
5. In the present case, the new Convention is intended to replace the entire body of existing instruments including Convention No. 147. In the working paper prepared for the first

¹ The only regional agreement which has not yet included Convention No. 147 as a relevant instrument for port State control is the Memorandum of Understanding of Viña del Mar (South American region).

² ILO: *Review of relevant ILO maritime instruments*, Report for discussion at the 29th Session of the Joint Maritime Commission, doc. JMC/29/2001/1 (Geneva, 2001), p.31.

³ ILO: High-Level Tripartite Working Group on Maritime Labour Standards (first meeting), doc. TWGMLS/2001/1, para. 3.2.3, pp. 17-18.

meeting of the High-Level Working Group,⁴ the Office indicated that the final clauses of the new instrument would contain the usual provisions with some adjustments, in order to avoid any duplication in the implementation of the new instrument with respect to existing Conventions ratified by the Member concerned. The Office also stated that in order to preserve the “capital” of ratifications that had already been built up, it would be necessary to ensure that obligations under these Conventions were replaced for the Member concerned by equivalent or higher standards under the new instrument. The intention would be to facilitate the gradual disappearance of the old Convention.

6. In view of the singular importance of the principles and concepts in Convention No. 147 (to which the paper on inspection and control refers⁵), the question is how to ensure that the capital of ratifications is preserved. In other words, how to ensure that all member States which have ratified Convention No. 147 can immediately ratify the new Convention without in any way diminishing the obligations inherent in their ratification of Convention No. 147. In order to ensure that the capital referred to above is retained, it would be necessary in the first place to ensure that the substance of Convention No. 147 is carried over into the new Convention. In addition, in order for the best use to be made of the capital represented by Convention No. 147 and to encourage further ratifications of the latter, the Office suggests that member States which have ratified Convention No. 147 might be permitted to ratify the new Convention immediately and be given a longer period of grace to bring their law and practice into line with the new Convention.
7. The above proposal has two broad objectives. The first is to avoid any discontinuity of obligations under the Convention (i.e. to avoid legal gaps in protection and to meet constitutional requirements). The second objective is to create the right incentives for ratification of the new Convention. This second objective would ensure that as many member States as possible can be brought “on board the new ship” – the new Convention. Many member States would normally wait to ratify a new Convention until they had adopted all the necessary regulations and their law and practice were compliant. In the ILO system, there is normally one year’s grace after the entry into force – for a Member before its first report under the Convention is required. During that one-year period, the Member can bring its laws and practice into full compliance. The proposal would be to provide for a two-year period of grace instead of one year for full compliance with all the provisions of the new Convention. It would permit States that were parties to Convention No. 147 to ratify the new Convention without delay. An additional incentive for the ratification of the new instrument would be the reduction in reporting and related administrative burden. The more quickly countries moved to the new instrument, the greater would be the administrative gains. Considering the importance of keeping up the momentum for broad ratification and implementation of the new Convention, providing for a transitional period to permit full compliance would appear to have significant benefits.
8. There are various ways in which the provisions of Convention No. 147 could remain applicable until the new Convention had come fully into effect for the Member concerned. In the first place, it should be possible to find a way of delaying the ipso facto denunciation of Convention No. 147, which would take place in accordance with Article 11(1) of that Convention “unless the new Convention otherwise provides”. An alternative would be to allow the ipso facto denunciation of Convention No. 147 to have immediate effect and to

⁴ ILO: High-Level Tripartite Working Group on Maritime Labour Standards (first meeting), working paper, doc. TWGMLS/2001/2 (Geneva, 2001).

⁵ ILO: Considerations for provisions on inspection and control in a Consolidated Maritime Labour Convention (Draft 1), Sub-Group of the High-Level Tripartite Working Group on Maritime Labour Standards (first meeting), doc. TWSGMLS, 2002/1 (Geneva, 2002).

make the period of grace for fully implementing the new Convention subject to the Member's continued respect for the substance of Convention No. 147.

9. It is important to note that under the above approach, member States ratifying the new Convention but only complying with some of its provisions would still be bound by the existing Conventions which they would have ratified until they had assumed all the equivalent provisions of the new Convention. Any ipso facto denunciation would therefore be limited to the case where there were equivalent or higher standards in the new Convention that had entered into force for the Member concerned. There could conceivably be other incentives to move quickly to accepting the new provisions. In any event, in view of the transitional provisions, member States would have to come into full compliance with all of the new provisions of the Convention by a specific date.

10. The Sub-Group may wish to:

- (a) note the possible ways in which the obligations under Convention No. 147 could be kept in effect until the Member had fully assumed equivalent or more extensive obligations under the new Convention;
- (b) give guidance as to whether the general idea of providing a longer period of grace, as an incentive for the ratification of Convention No. 147, should be pursued.