
INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

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

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Introduction

1. The “Briefing for the First Session of the High-Level Tripartite Working Group on Maritime Labour Standards” (referred to below as “the briefing document”) summarizes the concerns that have been expressed on that subject by representatives of the shipowners and seafarers and sets out their preferred solutions, including in particular the adoption of a framework instrument on maritime labour standards. If there is agreement in the Working Group on those concerns and preferred solutions, it would be desirable for thought to be given, at the earliest possible stage, to the form that such an instrument might take and to the issues that might require consideration in the elaboration of its contents. The purpose of the present working paper is therefore to provide a general basis for such a preliminary discussion if sufficient time is available at the Working Group’s meeting in December 2001. Part I describes in general terms the structure of a possible instrument which would achieve each of the preferred solutions set out in paragraph 3.23 of the briefing document.
2. Part II suggests the kind of questions that will need to be considered when the content of such an instrument is developed. A number of options will be available and the questions are mainly directed towards ascertaining from members of the High-Level Tripartite Working Group which options would best achieve the desired solutions or would represent the best mix between possibly conflicting objectives, such as having a simple but effective instrument which can be ratified by a substantial number of States in the space of a few years.
3. Having regard to the constitutional structure of the International Labour Organization, that instrument would be an international labour Convention, adopted by the International Labour Conference in accordance with article 19 of the ILO Constitution. It would bring together into a consolidated text the substance of as much of the existing body of ILO maritime instruments (i.e. Conventions and Recommendations) as would appear feasible and useful, bearing in mind that some standards and provisions are no longer considered relevant. The task of consolidation would be facilitated by the work of the Governing Body’s Working Party on Policy regarding the Revision of Standards, which has identified pre-1985 standards that have lost some or all of their relevance, with a view to revision or elimination thereof (see paragraphs 2.6-2.10 of the briefing document).
4. A substantial portion of the instrument – especially provisions based on existing Conventions – would be drafted in mandatory terms. Provisions based on existing Recommendations would not be binding, but the instrument might require ratifying Members to report on the extent to which effect is being given to them (under a provision similar to article 19.5(e) of the ILO Constitution), in addition to their normal reporting with respect to implementation of the binding provisions.
5. Although the new instrument would go much further than previous ILO consolidating Conventions, the only significant innovation might relate to the procedure for amendment thereof. Under the ILO Constitution (article 19, paragraphs 2 and 5(a)), international labour Conventions are adopted by the International Labour Conference by a two-thirds majority and communicated to Members for ratification. In general, they cannot be amended, unlike conventions adopted outside the ILO framework. The normal method in the ILO is for the Governing Body to take the initiative by placing on the Conference’s agenda the adoption of a revising Convention (with a different name and number)

including “final clauses” that facilitate the gradual disappearance of the old Convention.¹ Those clauses would need to be adjusted in order to implement the solution involving simplified amendment procedures (see point 5 in paragraph 3.23 of the briefing document).

6. Some improvement could perhaps be made to the procedure that would apply to the revision of the instrument as a whole. But the main aim would be to reduce considerably the delay in simply keeping the instrument up to date. For example, the Accommodation of Crews Convention (Revised), 1949 (No. 92), provides that in vessels of 3,000 tons or over the floor area per person of sleeping rooms for ratings shall be not less than 2.78 m². This area was increased to 4.25 or 4.75 m². by the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), which took 21 years to enter into force and even now has been ratified by less than half of the parties to the 1949 Convention. Such a delay is mainly due to the fact that the ratification process usually involves an act of parliament or similar act, and a long time may be needed for it to reach the parliamentary agenda, even in the case of simple and uncontroversial changes. However, in many national systems, the same changes could presumably have been made much more quickly by means of subsidiary legislation not requiring parliamentary approval.
7. There are, however, one or two precedents in the ILO for a simpler procedure in the case of amendments to details. Thus, under Article 31 of the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), the International Labour Conference may, by a two-thirds majority, adopt amendments to the list of occupational diseases in a schedule to the Convention. Members that have ratified the Convention have individually to accept such amendments before they become bound by them. Members subsequently ratifying the Convention are bound by the amendments (unless the Conference has decided otherwise).
8. However, even in cases where parliamentary approval is not required for the acceptance of amendments, governments are often slow to signify their acceptance and some organizations sometimes provide for a “tacit amendment” or “opting-out” procedure. One such organization is the International Maritime Organization (IMO). Under such procedures, after the adoption of amendments covered by the procedures, the parties to the Convention concerned are formally notified of them and given around two years to object. If the number of objections received during that period exceeds a specified proportion of the parties, the amendments do not enter into force. Otherwise, they are deemed to have been accepted by all parties that have not objected to them and are binding on States that subsequently ratify the instrument concerned. In some cases (e.g. variations of monetary limits which do not exceed a specified percentage and are made after a specified interval of years), objecting parties are also bound by an amendment if it enters into force but are given an opportunity to denounce the instrument itself.
9. Under the procedures just referred to, while proposed amendments are discussed in the Organization as a whole, their actual adoption depends upon a two-thirds majority vote in favour by the parties to the Convention concerned and only the latter are involved in the acceptance procedure. Such procedures would probably need some adaptation if they are to be used in an ILO context, in which the parties to a Convention are not given any special role in the revision process. At the same time, it may also be relevant to note a special feature in the ILO with respect to an international labour Recommendation, Seafarers’ Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187), and its predecessor. In this case, an important aspect of the instrument – the updating of the

¹ For a study on the question of revision, see GB.276/LILS/WP/PRS/2.

recommended minimum basic wage for able seamen (paragraph 10) – is entrusted to the Joint Maritime Commission or another body authorized by the Governing Body.

- 10.** Having regard to the problem of the low level of ratifications (see paragraphs 3.18 and 3.19 of the briefing document) and the present uneven enforcement of standards (paragraph 3.20), another significant feature of the new instrument (implementing point 8 of the “preferred solutions” in paragraph 3.23 of the briefing document) might be the role given to ratifying States to ensure that decent conditions of work are present not only on ships registered in their territory, but also on ships calling in their ports even where they are registered in countries which have not ratified the instrument. Such a feature would not be an innovation as it is to a certain extent provided for in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), but consideration might be given to extension thereof (see paragraph 6 of the briefing document). In this connection, mention might also be made of the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180), Article 8 of which requires that records of seafarers’ daily hours of work or rest be maintained for monitoring purposes.

Section 1. The framework instrument

General structure

11. As indicated in point 3 of the “preferred solutions” in paragraph 3.23 of the briefing document, the consolidated instrument would comprise a number of “Parts” incorporating the basic principles of existing Conventions whose general applicability is required in order to ensure that parties providing decent conditions of work are not placed at a disadvantage (see paragraph 3.20 of the briefing document). Part I of the instrument might be a statement of fundamental principles and rights at work, those contained in maritime Conventions and perhaps those in other relevant international labour Conventions. This Part would also set out the responsibilities of the parties with respect to the inspection of ships, including those registered elsewhere (see paragraph 10 above). Each of the remaining Parts would be devoted to a particular “family” of principles and rights; for example, one such Part might deal with social security matters.
12. Each Part, from Part II onwards, would have an annex, setting out detailed requirements for implementation of the principles and rights in the Part concerned (see point 4 of the “preferred solutions”). It would essentially contain the more detailed provisions of the Conventions concerned. These details could be amended through simplified procedures of the kind mentioned above (see paragraph 5 onwards). These procedures might be set out in the “final clauses” of the instrument.
13. The final clauses would also contain the usual provisions, perhaps 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, and, in order to preserve the “capital” of ratifications that has already been built up, by ensuring that obligations under existing Conventions remain fully in force until they are replaced for the Member concerned by equivalent or higher standards under the new instrument.
14. The Parts and annexes of the instrument would be binding on Members ratifying it. At the time of ratification, it might be possible for a Member not to agree to be immediately bound by particular Parts or annexes. There would be an additional component, reflecting the provisions of existing international labour Recommendations and other material, such as codes of practice (see point 6 of the “preferred solutions”). This component would not have mandatory force.
15. Thus the substance of existing Conventions and Recommendations might be rationalized and consolidated in a single instrument covering five areas:

Binding	<i>Part I:</i> Fundamental principles and rights
	<i>Parts II to ??:</i> Substantive principles of families of Conventions
	<i>“Final clauses”</i>
	<i>Annexes:</i> Parts II to ??: Details plus simplified amendment procedure
Non-binding	<i>Other provisions:</i> Recommendations, codes of practice and guidelines.

Procedure

16. It is envisaged that the new instrument would be adopted at a Maritime Session of the International Labour Conference to be held in 2005. The procedure for the preparation of the instrument would be decided by the Governing Body on the basis of the relevant provisions of the Conference's Standing Orders. The text of a proposed instrument should be available to governments at least four months before the opening of the Conference. This draft would be prepared by the Office, probably on the basis of a preparatory technical conference, which would be scheduled to meet in 2004. Prior to this preparatory conference, meetings of the High-Level Tripartite Working Group would also be held in 2002 and 2003.

Section 2. Questions to be considered

17. If the preferred solutions set out in paragraph 3.23 of the briefing document are found to be generally acceptable, a number of options concerning important details will need to be considered before work can begin on actual drafting. Further research will probably be necessary before the questions outlined below can be answered, but it would appear useful to have these and other important questions identified as early as possible in order to orient the work of the tripartite subgroup that is to be established to prepare and consider the working papers for the Working Group.

Consolidation: Content – which provisions should be included?

18. From the conclusions of the Working Party referred to in paragraph 3 above and from proposals of the Joint Maritime Commission, it would appear that 26 out of the 39 maritime labour Conventions, one Protocol and 18 of the 29 Recommendations are sufficiently up to date and relevant to the industry. The volume of provisions to be included in the new instrument will be reduced, once provisions on the same subject are discarded or merged. Some cases, however, will have two or more overlapping provisions, one of which establishes a higher standard. The two Conventions referred to in paragraph 6 above are an example of this.

In such cases, *should the instrument include only the higher standard?*

Perhaps ideally it should. But several countries may have ratified the Convention containing the lower standard. Indeed the lower standard may be contained in an old Convention with perhaps 60 parties, and the higher standard may form part of one which has only just entered into force with the minimum number of ratifications. It may be assumed that if the higher standard alone is included, this could considerably delay the entry into force of the new instrument or at least impair its general applicability. *Is this a reasonable assumption? If it is, what kind of flexibility might be provided for in order to enable ratification by countries which at present have a lower standard of protection? Might the following options be considered?*

- *an option not to accept one or more of the annexes (see paragraph 12 above) at the time of ratification?* One possibility, as far as the annexes are concerned, would be to require ratifying Members to have laws and regulations that are “substantially equivalent”. This latter concept, used in Convention No. 147 referred to in paragraph 10 above, has been interpreted to mean that national laws and regulations could be different in detail, but that the States should undertake to ensure that the general goals are achieved;¹

or:

- *an option not to accept, at the time of ratification, one or more Parts of the instrument and the corresponding annex(es)?*

¹ See ILO: *Labour standards on merchant ships*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 77th Session, Geneva, 1990, para. 69.

or:

- *an option, restricted to Members that are parties to a Convention with a lower standard, enabling them to replace the relevant provision of the instrument with the corresponding provision providing for a lower standard?* This might, however, increase the complexity of the instrument.

If options of this kind were provided for, they could be made subject to conditions designed to pave the way for full acceptance of the instrument. Governments exercising one or other of the options (in consultation with their social partners) might be required to:

- give effect to the higher standard in so far as conditions permitted;
- move as quickly as possible to renunciation of the option concerned; and
- report regularly on progress made with regard to these two aspects.

Would the existence of options significantly facilitate ratification of the instrument by countries whose legislation only provides for the lower standard?

Would any advantage in this respect be outweighed by a possible disincentive regarding ratification of the new instrument by Members which are already at the higher standard?

Consolidation: Distribution – how should the provisions be arranged?

19. As indicated in paragraph 12 above, the new instrument would be divided into Parts, with corresponding annexes, relating to various “families” of subjects. These families would need to be identified. The table of contents of the ILO’s *Maritime labour Conventions and Recommendations*,² might provide a working basis for such an exercise.

Criteria would need to be determined for the distribution of the various provisions between Part I of the instrument, the substantive Parts and the corresponding annexes, outlined in paragraph 15 above. However, this might to some extent depend on the answers given to questions raised elsewhere in this paper. For example, the statement of fundamental principles and rights in Part I might need to be more extensive if ratifying Members were given an option not to accept all the substantive provisions at the time of ratification. Similarly, the decision as to which of the substantive provisions constitute *principles*, for inclusion in the Parts, and which constitute *details*, for inclusion in the annexes, could be affected by the choice of simplified amendment procedure. Having regard to the considerations set out in paragraph 6, it might be useful to have indications from governments as to *the kind of legislative provisions that are included in government regulations (or collective agreements) rather than in acts of parliament*.

Simplified amendment procedure

20. The objective should presumably be to devise a mechanism for updating the annexes which combines the greatest possible flexibility with general acceptability to governments and national parliaments. In this connection:

² ILO: *Maritime labour Conventions and Recommendations*, Geneva, 1994.

Paragraph 7 above gives an example of an “opting-in” procedure, under which amendments to a schedule that are adopted by the International Labour Conference are submitted to Members for acceptance. *Would the government’s acceptance of amendments of this kind require approval of the national parliament? Would such a procedure be acceptable if the amendment were adopted by another body authorized by the International Labour Conference?* – for example, adoption by the Governing Body, with perhaps a qualified majority and acting on the recommendation of the Joint Maritime Commission or a tripartite working group established by it.

Paragraph 8 above outlines an “opting-out” procedure, under which amendments of annexes are binding on Members that do not object to them within a certain period, unless the number of objections received exceeds a certain proportion of the parties to the Convention concerned. *Is such a procedure acceptable to governments? Would it be acceptable if the amendment were adopted by another body authorized by the International Labour Conference?*

General enforceability

21. As indicated in paragraph 10 above, Convention No. 147 gives a party the right to take action if it “receives a complaint or obtains evidence” that a foreign-registered ship visiting one of its ports does not conform to the standards referred to in the Convention (Article 4). The action is in general limited to addressing a report to the government of the country of registration, with a copy to the Director-General of the ILO. However, if any of the conditions on board are “clearly hazardous to safety or health”, the Member may take measures to rectify them, which may (provided that they are not unreasonable) result in the detention or delay of the foreign ship.

(a) *Would it be appropriate for the action indicated above to be allowed in any case of non-conformity with the provisions of the new instrument, or at least with the principles set out in its Parts?*

(b) *Is reporting to the foreign government, with a copy to the Director-General, a sufficient measure in the case of shortcomings that are not hazardous?*

(c) *Should the Member have the right to take rectification measures in cases other than those involving hazards to safety or health? If so, in what kind of cases?*

If an extension of the kind envisaged under (b) and (c) is considered, it might be necessary to conduct a study on to the kinds of measures that could be taken by the port State in keeping with international law.

(d) *What kinds of measures (in addition to the example given in paragraph 10 above) might be provided for to facilitate monitoring by the Member concerned?*