

INTERNATIONAL LABOUR ORGANIZATION  
Sectoral Activities Programme

**High-level Tripartite Working Group  
on Maritime Labour Standards  
(Fourth meeting)**

**Consolidated maritime labour Convention (Preliminary second draft)  
Effect on Revised Conventions**

Nantes, 2004



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## Considerations concerning Article IX of the first draft for a consolidated Convention

1. The first draft for a consolidated maritime labour Convention was submitted to the High-level Tripartite Working Group at its last (third) meeting in June/July 2003. Article IX<sup>1</sup> is intended to deal with the effect of the new Consolidated Convention on the existing maritime labour Conventions. This is a question that needs to be discussed in the High-level Group, as it requires the balancing of various policy considerations. The Office therefore only outlined the components of Article IX in the first draft, indicated the main issues in the Commentary to that draft<sup>2</sup> and undertook, at the High-level Group's last meeting, to provide the necessary explanations. Hence the present paper.
  
2. Until the consolidated Convention is universally ratified, it will necessarily have to coexist to some extent with the present international maritime labour standards. However, it is obviously undesirable that a Member ratifying the new Convention should be party to two different Conventions covering the same subject matter. From a more general point of view, it is also inconvenient to have the existing corpus of maritime labour standards divided into two separate systems, in which some Members are bound only by the new Convention, while others are party to the present Conventions. Under international treaty law, there is no easy way of eliminating existing multilateral conventions,<sup>3</sup> or replacing them with a new one, unless those conventions themselves provide a means of doing this. International labour Conventions adopted from 1930 onwards<sup>4</sup> do in fact contain an Article that makes it possible for a future "revising Convention" to eliminate most of the effects of the Conventions they are revising (but not the Conventions themselves). This Article typically reads as follows:<sup>5</sup>
  1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –
    - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of [the article permitting denunciation after certain intervals], if and when the new revising Convention shall have come into force;
    - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
  2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

<sup>1</sup> Article X in the second draft to be submitted to the High-level Tripartite Working Group in January 2004.

<sup>2</sup> See document TWGMLS/2003/1, Comment 6, para. 4.

<sup>3</sup> When an amendment to the ILO Constitution that was adopted in 1997 enters into force, the International Labour Conference will have the power to abrogate obsolete international labour Conventions in certain circumstances.

<sup>4</sup> The first post-1930 maritime labour Convention was the Food and Catering (Ships' Crews) Convention, 1946 (No. 68).

<sup>5</sup> Convention No. 180, Article 23.

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3. Subparagraphs (a) and (b) of paragraph 1 of this Article thus offer two options providing solutions for the co-existence problems mentioned above, which will apply “unless the new Convention otherwise provides”. Subparagraph (a) avoids the problem of a ratifying Member being bound by similar obligations under different Conventions: once the new obligations enter into force, the old obligations will disappear. Subparagraph (b) blocks the old Convention to further ratifications: once the new Convention comes into force, the old Convention will be limited to the Members that have already ratified it (until they denounce it).
  4. The introduction to paragraph 1 quoted above and its subparagraphs (a) and (b) suggest three separate issues which will need to be considered by the High-level Group. In considering these issues, which are dealt with below, the High-level Group should take account of the possibility that the internal ratification process may take several years in some countries. Indeed, despite the effort that will be made to make the Convention generally ratifiable, a minority of ILO Members may not be in a position to ratify for a much longer time in particular because of the vast scope of its subject matter.

### **Which Conventions are being revised?**

5. For the sake of clarity, the new Convention will need to identify the Conventions that it is revising. The list will cover most but not all of the existing maritime Conventions. In particular, it is not at present envisaged to revise Conventions Nos. 108 and 185 on seafarers’ identity documents or Conventions covering social security.

### **Should the new Convention adopt the option of ipso jure denunciation?**

6. If the new consolidated Convention does not “otherwise provide” with respect to subparagraph (a) mentioned above, upon its entry into force any Member that has already ratified it or subsequently ratifies it will be deemed to have denounced any Convention which it has ratified and which is identified in the new Convention as having been revised. The Office can see only one disadvantage in this, which seems to be outweighed by the advantage of avoiding duplicating (and possibly conflicting) obligations for ratifying Members. The disadvantage is that the ratifying Member would no longer be a party to the old Conventions, and would therefore not be able to benefit from provisions in those Conventions that establish obligations in favour of Members that have ratified the same Convention. However, there seem to be only two Conventions that do establish obligations in favour of other ratifying Members: namely, Conventions Nos. 108 and 185 on seafarers’ identity documents and, as already noted, these will probably be outside the revision process. A Member that ceases to be a party to a revised Convention will in addition not be able to lodge a complaint under article 26 of the ILO Constitution about another party’s non-observance of that Convention. However, the Member would still be able to initiate the article 26 procedure through the ILO Governing Body.<sup>6</sup> The Office accordingly recommends that the provision on “ipso jure denunciation” in Conventions concluded since 1930 should be allowed to operate, and that there should therefore be no contrary provision in the new Convention.

<sup>6</sup> Under paragraph 4 of Article 26.

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## Should the new Convention close the revised Conventions to further ratification?

7. The answer to this question may to some extent depend upon the number of ratifications and other requirements specified for the initial entry into force of the Convention under what is now Article VII of the first draft. If the entry into force of the new Convention were delayed until a large number of maritime nations had ratified it, it might be considered justified to allow subparagraph (b) mentioned above to take its course. This might encourage the remaining maritime countries in the ILO to ratify the new Convention by preventing subsequent ratification of the revised Conventions after the new Convention has come into force. On the other hand, there could be adverse side effects even in such a case, and certainly in the case where a relatively low level of ratifications is required for entry into force. In particular, certain ILO Members may, as indicated above, not be able to ratify the new Convention for many years to come. To exclude them from any further participation in maritime labour standards would not only seem undesirable in itself but might also prevent them from ever joining the new Convention, as their ratifications of the revised Conventions could in practice be essential stepping stones to their ratification of the consolidated Convention.
8. The High-level Group (and eventually the International Labour Conference) is not, however, faced with a stark choice, namely that of either immediately closing the revised Conventions to further ratification as soon as the consolidated Convention comes into force or otherwise keeping them open to ratification for all time. The words “otherwise provide” appear flexible enough to allow a partial solution to be adopted. This is confirmed by the treatment of this subject by, in particular, Article 10 of the Minimum Age Convention, 1973 (No. 138). Paragraph 1 of Article 10 specifies the sectoral minimum age Conventions that are being revised. Paragraph 2 provides that some of those Conventions will not be closed to further ratification. Paragraph 3 specifies others which “shall be closed to further ratification when all the parties thereto have consented to such closing by ratification of this Convention or by a declaration communicated to the Director-General of the International Labour Office”. While the particular solution provided for in paragraph 3 may not be appropriate in the present context, the message given by that paragraph is that closure to further ratification can be delayed until specified conditions are met.
9. A tailor-made solution can thus be devised to balance the three policy considerations that seem to be involved, namely: the need for an early entry into force of the consolidated Convention; the desirability for the old maritime labour Conventions to be replaced by the new one as soon as possible; and the undesirability of any action that might exclude a number of ILO Members from participation in maritime labour standards and eventually in the consolidated Convention. A possible approach would be to identify the more important maritime labour Conventions, especially those – like Convention No. 147 – which could be considered as stepping stones to ratification of the consolidated Convention. The other revised Conventions could all be closed to ratification. The partial solution applying subparagraph (b) referred to above might be for the new Convention to allow closure of the “stepping-stone” Conventions only after the new Convention has been ratified by the vast majority of ILO Members. In other words, there would be one level of ratification requirements for entry into force and another, higher level for closure of specified Conventions to further ratification. This is the approach that will be adopted for the equivalent of Article IX in the second draft of the consolidated Convention, on which the guidance of the High-level Group will be requested.

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- 10.** The solution does not of course assist in the elimination of maritime labour Conventions adopted before 1930. These would need to be expressly denounced by Members that were still party to them, in accordance with their respective provisions relating to denunciation. The Conference could take a decision to close specific pre-1930 Conventions to further ratification, but a procedure would need to be adopted for this purpose – probably of a general nature and not solely for the maritime sector.