



EIGHTH ITEM ON THE AGENDA

The proposed consolidated maritime labour Convention: Key features

1. At its 285th Session last November, the Governing Body took note of the progress of work undertaken by the High-level Tripartite Working Group on Maritime Labour Standards. On the invitation of the Committee on Legal Issues and International Labour Standards,¹ the Governing Body requested the Director-General to submit to its March session a report on the key features of the proposed consolidated Convention on maritime labour standards, as envisaged so far. The report was to be prepared by the Office, with the assistance of the Subgroup of the High-level Tripartite Working Group, and to make particular reference to the role that the ILO supervisory system might play.
2. It is recalled that at its first Meeting in December 2001,² the High-level Tripartite Working Group endorsed the eight preferred solutions that had been jointly recommended by the representatives of the Shipowners and the Seafarers to meet the concerns that they had raised with respect to the existing maritime labour standards. These solutions, which are reproduced in the appendix to the present report, have remained as the essence of the draft for a consolidated Convention which the Office is preparing with the assistance of the Subgroup and under the direction of the High-level Tripartite Working Group, which held its second meeting in October 2002.³
3. As envisaged so far, the proposed consolidated Convention would:
 - (a) incorporate, in so far as possible, the substance of all relevant maritime labour standards with any necessary updating;
 - (b) be easily updatable to keep pace with developments in the maritime sector;
 - (c) be drafted in such a way as to secure the widest possible acceptability;

¹ GB.285/11/2, paras. 58 to 66.

² See TWGMLS/2001/10.

³ See TWGMLS/2002/13.

- (d) place emphasis on the means of enforcing its provisions in order to establish a “level playing field”; and
 - (e) be structured in such a way as to facilitate the achievement of the above objectives.
4. Since the exercise of consolidation necessarily implies an integrated approach, each of the key features set out above interacts with the others, as will be seen below.

(a) Substance covered

5. A Convention consolidating standards in several different fields for a particular sector is not new to the ILO, but the proposed Maritime Labour Convention will probably go much further in this respect than any existing international labour Convention, such as the Plantations Convention, 1958 (No. 110).⁴ Although the consolidation will be limited to maritime labour Conventions and Recommendations, one of those instruments will be the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147),⁵ supplemented by a Protocol adopted in 1996. This Convention – whose provisions and approach will feature prominently in the new Convention – requires Members to ensure that shipboard conditions of employment and shipboard living arrangements are covered by national provisions that are substantially equivalent to specified Conventions or articles of Conventions (to the extent that the Member concerned is not already bound by those Conventions). These Conventions, specified in appendices to Convention No. 147 and its Protocol, include general Conventions outside the maritime sector, in particular, Conventions Nos. 87 and 98.

Flexibility for updating

6. A principal innovation (as far as the ILO is concerned) of the proposed consolidated Convention would be the possibility of using a simplified procedure to make changes to provisions relating to the detailed implementation of the Convention. The lengthy consideration given to changes under the ILO’s present revision procedures, first at the international level and then at the national level of each Member considering ratification, is certainly justified when amendments are proposed to the basic provisions of a Convention, but appears unnecessarily cumbersome and long when it is a question of updating technical details. The result – which was one of the major concerns raised by the Shipowners and Seafarers – has been that many maritime Conventions are necessarily out of date.
7. The procedure for amendment by tacit acceptance that would be provided for in the consolidated Convention is inspired by procedures contained in other international instruments, especially those of the International Maritime Organization (IMO). It is, however, adapted to the particular circumstances of the ILO: amendments of detailed provisions could be adopted by a special committee established by the Governing Body and consisting of Members that had ratified the new Convention together with representatives of the Shipowners and Seafarers. Representatives of other ILO Members

⁴ This Convention has 87 Articles extending to plantation workers the standards of general international labour Conventions in 12 different areas covering, for example, recruitment, contracts of employment, freedom of association, labour inspection and medical care.

⁵ This Convention has been ratified by 43 ILO member States. In addition, in accordance with article 35 of the ILO Constitution, it 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. It is generally considered to be the most important of the ILO’s maritime labour standards.

would be able to participate without vote. Once adopted, the amendments would have to be approved at an ordinary session of the International Labour Conference. When approved, they would be submitted to ratifying Members for consideration. They would enter into effect unless more than one-third of the ratifying Members, or ratifying Members representing at least 50 per cent of gross tonnage of the world's merchant fleet, expressed their disagreement within a prescribed period. If some ratifying Members expressed their disagreement (but not enough to block the amendment), the amendments would not take effect with respect to them.

8. The legal basis for this amendment procedure resides in the fact that the legislators concerned (the International Labour Conference, acting under article 19 of the ILO Constitution, and national parliaments) 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.
9. It would still be possible for changes to be made to the consolidated Convention as a whole, particularly to its basic provisions, using procedures equivalent to the normal ILO revision procedures: the changes would, however, be made through *amendments* rather than through the adoption of a new *revising Convention*, which has been the procedure provided for in international labour Conventions since the 1930s. Because of its vast scope, the consolidated Convention could be the subject of several changes over the decades and it would clearly be cumbersome if each series of changes led to the adoption of a separate revising consolidated Convention. While this disadvantage has in practice been mitigated to some extent through the adoption of protocols for the limited revision of certain provisions of an ILO Convention, the present *revision* procedures are ill-adapted to the drive towards a single, universally applicable Convention. Under an *amendment* procedure, on the other hand, Members might sometimes be bound by different provisions in a Convention;⁶ but they will always remain parties to the same legal instrument and entitled to take action under the ILO Constitution if another Member is not observing any obligation in the Convention that both of them have accepted. With this sole exception, the general amendment procedure envisaged for the consolidated Convention closely follows the revision procedure provided for in current ILO Conventions.

(b) Widest possible acceptability

10. A principal objective for the proposed consolidated Convention is that it should be universally applicable in the same way as certain IMO Conventions, such as the International Convention for the Safety of Life at Sea, 1974 (SOLAS). The new Convention must therefore be drafted in such a way as to attract ratifications from as many ILO Members as possible and as soon as possible. This will be a challenging task requiring a new drafting approach: unless certain parts of the proposed Convention were made optional,⁷ a situation to be avoided as far as possible, Members would be required to accept the substance of around 30⁸ existing maritime labour Conventions in order to be able to ratify the proposed new one. How this could be achieved without any reduction in

⁶ This is an inconvenience that cannot be avoided if amendments are not to be forced upon Members.

⁷ This is the case with the Plantations Convention, for example, referred to in para. 5 above.

⁸ Between 1920 and 1996, a total of 39 Conventions, 29 Recommendations and one Protocol were adopted by the International Labour Conference.

the force of the standards was one of the main subjects of the Subgroup's discussions at its meeting last February.

(c) Enforcement

- 11.** The expression “enforcement” is used here for want of a better term. It is intended to cover any provisions or measures which are directly or indirectly relevant to ensuring that the substantive provisions of a legal instrument are actually being implemented. Such provisions are of course not new to the ILO: there are, in particular, Conventions relating to inspection, or containing provisions on inspection, which is perhaps the most important aspect of enforcement at the national level. Moreover, Conventions frequently contain provisions relevant to enforcement, such as the requirement to keep records, to establish penalties for non-compliance and to have adequate internal complaints or recourse procedures. Above all, the requirement for proper enforcement of national laws and regulations is one of the main thrusts of Convention No. 147, for example. The innovation in the proposed consolidated Convention would be to take the various aspects of enforcement at the national level and to place them in a separate part transcending the whole Convention. This part would seek to define the roles of the various actors in the field of enforcement. These actors, already identified in Convention No. 147, are the flag States, which have the primary role, port States and labour-supplying States. Examples of aspects of enforcement in the proposed Convention that are new to ILO Conventions, would be a requirement for each Member to establish a system of certification or documentation of compliance covering conditions on board ship as well as an overall system of quality standards and control covering implementation of the Convention in general.
- 12.** A proper interaction of this part with the rest of the consolidated Convention is a major aim. Not only should the provisions on enforcement offer inspectors, at the flag-state and port-state levels, effective solutions in practice to ensuring implementation of the provisions setting out the standards; but each of those provisions should be drafted in a way which enhances their enforceability. Account would also need to be taken of the interaction between the provisions of the consolidated Convention and related activities under other international instruments, such as those of the IMO, especially in the field of safety and security and professional competencies. The coordination of similar inspections to be carried out under the consolidated Convention and IMO Conventions is given particular importance in this connection.
- 13.** In order to complete the construction of an effective system of enforcement, another concern in the drafting of the provisions relevant to the question of enforcement will be to ensure continuity between national enforcement systems, required under the consolidated Convention, and the ILO's supervisory procedures. As indicated above, the consolidated Convention would place increased emphasis on the need for each Member to evidence compliance with the standards of the Convention and to have an overall system of quality control and independent evaluation. Through these kinds of means to ensure that implementation is not only done but also seen to be done, the aim would be to place the supervisory bodies in the best possible position to follow implementation by ratifying Members and to enable those Members to assess the extent to which the desired level playing field is actually in place.
- 14.** It would seem too much to expect that the aims referred to in the previous paragraphs will be fully achieved in the text to be adopted in 2005. This is one of the reasons why the Governing Body would be requested in the Convention text to keep the working of the Convention under continuous review, through the committee that would be empowered to adopt amendments to the detailed provisions, referred to in paragraph 7 above.

15. The Committee just referred to could indeed play a much fuller role in the supervisory process than that indicated above. However, this would be a matter to be worked out through tripartite consultation mainly in the framework of the Governing Body, rather than in the proposed Convention. The Committee could indeed not only make the best possible use of the ILO's supervisory process, but would also have the potential – with the Convention itself – to provide a valuable contribution if the spirit of innovation present up to now continues in the context of the supervisory activities. This contribution would be based, inter alia, on the expertise in maritime matters of the members of the Committee, on their close contact with actual situations and on the ability that the Convention would give for a speedier reaction to problems that may arise. Through the system of control and evaluation to be established at the national levels, it should be possible to resolve most day-to-day problems of implementation. The Committee would then be able to concentrate on the identification of the main problems, and on ways of resolving them. In this connection, the question of the communication of relevant information by the Committee to the Committee of Experts on the Application of Conventions and Recommendations, through the Governing Body, could be further examined.

(d) Structure of the Convention

16. As conceived so far, the structure and drafting of the first part of the consolidated Convention would be the same as that of traditional international labour Conventions: the articles in it would relate to basic principles and rights and to provisions covering the Convention as a whole, such as entry into force and amendment. This part would closely reflect the substance of Convention No. 147. The essential difference is that the standards to be observed, at least through substantially equivalent legislation, would be set out in the Convention itself rather than listed in appendices. The remaining parts of the Convention would be influenced by the structure of IMO Conventions, but would retain a clear ILO identity. The next level of the Convention (the second level, under the articles just referred to) would consist of “regulations” setting out the basic principles of relevant maritime labour Conventions. The third and fourth levels would be formed by a “code” giving directions and guidance as to how the regulations were to be implemented. The directions would be in the mandatory Part A, and the guidance in Part B. Any amendments to the Articles or the regulations would have to be expressly accepted through the normal procedures, as explained above. The simplified amendment procedure could be used for amendments to the code, unless provided otherwise in the Convention.

17. The intention therefore is that the consolidated Convention should not only retain the content of existing maritime labour Conventions and Recommendations, but also embody, adapt and extend approaches that already exist in international instruments, especially those of ILO Convention No. 147. The precise way in which that intention will be realized is only partially reflected in the latest draft of the proposed Convention. Under the direction of the High-level Group, the discussions have so far concentrated on the structure, the simplified amendment procedure and enforcement; substantial progress has been achieved in those respects. Discussions have now begun on how to reflect the content of the labour standards themselves, and substantial redrafting will be done to embody the advice of the Subgroup for a new text to be presented to the High-level Group next July.

Geneva, 14 February 2003.

Appendix

Solutions recommended by Shipowners and Seafarers and endorsed by the High-level Tripartite Working Group for a consolidated maritime labour Convention

1. The provisions of the corpus of international maritime labour standards that are sufficiently up to date should be consolidated as a matter of priority and in so far as this proves possible to achieve.
2. Their substance 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 consolidated instrument should consist of a number of parts setting out the key principles of international maritime labour standards.
4. The parts should be complemented by annexes setting out detailed requirements for each of the parts.
5. A simplified amendment procedure should be provided for updating the annexes and ensuring prompt entry into effect.
6. The instrument should also contain the substance of recommendations and other non-mandatory texts.
7. The instrument should be drafted in such a way as to secure the widest possible acceptability among governments, shipowners and seafarers committed to the principles of decent work.
8. The instrument should contain provisions giving responsibility to all States to ensure that decent conditions of work apply on all ships that are placed under their jurisdiction or that come within their jurisdiction.