

STATE PAPER NO 2007

Submission of International Labour Instruments to the National Assembly of the Parliament of Guyana.

The International Labour Conference at its ninety-fourth session held in February, 2006, adopted the following convention:-

Maritime Labour Convention, 2006.

A copy of the Convention is attached.

As a member of the International Labour Organization, Guyana is under obligation to bring the above- mentioned convention to the attention of the National Assembly for necessary action and inform the Director General of the International Labour Organization of the action taken.

General Obligations

Article 1

1. By ratifying this convention, Government would have undertaken to give complete effect to its provisions in the manner set out in Article VI in order to secure the right of all seafarers to decent employment.
2. Government shall cooperate with other governments for the purpose of ensuring the effective implementation and enforcement of this Convention.

Definitions and Scope of Application

Article 11

1. For the purpose of this Convention and unless provided otherwise in particular provisions, the term.
 - a) **Competent Authority** means the Minister, Government department or other authority having power to issue and enforce regulations, orders or other instructions using the force of law in respect of the subject matter of the provision concerned.

- b) **Declaration of Maritime Labour Compliance** means the declaration referred to in Regulation 5.1.3.
- c) **Gross Tonnage** means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any Successor Convention.
- d) **Maritime Labour Certificate** means the certificate referred to in Regulations 5.1.3.
- e) **Requirement of this Convention** refers to the requirements in these Articles and in the Regulations and Part A of the Code of this Convention.
- f) **Seafarer** means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.
- g) **Seafarers' Employment Agreement** includes both a contract of employment and articles of agreement.
- h) **Seafarer Recruitment and Placement Service** means any person, company, institution, agency or other organization, the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners.
- i) **Ship** means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.
- j) **Shipowner** means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility of the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties or responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfill certain of the duties or responsibilities on behalf of the shipowner.

2. Except as expressly provided otherwise, this convention applies to all seafarers.

3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the competent authority.

4. Except as expressly provided otherwise, this Convention applies to all ships, whether privately or publicly owned, ordinarily engaged in commercial activities, other than ships

engaged in fishing or similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries.

5. In the event of doubt as to whether this Convention applies to a ship or particular category of ships, the question shall be determined by the competent authority.

6. Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the code referred to in Article VI, paragraph 1 to a ship or particular categories of ships flying the flag of the Member, the relevant provisions of the code shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures.

7. Any determinations under paragraph 3 or 5 or 6 of this Article shall be communicated to the Director General of the I.L.O.

8. Unless expressly provided otherwise a reference to this Convention constitutes at the same time a reference to the Regulations and the Code.

Fundamental Rights and Principles

Article 111

The government shall satisfy itself that the provisions of its law and regulations respect, in the context of this Convention, the fundamental rights to:-

- a) Freedom of association and the right to collective bargaining;
- b) The elimination of forced or compulsory labour;
- c) The abolition of child labour; and
- d) The elimination of discrimination in respect of employment and occupation.

Seafarer' Employment and Social Rights

Article IV

Government shall ensure within the limits of its jurisdiction that every seafarer has the right to safe and secure workplace, to fair terms of employment, to decent working and living conditions on board ship, to health protection, medical care, welfare measure and other forms of social protection.

Implementation and Enforcement Responsibilities

Article V

The government shall:

- a) Implement and enforce laws or regulations or other measures adopted to fulfill its commitments under this Convention with respect to ships and seafarers under its jurisdiction;
- b) Effectively exercise its jurisdiction by establishing a system for ensuring compliance;
- c) Ensure that ships flying its flag carry a maritime labour certificate and a declaration of maritime labour compliance.

A ship to which this convention applies can be inspected by another country in their ports to determine whether it is in compliance with the requirements of this Convention.

Government shall exercise its jurisdiction over seafarer recruitment and placement services, prohibit violations of this Convention, implement its responsibilities under this Convention in such a way that ships flying the flag of any state that has not ratified this Convention do not receive more favorable treatment than ships that fly the flag of any State that has ratified it.

Regulations and Parts A and B of the Code

Article VI

The Regulations and provisions of Part A of the Code are mandatory while the provisions of Part B are not.

Government undertakes to respect the rights and principles set out in the Regulations and to implement each Regulation in the manner set out in Part A of the Code and give due consideration to implementing its responsibilities in the manner provided for in Part B of the Code.

If Government is unable to implement Part A of the Code, unless expressly provided otherwise in this Convention, it shall implement Part A through provision in its laws and regulations or other measures which are substantially equivalent to the provisions of Part A.

Consultations with Ship-Owners' and Seafarers' Organizations

Article VII

Flexible application of this Convention for which the Convention requires consultation with ship-owners' and seafarers' organizations in cases where on no such organizations exist within a country; can only be decided by that country through consultations with the committee referred to in Article XIII.

The Convention comprises there (3) different but related parts: the Article, the Regulations and the Code.

The Article and Regulations set out the core rights and principles and the basic obligations of Government ratifying the Convention.

The code contains the details for the implementation of the Regulations.

The Regulations and the Code are very extensive and could be found at the back of the Convention.

This Convention revises thirty-six (36) Conventions and a Protocol all dealing with seafarers.

Position in Guyana

Guyana has ratified two (2) of the thirty six (36) Conventions being revised by this Convention.

In 1998 the Guyana shipping Act, No.7 of 1998, was enacted.

The Act complies with the minimum age of 16 years for employment on board ships but does not prohibit persons less than 18 years from night work as required by the Convention.

The Convention states that seafarers shall not work on board ships unless they are certified medically fit. The Act only requires persons under the age of 18 years to be medically certified.

The law provides for the repatriation of seafarers. It provides for ships to be manned by a crew sufficient and efficient from the point of view of safety.

The law permits the Minister to make regulations with respect to crew accommodation, food and water. The regulations have, so far, not been made.

Conclusion

The conventions require a number of conditions to be complied with and Guyana has not addressed many of them.

It is recommended, therefore, that Guyana do not ratify the Convention at present but use its provisions to upgrade the laws.