



Fourth meeting of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended (MLC, 2006)

Geneva, 19–23 April 2021

► Instruments relating to shipowners' liability

Summary

The maritime labour instruments under review include **one Convention concerning shipowners' liability**:

- [Shipowners' Liability \(Sick and Injured Seamen\) Convention, 1936 \(No. 55\)](#)

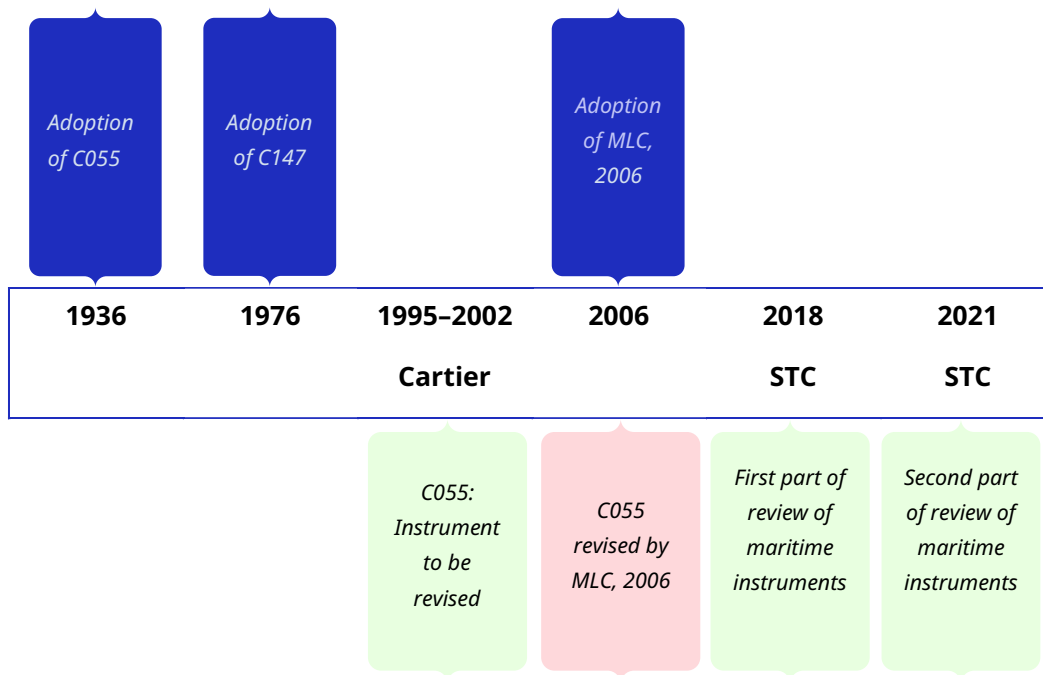
Status of the instrument under review

Convention No. 55	Instrument to be revised	(Revised by the MLC, 2006)
-------------------	--------------------------	----------------------------

Possible action to consider

To classify Convention No. 55 as “outdated” and propose its abrogation at the 118th Session (2030) of the International Labour Conference.

► Instruments relating to shipowners' liability - Chronology



I. Regulatory approach of the ILO with regard to shipowners' liability

A. Protection provided by ILO instruments

1. The *Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)*, applies to all persons employed on board any vessel, other than a ship of war, registered in a territory for which the Convention is in force and ordinarily engaged in maritime navigation. Member States may exclude persons employed on board certain types of vessels from the scope of application of the national legislation which gives effect to the Convention, including coastwise fishing boats. The Convention specifies that the shipowner shall be liable in respect of sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement as well as death resulting from such sickness or injury. The shipowner may be exempted from liability in respect of injury incurred otherwise than in the service of the ship; injury or sickness due to the wilful act, default or misbehaviour of the sick, injured or deceased person; and sickness or infirmity intentionally concealed when the engagement is entered into. The shipowner's liability covers medical care (including medical treatment, supply of proper and sufficient medicines and therapeutical appliances and board and lodging) and the payment of wages while the sick or injured person remains on board and, if they have dependants, until the sickness or incapacity has been declared of a permanent character. However, national laws or regulations may limit the liability of the shipowner in respect of a person no longer on board to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness. Additionally, Convention No. 55 states that "the shipowner shall be liable to defray the expense of repatriating every sick or injured person who is landed during

the voyage in consequence of sickness or injury.” The shipowner shall be liable to defray burial expenses in case of death occurring on board, or in case of death occurring on shore if at the time of his death the deceased person was entitled to medical care and maintenance at the shipowner’s expense. Shipowners or their representatives shall take measures for safeguarding property left on board by sick, injured or deceased persons.

2. The [Maritime Labour Convention, 2006, as amended \(MLC, 2006\)](#), incorporates and complements the content of Convention No. 55. It provides, under Regulation 4.2 on shipowners’ liability, that each Member shall ensure that measures “are in place on ships that fly its flag to provide seafarers employed on the ships with a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers’ employment agreement or arising from their employment under such agreement”. The MLC, 2006, extends shipowners’ liability to bear the costs for seafarers working on their ships. Such liability covers sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates. The Convention provides that shipowners shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard. The extent of such financial security is indicated in the amendments to the Convention, which were adopted in June 2014 and entered into force on 18 January 2017. It requires that a financial security system be put in place, subject to flag State and port State inspections, to ensure that shipowners provide compensation to seafarers and their families in the event of death and long-term disability due to an occupational injury, illness or hazard. Additionally, Standard A2.5.1, paragraph 1(c) on repatriation establishes that seafarers have a right to be repatriated at no cost to themselves when they are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances, including, according to Guideline B.2.5.1, in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel.
3. It is also worth noting the extended scope of the MLC, 2006, which defines a seafarer as “any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies”, namely “ships, whether publicly or privately 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”.¹ A ship is defined as 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. Thus, the MLC, 2006, as opposed to Convention No. 55, does not limit its scope of application only to persons employed on board a ship.

B. Key dates for the instruments under review: Adoption and ratification

4. Convention No. 55 was adopted in 1936, and 18 ratifications were registered. The ratification of the MLC, 2006, has resulted in the denunciation of this instrument by 13 States to date. Five Member States remain bound by this instrument;² one remains

¹ Article II(4). The MLC, 2006, does not apply to warships or naval auxiliaries.

² Namely Egypt, Mexico, Peru, Turkey, and United States of America. The Government of [Egypt](#) indicated that “work is under way to bring national legislation into conformity with the relevant provisions of the MLC, 2006, in preparation for its effective implementation before ratification”.

bound only in respect of a non-metropolitan territory.³ There are four comments by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) awaiting a response as regards implementation issues.⁴

II. Evolution of the instruments: From adoption to 2021

5. Following the work of the **Cartier Working Party**, the Governing Body decided to classify Convention No. 55 as “convention to be revised”. The Governing Body considered that the revision of Convention No. 55 should be considered along with the other maritime instruments, in the context of the elaboration of a draft framework instrument on labour standards in the maritime sector.⁵
6. Convention No. 55 is included in the Appendix to the [Merchant Shipping \(Minimum Standards\) Convention, 1976 \(No. 147\)](#). Each Member which has ratified Convention No. 147 has undertaken to satisfy itself that its laws and regulations are substantially equivalent to the Conventions or articles of Conventions referred to in the Appendix to this Convention, in so far as the Member is not otherwise bound to give effect to the Conventions in question.⁶ In this regard, of the 12 Member States⁷ which remain bound by Convention No. 147, three have ratified Convention No. 55.⁸ Therefore, nine Member States are bound⁹ to ensure substantial equivalence of their legislation to Convention No. 55, in accordance with Article 2(a) of Convention No. 147.
7. The MLC, 2006, under Regulation 4.2, revises Convention No. 55, incorporating its objective, namely the obligation to ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment. Convention No. 55 is no longer open to ratification.
8. One of the recurring issues concerning the application of maritime labour Conventions, including Convention No. 55,¹⁰ is their possible extension to categories of workers other than seafarers as defined by the MLC, 2006. In particular, a number of national laws have established a common framework for fishers and seafarers on the basis of these Conventions applicable to the two sectors. This rationale which allows the same

³ This Convention was declared applicable to the following non-metropolitan territories, involving reporting obligations for the Member States concerned: Puerto Rico (United States), American Samoa (United States), United States Virgin Islands (United States), Guam (United States), and French Polynesia (France).

⁴ These concern [Mexico](#) (comments on repatriation expenses in the event of sickness or injury), [Peru](#) (comments on repatriation; and safeguarding property left on board), [Turkey](#) (comments on the scope of national legislation in relation to ships under 100 gross tonnage; payment of full wages; repatriation destination; property left on board; equality of treatment), and [United States of America](#) (comments on the scope of application in relation to non-resident foreign seafarers and equality of treatment for all seafarers). In relation to [Puerto Rico \(United States\)](#), [American Samoa \(United States\)](#), [United States Virgin Islands \(United States\)](#), and [Guam \(United States\)](#), the CEACR referred to the observation made concerning the application of the Convention by the United States.

⁵ See ILO, *Follow-up to the Recommendations of the Working Party: (b) Information Note on the Progress of Work and Decisions taken Regarding the Revision of Standards*, GB.283/LILS/WP/PRS/1/2, 2002, 3 and 17.

⁶ ILO, *General Survey of the Reports on the Merchant Shipping (Minimum Standards) Convention (No. 147) and the Merchant Shipping (Improvement of Standards) Recommendation (No. 155), 1976*, Report III (Part 4B), International Labour Conference, 77th Session, 1990, 39 ff.

⁷ It may also be noted that Convention No. 147 remains in force for Brazil but only until 7 May 2021, date on which the ratification of the MLC, 2006, will enter into force for that Member State.

⁸ Namely [Egypt](#), [Peru](#), and [United States of America](#).

⁹ Namely [Azerbaijan](#), [Costa Rica](#), [Dominica](#), [Iraq](#), [Israel](#), [Kyrgyzstan](#), [Tajikistan](#), [Trinidad and Tobago](#), and [Ukraine](#).

¹⁰ Article 1(2)(a)(ii) of Convention No. 55.

international labour Convention to be applied to seafarers and fishers, is not adopted by the MLC, 2006, which explicitly excludes fishers from its scope of application. The Work in Fishing Convention, 2007 (No. 188), contains provisions on the protection of fishers in the case of work-related sickness, injury or death.¹¹

III. Key points to consider in deciding the status of the instruments

9. In reviewing the status of Convention No. 55, the following considerations are particularly relevant:
 - (1) Convention No. 55 has been revised by the MLC, 2006, and the protection it provides with regard to shipowners' liability no longer corresponds with the requirements of the most recent instruments.
 - (2) Five Member States remain bound by Convention No. 55. Convention No. 55 is referred to in the Appendix of Convention No. 147, and therefore remains a source of obligations for nine Member States. It is possible that the application of Convention No. 55 may have been extended, by some of the countries that remain bound by that Convention to the fishing sector.¹²
 - (3) The MLC, 2006, is the up-to-date instrument that reflects the tripartite consensus on this issue. It provides comprehensive protection for seafarers and ensures a level playing field for shipowners through its unique enforcement mechanism.

IV. Possible action to consider with respect to the instruments

10. In the light of the foregoing, the Special Tripartite Committee (STC) might wish:

1. To classify Convention No. 55 as "outdated" and propose its abrogation at the 118th Session (2030) of the International Labour Conference.
2. To request the Office to launch an initiative to promote the ratification on a priority basis of the MLC, 2006, and, as the case may be, Convention No. 188 among those countries still bound by Convention No. 55.
3. To encourage the Member State which has already ratified the MLC, 2006, but remains bound by Convention No. 55 in respect of a non-metropolitan territory, to extend the application of the MLC, 2006, to that territory.

¹¹ See Article 38.

¹² See CEACR comments on [Peru \(2008\)](#).