



## 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 compliance and enforcement

#### Summary

The maritime labour instruments under review include **two Conventions, one Protocol and five Recommendations related to compliance and enforcement:**

- Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)
- Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (P147)
- Labour Inspection (Seafarers) Convention, 1996 (No. 178)
- National Seamen’s Codes Recommendation, 1920 (No. 9)
- Labour Inspection (Seamen) Recommendation, 1926 (No. 28)
- Social Conditions and Safety (Seafarers) Recommendation, 1958 (No. 108)
- Merchant Shipping (Improvement of Standards) Recommendation, 1976 (No. 155)
- Labour Inspection (Seafarers) Recommendation, 1996 (No. 185)

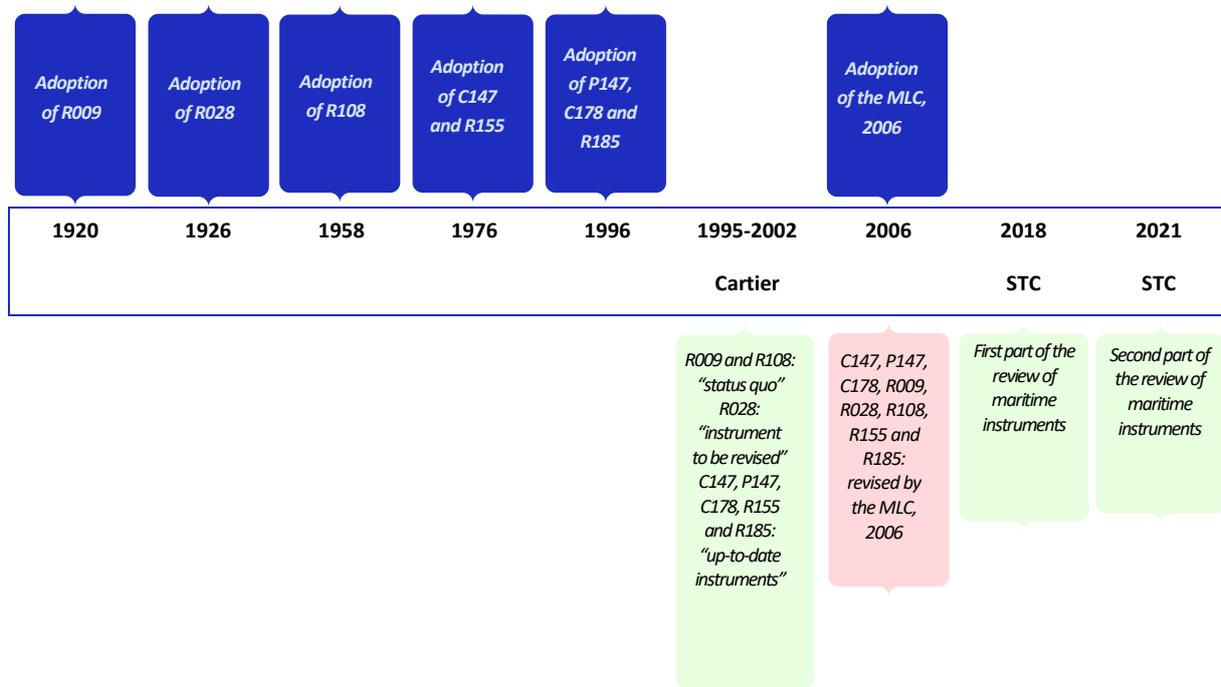
#### Status of the instrument under review

Convention No. 147	Up-to-date instrument	Revised by the MLC, 2006
Protocol No. 147	Up-to-date instrument	Revised by the MLC, 2006
Convention No. 178	Up-to-date instrument	Revised by the MLC, 2006
Recommendation No. 9	Instrument with interim status	Revised by the MLC, 2006
Recommendation No. 28	Outdated instrument	Revised by the MLC, 2006
Recommendation No. 108	Instrument with interim status	Revised by the MLC, 2006
Recommendation No. 155	Up-to-date instrument	Revised by the MLC, 2006
Recommendation No. 185	Up-to-date instrument	Revised by the MLC, 2006

**Possible action to consider**

1. To classify Convention No. 147 as “outdated” and propose its abrogation at the 118th Session (2030) of the International Labour Conference.
2. To classify the Protocol of 1996 (P147) as “outdated” and propose its withdrawal as soon as possible.
3. To classify Convention No. 178 as “outdated” and propose its withdrawal as soon as possible.
4. To classify Recommendations Nos 9, 28, 108, 155 and 185 as “outdated” and propose their withdrawal as soon as possible.

► Instruments relating to compliance and enforcement – Timeline



## I. Regulatory approach of the ILO with regard to compliance and enforcement

### A. Protection provided by ILO instruments

1. The [National Seamen's Codes Recommendation, 1920 \(No. 9\)](#), encourages Member States to undertake the clear and systematic codification of national laws relating to maritime labour so that the seafarers of the world, whether engaged on ships of their own or foreign countries, may have a better comprehension of their rights and obligations. The objective is also to facilitate the drawing up of an international seafarers' code.
2. The objective of the [Labour Inspection \(Seamen\) Recommendation, 1926 \(No. 28\)](#), is to promote a series of general principles to assist Member States in the institution or reorganization of their systems of inspection of the conditions under which seafarers work. The status and duties of inspectors are also set out with a view to ensuring their impartiality, competence and the necessary powers, including to issue orders, for the discharge of their functions.
3. The [Social Conditions and Safety \(Seafarers\) Recommendation, 1958 \(No. 108\)](#), takes into account the increase in the volume of tonnage registered in countries not hitherto regarded as being traditionally maritime in reaffirming the obligations of flag States in relation to the effective exercise of jurisdiction and control for the purpose of the safety and welfare of seafarers on board seagoing merchant ships. The Recommendation specifies that the flag State should: make and adopt regulations designed to ensure the observance of internationally accepted safety standards; establish an appropriate ship inspection service; ensure that the conditions under which seafarers serve are in accordance with the standards generally accepted by the traditional maritime

countries; ensure freedom of association for seafarers serving on board its ships; and adopt measures respecting the repatriation of seafarers serving on board its ships.

4. The [Merchant Shipping \(Minimum Standards\) Convention, 1976 \(No. 147\)](#), applies to every seagoing ship, whether publicly or privately owned, which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose. It provides that a State that ratifies it undertakes to have laws or regulations laying down, for ships registered in its territory: "(i) safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board ship; (ii) appropriate social security measures; and (iii) shipboard conditions of employment and shipboard living arrangements, in so far as these, in the opinion of the Member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned". It also has to satisfy itself that the provisions of such laws and regulations are substantially equivalent to the Conventions or Articles of Conventions referred to in the Appendix to the Convention,<sup>1</sup> in so far as it is not otherwise bound to give effect to them by reason of their ratification. Convention No. 147 establishes the requirement for a State that ratifies it to exercise effective jurisdiction or control over ships registered in its territory in respect of: safety standards, including standards of competency, hours of work and manning; social security measures prescribed by national laws or regulations; and shipboard conditions of employment and living arrangements. Seafarers employed on ships registered in its territory have to be properly qualified or trained for the duties for which they are engaged, due regard being had to the Vocational Training (Seafarers) Recommendation, 1970 (No. 137). States are required to carry out inspections on ships registered in their territory to ensure compliance with the international Conventions that they have ratified. The Convention specifies that an inquiry must be held into any serious marine casualty, particularly those involving injury and/or loss of life, and that its final report is normally to be made public. Finally, the Convention establishes a port State control procedure. In effect, it provides that any State that has ratified the Convention, if it receives a complaint or obtains evidence that a ship flying a foreign flag that calls into port does not conform to the standards of the Convention, may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety and health.
5. The [Merchant Shipping \(Improvement of Standards\) Recommendation, 1976 \(No. 155\)](#), supplements Convention No. 147. In Paragraph 2, it calls for national laws and regulations or, as appropriate, applicable collective agreements, to be *at least equivalent*<sup>2</sup>

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<sup>1</sup> The Conventions enumerated in the Appendix: Minimum Age Convention, 1973 (No. 138), or Minimum Age (Sea) Convention (Revised), 1936 (No. 58), or Minimum Age (Sea) Convention, 1920 (No. 7); Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), or Sickness Insurance (Sea) Convention, 1936 (No. 56), or Medical Care and Sickness Benefits Convention, 1969 (No. 130); Medical Examination (Seafarers) Convention, 1946 (No. 73); Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (Articles 4 and 7); Accommodation of Crews Convention (Revised), 1949 (No. 92); Food and Catering (Ships' Crews) Convention, 1946 (No. 68) (Article 5); Officers' Competency Certificates Convention, 1936 (No. 53) (Articles 3 and 4); Seamen's Articles of Agreement Convention, 1926 (No. 22); Repatriation of Seamen Convention, 1926 (No. 23); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

<sup>2</sup> Which is more restrictive than substantial equivalence. See ILO: [Labour standards on merchant ships](#), *General Survey by the Committee of Experts on the Application of Conventions and Recommendations, General Survey of the Reports on the Merchant Shipping (Minimum Standards) Convention (No. 147) and the Merchant Shipping (Improvement of Standards)*

to the Conventions or Articles of Conventions referred to in the Appendix to Convention No. 147. Paragraph 3 also calls for such laws and regulations and collective agreements to contain provisions that are *at least equivalent* to the provisions of the instruments referred to in the Appendix of the Recommendation.<sup>3</sup>

6. The [Protocol of 1996 to the Merchant Shipping \(Minimum Standards\) Convention, 1976 \(P147\)](#), extends the list of Conventions contained in the Appendix to Convention No. 147 and, in this Appendix, includes the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), in place of the Repatriation of Seamen Convention, 1926 (No. 23).
7. The [Labour Inspection \(Seafarers\) Convention, 1996 \(No. 178\)](#), applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of a Member for which the Convention is in force and is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose. It provides for its extension, where it is deemed practicable, after consulting the representative organizations of fishing vessel owners and fishers, to commercial maritime fishing vessels. States which ratify the Convention are required to maintain a system of inspection of seafarers' working and living conditions, which shall be placed under the authority of a central coordinating authority.
8. The [Labour Inspection \(Seafarers\) Recommendation, 1996 \(No. 185\)](#), includes further specifications on the role of the central coordinating authority, the means made available to inspectors and their duties and powers.
9. The [Maritime Labour Convention, 2006, as amended \(MLC, 2006\)](#), takes over the instruments relating to compliance and enforcement through two distinct approaches. First, it achieves the objective set out in Recommendation No. 9 of 1920 of facilitating the emergence of an international seafarers' code. This was extended, first in 1958 through Recommendation No. 108, which takes into account the emergence of new maritime States and the significant internationalization of maritime labour relations, and then in 1976 through Convention No. 147. That Convention, supplemented by Recommendation No 155 and Protocol No. 147, with reference to a selection of maritime instruments adopted by the ILO, organizes a coherent framework for the protection of the working and living conditions of seafarers. Second, the MLC, 2006, consolidates and modernizes in Title 5, respecting compliance and enforcement, the contribution of the previous instruments. The content of these instruments has been modernized and integrated in Regulation 5.1. In particular, the MLC, 2006, adds new elements through the role that it accords to recognized organizations, the introduction of the certification of compliance by ships and detailed on-board complaint procedures. Taking inspiration from the instruments adopted under the auspices of the International Maritime Organization (IMO), the ILO has also introduced the possibility of the control of living and working conditions on board ship by the port State. In this regard, Article 4 of Convention No. 147 played a pioneering role and is now taken up in greater detail in Regulation 5.2. With a view to ensuring the universal scope of the MLC, 2006, it contains a "no more favourable

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*Recommendation (No. 155), 1976*, Report III (Part 4 B), International Labour Conference, 77th Session, Geneva, 1990, paras 65 et seq.

<sup>3</sup> Conventions enumerated in the Annex: Officers' Competency Certificates Convention, 1936 (No. 53); Food and Catering (Ships' Crews) Convention, 1946 (No. 68); Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133); Prevention of Accidents (Seafarers) Convention, 1970 (No. 134); Workers' Representatives Convention, 1971 (No. 135); Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91); or Seafarers' Annual Leave Convention, 1976 (No. 146); Social Security (Seafarers) Convention, 1946 (No. 70); Vocational Training (Seafarers) Recommendation, 1970 (No. 137); IMCO/ILO Document for Guidance, 1975.

treatment” clause<sup>4</sup> for ships flying the flag of any State that has not ratified it, which allows the inspection of these ships in the ports of a State party on the basis of the minimum provisions of the Convention.

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

10. Convention No. 147 was adopted in 1976, and 56 ratifications were registered. It has been denounced by 44 Member States and 12 Member States therefore remain bound by the Convention.<sup>5</sup> Two Member States remain bound by the Convention in non-metropolitan territories only.<sup>6</sup> There are 21 comments by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) awaiting a response with regard to implementation issues.<sup>7</sup>
11. Protocol No. 147 was adopted in 1996, and 24 ratifications were registered. It has been denounced by 24 Member States and no Member States therefore remain bound by the Protocol.
12. Convention No. 178 was adopted in 1976, and 15 ratifications were registered. It has been denounced by 14 Member States and only 1 Member State will remain bound by the instrument.<sup>8</sup>

<sup>4</sup> Article V, paragraph 7, of the MLC, 2006: “Each Member shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.”

<sup>5</sup> Namely Azerbaijan, Costa Rica, Dominica, Egypt, Iraq, Israel, Kyrgyzstan, Peru, Tajikistan, Trinidad and Tobago, Ukraine and United States. To be noted that Convention No. 147 remains in force for Brazil, but only until 7 May 2021, when the MLC, 2006, will enter into force for this Member State. The Government of [Egypt](#) indicates that “work is under way to bring national legislation into conformity with the relevant provisions of the Maritime Labour Convention, 2006, as amended (MLC, 2006), in preparation for its effective implementation before ratification”. The Government of [Kyrgyzstan](#) indicates that there are “no seagoing ships registered in Kyrgyzstan and that therefore this Convention is without object”. The Government of [Tajikistan](#) indicates that “at present the country does not have a maritime fleet and that [...] this Convention [...] is not applied in law or practice.” The Government of [Ukraine](#) indicates that it “has taken active steps towards the review of the national legislation which would eventually permit the early ratification and effective implementation of the MLC, 2006”. Convention No. 147 has also been declared applicable to American Samoa (United States), Guam (United States), Northern Mariana Islands (United States), Puerto Rico (United States) and United States Virgin Islands (United States).

<sup>6</sup> Convention No. 147 remains applicable to French Polynesia (France), the French Southern and Antarctic Territories (France), Aruba (Netherlands) and therefore reporting obligations continue to apply to the Member States concerned. Regarding the [French Southern and Antarctic Territories \(TAAF\)](#), the Government indicates that, “since the implementation of Act No. 2005-412 of 3 May 2005, commercial vessels are registered in the French International Register (RIF) and that therefore only a few fishing boats are still registered in the French Southern and Antarctic Territories (TAAF)”. Regarding [Aruba](#), the Government indicates that there are “neither seafarers nor ships registered in the territory”.

<sup>7</sup> They concern Aruba (Netherlands) (request for information on the number of seafarers and the number of ships registered); United States and its non-metropolitan territories (seafarers’ articles of agreement, certificates of service, recruitment, complaints, responsibilities for non-resident seafarers working in foreign waters in the event of death or injury, frequency of medical examinations); Peru (safety and conditions on board, inspections by the flag State and port State control, recruitment, inquiries in the event of serious incidents); Trinidad and Tobago (social security, recruitment and port State control); Azerbaijan (social security, articles of agreement and complaints); Iraq (substantial equivalence with all the Conventions enumerated in the Appendix); Egypt (national legislation that does not give effect to all the requirements); Dominica (request for information on the implementation of all the requirements of the Convention); and Costa Rica (articles of agreement, living conditions on board and catering).

<sup>8</sup> Namely Peru. To be noted that Convention No. 178 remains in force for Brazil, but only until 7 May 2021, when the MLC, 2006, will enter into force for this Member State. Comments by the CEACR are awaiting a response in relation to implementation issues concerning Peru (inspection in the event of a significant alteration, compensation in cases where a ship is unduly retained or delayed, qualifications of inspectors, inspection reports and inspection reports pursuant to a major incident).

13. Recommendation No. 9 was adopted in 1920. Recommendation No. 28 was adopted in 1926 and was replaced by Convention No. 178.<sup>9</sup> Recommendation No. 108 was adopted in 1958.

## II. Evolution of the instruments: From adoption to 2021

14. In the context of the review carried out by the **Cartier Working Party**,<sup>10</sup> Convention No. 147, Protocol No. 147 and Convention No. 178 were considered to be “up-to-date instruments”. Recommendation No. 28 was classified in the category of “outdated instruments”. Recommendations Nos 9 and 108 were classified in the category of “status quo”. Recommendations Nos 155 and 185 were classified as “up-to-date instruments”.
15. Convention No. 147 establishes the requirement for the States that have ratified it to give effect to a list of Conventions (or Articles of Conventions) contained in its Appendix. Convention No. 147, as well as the maritime Conventions enumerated in its Appendix, have been revised by the MLC, 2006 and are closed for any further ratifications. The scope of application of the MLC, 2006, and the responsibilities that it establishes in respect of flag States, port States and labour providers ensure the broader and more effective implementation of the rights of seafarers in relation to working and living conditions on board ships than under the system established by Convention No. 147.
16. During the work of the Cartier Working Party, the need was identified to regularly update the Appendix to Convention No. 147 to ensure that it took into account developments in the maritime transport sector. Protocol No. 147 was adopted in response to this need to update the Appendix. It has been denounced by all the Member States that initially ratified it, which have chosen to ratify the MLC, 2006. The entry into force of the MLC, 2006, had the effect of revising Protocol No. 147, which is now closed for any further ratifications.<sup>11</sup>
17. The implementation of Recommendation No. 155 is linked to that of Convention No. 147, which it supplements. It was also revised by the MLC, 2006. The same applies to Recommendations Nos 9 and 108, the objectives of which (the development of an international seafarers’ code, recognition of the emergence of new maritime States and the increasing internationalization of maritime labour relations) are achieved through the MLC, 2006.
18. Recommendation No. 28 on labour inspection for seafarers was replaced by Convention No. 178,<sup>12</sup> which is supplemented by Recommendation No. 185. These two instruments were revised by the MLC, 2006, with their content reproduced, modernized and supplemented in Regulation 5.1. As only one Member State remains bound by Convention No. 178, it is no longer in force and it is closed for any further ratifications.
19. The instruments related to compliance and enforcement under review by the Special Tripartite Committee have two complementary objectives: the development of an international social code for seafarers, which takes into account the significant transformations in the maritime transport sector, and the establishment of labour

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<sup>9</sup> Article 10 of Convention No. 178.

<sup>10</sup> See [GB.283/LILS/WP/PRS/1/2](#).

<sup>11</sup> The Protocol refers to the standard clauses of Article 11 of Convention No. 147 concerning the consequences of its revision by the MLC, 2006.

<sup>12</sup> Article 10 of Convention No. 178.

inspection under the responsibility of the flag State and control by the port State to ensure the effective application of this code.

20. The MLC, 2006, through its consolidation of earlier instruments, the amendment procedures that ensure that it is updated regularly, the responsibilities that it establishes in relation to certification, ship inspection and complaint procedures for seafarers, is now the only relevant instrument to be taken into account for the full achievement of these objectives.
21. Convention No. 147 remains nevertheless a relevant instrument for States that have not ratified the MLC, 2006. In the first place, States that are bound by Convention No. 147 undertake to adopt and maintain legislation that protects seafarers by according them working and living conditions based on the requirements set out in several ILO instruments. Secondly, the Convention allows for port State control in relation to foreign ships calling into ports and continues to be taken into account in the context of regional Memoranda of Understanding on port State control.
22. However, the almost universal coverage of the MLC, 2006 (ratified by 97 Member States and covering over 91 per cent of the gross tonnage of the global merchant fleet) gives rise to a risk of legal insecurity for States that remain bound by Convention No. 147. Ships that fly their flag do not benefit from the certification procedure which offers them a presumption of compliance with the requirements of the MLC, 2006. They are therefore exposed to more in-depth inspection in foreign ports, which can slow down port operations.
23. One of the recurrent challenges of the application of maritime labour Conventions, including Convention No. 178, relates to their potential application to categories of workers other than seafarers, within the meaning of the MLC, 2006. It should be noted in this respect that the Work in Fishing Convention, 2007 (No. 188), includes provisions on compliance and enforcement.<sup>13</sup>

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

24. In the review to decide on the status of Conventions Nos 147 and 178, Protocol No. 147 and Recommendations Nos 9, 28, 108, 155 and 185, the following considerations are particularly relevant:
  - (1) Convention No. 147 was revised by the MLC, 2006, and 12 Member States remain bound by the instrument.
  - (2) Protocol No. 147 was revised by the MLC, 2006, no Member State remains bound by the instrument and it is no longer in force.
  - (3) Convention No. 178 was revised by the MLC, 2006, only one Member State remains bound by the instrument and it is no longer in force.
  - (4) Recommendations Nos 9, 28, 108, 155 and 185 were taken into account in the MLC, 2006.
  - (5) The MLC, 2006, is the up-to-date instrument that reflects the tripartite consensus in relation to compliance and enforcement. It provides comprehensive protection for seafarers and ensures a level playing field for shipowners through its certification,

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<sup>13</sup> Articles 40 et seq. of Convention No. 188.

inspection and complaint procedures, under the responsibility of flag and port States.

#### IV. Possible action to consider with respect to the instruments

25. In light of the foregoing, the Special Tripartite Committee (STC) may wish:

1. To classify Convention No. 147 as “outdated” and propose its abrogation at the 118th Session (2030) of the International Labour Conference and, in this regard:
  - (a) encourage Member States that are still bound by Convention No. 147 to ratify the MLC, 2006, which would involve the denunciation *ipso jure* of Convention No. 147;
  - (b) encourage Member States that have already ratified the MLC, 2006, but which remain bound by Convention No. 147 only for non-metropolitan territories, to extend the application of the MLC, 2006, to those territories.
2. To classify Protocol No. 147 as “outdated” and propose its withdrawal as soon as possible.
3. To classify Convention No. 178 as “outdated” and propose its withdrawal as soon as possible. In this respect, the ratification of the MLC, 2006 and of Convention No. 188 by the Member State still bound by Convention No. 178, should be encouraged.
4. To classify Recommendations Nos 9, 28, 108, 155 and 185 as “outdated” and propose their withdrawal as soon as possible.