

**Third meeting of the Special Tripartite Committee
of the MLC, 2006**Geneva
23–27 April 2018**Instruments relating to seafarers'
employment agreements****Summary**

The maritime labour instruments under review include **one Convention dealing with seafarers' employment agreements:**

- [Seamen's Articles of Agreement Convention, 1926 \(No. 22\)](#).

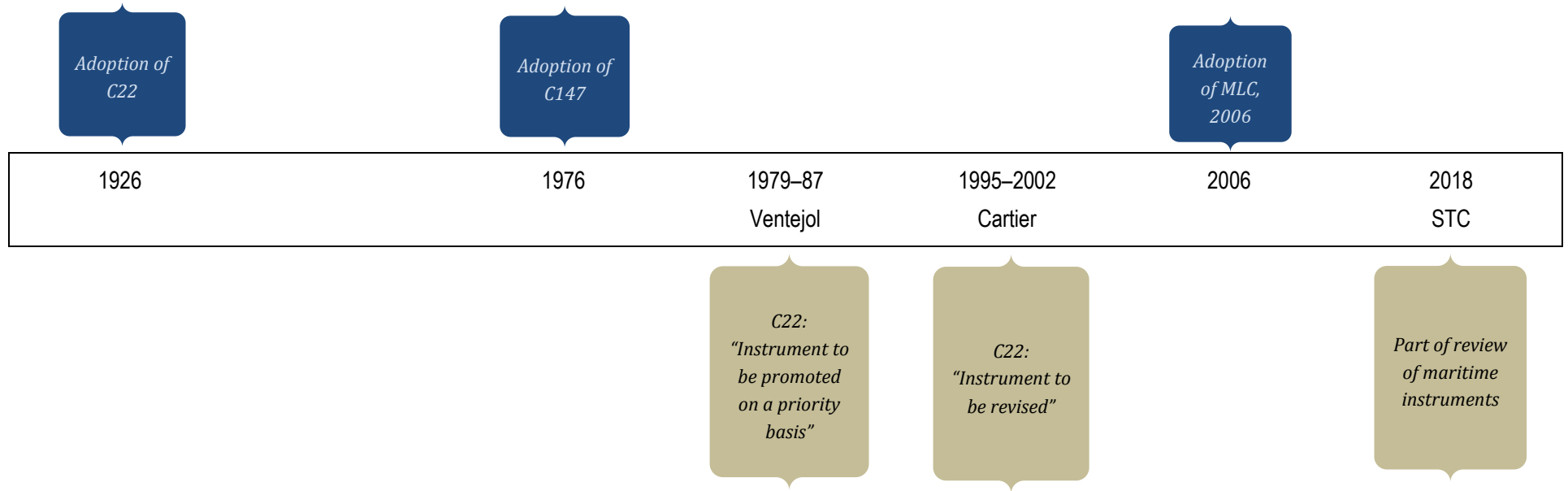
Status of the instrument under review

	Recommendation of the Cartier Working Party	Follow-up since the Cartier Working Party
Convention No. 22	To be revised	Revised by the MLC, 2006

Possible action to consider

1. To classify Convention No. 22 as "outdated" and discuss the possibility of its abrogation or withdrawal at a later date.

Instrument relating to seafarers' employment agreements – Chronology



I. Regulatory approach of the ILO with regard to seafarers' employment agreements

A. Protection provided by ILO instruments ¹

1. The [Seamen's Articles of Agreement Convention, 1926 \(No. 22\)](#), applies to all seagoing vessels. ² It applies to owners, masters and seamen ³ of such vessels and does not apply to fishing vessels. Articles of agreement shall be signed both by the shipowner or a representative of the shipowner and by the seafarer. The foregoing requirement shall be deemed to have been fulfilled if the competent authority certifies that the provisions of the agreement have been laid before it in writing and have been confirmed both by the shipowner or a representative of the shipowner and by the seafarer. Article 6 of the Convention specifies the minimum content of these articles of agreement. Safeguards have to be established to ensure that seafarers understand the content of the agreement. This means in practice that they have the right to examine the agreement and seek advice before signing it. Seafarers must be able to obtain information when on board ship regarding their rights and obligations arising from the agreement.
2. The Convention also provides for the keeping of a crew list and the issuing of a document containing a record of his employment on board the vessel. This document shall not contain any statement as to the quality of the seaman's work or as to his wages. Lastly, the Convention contains several provisions concerning termination of the agreement, in particular regarding the notice period.
3. The [Maritime Labour Convention, 2006, as amended \(MLC, 2006\)](#), establishes the obligation, under Regulation 2.1 on seafarers' employment agreements, for the terms and conditions for employment of a seafarer to be set out or referred to in a clear written legally enforceable agreement. Compulsory minimum content is specified. Seafarers must therefore be in possession of an employment agreement signed by the seafarer and by the shipowner or a representative of the shipowner. Where they are not employees, seafarers must have evidence of contractual or similar arrangements providing them with decent working and living conditions on board the ship. The MLC, 2006 reaffirms the seafarer's right to examine and seek advice on the agreement before signing it. It also covers the document containing a record of the seafarer's employment. Note should also be taken of the broad scope of the MLC, 2006 which provides protection for the seafarer, defined as "any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies", and applies to "all ships, whether publicly or privately owned, ordinarily engaged

¹ The question of employment agreements for fishers is covered by the [Fishermen's Articles of Agreement Convention, 1959 \(No. 114\)](#), which was revised by the [Work in Fishing Convention, 2007 \(No. 188\)](#).

² Article 2(a) states: "the term *vessel* includes any ship or boat of any nature whatsoever, whether publicly or privately owned, ordinarily engaged in maritime navigation". Article 1 provides for certain exclusions, such as vessels engaged in the coasting trade, pleasure yachts, fishing vessels and certain vessels engaged in the small-scale coasting trade on a national or regional basis.

³ Article 2(b) states: "the term *seaman* includes every person employed or engaged in any capacity on board any vessel and entered on the ship's articles. It excludes masters, pilots, cadets and pupils on training ships and duly indentured apprentices, naval ratings, and other persons in the permanent service of a Government".

in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks.”⁴ Moreover, seafarers’ employment agreements are among the particulars that have to be inspected for the purpose of obtaining a maritime labour certificate.

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

4. Convention No. 22 was adopted in 1926, and 60 ratifications were registered. The ratification of the MLC, 2006 has involved the denunciation of this instrument by 43 States to date.⁵ Seventeen States remain bound by this Convention.⁶ A total of 12 comments by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) are awaiting replies with regard to problems of application.⁷

II. Evolution of the instrument: From adoption to 2018

A. Status

5. Further to the review carried out by the **Ventejol Working Party**, it was decided to classify the Convention in the category of “instruments to be promoted on a priority basis”.⁸
6. During the review by the **Cartier Working Party**, it was pointed out that the Convention had been widely ratified and that there was nothing in the CEACR comments awaiting replies to suggest that it posed any particular problem for member States. However, after a request for information had been made to member States, the Governing Body decided that the Convention should be revised since it was an older instrument which no longer reflected

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

⁵ Pursuant to Article X of the MLC, 2006.

⁶ The following States remain bound by Convention No. 22: Brazil, Colombia, Cuba, Djibouti, Dominica, Egypt, Iraq, Mauritania, Mexico, Pakistan, Papua New Guinea, Peru, Sierra Leone, Somalia, the former Yugoslav Republic of Macedonia, Uruguay and the Bolivarian Republic of Venezuela. Chile ratified the MLC, 2006 on 22 February 2018. With regard to the former Yugoslav Republic of Macedonia, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted the Government’s indication that the country does not have a shipping fleet, does not have any vessel registered under its flag, and does not have any legislation relating to matters covered by the ILO maritime Conventions. Furthermore, the Convention was declared applicable to the following non-metropolitan territories: Anguilla (United Kingdom), Aruba (Netherlands), Caribbean Part of the Netherlands, China – Hong Kong Special Administrative Region, China – Macau Special Administrative Region, Falkland Islands (Malvinas) (United Kingdom), French Polynesia (France), French Southern and Antarctic Territories (France), Guernsey (United Kingdom), Jersey (United Kingdom) and Sint-Maarten (Netherlands).

⁷ The comments concern: Anguilla (United Kingdom); Brazil; China – Macau Special Administrative Region; Colombia; Cuba; Iraq; Mauritania; Mexico; Pakistan; Papua New Guinea; French Polynesia (France); and the Bolivarian Republic of Venezuela.

⁸ See [GB.273/LILS/WP/PRS/4](#) and *Official Bulletins* Vol. LXII, Series A, 1979 and Vol. LXX, Series A, 1987.

current employment practices. This conclusion was based in particular on the discussions which had accompanied the revision in 1996 of the Placing of Seamen Convention, 1920 (No. 9), by the Recruitment and Placement of Seafarers Convention, 1996 (No. 179).⁹

B. Application and consolidation

7. Convention No. 22 appears in the Appendix to the [Merchant Shipping \(Minimum Standards\) Convention, 1976 \(No. 147\)](#). States which have ratified the latter undertake to verify that their legislation is substantially equivalent¹⁰ to the Conventions or Articles of Conventions referred to in the Appendix, in so far as they are not otherwise bound to give effect to the Conventions in question. Nine States which have not ratified Convention No. 22 give effect to it through the application of Convention No. 147.¹¹
8. Convention No. 22 was revised by the MLC, 2006 which incorporates its objective, namely the obligation to ensure that seafarers have a fair employment agreement.¹² Although Convention No. 22 remains open to ratification,¹³ its last ratification was registered in 1991.

C. Situation in relation to international labour standards

9. On account of its consolidation by the MLC, 2006, the content of Convention No. 22 was recently the subject of an in-depth examination aimed at ensuring that it remains up to date and relevant in terms of the requirements and practices of the sector.
10. The incorporation of Convention No. 22 into Regulation 2.1 of the MLC, 2006 was accompanied by a real drive to ensure modernization. The objective was to adapt to the practices and terminology in use in the various maritime countries (for non-employees, evidence of contractual or similar arrangements; the employment agreement constituted wholly or partially by a collective agreement, etc.).¹⁴ Although the protection afforded by Convention No. 22 has been broadly incorporated, certain rights have been improved (length of the minimum notice period, which has been increased from 24 hours to seven days). The compulsory clauses have been reviewed and the requirement for a written employment agreement, signed by the seafarer and by the shipowner or a representative of the shipowner, extends to all seafarers within the meaning of the MLC, 2006.
11. It should be added that the requirements of the MLC, 2006, relating to seafarers' employment agreements fall within the scope of seafarers' living and working conditions that have to be inspected and approved by the flag State. For ships concerned by the

⁹ See [GB.277/LILS/WP/PRS/1/2](#).

¹⁰ 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, Geneva, 1990, pp. 41 ff.

¹¹ Azerbaijan, Costa Rica, Iceland, Israel, Kyrgyzstan, Tajikistan, Trinidad and Tobago, Ukraine, and the United States.

¹² See Regulation 2.1 of the MLC, 2006, and the associated provisions of the Code.

¹³ See the *Introductory Note* prepared for the third meeting of the Special Tripartite Committee (STC).

¹⁴ See M. McConnell, D. Devlin and C. Doumbia-Henry, *The Maritime Labour Convention*, Martinus Nijhoff Publishers, 2011, pp. 279 ff.

compulsory certification stipulated by the MLC, 2006, observance of these requirements must be taken into account. Seafarers' employment agreements are therefore the subject of controls as part of the procedures established by the MLC, 2006, but above all they are key documents in relation to the work of flag State or port State inspectors. In this way the MLC, 2006 represents major progress which is highly beneficial.

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

12. In the context of the review to determine the status of Convention No. 22, account should be taken of the following considerations, which are particularly relevant:

Convention No. 22, which was revised by the MLC, 2006, uses terminology which may be considered archaic in certain respects and has a much narrower scope of application than the MLC, 2006. However, it is an instrument which retains a certain value:

- Several States which have not ratified the MLC, 2006 remain bound by this instrument;¹⁵ it is applicable to a number of non-metropolitan territories;
- Convention No. 22 is an instrument incorporated into the system of Convention No. 147 which, in this context, remains relevant for nine States.

IV. Possible action to consider with respect to the instrument

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

1. To classify Convention No. 22 as “outdated”. In this regard, the STC might wish:
 - (a) to encourage States still bound by this Convention to ratify the MLC, 2006. This would involve the “automatic” denunciation of Convention No. 22;
 - (b) to review the situation of this Convention at the next meeting of the STC in order to decide on its possible withdrawal or abrogation.

¹⁵ Seventeen States.