



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

Geneva, 19–23 April 2021

► Conventions not revised by the MLC, 2006

Summary

The maritime labour instruments under review include **two Conventions that were not revised by the MLC, 2006:**

- Seafarers' Pensions Convention, 1946 (No. 71);
- Seafarers' Identity Documents Convention, 1958 (No. 108).

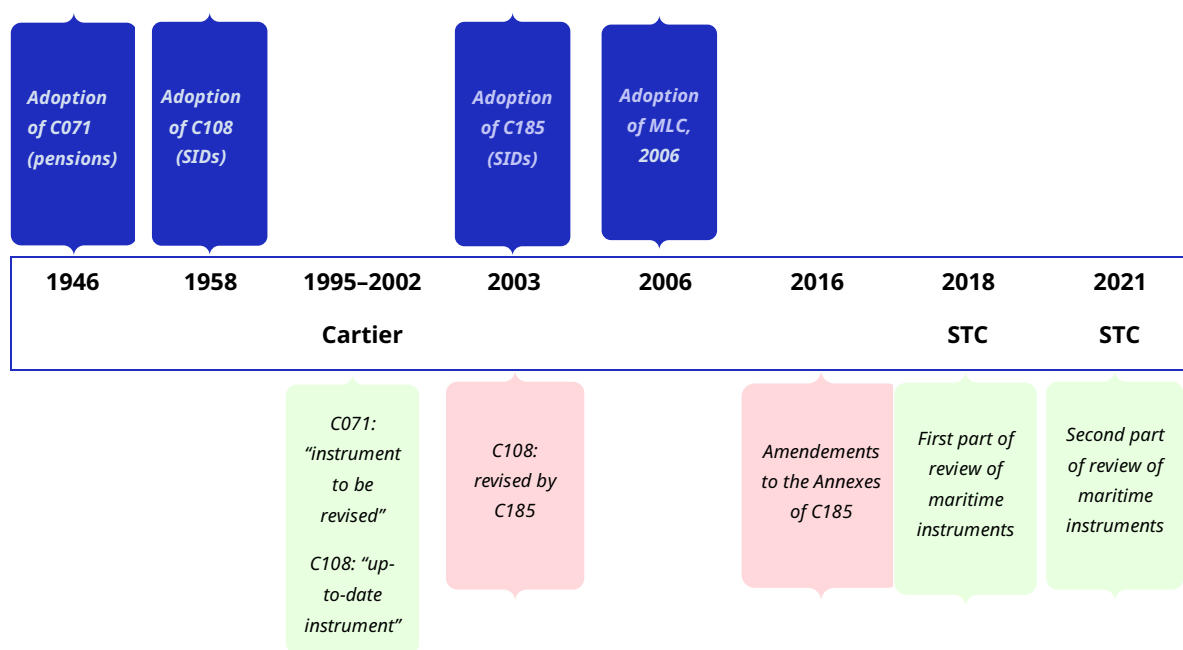
Status of the instrument under review

Convention No. 71	To be revised	(Not revised by the MLC, 2006)
Convention No. 108	Outdated instrument	(Not revised by the MLC, 2006 – revised by Convention No. 185)

Possible action to consider

- 1 To classify Convention No. 71 as “requiring further action to ensure continued and future relevance” and to establish the follow-up with a view to determining the action to be taken.
- 2 To classify Convention No. 108 as “outdated” and propose its abrogation at the 118th Session (2030) of the International Labour Conference.

► Conventions not revised by the MLC, 2006 – Timeline



I. Regulatory approach of the ILO with regard to the Conventions not revised by the MLC, 2006

A. Protection provided by ILO instruments

1. The scope of application of the [Seafarers' Pensions Convention, 1946 \(No. 71\)](#), is very broad, as it includes seafarers, that is every person employed on board or in the service of any seagoing vessel, other than a ship of war, which is registered in a territory for which the Convention is in force. However, it offers Member States real flexibility, as they may envisage exceptions in respect of certain categories of seafarers, such as persons employed on board or in the service of vessels that are not engaged in trade, the transport of cargo or passengers; fishing vessels; and vessels of less than 200 gross tons. Exceptions may also apply to persons employed on board or in the service of the ship by an employer other than the shipowner, except radio officers or operators and catering staff; persons not remunerated for their services or remunerated only by a nominal salary or wage, or remunerated exclusively by a share of profits; persons working exclusively on their own account; persons not resident in the territory of the Member State; and persons who are not nationals of the Member State. The Convention specifies that the pensions provided shall be payable to seafarers who have completed a prescribed period of sea service on attaining the age of 55 or 60 years. It also specifies the minimum level of the pension, calculated with reference to a percentage of the remuneration paid for each year of sea service. The contribution of seafarers collectively is limited to a maximum of half of the cost of the pensions payable under the scheme. The principle of the maintenance of rights in course of acquisition is provided for in the event of a change of scheme. Shipowners and seafarers who contribute to the scheme shall be entitled to participate in its management through representatives. The scheme must grant a right of appeal in any dispute arising thereunder.

2. The [Seafarers' Identity Documents Convention, 1958 \(No. 108\)](#), applies to every seafarer engaged in any capacity on board a vessel, other than a ship of war, registered in a territory for which the Convention is in force and ordinarily engaged in maritime navigation. Subject to any exclusion decided upon by the competent authority after consultation with the shipowners' and seafarers' organizations concerned, the Convention may therefore be applied to fishers. Each Member State that ratifies Convention No. 108 undertakes to issue to each of its nationals who is a seafarer on application by the seafarer a "seafarers' identity document" (SID). A SID may also be issued to a seafarer serving on board a vessel registered in its territory or registered at an employment office within its territory. The Convention specifies the particulars that must be included in the document and the authorized reasons for entry into the territory of the State party, including to join a ship, transfer to another ship, transit or benefit from shore leave.
3. Convention No. 108 was revised by the [Seafarers' Identity Documents Convention \(Revised\), 2003 \(No. 185\)](#).¹ This instrument, adopted in the context of the 11 September 2001 attacks, is intended to provide seafarers with a reliable and secure identity document with a view to facilitating their temporary entry into a foreign territory to enable them to join their ship, transfer to another ship, pass in transit or to benefit from shore leave. In comparison with Convention No. 108, which does not contain any security device, Convention No. 185 fundamentally modifies the requirements relating to the manufacture and content of SIDs, through the use of biometric data in accordance with the specifications of the International Civil Aviation Organization (ICAO). Amendments to the Annexes of Convention No. 185 were adopted in 2016 to take into account the most recent standards developed by ICAO, which are currently used for electronic passports.

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

4. Convention No. 71 was adopted in 1946, and 13 ratifications have been registered. It has not been denounced by any Member States and therefore remains in force for 13 Member States.² There are five comments by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) awaiting a response with regard to implementation issues.³

¹ Article 10 of Convention No. 185.

² Namely Algeria, Argentina, Bulgaria, Djibouti, Egypt, France, Greece, Italy, Lebanon, Netherlands, Norway, Panama and Peru. Convention No. 71 has also been declared applicable to New Caledonia (France) and French Polynesia (France).

³ They concern Panama (information on the number of retirees covered and the replacement rate of the pension, and the participation of insured persons in the administration of the scheme), Norway (the coverage of hotel and restaurant personnel on board tourist ships registered with the Norwegian International Ship Register and information on the current reform process), Italy (the retirement age and information requested on the level of pensions), Greece (information requested on the impact of the economic crisis and the reforms introduced on the implementation of the Convention) and Djibouti (information requested on the establishment of the National Social Security Fund and on the retirement age).

5. Convention No. 108 was adopted in 1958, and 64 ratifications were registered. It entered into force in 1961. It has since been denounced by ten Member States following the ratification of Convention No. 185. It therefore remains in force for 54 Member States⁴ and in one Member State only in relation to non-metropolitan territories.⁵ There are 40 CEACR comments awaiting a response with regard to implementation issues. Following its revision by Convention No. 185, Convention No. 108 is closed for any further ratifications.

II. Evolution of the instruments: From adoption to 2021

6. In the context of the review carried out by the **Cartier Working Party**,⁶ Convention No. 71 was classified in the category of “instruments to be revised”.
7. Convention No. 71 was initially included among the Conventions to be revised with the entry into force of the MLC, 2006.⁷ However, it was finally withdrawn from the list on the grounds that the protection it affords to seafarers is not reproduced by any of the provisions contained in Regulation 4.5 of the MLC, 2006, on social security.⁸ Convention No. 71 therefore retains relevance for the protection that it provides to seafarers in relation to pensions.
8. With reference to the instruments adopted by the ILO in relation to social security, seafarers are in principle excluded from the scope of application of the Social Security (Minimum Standards) Convention, 1952 (No. 102).⁹
9. Convention No. 71, which has not been revised since its adoption, remains relevant as the only ILO instrument providing specifications concerning the scope of the protection to be granted to seafarers in relation to pensions. However, only 13 States remain bound by the instrument.¹⁰ Moreover, the comments awaiting responses show that its approach, which dates from 1946, is not necessarily in accordance with the development of national legislation respecting coverage of the old-age contingency. For example, the retirement age that it sets out (55 or 60 years) gives rise to difficulties in light of recent reforms to old-age schemes in certain Member States, which are tending to raise the retirement age.
10. In the context of the review carried out by the Cartier Working Party, Convention No. 108 was classified as an “up-to-date” instrument.

⁴ See the [detailed list](#) on the NORMLEX database. The Convention has also been declared applicable to the Hong Kong Special Administrative Region (China), the Macau Special Administrative Region (China), the Faroe Islands (Denmark), Anguilla (United Kingdom), Bermuda (United Kingdom), British Virgin Islands (United Kingdom), Falkland Islands (Malvinas) (United Kingdom), Gibraltar (United Kingdom), Guernsey (United Kingdom), Isle of Man (United Kingdom), Jersey (United Kingdom), Montserrat (United Kingdom), and St Helena (United Kingdom). A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning the sovereignty over the Falkland Islands (Malvinas).

⁵ Convention No. 108 remains applicable to New Caledonia (France), French Polynesia (France) and to the French Southern and Antarctic Territories (France).

⁶ See [GB.283/LILS/WP/PRS/1/2](#).

⁷ Which are enumerated in Article X of the MLC, 2006.

⁸ See [Provisional Record No. 7](#), Part I, Report of the Committee of the Whole, of the 94th (Maritime) Session of the International Labour Conference, 2006, paras 216–223.

⁹ Article 77, para. 1, of Convention No. 102: “This Convention does not apply to seamen or seafishermen: provision for the protection of seamen and seafishermen has been made by the International Labour Conference in the Social Security (Seafarers) Convention, 1946, and the Seafarers’ Pensions Convention, 1946.”

¹⁰ All of these States have ratified the MLC, 2006, with the exception of Egypt and Peru.

11. Until 2004, the inclusion in the MLC, 2006, of provisions on seafarers' identity documents had been envisaged. In this respect, the possibility of including Conventions Nos 108 and 185 among the instruments to be revised by the entry into force of the MLC, 2006, was discussed, but not finally retained.¹¹
12. Convention No. 108 retains significant influence in the maritime transport sector. There are 54 Member States which remain bound by the instrument. Its revision by Convention No. 185 in 2003 was motivated by the desire to preserve seafarers' right to move and to shore leave, in a context in which threats to maritime security required and continue to require higher standards for the manufacture of SIDs than those prevailing in 1958, when Convention No. 108 was adopted. In this respect, Convention No. 185 is the result of a strong international consensus, given expression by the ILO as well as the International Maritime Organization through the adoption of the International Code for the Security of Ships and of Port Facilities (ISPS), which entered into force in 2004. Convention No. 185 must therefore be considered the up-to-date and relevant instrument respecting SIDs.
13. At the same time, it should be admitted that the ratification and implementation promotion of Convention No. 185 continue to face multiple challenges, despite the intense efforts made to make the Convention more relevant.
14. One of the recurrent challenges of the application of maritime labour Conventions relates to their potential application to categories of workers other than seafarers. The scope of application of Convention No. 71 is very broad and covers categories of persons employed by or in the service of seagoing ships, including fishing vessels. Within the framework of both Convention No. 108 and Convention No. 185, Member States can decide to issue SIDs to persons working in commercial maritime fishing. It should be noted that the Work in Fishing Convention, 2007 (No. 188), does not contain provisions comparable to those of Conventions Nos 71 and 108.

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

15. In the review of the status of Conventions Nos 71 and 108, the following considerations are particularly relevant:
 1. Convention No. 71, has not been consolidated within the MLC, 2006. The protection that it affords merits review to ascertain whether it still corresponds to the needs of seafarers in relation to pensions.
 2. There are currently 13 Member States that remain bound by Convention No. 71.
 3. Convention No. 108 was revised by Convention No. 185, which is the up-to-date instrument that reflects the tripartite consensus in relation to SIDs and sets out a more secure system for seafarers' identity documents.
 4. There are currently 54 member States that remain bound by Convention No. 108.

¹¹ Preparatory Technical Maritime Conference, Commentary to the recommended draft, Geneva, 13–24 September 2004, [PTMC/04/2](#), Comment 19, 23.

IV. Possible action to consider with respect to the instruments

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

1. To classify Convention No. 71 as "requiring further action to ensure continued and future relevance", In this regard, the STC recommends the Governing Body to convene a tripartite meeting of experts aimed at to sharing knowledge concerning the implementation of the Convention and the reasons for the non-ratification of the instrument, so as to determine the action to be taken as soon as possible.
2. To classify Convention No. 108 as outdated and propose its abrogation at the 118th Session (2030) of the International Labour Conference. In this regard the STC recommends:
 - (a) to encourage Member States that are still bound by Convention No. 108 to ratify Convention No. 185;
 - (b) to encourage the Member State that has already ratified Convention No. 185, but which remains bound by Convention No. 108 for non-metropolitan territories, to extend the application of Convention No. 185 to those territories; and
 - (c) to convene a tripartite meeting of experts on Convention No. 185 to examine the challenges that remain for its implementation and ratification, and to determine the action to be taken as soon as possible.