

**Third Meeting of the Special Tripartite Committee
of the MLC, 2006**Geneva
23–27 April 2018**Instruments relating to recruitment and
placement (seafarers)****Summary**

The maritime labour instruments under review include **two Conventions and two Recommendations concerned with the recruitment and placement of seafarers:**

- [Placing of Seamen Convention, 1920 \(No. 9\)](#);
- [Recruitment and Placement of Seafarers Convention, 1996 \(No. 179\)](#);
- [Seafarers' Engagement \(Foreign Vessels\) Recommendation, 1958 \(No. 107\)](#);
- [Recruitment and Placement of Seafarers Recommendation, 1996 \(No. 186\)](#).

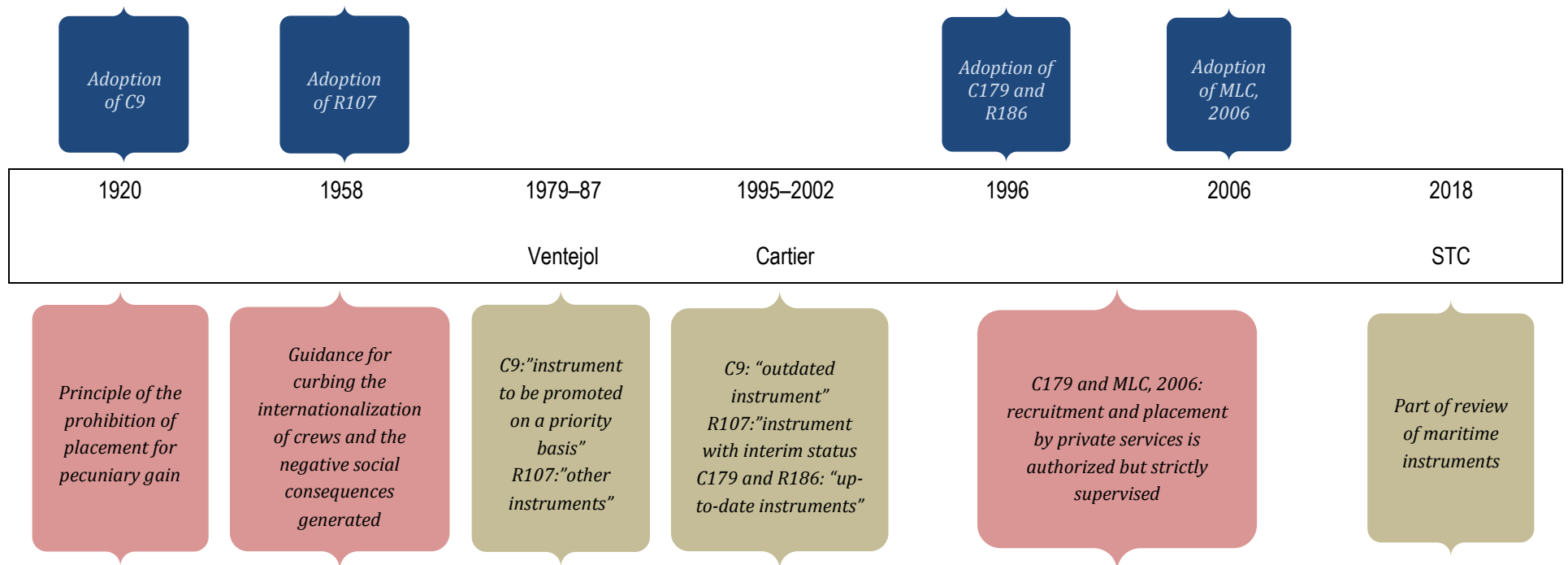
Status of the instruments under review

	Recommendation of the Cartier Working Party	Follow-up since the Cartier Working Party
Convention No. 9	Outdated instrument	Revised by the MLC, 2006
Convention No. 179	Up-to-date instrument	Revised by the MLC, 2006
Recommendation No. 107	Instrument with interim status	Revised by the MLC, 2006
Recommendation No. 186	Up-to-date instrument	Revised by the MLC, 2006

Possible action to consider

1. To classify Convention No. 9 as “outdated” and propose its abrogation.
2. To classify Recommendation No. 107 as “outdated” and propose its withdrawal.
3. To classify Convention No. 179 and Recommendation No. 186 as “outdated” and propose their withdrawal.

Instruments relating to the recruitment and placement of seafarers – Chronology



I. Regulatory approach of the ILO with regard to the recruitment and placement of seafarers

A. Protection provided by ILO instruments

1. The [Placing of Seamen Convention, 1920 \(No. 9\)](#), concerns seamen, namely all persons, except officers, employed as members of the crew on vessels engaged in maritime navigation. It lays down the principle of prohibiting placement for pecuniary gain. It stipulates that no fees shall be charged directly or indirectly by any person, company or other agency, for finding employment for seamen on any ship. If a placement enterprise for pecuniary gain is in operation in the member State, the ratification of the Convention binds the State to abolish the practice as soon as possible. This Convention is not applicable to the fishing sector.¹
2. The [Seafarers' Engagement \(Foreign Vessels\) Recommendation, 1958 \(No. 107\)](#), takes into account the phenomenon of the internationalization of crews. It adopts a rather hostile position towards this practice, since it aims only at reducing the costs of operating vessels and not at finding a solution to a labour shortage. The Recommendation states that "each Member should do everything in its power to discourage seafarers within its territory from joining or agreeing to join vessels registered in a foreign country unless the conditions under which such seafarers are to be engaged are generally equivalent to those applicable under collective agreements and social standards accepted by bona fide organizations of shipowners and seafarers of maritime countries where such agreements and standards are traditionally observed". When seafarers of the member State are nevertheless working on vessels registered in other States, this State must ensure that satisfactory arrangements are in place to guarantee minimum rights relating to repatriation and medical care.
3. The [Recruitment and Placement of Seafarers Convention, 1996 \(No. 179\)](#), revisits the principle of prohibiting the placement of seafarers as a commercial enterprise for pecuniary gain, as established in Convention No. 9. While it does not encourage the establishment or development of private recruitment and placement services, it acknowledges their existence and defines the minimum framework conditions for their operation. Hence, "[w]here private recruitment and placement services have been or are to be established, they shall be operated within the territory of a Member only in conformity with a system of licensing or certification or other form of regulation. This system shall be established, maintained, modified or changed only after consultation with representative organizations of shipowners and seafarers". Member States are, however, entitled to maintain "a free public recruitment and placement service for seafarers". With the exception of certain fees, the use of these services must be free for seafarers. Recruitment and placement services must ensure that contracts of employment and articles of agreement are in accordance with applicable laws, regulations and collective agreements, that the seafarers have the opportunity to examine these contracts before signing them and that they are informed, throughout the period of their contract, of their contractual rights and obligations. It also specifies the requirements that the competent authority of the flag State must make concerning the operation of these services, the inspections that must be carried out and facilitated, and the existence of adequate machinery and procedures for the investigation of complaints concerning the

¹ See International Labour Conference, 3rd Session, Geneva, 1921, [Resolutions proposed by the Maritime Commission](#): "It is understood that any Recommendations or Conventions regarding maritime affairs agreed on by this Conference do not cover the fishing industry".

activities of recruitment and placement services. While the Convention is aimed predominantly at seafarers working on merchant ships, it can be expanded to fishers or seafarers employed on maritime mobile offshore units.

4. The [Recruitment and Placement of Seafarers Recommendation, 1996 \(No. 186\)](#), was adopted at the same time as Convention No. 179 and supplements it. It envisages in particular the issue of recruitment or placement from the perspective of the maritime labour market. The aim is to ensure that there is cooperation between these public and/or private services and with the other stakeholders (shipowners' and seafarers' organizations, and training institutions) so that labour needs are identified and met as far as possible, taking particular account of levels of qualifications, continuity of employment, and principles such as non-discrimination on the basis of sex or age. Recommendation No. 186 advocates continued supervision of recruitment and placement services on the basis of a system of quality standards, which it details, taking into account concerns such as the confidentiality of the information processed or transparency regarding the costs borne by seafarers.
5. The [Maritime Labour Convention, 2006, as amended \(MLC, 2006\)](#), synthesizes the 1996 standards while adopting an innovative and comprehensive approach to the issue. It provides, under Regulation 1.4 on recruitment and placement, that seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer. This system can comprise the setting up of a public recruitment or placement service, through private services and/or through services operated by a seafarers' organization. In all cases, the State in which these services operate must supervise the activity in order to protect and promote seafarers' rights, in accordance with the detailed provisions of the MLC, 2006. Note should also be taken of the broader 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 in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks"².

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

6. Convention No. 9 was adopted in 1920, and 41 ratifications were registered. The ratifications of Convention No. 179³ and the MLC, 2006,⁴ have resulted in the denunciation of Convention No. 9 by 30 States to date. Australia denounced this Convention in 1998. Ten States remain bound by this instrument.⁵ Five comments by the Committee of Experts on

² Article II, para. 4 of the MLC, 2006 does not apply to warships or naval auxiliaries.

³ See Convention No. 179, Article 7. Convention No. 9 was adopted before 1929. It therefore does not contain any provision setting out the legal effects of any revision (such as closure to any new ratifications).

⁴ Pursuant to Article X of the MLC, 2006.

⁵ The following States remain bound by Convention No. 9: Cameroon, Colombia, Cuba, Djibouti, Egypt, Israel, Mexico, Peru, the former Yugoslav Republic of Macedonia, and Uruguay. 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-

the Application of Conventions and Recommendations (CEACR) are awaiting replies regarding problems of application.⁶

7. Convention No. 179 was adopted in 1996. It registered ten ratifications. The ratification of the MLC, 2006, by the ten States which had previously ratified Convention No. 179 involved the “automatic” denunciation of this instrument, as a result of which no State remains bound by this Convention.
8. Recommendation No. 107 was adopted in 1958. Recommendation No. 186 on the recruitment and placement of seafarers was adopted in 1996. It does not revise Recommendation No. 107.

II. Evolution of the instruments: From adoption to 2018

A. Status

9. Further to the review carried out by the **Ventejol Working Party**, it was decided to classify Convention No. 9 in the category of “instruments to be promoted on a priority basis”.⁷ In 1979, as in 1987, Recommendation No. 107 was classified under “other instruments”.
10. During the review by the **Cartier Working Party**, it was considered that Convention No. 179 was the modern standard in this area and its ratification should therefore be promoted.⁸ Further to the work of the Cartier Working Party, the Governing Body decided that only Convention No. 179 and the related Recommendation No. 186 should be considered to be up to date. Convention No. 9 was deemed an outdated instrument and was proposed for denunciation in favour of Convention No. 179. Recommendation No. 107 was classified under “other instruments” (status quo), and therefore deemed to be an “instrument with interim status” by the Governing Body.⁹

metropolitan territories: Aruba (Netherlands), Caribbean Part of the Netherlands, French Polynesia (France), French Southern and Antarctic Territories (France) and Sint-Maarten (Netherlands).

⁶ The comments concern: Cameroon (the Government indicates that, where there are no specific provisions regarding the placement of seafarers, the general legislation applies; request to provide information on the application of these provisions); Colombia (request for information relating to a trade union federation’s observations on the manner in which the relevant law is monitored); Djibouti (lack of provisions relating to the placement of seafarers (18 seafarers registered, one single shipowner that owns a single vessel)); Egypt (request to amend the 2003 Labour Code, which permits recruitment agencies to impose fees on workers during the first year of employment in order to cover administrative expenses); Mexico (request to take the necessary measures to bring the legislation and practice into conformity with the Convention); and Peru (request to indicate the measures adopted to ensure the organization and maintenance of an efficient and appropriate system of non-fee-charging agencies for the placement of seafarers).

⁷ See [GB.273/LILS/WP/PRS/4](#) and *Official Bulletins Vol. LXII, Series A, 1979* and *Vol. LXX, Series A, 1987*.

⁸ See [GB.273/LILS/WP/PRS/4](#).

⁹ See [GB.277/LILS/WP/PRS/1/2](#).

B. Application and consolidation

11. The ILO standards dealing with the placement and recruitment of seafarers are not incorporated into the protection framework established by the [Merchant Shipping \(Minimum Standards\) Convention, 1976 \(No. 147\)](#), or its Protocol.
12. Conventions Nos 9 and 179 (as well as Convention No. 147) were revised by the MLC, 2006.¹⁰ Technically, Convention No. 9 remains open to ratification (the last ratification was registered in 1993), which is not the case for Convention No. 179.¹¹
13. The content of Recommendation No. 186 was incorporated in the MLC, 2006, particularly Guideline B1.4.1. The content of Recommendation No. 107 was not incorporated in the MLC, 2006.

C. Situation in relation to international labour standards

14. The use of intermediaries in recruitment and placement operations for seafarers has been considered since the ILO's earliest years. In 1920, the Joint Maritime Commission referred to a report dealing with the codification of maritime law, which identified a number of issues warranting treatment in a special survey, the most important of which was the placement of seafarers. At that time, it was the "deplorable victimization of seamen by "crimps" and similar social parasites" which was denounced.¹²
15. This resulted in the adoption of Convention No. 9, which supports the prohibition on the placement of seafarers for pecuniary gain. This objective nevertheless had to be aligned with another concern: that of facilitating employment for seafarers through the implementation of an "efficient and adequate system of public employment offices for finding employment for seamen without charge".¹³
16. Since 1920, practices relating to maritime employment have evolved considerably. This is seen particularly in the internationalization of crews and the frequent use of recruitment and placement agencies.¹⁴
17. Convention No. 179 and Recommendation No. 186, adopted in 1996, represent a significant development in the ILO's approach, in terms of the recognition of the existence of private recruitment and placement agencies, whose activities must nevertheless be strictly supervised. Both instruments were consolidated in the MLC, 2006. It should be noted that the requirements of the MLC, 2006 relating to the recruitment and placement of seafarers 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 compulsory certification stipulated by the MLC, 2006, observance of these requirements must be taken into account.

¹⁰ See Regulation 1.4 of the MLC, 2006, and the associated provisions of the Code.

¹¹ See the *Introductory Note* prepared for the third meeting of the STC.

¹² ILO: *The International Labour Organisation and the Seaman*, Geneva, 1927, p. 15.

¹³ Article 4(1) of Convention No. 9.

¹⁴ See McConnell, M., Devlin, D., and Doumbia-Henry, C., *The Maritime Labour Convention, 2006* (Martinus Nijhoff Publishers, 2011), pp. 261 ff.

The consolidation carried out in 2006 therefore endows the relevant ILO standards with genuine universality and greater effectiveness.

- 18.** One of the recurring issues concerning application of the Conventions relating to maritime labour 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 sectoral Conventions. It should be recalled that the possible abrogation or withdrawal of a Convention does not affect any national legislation that has been adopted with a view to giving effect to it, or in general prevent a State from continuing to apply the instrument if it wishes to do so.¹⁵ Convention No. 179 provides as follows: “To the extent it deems practicable, after consultation with the representative organizations of fishing-vessel owners and fishermen or those of owners of maritime mobile offshore units and seafarers serving on such units, as the case may be, the competent authority may apply the provisions of the Convention to fishermen or to seafarers serving on maritime mobile offshore units.”¹⁶ This rationale for optional extension, which allows the same 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. Both the MLC, 2006, and the Work in Fishing Convention, 2007 (No. 188), incorporate the content of Convention No. 179 but adopt different approaches on certain aspects.

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

- 19.** In the context of the review to determine the status of the instruments relating to the recruitment and placement of seafarers, account should be taken of the following considerations, which are particularly relevant:
- (1) Convention No. 9 and Recommendation No. 107 appear to be completely outdated as regards their approach to maritime employment.
 - (2) No member State remains bound by Convention No. 179.

IV. Possible action to consider with respect to the instruments

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

1. To classify Convention No. 9 as “outdated” and propose its abrogation. In this regard, this STC might wish to launch an initiative to encourage the ratification of the MLC, 2006 by States which remain bound by Convention No. 9.
2. To classify Recommendation No. 107 as “outdated” and propose its withdrawal.
3. To classify Convention No. 179 and Recommendation No. 186 as “outdated” and propose their withdrawal.

¹⁵ ILO: *Abrogation of four and withdrawal of two international labour Conventions*, Report VII(2), International Labour Conference, 106th Session, Geneva, 2017, p. 5.

¹⁶ Article 1(2) of Convention No. 179.