

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

The maritime labour instruments under review include **four Conventions concerned with entitlement to leave for seafarers:**

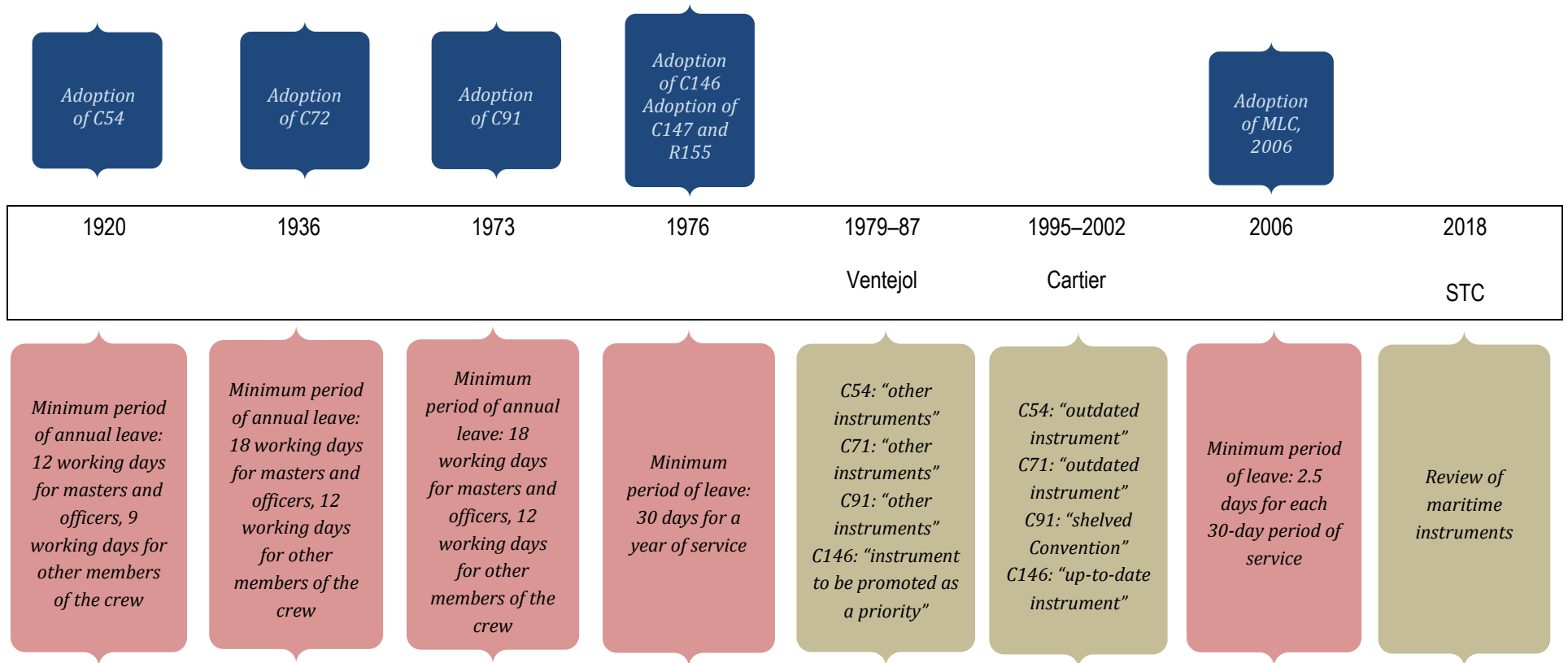
- [Holidays with Pay \(Sea\) Convention, 1936 \(No. 54\)](#);
- [Paid Vacations \(Seafarers\) Convention, 1946 \(No. 72\)](#);
- [Paid Vacations \(Seafarers\) Convention \(Revised\), 1949 \(No. 91\)](#);
- [Seafarers' Annual Leave with Pay Convention, 1976 \(No. 146\)](#).

Status of the instruments under review

	Recommendation of the Cartier Working Party	Follow-up since the Cartier Working Party
Convention No. 54	Outdated instrument	Revised by the MLC, 2006
Convention No. 72	Outdated instrument	Revised by the MLC, 2006
Recommendation No. 91	Shelved Convention	Revised by the MLC, 2006
Recommendation No. 146	Up-to-date instrument	Revised by the MLC, 2006

Possible action to consider

1. To classify Conventions Nos 54 and 72 as “outdated” and propose their withdrawal.
2. To classify Convention No. 91 as “outdated” and propose its abrogation.
3. To classify Convention No. 146 as “outdated” and to review its possible withdrawal or abrogation at a later stage.



I. Regulatory approach of the ILO with regard to entitlement to leave for seafarers

A. Protection provided by ILO instruments

1. The [Holidays with Pay \(Sea\) Convention, 1936 \(No. 54\)](#), applies to the master, officers and members of the crew of all seagoing vessels engaged in the transport of cargo or passengers for the purpose of trade. It excludes, among others, persons employed in fishing vessels or working on their own account. The minimum annual holiday with pay after one year of continuous service with the same undertaking is fixed at not less than 12 working days for masters and officers and not less than nine working days for other members of the crew. The remuneration received during this holiday must be the seafarer's usual remuneration. Any agreement to relinquish the right to a holiday, or forgo a holiday, is void. The Convention sets out in detail the terms for calculating the right to a holiday. The annual holiday with pay does not include public holidays, interruptions of service due to sickness, or any compensatory time off. In certain special circumstances, the holiday can be divided or substituted by a cash payment.
2. The [Paid Vacations \(Seafarers\) Convention, 1946 \(No. 72\)](#), has a scope of application which, while worded differently, is similar to that of Convention No. 54. However, the competent authority, after consultation, may exempt masters and officers provided that they enjoy conditions of leave which are not less favourable to those required by the Convention. Vessels of less than 200 gross register tons may also be exempt. The duration of paid annual holiday for masters, officers and radio officers or operators, after 12 months of continuous service, is 18 working days. For other members of the crew, it is set at 12 working days. For persons with six months of service, the duration of holiday is calculated on the basis of one and a half working days' leave for each complete month of service.
3. The [Paid Vacations \(Seafarers\) Convention \(Revised\), 1949 \(No. 91\)](#), reproduces the content of Convention No. 72, with one main difference, concerning the calculation of the usual remuneration payable during the holiday. While Convention No. 72 requires the addition of a subsistence allowance, this is not an obligation under Convention No. 91.
4. The [Seafarers' Annual Leave with Pay Convention, 1976 \(No. 146\)](#), applies to seafarers, namely persons employed in any capacity on board a seagoing ship, other than a ship of war or a ship engaged in fishing. However, each member State, after consultation, may extend its application to fishers. Conversely, measures may be taken, after consultation, to exclude certain categories of persons employed on board. The Convention sets out the right to annual leave with pay of not less than 30 calendar days for one year of service. Where a seafarer's length of service is less than one year, the duration of leave may be reduced proportionately. The principle of maintaining usual remuneration is reaffirmed. In exceptional cases, compensation may be paid in lieu of leave. Any agreement to relinquish or forgo such leave is null and void.
5. The [Maritime Labour Convention, 2006, as amended \(MLC, 2006\)](#), in Regulation 2.4, provides that seafarers are entitled to paid annual leave of a minimum of 2.5 calendar days per month of employment (30 days for a 12-month period). Except in cases provided for by the competent authority, agreements to forgo the minimum leave are prohibited. Seafarers shall be granted shore leave to benefit their health and well-being and consistent with the operational requirements of their positions. The Guidelines reproduce the detailed provisions of Convention No. 146 covering the calculation of rights, the taking of leave, and the division and accumulation of leave. One Guideline specifically addresses the situation of young

seafarers. Also noteworthy is the broadened scope of application of the MLC, 2006 which protects seafarers defined as “any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies”, namely “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”.¹

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

6. Convention No. 54 was adopted in 1936, and six ratifications were registered. It has never fulfilled the conditions of its entry into force and, consequently, has been denounced by two States.²
7. Convention No. 72 was adopted in 1946. Five ratifications were registered and the conditions of its entry into force have never been fulfilled. Consequently, it was denounced by four States following the entry into force of Convention No. 91.³
8. Convention No. 91 was adopted in 1949 and 25 ratifications were registered. It entered into force in 1967. The ratifications of Convention No. 146 and the MLC, 2006 have resulted in the denunciation of Convention No. 91 by 17 States to date. Eight member States remain bound by this Convention.⁴ Two comments by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) are awaiting replies regarding problems of application.⁵
9. Convention No. 146 was adopted in 1976 and 17 ratifications were registered. The ratification of the MLC, 2006 by the 13 States which had previously ratified Convention No. 146 involved the “automatic” denunciation of this instrument.⁶ Four States remain

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

² The United States, Mexico and Uruguay are the only States to have ratified Convention No. 54 and not to have subsequently ratified the MLC, 2006.

³ Cuba is the only State to have ratified Convention No. 72 and not to have subsequently ratified the MLC, 2006.

⁴ The following remain bound by Convention No. 91: Angola, Cuba, Djibouti, Guinea-Bissau, Iceland, Israel, Mauritania and the former Yugoslav Republic of Macedonia. 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 statement that the country did not have a maritime fleet, that no vessel was registered under its flag and that none of its legislation related to the issues addressed in the ILO maritime Conventions.

⁵ These concern Angola (request to indicate the provisions of the new laws which give application to the Convention) and Guinea-Bissau (request to indicate any legislative amendments undertaken to fully implement the provisions of the Convention).

⁶ Under Article X of the MLC, 2006.

bound by this Convention.⁷ Four comments by the CEACR are awaiting replies regarding problems of application.⁸

II. Evolution of these instruments: From adoption to 2018

A. Status

10. Further to the review carried out by the **Ventejol Working Party**, it was noted that Conventions Nos 54 and 72 were “obsolete, having been superseded by Convention No. 91”.⁹ Convention No. 146 revises Convention No. 91 and closes it to any new ratifications.¹⁰ In 1979 and 1987,¹¹ Conventions Nos 54, 72 and 91 were classified as “other instruments”, while Convention No. 146 was classified as an “instrument to be promoted as a priority”.
11. During the review by the **Cartier Working Party**, it was pointed out that Conventions Nos 54 and 72 had never entered into force and that they had been revised by more recent instruments. Convention No. 91 had been revised by Convention No. 146. However, the low number of ratifications of Convention No. 146 was noted. Further to the work of the Cartier Working Party, the Governing Body decided that:
 - Conventions Nos 54 and 72 should be classified as “outdated instruments”;
 - Convention No. 91 should be classified as a “shelved instrument”;¹²
 - Convention No. 146 should be classified as an “up-to-date instrument” but further information should be requested in this respect.

⁷ The following remain bound by Convention No. 146: Brazil (specified duration of annual leave: 30 days), Cameroon (specified duration of annual leave: 60 days for officers and 3 days per month for seafarers), Iraq (specified duration of annual leave: 36 days) and Turkey (specified duration of annual leave: 30 days). This Convention was also declared applicable to the following non-metropolitan territories: Aruba (Netherlands), French Polynesia (France), and French Southern and Antarctic Territories (France).

⁸ These concern Brazil (request to take measures to ensure that the substitution for annual leave by a cash payment is only made in exceptional cases); Cameroon (request to indicate the manner in which the Merchant Shipping Community Code of 2012 gives effect to the Convention); Iraq (request to introduce the necessary amendments to the Civil Marine Service Act in order to give effect to Articles 4, 6, 8, 10 and 11 of the Convention); and Turkey (request to reply to the observations of a workers’ organization and to indicate the manner in which effect is given to Articles 4(1), 7(3) and 10 of the Convention).

⁹ See document [GB.194/PFA/12/5](#), Appendix I, p. 76 (Office’s background paper, November 1974). Article 11 of Convention No.72 specifies that it revises Convention No. 54. Article 11 of Convention No. 91 specifies that it revises Convention No. 54.

¹⁰ Article 14 of Convention No. 146.

¹¹ See *Official Bulletins* Vol. LXII, 1979, Series A and Vol. LXX, 1987, Series A.

¹² The Cartier Working Party had classified it as an outdated instrument: see document [GB.277/LILS/WP/PRS/1/2](#).

B. Application and consolidation

12. None of the instruments concerning paid leave for seafarers that have been examined by the Special Tripartite Committee (STC) are included in the Appendix to the [Merchant Shipping \(Minimum Standards\) Convention, 1976 \(No. 147\)](#).
13. The Annex to the [Merchant Shipping \(Improvement of Standards\) Recommendation, 1976 \(No. 155\)](#), refers to the Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91), and the Seafarers' Annual Leave Convention, 1976 (No. 146). This Recommendation extends the body of instruments to which effect may be given within the conditions provided for by Convention No. 147 (substantial equivalence).¹³
14. Conventions Nos 54, 72, 91 and 146 have been revised by the MLC, 2006. The latter essentially reproduces the content of Convention No. 146, by reformulating it and integrating it in its unique structure, which distinguishes between the Standards and Regulations on the one hand, and Guidelines on the other hand. Conventions Nos 54, 72, 91 and 146 are no longer open to ratification.¹⁴

C. Situation in relation to international labour standards

15. The ILO adopted four Conventions on paid annual leave for seafarers between 1936 and 1976. It is notable that these instruments have received little interest from member States. The adoption, entry into force and extraordinary ratification status of the MLC, 2006, currently represent the best opportunity for extending to the majority of seafarers adequate protection with regard to paid annual leave. It is also significant that the four States which remain bound by Convention No. 146 all enshrine in their legislation durations of leave in conformity with the minimum required by the MLC, 2006.
16. One of the recurrent issues with respect to the application of the maritime labour Conventions is their potential application to categories of workers other than seafarers, within the terms of 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. Convention No. 146, in terms of its scope, provides that member States may extend the protection afforded by its application to fishers.¹⁵ 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.¹⁶ It is important to underscore that before the adoption of the Work in Fishing Convention, 2007 (No. 188), no ILO instrument specifically covered paid annual leave for fishers. This question is mentioned only in the context of the information to be included in the fisher's work agreement, without further details, in Annex II to Convention No. 188.

¹³ 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. 39 ff.

¹⁴ See the *Introductory Note* prepared for the third meeting of the STC.

¹⁵ This appears to be the case for Turkey and Brazil according to information sent to the CEACR.

¹⁶ See [Report VII\(2\), submitted to the International Labour Conference at its 106th Session, 2017](#), p.5.

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

17. In the context of the review of the status of Conventions Nos 54, 72, 91 and 146 on entitlement to leave, account should be taken of the following considerations, which are particularly relevant:

- (1) Conventions Nos 54 and 72 have never entered into force. They have been revised by the MLC, 2006.
- (2) Nine ILO member States are currently bound by Convention No. 91. The protection it affords with regard to the duration of leave, however, no longer corresponds with the requirements of the most recent instruments. It should also be noted that the conditions established in Article 13 for its entry into force are no longer met.¹⁷
- (3) Convention No. 146 has been revised by the MLC, 2006, and only four member States remain bound by it (all of which are in conformity with the MLC, 2006, on the issue of the duration of annual leave). It is included in the Annex to Recommendation No. 155. Its application could have been extended, by the member States that ratified it, to the fishing sector.

IV. Possible action to consider with respect to the instruments

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

1. To classify Conventions Nos 54 and 72 as “outdated” and propose their withdrawal.¹⁸
2. To classify Convention No. 91 as “outdated” and propose its abrogation. In this regard, the STC might wish to encourage States still bound by this Convention to ratify the MLC, 2006.
3. To classify Convention No. 146 as “outdated” and review its situation at the next meeting of the STC in order to decide on its possible withdrawal or abrogation. In this regard, the STC might wish to:
 - (a) encourage the States still bound by this Convention to ratify the MLC, 2006;
 - (b) encourage the States still bound, or previously bound, by Convention No. 146 which have extended its protection to the fishing sector, to ratify Convention No. 188.
4. With regard to fishing, to draw the attention of the Governing Body to a gap concerning the protection of fishers’ annual leave, given that fishers are not covered by the MLC, 2006, and that the question of annual leave is mentioned only in the context of the information to be included in the fisher’s work agreement, without further details, in Annex II to Convention No. 188.

¹⁷ Article 13(2) states that this Convention “shall come into force six months after the date on which there have been registered ratifications by nine of the following countries: United States of America, Argentine Republic, Australia, Belgium, Brazil, Canada, Chile, China, Denmark, Finland, France, United Kingdom of Great Britain and Northern Ireland, Greece, India, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Sweden, Turkey and Yugoslavia, including at least five countries each of which has at least one million gross register tons of shipping. This provision is included for the purpose of facilitating and encouraging early ratification of the Convention by Member States”.

¹⁸ See the *Introductory Note* prepared for the third meeting of the STC.