



## Instruments concerning seafarer compensation for the ship's loss or foundering

### Summary

Among the maritime labour instruments, **one Convention addresses seafarer compensation for the ship's loss or foundering:**

- the [Unemployment Indemnity \(Shipwreck\) Convention, 1920 \(No. 8\)](#).

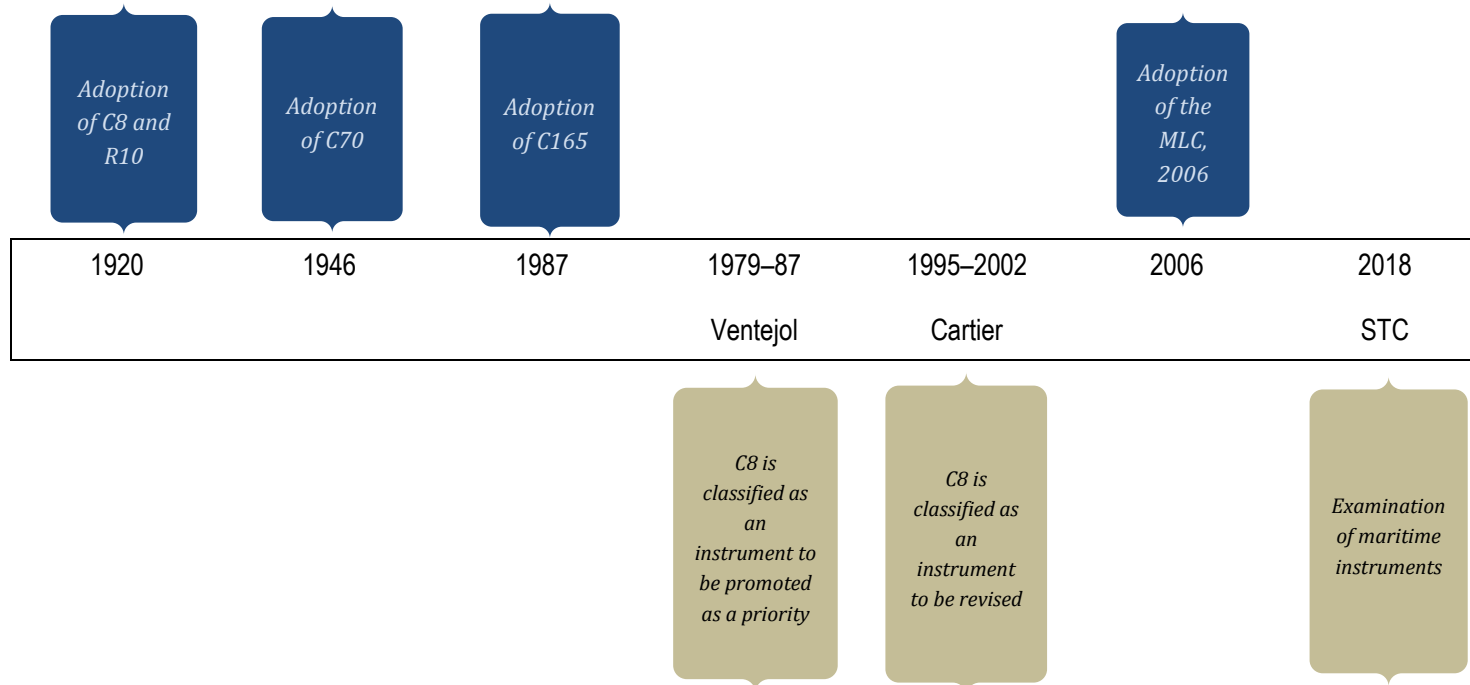
### Status of the instrument examined:

|                  | Recommendation of the<br>Cartier Working Party | Follow-up by the Cartier<br>Working Party |
|------------------|--|---|
| Convention No. 8 | Instrument to be revised                       | Revised by the MLC, 2006                  |

### Possible action to be considered

1. Classify Convention No. 8 in the category of “outdated standards” and propose its abrogation.

## Instruments concerning seafarer compensation for the ship's loss or foundering – Chronology of developments



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## I. The ILO's regulatory approach to seafarer compensation for the ship's loss or foundering

### A. Protection under ILO instruments

1. The [Unemployment Indemnity \(Shipwreck\) Convention, 1920 \(No. 8\)](#), applies to all vessels, namely “all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned; it excludes ships of war”. It provides protection to anyone employed on a ship. In the event of loss or foundering of a vessel, the owner or person with whom a seafarer has contracted for service on board the vessel shall pay the seaman an indemnity against the resulting unemployment. This indemnity shall be paid for the days during which the seaman remains in fact unemployed at the same rate as the wages payable under the contract, but the total indemnity payable under this Convention to any one seafarer may be limited to two months' wages. Seafarers shall have the same remedies for recovering such indemnities as they have for recovering arrears of wages earned during the service.
2. Convention No. 8 is related to the [Unemployment Insurance \(Seamen\) Recommendation, 1920 \(No. 10\)](#). This Recommendation encourages member States to establish for seafarers an effective system of insurance against unemployment arising out of shipwreck or any other cause. Thus, it covers unemployment owing to circumstances broader than those covered by Convention No. 8 and will therefore be examined alongside the instruments on social security for seafarers.
3. The [Social Security \(Seafarers\) Convention, 1946 \(No. 70\)](#), like the [Social Security \(Seafarers\) Convention \(Revised\), 1987 \(No. 165\)](#), does not specifically address unemployment arising from the circumstances covered by Convention No. 8.
4. Regulation 2.6 of the [Maritime Labour Convention, 2006, as amended \(MLC, 2006\)](#), establishes that seafarers are entitled to adequate compensation in the case of injury, loss or unemployment arising from a ship's loss or foundering. Standard A2.6, paragraph 1, deals specifically with unemployment arising from a ship's loss or foundering. It requires the shipowner to pay to each seafarer on board an indemnity against unemployment resulting from such circumstances. Guideline B2.6.1 reiterates the principle that an indemnity should be paid for the days during which the seafarer remains in fact unemployed at the same rate as the wages payable under the employment agreement, but the total may be limited to two months' wages. It also specifies that seafarers may have the same legal remedies for recovering such indemnities as they have for recovering arrears of wages earned during the service. Standard A2.6, paragraph 2, specifies that indemnity against unemployment is not intended to cover other losses or injuries arising from a ship's loss or foundering. Also noteworthy is the broader scope 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, “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”.<sup>1</sup>

<sup>1</sup> Article II, para. 4, of the MLC, 2006 does not apply to warships or naval auxiliaries.

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**B. Dates of examination of the instrument:  
Adoption and ratification**

5. Convention No. 8 was adopted in 1920 and has been ratified 60 times. Ratification of the MLC, 2006,<sup>2</sup> has entailed the denunciation of Convention No. 8 by 46 member States. Currently, 14 member States remain bound by Convention No. 8.<sup>3</sup> Twelve comments by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) are awaiting replies regarding problems of implementation.<sup>4</sup>

<sup>2</sup> Under Article X of the MLC, 2006.

<sup>3</sup> The following remain bound by Convention No. 8: Colombia, Costa Rica, Cuba, Dominica, Grenada, Iraq, Mexico, Papua New Guinea, Peru, Saint Lucia, Sierra Leone, Solomon Islands, the former Yugoslav Republic of Macedonia and Uruguay. With regard to the former Yugoslav Republic of Macedonia, the Committee of Experts 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. This Convention has also been declared applicable to the following non-metropolitan territories: Anguilla (United Kingdom), Aruba (Netherlands), British Virgin Islands (United Kingdom), the Caribbean Part of the Netherlands, China – Hong Kong SAR, the Falkland Islands (Malvinas) (United Kingdom), the French Southern and Antarctic Territories (France), Guernsey (United Kingdom), Jersey (United Kingdom), Montserrat (United Kingdom), Saint Helena (United Kingdom) and Sint-Maarten (Netherlands).

<sup>4</sup> These concern Anguilla (United Kingdom) (request for an explanation on the manner in which application of the Merchant Shipping Act is guaranteed to vessels registered in Anguilla to give full effect to the provisions of the Convention); Azerbaijan (request to indicate the legislative instruments that give effect to the Convention); Colombia (request for a reply to a workers' organization's observations and to indicate the measures adopted to give effect to Article 2 of the Convention (indemnity for unemployment resulting from the loss or foundering of a vessel)); Costa Rica (request to take measures to amend the legislation by adding a specific definition of the term "vessel", in conformity with Article 1 of the Convention); Dominica (request to indicate measures adopted to give effect to Article 2, paragraph 2, of the Convention); Grenada (request to take measures to ensure payment of indemnity against unemployment for captains); Solomon Islands (request to take measures to bring the national legislation into line with Article 2 of the Convention (unemployment indemnity in case of shipwreck)); Iraq (request to take all measures to ensure that seafarers receive the indemnities provided for under Articles 2 and 3 of the Convention (unemployment indemnity in the event of the loss or foundering of a ship)); Montserrat (United Kingdom) (request to indicate the measures adopted to extend to Montserrat the application of section 37 of the 1979 United Kingdom Merchant Shipping Act, which removes the possibility of depriving seamen of the right to unemployment indemnity where they have failed to exert reasonable efforts to save the ship, persons and cargo); Papua New Guinea (request to review certain provisions of domestic law in order to ensure conformity with the Convention); Peru (request to indicate whether national provisions have been adopted to fix the total amount of unemployment indemnity in case of shipwreck); and Saint Lucia (request to take measures to bring the Shipping Act into line with the Convention as regards the scope of application and the definitions of the terms "seafarer" and "vessel" and to amend the provisions of the Shipping Act which provide that, in the event of wreck, or loss of the ship, proof that the seafarer had not exerted himself or herself to the utmost to save the ship, cargo and stores shall bar his or her claim for wages, which is not permitted under the Convention).

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## II. New developments since the adoption of this instrument to 2018

### A. Status

6. During the examination conducted as part of the work of the **Ventejol Working Party**, it was noted that Convention No. 8 remained valid in so far as no other instrument contains substantive provisions on income protection against unemployment, which would be applicable to seafarers in the circumstances envisaged (the loss or foundering of a ship).<sup>5</sup> Therefore, in 1979 as in 1987, this Convention was considered an instrument to be promoted as a priority.<sup>6</sup>
7. As a result of the work of the **Cartier Working Party**, the Governing Body decided that Convention No. 8 should be classified among the instruments to be revised.

### B. Enforcement and consolidation

8. Convention No. 8 is not included in the Appendix to the [Merchant Shipping \(Minimum Standards\) Convention, 1976 \(No. 147\)](#); the [Protocol of 1996 to the Merchant Shipping \(Minimum Standards\) Convention, 1976](#); or the [Merchant Shipping \(Improvement of Standards\) Recommendation, 1976 \(No. 155\)](#).
9. The MLC, 2006 revised Convention No. 8 and incorporates its content in similar language.<sup>7</sup> Technically, Convention No. 8 remains open for ratification; its most recent ratification was registered in 1993.<sup>8</sup>

### C. The international labour standards context

10. The fact that the MLC, 2006, contains wording almost identical to that of Convention No. 8 clearly demonstrates that the protection that the latter instrument provides remains relevant. When the MLC, 2006 was drawn up, it was decided to make a distinction between unemployment arising out of a ship's loss or foundering, for which the shipowner is liable under the law of the flag, and unemployment arising out of other circumstances, which is governed by the regime established in Regulation 4.5 (social security). Pursuant to the Regulation, protection against the risk of unemployment falls under the legislation of the seafarer's State of residence. Furthermore, whereas Convention No. 8 focuses on the issue of unemployment, the main contribution of the MLC, 2006 is the inclusion of other potential consequences that a ship's loss or foundering (injury and losses), which may in part give rise to protection under Regulation 4.2 (on shipowners' liability for sickness, injury or death occurring in connection with their employment).

<sup>5</sup> See document [GB.194/PFA/12/5](#), Appendix I, p. 74 (Office background paper, November 1974).

<sup>6</sup> See *Official Bulletin*, [Vol. LXII, 1979, Series A](#), and [Vol. LXX, 1987, Series A](#).

<sup>7</sup> See Regulation 2.6 of the MLC, 2006, as well as the provisions of the relevant Code.

<sup>8</sup> On this point, see the introductory note prepared for the third meeting of the Special Tripartite Committee (STC).

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### **III. Primary issues to be considered in determining the status of this instrument**

11. In the context of the review to determine the status of Convention No. 8, the following considerations are particularly relevant:

- (1) Fourteen States remain bound by Convention No. 8.
- (2) It was consolidated in the MLC, 2006.
- (3) Although the protection that it guarantees to seafarers still appears relevant, its scope is rather limited if provided in isolation from the other elements of protection that are consolidated in the MLC, 2006.

### **IV. Possible action to be considered in relation to this instrument**

12. With regard to these points, the Special Tripartite Committee might wish:

1. To classify Convention No. 8 in the category of “outdated standards” and propose its abrogation.