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Report V (2A)

## Work in the fishing sector

Fifth item on the agenda

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## LIST OF RECURRING ABBREVIATIONS

### International and regional intergovernmental or non-governmental organizations

EU	European Union
FAO	Food and Agriculture Organization of the United Nations
ILC	International Labour Conference
ILO	International Labour Organization
IMHA	International Maritime Health Association
IMO	International Maritime Organization
WHO	World Health Organization

### International instruments

SFV 1977	Torremolinos International Convention for the Safety of Fishing Vessels, 1977
SFV PROT 1993	Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977
STCW-F	International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995

### National employers' and workers' organizations

Argentina	CATT	Confederation of Transport Workers of Argentina
	ACPP	Association of Fishing Captains and Skippers
Belgium	CCE	Central Economic Council
	CNT	National Labour Council
Canada	CEC	Canadian Employers' Council
Cyprus	OEB	Cyprus Employers and Industrialists Federation
Finland	STTK	Finnish Confederation of Salaried Employees
	SAK	Central Organization of Finnish Trade Unions

France	MEDEF	Movement of French Enterprises
Italy	UILA-PESCA	Italian Agroindustrial Workers Union – Fishing Sector
New Zealand	NZCTU	New Zealand Council of Trade Unions
Nicaragua	CTN	Nicaraguan Workers' Confederation
Spain	OPPAO	Organization of High-Sea Fishing Producers of Ondarroa
	FNCP	National Federation of Fishers' Associations
Switzerland	USS	Swiss Federation of Trade Unions
	UPS	Confederation of Swiss Employers
United States	USCIB	United States Council for International Business

**Technical terms**

EEZ	exclusive economic zone
EPIRBs	emergency position indicating radio beacons
GPS	global positioning system
gt	gross tons
grt	gross register tons
LOA	length overall
nm	nautical miles
OSH	occupational safety and health
PSC	port state control

## INTRODUCTION

The first discussion of an item concerning a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector took place at the 92nd Session (2004) of the International Labour Conference. Following that discussion, and in accordance with article 39 of the Standing Orders of the Conference, the International Labour Office prepared and communicated to the governments of member States Report V (1) containing a proposed Convention and a proposed Recommendation, based on the conclusions adopted by the Conference at its 92nd Session.

Governments were invited to send any amendments or comments they might wish to make so as to reach the Office by 15 November 2004 at the latest, or to inform it, by the same date, whether they considered that the proposed texts constituted a satisfactory basis for discussion by the Conference at its 93rd Session (2005).

At the time of drawing up this report, the Office had received replies from the governments of the following 43 member States: Argentina, Australia, Belgium, Brazil, Canada, China, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Greece, Guinea, Hungary, Iceland, India, Indonesia, Israel, Japan, Kuwait, Lebanon, Lithuania, Mauritius, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Ukraine, United Arab Emirates, United Kingdom.

In accordance with article 39, paragraph 6, of the Standing Orders of the Conference, governments were requested to consult the most representative organizations of employers and workers before finalizing their replies and to indicate which organizations were consulted.

The governments of the following 36 member States stated that the most representative organizations of employers and workers had been consulted, and some included in their replies the opinions expressed on certain points by these organizations: Argentina, Australia, Belgium, Brazil, Canada, China, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Greece, Guinea, Hungary, Iceland, Indonesia, Israel, Japan, Lebanon, Lithuania, Mauritius, Netherlands, New Zealand, Norway, Poland, Portugal, Singapore, Spain, Sweden, Switzerland, United Arab Emirates, United Kingdom.

The governments of the following member States sent separately the replies from employers', workers' or other organizations, and in some cases, replies were received directly at the Office: Belgium, Canada, Cyprus, France, Italy, New Zealand, Nicaragua, Spain, Switzerland, United States.

Replies have also been received from the European Union (EU) and the International Maritime Health Association (IMHA).

To ensure that the English and French texts of the proposed Convention and proposed Recommendation concerning work in the fishing sector are in the hands of the governments within the time limit laid down in article 39, paragraph 7, of the Standing

Orders of the Conference, these texts have been published in a separate volume, Report V (2B).

The present volume, Report V (2A), which has been drawn up on the basis of the replies received from governments, and employers' and workers' organizations, contains the essential points of their observations.

This report also reflects the outcome of the Tripartite Meeting of Experts on the Fishing Sector. It should be recalled that the Conference Committee on the Fishing Sector decided that consultations should be held on the issue of accommodation before the 93rd Session of the Conference in 2005 on the basis that the Office devise a mechanism to facilitate the process, the three parties commit to participate in consultations, and a working party be set up by the Conference Committee in 2005. The Conference Committee also agreed that the proposed Convention should include a new part to be developed by the Office providing additional requirements for larger vessels, and that the issue of social security should be left open pending the outcome of the Preparatory Technical Maritime Conference (September 2004) developing the draft consolidated maritime labour Convention aimed at seafarers. To obtain sufficient guidance to accomplish its task of preparing new provisions concerning large vessels and social security, the Office proposed at the 290th (June 2004) Session of the Governing Body that the mechanism envisaged by the Conference Committee take the form of a meeting of experts, which should deal with the question of accommodation as well as with the questions that had not been covered during the first discussion on work in the fishing sector. The Governing Body agreed to this proposal and convened the Tripartite Meeting of Experts on the Fishing Sector in Geneva from 13 to 17 December 2004.

Report V (2A) is divided into four sections: the first comprises general observations on the proposed texts, the second and third sections contain observations on the proposed Convention and proposed Recommendation, and the fourth section includes the Office commentary on these observations and the views expressed at the Tripartite Meeting of Experts on the Fishing Sector. The appendix reproduces the report of the Tripartite Meeting of Experts on the Fishing Sector (TMEFS/2004/4).

## **REPLIES RECEIVED**

The substance of the replies received on the proposed Convention and the proposed Recommendation concerning work in fishing is given below.

The governments of the following 21 member States stated that they had no observations to put forward at the moment or that they considered that the proposed texts constituted a satisfactory basis for discussion at the 93rd Session of the International Labour Conference: Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Greece, Hungary, India, Indonesia, Israel, Kuwait, Lithuania, Mauritius, Poland, Singapore, Spain, Sweden, Thailand, United Arab Emirates. Some of the countries (nine) that considered the texts to be a satisfactory basis for discussion also commented on the texts or replied to questions raised in the Office commentary in Report V (1).

Some governments reported on their national law and practice, others provided detailed information on their countries' situation concerning fishing. While this is most useful for the work of the Office, this information has not been reproduced unless it is necessary for the understanding of the reply.

### **General observations**

#### AUSTRALIA

The general thrust of the draft Convention, which creates an international framework similar to the IMO framework in respect of ship safety, is supported, particularly its focus on the human factor that is integral to safety at sea. In Australia, regulation of fishing vessels is largely the responsibility of the states and the Northern Territory. With regard to the scope, an option, which may assist widespread ratification, would be to limit the Convention to vessels of a size to which IMO safety Conventions apply, i.e. 500 gt and above. This would limit application to larger vessels where such conditions may be more relevant, and exclude the many smaller vessels, including traditional fishing craft. However, as there are large vessels that do not meet the tonnage limit but voyage internationally, the suggested application would be: 500 gt for domestically operating vessels and all fishing vessels on international/overseas voyages. The responsibilities of the national maritime authority are limited to fishing vessels engaged on overseas voyages, which generally would be larger vessels that fall within the IMO Convention tonnage limits. As the employment circumstances on these vessels are similar to those of seafarers on trading ships, the working conditions should parallel those of seafarers as developed under ILO Conventions. For many countries, application of the Convention to smaller domestic fishing vessels may prove too onerous, although the FAO estimates some 90 per cent of the world fishers work on vessels of 24 metres or less in length, and, ironically, the smallest owner-operated boats are most in need of regulation and education on safe working practices.

As regards the term “fishing vessels that undertake international voyages”, the proposed approach is consistent with national legislation and seems appropriate in conjunction with the provisions for vessels exceeding a certain length. Yet, the term “overseas” might usefully be substituted for “international”, which carries connotations of entry to foreign ports, whereas some vessels that the ILO wishes to regulate may only enter foreign waters. A definition of “international voyage” (or perhaps “overseas voyage”) is warranted, given that more stringent regulation will be imposed on vessels performing such voyages. The standardization of fishing crew conditions with conditions on trading vessels of similar size is supported. It should be noted, however, that the living and working conditions of a fisher remain harder and more dangerous than those of a commercial seafarer.

#### BELGIUM

CNT: The Council expresses support for the proposed Convention and Recommendation concerning work in the fishing sector and concurs with the reply submitted by the CCE.

#### BRAZIL

Given the scope of the Convention, the term “fishing vessels that undertake international voyages” seems appropriate.

#### CANADA

A Convention and Recommendation concerning work in the fishing sector should provide strong protection for fishers, and yet be flexible enough to accommodate the diverse operations, conditions and employment relationships prevailing in the industry. In revising and replacing the seven existing ILO instruments on the issue, the result should not be simply an amalgamation of existing provisions, but rather a new instrument with updated and practical provisions. The right balance must be struck between developing effective standards to safeguard fishers and avoiding overly prescriptive language that will prevent widespread ratification and implementation. The term “international voyages”, which is used in Articles 18, 25 and 32 of the Convention and in Paragraph 17 of the Recommendation, should be defined as follows: “‘fishing vessels that undertake international voyages’ means those vessels that remain at sea for more than a few days at one time, and that engage in fishing operations in the waters of other States or in international waters, or visit the ports of other States”. This definition should be included in Article 1, or alternatively, each reference to the term should be clarified in the text; otherwise, small vessels fishing in the waters of adjacent States or visiting nearby foreign ports could be considered to “undertake international voyages” even if they return to their home ports every day, while fishing vessels remaining at sea for long periods, but only fishing in international waters, would not be included.

CEC: Some provisions of the proposed Convention are intended to be applicable to larger fishing vessels that conduct “international voyages”. It seems that the perceived need for such provisions is not in relation to fishing within national jurisdic-

tions, but rather with OSH and accident prevention issues associated with the distant water fishing activity of some foreign fishing vessels. These concerns can be addressed without negatively impacting on the activity of responsible fleets that fish under the effective control of their flag State. Thus, the definition should be amended to “trips by larger vessels engaged in fishing for more than a few days on the high seas and landing in ports of other States”. Making reference to fishing outside national jurisdictions, i.e. “high seas”, and using the word “and” in relation to landing in ports of other States, would lead to the exclusion from the relevant part of the Convention of both fishing trips occurring in domestic waters but landing in a foreign port, and fishing trips occurring in international waters but landing in the flag state port.

#### CYPRUS

The Cyprus Workers Confederation and the Pancyprian Federation of Labour accept the proposed texts as a satisfactory basis for discussion by the Conference in June 2005.

#### DENMARK

It appears necessary to introduce a mandatory provision to protect fishers from noise and vibration on board fishing vessels. The requirement may, as a first step, be restricted to larger fishing vessels.

#### EGYPT

The Government upholds its comments given in Report V (2) *Conditions of work in the fishing sector: The constituents' views* (92nd Session, ILC, 2004).

#### FINLAND

The proposed instruments on work in fishing could improve conditions for fishers. However, the new Convention needs to be a comprehensive, clear and flexible instrument that can be generally ratified. It is recalled that companies operating in the fishing sector are often small, that their scope for applying special provisions is limited, and that regulations should be as simple as possible if entrepreneurship is to be furthered. The STTK and the SAK state that although general labour law is applied to fishers in Finland, it is not always clear whether the Seamen's Act or the Employment Contracts Act applies. Although points of convergence with the Conventions applying to seafarers have been taken into account, consideration should be given to the inclusion of a clause that would guarantee fishers at least the same level of protection as that for seafarers or other workers in an employment relationship.

#### GUINEA

The issues covered in the proposed texts are of relevance to the fishing sector and accommodate national concerns.

## ICELAND

The Convention should contain general provisions that could enable a wide range of countries to ratify the instrument and could be applied to all fishing vessels regardless of size. Otherwise, the outcome will be an instrument that will not serve its purpose and will not be ratified, especially by nations that have the vast majority of fishers on small fishing boats. Some countries like Iceland already have higher standards on their fishing fleets than are proposed in the draft Convention. However, that does not affect the need to set minimum standards that could cover all fishers, even those on the smallest fishing boats.

## INDIA

Communication systems on board fishing vessels should be improved, in order to ensure continuous communication from the vessel in operation to the shore base and vice versa, thus providing crew members who spend long periods at sea with information about the well-being of their families. The voyage schedules should be made available not only to the agencies involved in the regulation of maritime affairs but also to the local harbour officials, so as to monitor the welfare of the crew. In the event of losses due to the death/injury/sickness of crew members, the dependents/legal heirs should be well compensated and provided with suitable legal means to sue the fishing vessel owner. In addition to the precautionary approach to avoid sea disasters, fishers should be well trained in disaster management. The competent authority should inspect periodically or in the event of a grievance compliance with the provisions concerning OSH and take deterrent action in case of violation. New or modified legislation should be made known to all fishers continuously engaged in the fishing sector, in order to protect their rights and ensure social security. There is a need to safeguard the livelihood and interests of fishers engaged in subsistence and small-scale fishing, since many commercial fishing operations exploit fishery resources by mechanical power in zones earmarked for local fishers, thereby infringing laws and regulations.

## ISRAEL

In Israel, approximately 2,100 persons are involved in the fishing sector, and there are nearly 600 fishing boats with an average capacity of three persons. Fishing vessels do not leave territorial waters, and the majority are not at sea for more than 24 hours. Most fishing boats are 7 metres long, and there are about 50 boats of 14 metres and 30 of 20 metres in length. The Ministry of Transportation issues licences for boats and operators and specifies the equipment and preconditions necessary to obtain such licences.

## ITALY

UILA-PESCA: The content of the proposed Convention and Recommendation is considered as generally positive. Many provisions are already codified in national legislation and collective agreements between trade unions for employed workers and organizations of fishing vessel owners.

## JAPAN

The concept of substantial equivalence should be introduced in the proposed Convention for the purpose of widespread ratification. Thus, as in the draft consolidated maritime labour Convention, the following new provision should be inserted in Part II:

- (1) A Member which is not in a position to implement the principles and rights in the manner set out in this Convention may implement those principles and rights through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of this Convention.
- (2) For the sole purpose of paragraph (1), any law, regulation, collective agreement or other implementing measure shall be considered to be substantially equivalent, in the context of this Convention, if the Member satisfies itself that:
  - (a) it is conducive to the full achievement of the general object and purpose of the provisions of this Convention; and
  - (b) it gives effect to the provisions of the Convention concerned.

Furthermore, clarification is requested on the requirements for entry into force and amendment of the proposed Convention.

## KUWAIT

The proposed instruments address important issues and promote decent work in the fishing sector. They have been drafted in an adequate and flexible manner taking into account the various circumstances and legislations of member States and achieving an appropriate balance between mandatory and recommendatory provisions.

## LEBANON

The meaning of the term “fishing vessels that undertake international voyages” needs further clarification, especially in relation to the period of navigation and the places of fishing.

## MAURITIUS

The proposed Convention promotes decent working conditions and will establish landmarks for the introduction of a national regulatory framework related to work in fishing.

## MOROCCO

The proposed instruments should take the form of a Convention supplemented by a Recommendation. Bearing in mind that certain functions on board vessels are independent of navigation (fishing, trade or other functions), it would be desirable to include similar provisions in both the Convention concerning work in the fishing sector and the draft consolidated maritime labour Convention.

## NEW ZEALAND

Since the Convention attempts to cover all sizes, types and areas of operation of fishing vessels, it should be restricted to goal-based objectives, whereas technical details should be placed in the Recommendation.

NZCTU: There is a need for international standards providing a framework of minimum protection as regards workers' employment and working conditions, including conditions in the fishing sector. Hence, the development of this instrument is supported.

## NICARAGUA

CTN: Both proposed instruments contain important regulatory aspects that constitute tangible progress on the way to improving conditions of work in this key sector on a global scale and will have a beneficial impact on the workers concerned.

## NORWAY

The work on a new Convention on fishers' working and living conditions is of utmost importance, since the fishing industry is in equal need of international regulations as the maritime industry. However, the proposed text is too limited in its content and will only have the necessary impact for those who need it most if it is strengthened and proposals are moved from the Recommendation to the Convention. Also, since the text should be as clear and concise as possible, the term "international voyage" should be defined. It seems appropriate to include all vessels which intentionally arrive at a port in a country other than their country of register. However, difficulties may arise if vessels with no concrete plans to engage in international travel at present, do so in the future. Such a situation will lead to vessels travelling without meeting the requirements and unnecessary pressure being put on those responsible for compliance. Therefore, size and time at sea should continue to be the areas of limitation, but if "international voyage" is preferred, then a definition is necessary.

## PORTUGAL

The term "fishing vessels that undertake international voyages" seems to be sufficiently clear.

## SPAIN

At the next session of the ILC, account should be taken of the progress made in parallel on the draft consolidated maritime labour Convention, in order to place fishers, wherever possible, on the same footing as seafarers. As the term "international voyages" is not a widely used expression in strictly fishing terms, the term "trips" [*trayectos*] is proposed as an alternative to "voyages" [*viajes*].

OPPAO: Governments seem to pursue a categorization of vessels based on criteria such as length or tonnage, which is difficult to understand in the case of developed countries, as many of the standards in the proposed text are already covered by their

internal regulations, and is even less understandable in the case of developing countries, which will not be able to ratify overly prescriptive provisions. The draft text suffers from excessive classification of vessels, which will ultimately make it difficult to achieve a broadly ratifiable Convention, thus losing sight of an objective set at the outset.

#### SWEDEN

Since the sizes and applications of fishing vessels vary from small open wooden boats to ocean-going trawlers of considerable tonnage or floating fish factories, the achievement of a text embracing all kinds of conditions of service is not easy. Small-scale fishing, in which one or two families or family members jointly own and man the vessel and are remunerated with a share of the catch, is common. This makes it impossible to meet the requirements of Articles 13-16 relating to contracts of service, and Article 19 prescribing a monthly or regular salary. Whilst Article 16 makes an exception for an owner operating the fishing vessel single-handedly, the problem persists where two or more owners handle the boat.

#### SWITZERLAND

The scope of the proposed Convention encompasses commercial fishing in a broader sense – i.e. including fishing on rivers and inland waters. However, it should be noted that Article 3, paragraph 1, subparagraph (a), states that vessels engaged in fishing operations in rivers and inland waters may be excluded from the requirements of the Convention. It should be recalled that the fishing sector has only a marginal impact in Switzerland, where there are no high-sea fishing vessels and very few professional fishers. The position of fishers with regard to social security is no different from that of other workers. UPS states that it renounces to comment on the proposed instruments, given that Switzerland has practically no activity in the maritime fishing sector mainly addressed in Report V (1). USS indicates that it shares the position of the Swiss Government.

#### UKRAINE

New provisions should be introduced concerning compliance with sanitary standards during arrest or detention of a vessel and its fishers. The following text is proposed:

Members should take effective measures for the maintenance of sanitary standards in cases where a vessel and its fishers are under arrest or detained or the vessel has entered an armed conflict zone. The State in whose port the vessel is under arrest or detained should not prevent any measures for the upkeep of sanitary standards and should report the arrest or detention of the vessel to the State whose flag it flies.

#### UNITED STATES

USCIB: The following principles should guide elaboration of fishing instruments:  
(i) development of minimum labour standards for the protection of the majority of

fishers worldwide taking into account social and economic realities in developed and developing countries; (ii) development of an instrument with the flexibility to motivate widespread ratification and to address the vast majority of fishers working on smaller vessels who are at present afforded little if any protection with regard to OSH; (iii) protection against erosion of existing higher standards provided under national laws and practice for fishers employed in larger operations and/or in developed countries. The opportunity to improve conditions for the majority of the world's fishers would be lost if work towards creating a widely adoptable Convention became mired in rigid, dogmatic ideals that forestall ratification and implementation.

#### EUROPEAN UNION

Most EU Directives in the field of labour law and OSH are establishing minimum standards, and the same goes for ILO standards according to the ILO Constitution. Should the ILO minimum standards be lower than, but compatible with, EU standards, EU Member States could maintain or establish higher standards. However, the use of concepts and approaches that are totally different from EU standards should be avoided, as this could complicate or delay ratifications of an ILO Convention by EU Member States.

#### **Observations on the proposed Convention concerning work in the fishing sector**

The General Conference of the International Labour Organization,  
 Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 93rd Session on 31 May 2005, and  
 Recognizing that globalization has had a profound impact on the fishing sector, and  
 Noting the ILO Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Conference at its 86th Session (1998), and  
 Noting the relevant instruments of the International Labour Organization, in particular the Occupational Safety and Health Convention and Recommendation, 1981, and the Occupational Health Services Convention and Recommendation, 1985, and  
 Taking into account the need to revise the seven international standards adopted by the International Labour Conference specifically concerning the fishing sector, namely the Hours of Work (Fishing) Recommendation, 1920, the Minimum Age (Fishermen) Convention, 1959, the Medical Examination (Fishermen) Convention, 1959, the Fishermen's Articles of Agreement Convention, 1959, the Fishermen's Competency Certificates Convention, 1966, the Accommodation of Crews (Fishermen) Convention, 1966, and the Vocational Training (Fishermen) Recommendation, 1966, to bring these instruments up to date and to reach a greater portion of the world's fishers, particularly those working on board smaller vessels, and  
 Noting that the objective of these international standards is to help ensure that fishers have decent conditions for work on board fishing vessels with regard to: minimum requirements for work on board; conditions of service; accommodation and food; health protection, medical care and social security, and  
 Having decided upon the adoption of certain proposals with regard to work in the fishing sector, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention; adopts this            day of June of the year two thousand and five the following Convention, which may be cited as the Work in Fishing Convention, 2005:

### *Observations on the Preamble*

*Lebanon.* In the seventh paragraph of the Preamble, it is proposed to add the term “occupational safety” after “health protection”.

*South Africa.* Protection of fishers in terms of the core Conventions should be strengthened. It is proposed to include the following subparagraphs in the Preamble:

Taking into consideration the fundamental principles to be found in other international labour Conventions, in particular: the Forced Labour Convention, 1930, the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, the Equal Remuneration Convention, 1951, the Discrimination (Employment and Occupation) Convention, 1958, the Abolition of Forced Labour Convention, 1957, the Minimum Age Convention, 1973, and the Worst Forms of Child Labour Convention, 1999; and

Mindful of the core mandate of the Organization, which is to promote decent conditions of work, and.

## PART I. DEFINITIONS AND SCOPE

### DEFINITIONS

#### *Article 1*

For the purposes of the Convention:

- (a) “commercial fishing” means all fishing operations, including fishing operations on rivers and inland waters, with the exception of subsistence fishing and recreational fishing;
- (b) “competent authority” means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned;
- (c) “consultation” means consultation by the competent authority with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist, on the measures to be taken to give effect to the provisions of the Convention and with respect to any derogation, exemption or other flexible application of the Convention;
- (d) “fishing vessel owner” means the owner of the fishing vessel or any other organization or person who has assumed the responsibility for the operation of the vessel from the owner or other organization or person and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention;
- (e) “fisher” means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch; it excludes pilots, naval personnel, other persons in the

permanent service of a government [and shore-based persons carrying out work aboard a fishing vessel];

- (f) “fisher’s work agreement” means a contract of employment, articles of agreement or other similar arrangements and any other contract governing the terms of a fisher’s living conditions and work on board a vessel;
- (g) “fishing vessel” or “vessel” means any ship or boat, of any nature whatsoever, whether publicly or privately owned, used or intended to be used for the purposes of commercial fishing;
- (h) “new fishing vessel” means a fishing vessel for which:
  - (i) on or after the date of the entry into force of the Convention, the building or major conversion contract is placed; or
  - (ii) the building or major conversion contract has been placed before the date of the entry into force of the Convention, and which is delivered three years or more after that date; or
  - (iii) in the absence of a building contract, on or after the date of the entry into force of the Convention:
    - the keel is laid, or
    - construction identifiable with a specific vessel begins, or
    - assembly has commenced comprising at least [50 tonnes] or 1 per cent of the estimated mass of all structural material, whichever is less;
- (i) “existing vessel” is a vessel that is not a new fishing vessel;
- (j) “gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention;
- (k) “length” (L) shall be taken as 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the keel line, or as the length from the foreside of the stern to the axis of the rudder stock on that waterline, if that be greater. In vessels designed with rake of keel the waterline on which this length is measured shall be parallel to the designed waterline;
- (l) “recruitment and placement service” means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting fishers on behalf of employers or placing fishers with employers;
- (m) “skipper” means the person having command of a fishing vessel.

### *Observations on Article 1*

*Argentina.* As regards subparagraph (e), the exclusion of “shore-based persons carrying out work aboard a fishing vessel” seems appropriate, since the provisions of the proposed Convention should only apply to the exercise of fishing activities or activities immediately related to it. Also, it is understood that references to naval personnel include persons in the permanent service of the Government who carry out duties in this sector of activity. CATT states that, if “shore-based persons carrying out work aboard a fishing vessel” were included, subparagraph (e) should explain that this covers persons performing work on a fishing vessel in port or in the vicinity of the port. ACPP considers it necessary to add in subparagraph (e) after “fishing vessel” the wording “duly qualified or authorized for that activity”.

*Australia.* Subparagraph (a): The use of the term “commercial” appears superfluous, given that the definition excludes subsistence and recreational fishing, and given the simple title of the Convention. Furthermore, the definition could be expanded to include aquaculture – a growth area consisting of fish farming rather than taking natural resources from the sea, although many aspects of its operations resemble traditional fishing. Finally, a definition of “fishing operations” would be useful to delimit the scope of the Convention. Subparagraph (b): The “competent authority” would generally be a relevant state authority, if the Convention was extended to all fishing vessels, and if Australia ratified the Convention. Subparagraph (e): Shore-based persons carrying out work aboard a fishing vessel should be covered by the Convention, if they remain aboard while the vessel is engaged in a voyage, in order to prevent genuine fisher employees being classified as shore-based to circumvent the Convention. However, shore-based workers temporarily carrying out work aboard a fishing vessel in port should be excluded from the definition of “fisher”. If such workers are required to live aboard while temporarily carrying out work in a port, they should be entitled to the same accommodation and living conditions as fishers. A definition of “shore-based personnel” would be useful. Subparagraph (g): The Convention sometimes refers to “vessel” which presumably means “fishing vessel”. The definition should include something along the lines of “a reference to a vessel means a fishing vessel unless specifically excluded”. Subparagraph (i): In the definition of “existing vessel”, the word “fishing” could be inserted for consistency before the next use of the term “vessel”. Subparagraph (k): The word “stern” should be “stem”. Furthermore, the proposed manner of length measurement seems unnecessarily complex for fishing vessels. A simpler approach would be to measure length from the inside of the stem, along the main deck to an intersection of a projection of the rudder stock with the main deck, or, simpler still, just measure the length of the main deck.

*Belgium.* Shore-based persons carrying out work aboard a fishing vessel should be excluded from the definition of “fisher” in subparagraph (e). Besides, the definition of the term “fisher” is so broad that there may be confusion as to the coverage. The Belgian Act of 3 May 2003 regulating articles of agreement and social status of maritime fishers could be of some use in finding more adequate wording. It establishes that a maritime fisher is any person employed as a crewmember of a fishing vessel, and that the contract between a maritime fisher and the owner constitutes an engagement to serve on board for the duration of a sea voyage.

CCE: Same as the above reply.

*Brazil.* With reference to subparagraph (e), it would be appropriate to include “shore-based persons carrying out work aboard a fishing vessel” in the definition of “fisher”, as long as it is specified that this work should be directly linked to the catching and handling of fish aboard the vessel, e.g. the work of persons involved in the processing of fish aboard factory ships. Thus, workers carrying out duties not directly related to fishing would be excluded, e.g. workers doing maintenance work or fishery observers.

*Canada.* Persons providing services to fishing vessels such as unloading, resupplying and maintenance, as well as shore-based workers who work on board a fishing vessel for a limited period of time while the vessel is docked and not engaged in fishing operations should be excluded from the definition of “fisher” in subparagraph (e).

CEC: Shore-based persons carrying out work aboard a fishing vessel should be excluded from the proposed Convention, as they are not defined or registered as fishers.

*China.* In subparagraph (a), the words “fishing for research and teaching purposes” should be added after “with the exception of subsistence fishing”. It would be to the detriment of research and teaching work if these fishing operations were brought under the obligations of an international Convention.

*Cyprus. OEB:* As regards the issue of “shore-based persons carrying out work aboard a fishing vessel” in subparagraph (e), the scope of the Convention should be limited to persons directly engaged in work in the sector, e.g. a shore-based electrician called to work on a fishing boat is not working in the fishing sector. The clarification is necessary so as to avoid confusion at national level. Independent owner-operators should also be excluded from the definition of “fisher”, since the new instrument should regulate the employment relationship, whereas persons operating their own vessels are not working within an employment relationship. The employers’ associations members of the IOE plan to further discuss the complicated issue of exclusion of self-employed fishers.

*Finland.* The definitions in this Article do not make clear how widely fishers and fishing vessels come within the compass of the Convention. As regards subparagraph (a), it is unclear how “subsistence fishing” is defined, “commercial fishing” being defined as all fishing operations apart from recreational and subsistence fishing. In view of the wide definition of “fishing vessel” in subparagraph (g), provisions would apply to both inland-water fishing and small-scale fishing, regardless of the form of company. However, in Finland, it is usual to find small boats operating off the coast with a small crew on short fishing trips, and professional fishing being practiced in inland waters. Legally binding international provisions should ensure that small-scale fishing as a livelihood remains economically viable.

*France.* The term “inland waters” could give rise to different interpretations, if not defined properly. It is thus necessary to determine the areas to be covered by this term and to provide for a precise and coherent definition involving other international instruments, if need be.

MEDEF: In the interest of a clear and coherent approach to the definition of the term “fisher”, shore-based persons carrying out work aboard a fishing vessel should be excluded. These technicians normally work on vessels in port and should, therefore, not appear on the crew list.

*Iceland.* The definition of “fisher” in subparagraph (e) should be restricted to persons carrying out work aboard a fishing vessel while at sea, i.e. persons participating in the operation of the vessel, preparing gear for fishing, catching, loading catch and processing it. Since persons who temporarily work on repairs or maintenance of the vessel do not fit this description, the exclusion of “shore-based persons carrying out work aboard a fishing vessel” is supported. Furthermore, the definition of a “fisher’s work agreement” in subparagraph (f) should only cover the employment relationship between employer (fishing vessel owner) and employee (fisher). The existing fishing standards did not include self-employed persons and there is no reason for such change. A “fisher’s work agreement” should be defined as a “contract of employment,

collective agreement or other similar arrangement governing the terms of a fisher's work and working conditions on board a vessel".

*Italy.* UILA-PESCA: It seems necessary to specify that the representative organizations of fishers mentioned in subparagraph (c) are trade unions for employed workers/wage earners. The definition of "fisher" in subparagraph (e) is too general in that it assimilates independent fishers, i.e. owners of vessels and/or members of cooperatives owning vessels, with workers employed by fishing vessel owners. It should be made explicit that the proposed Convention deals with employed workers, as it is the wage earners who are the true beneficiaries of its provisions.

*Lebanon.* In subparagraph (a), it is proposed to add after the term "inland waters" the words "lakes and channels" in inverted commas for the purpose of clarification. With respect to the term "occupation" in subparagraph (e), it should be clarified whether, for example, the person repairing the machinery of the fishing vessel would be considered as a fisher. As regards the bracketed text, if these shore-based persons are dockers rather than fishers, the Convention should not be applicable to them; otherwise, there is no objection to their being covered. Furthermore, the term "other persons in the permanent service of a government" does not make clear who would be excluded from the instrument. Finally, it is proposed to add at the end of subparagraph (l) the words "according to statutory provisions in force in every country".

*Mauritius.* The tripartite Advisory Council for Occupational Safety, Health and Welfare proposes to amend subparagraph (m) as follows: "'Skipper' means an appropriately qualified person having command of a fishing vessel."

*Morocco.* In subparagraph (e), given that shore-based persons carrying out work aboard a fishing vessel are covered by specific benefits, they should be excluded from the scope of this Convention.

*New Zealand.* It would be useful to clarify whether the term "commercial fishing" in subparagraph (a) includes aquaculture, whaling, seal hunting and factory processing ships. In New Zealand, a "commercial fishing ship" is registered under the Fisheries Act and does not perform the above types of operations. As the term "gross tonnage" is not utilized within the Convention, it is suggested to delete its definition in subparagraph (j). The term "major conversion" used in subparagraph (h)(i) could be defined as follows:

"Major conversion" means the alteration or modification of a ship, including the replacement, removal or addition of:

- (a) any part of a ship, that is likely to:
  - (i) significantly affect the structural integrity, tonnage, freeboard, cargo or passenger capacity, crew or passenger accommodation, conditions of assignment of load line, watertight subdivision, stability, structural fire protection; or
  - (ii) result in significant changes to the propulsion machinery, auxiliary machinery, steering or method of propulsion of the ship; and
- (b) any safety equipment of the ship.

*Nicaragua.* CTN: Subparagraph (h), clause (iii), third bullet point, should be replaced with: "assembly has commenced comprising at least 20 per cent of the structural material". The reason for this amendment is that there is a contradiction between

the figure of 50 tonnes of structural material, or 1 per cent, whichever is less; since 1 per cent in real terms could turn out to be an insignificant figure.

*Norway.* As for subparagraph (e), “shore-based persons carrying out work aboard a fishing vessel” should not be covered by this Convention. However, this category should also benefit from the measures taken in relation to OSH and accident prevention. It is thus proposed to include a new paragraph 3 in Article 3 or a new subparagraph (f) in Article 26 with the following wording: “The skipper is, in cooperation with shore-based owners and operators, responsible to ensure that shore-based persons carrying out work aboard a fishing vessel are included in the efforts to ensure occupational safety, health and accident prevention on board.”

*Portugal.* Shore-based persons carrying out work aboard a fishing vessel according to subparagraph (e) should be covered by the Convention, although they might be excluded from some of its provisions, such as those relating to accommodation, food and repatriation.

*Spain.* The term “fisher” should not include shore-based persons, even if they *exceptionally* carry out work aboard a fishing vessel. It should rather refer to persons whose main tasks are performed on board. Since the content of the Convention refers to conditions of work on board vessels, it would, in principle, not make sense to apply it to workers usually carrying out their activity on shore. Moreover, if fishers were deemed to be only those workers appearing on the crew list, i.e. crew members, this could result in the exclusion of fishers engaged in artisanal fishing on board small vessels. It would be more appropriate, therefore, to refine the definition of “fisher” to require that these be persons habitually working on board fishing vessels. Yet, when shore-based persons are sailing on board the vessel they should be treated no less favourably than the crew in regard to accommodation and maintenance. Also, the express reference to workers paid on the basis of a share of the catch seems ambiguous, given that the vast majority of fishers work under this system of remuneration. Instead of treating the system applying to the vast majority as an exception, and the system of wage payment as the general rule, it would be more appropriate to include a general reference to any system of remuneration. The subparagraph should thus read as follows:

“fisher” means any person employed or engaged in any capacity or habitually carrying out an occupation on board any fishing vessel, irrespective of the system of remuneration; it excludes pilots, naval personnel, other persons in the permanent service of a government and shore-based persons carrying out work aboard a fishing vessel, who shall be subject to special agreed conditions concerning accommodation and maintenance on board when the vessel is sailing; such conditions shall not be less favourable than those enjoyed by fishers on board.

OPPAO: As regards subparagraph (e), it should be made clear that the Convention is limited in scope to persons directly working in the fishing sector, i.e. solely to fishers on board fishing vessels, logically excluding persons belonging to other sectors who, in certain circumstances, perform work aboard a fishing vessel.

*Tunisia.* In subparagraph (e), shore-based persons carrying out work aboard fishing vessels should be excluded from the Convention, given that they are not part of the crew. The term “subsistence fishing” should be defined so as to provide an unequivocal distinction from “commercial fishing” in subparagraph (a). This would

also facilitate the job of the competent authority, which, in the event of doubt, has to determine after consultation whether or not a vessel is engaged in commercial fishing.

*Ukraine.* In subparagraph (g), the words “of any nature whatsoever, whether publicly or privately owned” should be replaced with “of any nature or form of ownership whatsoever”, since in Ukraine there are many collective fishing enterprises operating collectively owned fishing vessels, which cannot be defined as exclusively private or public. As for subparagraph (m), the term “command” should be refined, since the legal rights of a captain over vessel and crew while at sea need to be clearly separated from the economic command of the owner while the vessel is sailing. It is proposed that the words “onboard the vessel” should be inserted before the words “having command of the vessel”.

*United States.* USCIB: With respect to subparagraph (e), fisheries observers should also be excluded from the definition of “fishers”, as they are generally hired through private contractors (not by vessel owners) for the purpose of collecting scientific data or compliance monitoring for use by government agencies, without being in the permanent service of a government. Furthermore, as regards the bracketed language, persons such as shore-based electricians or mechanics doing periodic repair work are not working within the fishing sector. The Convention should be limited to fishers on fishing boats. Finally, subparagraph (e) should also exclude independent owner-operators, since they are not part of an employment relationship and work for themselves.

#### SCOPE

#### Article 2

1. Except as provided otherwise, the Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.
2. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.

#### Observations on Article 2

*Finland.* According to this Article, the Convention would be applied not only to employed fishers but also to the self-employed and fishers paid on the basis of a share of the catch. The extension of the Convention to fishers operating independently or as entrepreneurs is problematic. National employment legislation applies only to those in an employment relationship, i.e. people who personally, under the management and supervision of an employer, have committed themselves to work for an employer in return for a wage or other consideration. In Finland, most fishers are self-employed.

*New Zealand.* As regards paragraph 1, see comment under Article 1, subparagraph (a).

*Tunisia.* Taking into account the particular nature of work on board small fishing vessels and the extent of traditional fishing activities in certain countries, it is

suggested to exclude vessels without motor and vessels of less than 5 t from the Convention.

### Article 3

1. The competent authority may, after consultation, exclude from the requirements of the Convention, or certain provisions thereof, where the application raises special and substantial problems in the light of particular conditions of service of the fishers or fishing vessels' operations:

- (a) fishing vessels engaged in fishing operations in rivers and inland waters; and
- (b) limited categories of fishers or fishing vessels.

2. In the case of exclusions under the preceding paragraph, and where practicable, the competent authority shall take measures, as appropriate, to progressively extend the protections under the Convention to those categories of fishers and fishing vessels.

### Observations on Article 3

*Argentina.* It is damaging for the strength of the generic exclusion in paragraph 1 to exist alongside the specific exclusion in Article 10, paragraph 2. This not only affects the coherence of the text, but, moreover, the parameters authorizing the exclusion in Article 10, paragraph 2, differ in wording from those in Article 3 and seem more restrictive. It would seem preferable to retain the wording of Article 3 and delete paragraph 2 of Article 10.

*Australia.* It is unclear whether this is intended to refer only to vessels of the flag State or to all fishing vessels.

*Finland.* Paragraph 1, subparagraph (b), authorizing under certain circumstances the exclusion of limited categories of fishers or fishing vessels, is strongly supported. The regulation of working conditions in the *entire* fishing sector, including the category of fisher entrepreneurs, would be unusual in terms of the national legislative tradition.

*France.* The provisions of this Article appear to be sufficiently flexible to strike a balance with the requirements of the Convention for the purpose of widespread ratification.

*Japan.* The Government enquires whether the notion “special and substantial problems” includes problems raised by the size of fishing vessels. If not, paragraph 1 should be revised to “... special and substantial problems in the light of the size of fishing vessels and particular conditions of service ...”.

*Norway.* See comment under Article 1, subparagraph (e).

*Tunisia.* It is suggested to replace the term “limited” in paragraph 1, subparagraph (b), with “established” [*déterminées*], since the former aims to restrict the categories of fishers or fishing vessels that may be excluded from the Convention, while the latter aims to determine the categories to be excluded.

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*Article 4*

1. Each Member which ratifies the Convention shall, in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organization:

- (a) list any categories of fishers or fishing vessels which may have been excluded in pursuance of Article 3, paragraph 1, above;
- (b) give the reasons for such exclusion, stating the respective positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
- (c) describe any measures taken to provide equivalent protection to the excluded categories.

2. Each Member shall describe in subsequent reports submitted under article 22 of the Constitution, the measures taken with a view to extending progressively the provisions of the Convention to the excluded fishers and fishing vessels.

*Observations on Article 4*

*Canada.* CEC: The concept that member States should be required to give reasons for exclusions and report on the positions of their constituents is not supported.

*Lebanon.* It is proposed to partly redraft paragraph 2 as follows: "... of the Constitution, any measures which might have been taken with a view to extending progressively ...".

*Article 5*

The competent authority may, after consultation, decide to use other units of measurement as defined in the Convention and shall, in the first report submitted under article 22 of the Constitution, communicate the reasons for the decision and any comments arising from the consultation.

*Observations on Article 5*

*Belgium.* It would be desirable to choose the criterion of vessel length, as defined in Article 1, subparagraph (k), rather than gross tonnage or any other unit of measurement. However, it should be noted that vessels might be of the same length and yet have a different engine power.

CCE: Same as the above reply.

*France.* The criterion of vessel length should be retained as the only unit of measurement. Gross tonnage should not also be used, since the introduction of a conversion formula – de facto a system of equivalence – would render the Convention difficult to understand and implement.

## PART II. GENERAL PRINCIPLES

## IMPLEMENTATION

*Article 6*

1. Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under the Convention with respect to fishers and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards or other means consistent with national law and practice.

2. Nothing in this Convention shall affect any law, award, custom or any agreement between fishing vessel owners and fishers which ensures more favourable conditions or provisions than those provided for by the Convention.

*Observations on Article 6*

*China.* Emphasizing that implementing laws and regulations should be formulated in line with national conditions would avoid misunderstandings and contradictions between developed and developing countries. Paragraph 1 should, therefore, be amended as follows:

Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under the Convention with respect to fishers and fishing vessels under its jurisdiction. Such laws and regulations shall be formulated in the light of national conditions so as to facilitate the implementation of the Convention. Other measures may include collective agreements, court decisions, arbitration awards or other means consistent with national law and practice.

*Italy.* UILA-PESCA: The “agreements between fishing vessel owners and fishers” referred to in paragraph 2 should explicitly include collective agreements between representative organizations of fishing vessel owners and trade unions for employed workers/wage earners.

*Lebanon.* For the purposes of clarity paragraph 1 should be redrafted to read: “... implement the provisions of the Convention by promulgating laws, regulations or any other measures that it has adopted to fulfil its commitments under the Convention ...”.

*New Zealand.* It would be helpful to clarify whether voluntary codes of practice would be considered as “other measures”.

## COMPETENT AUTHORITY AND COORDINATION

*Article 7*

Each Member shall:

- (a) designate the competent authority or authorities; and

- (b) establish mechanisms for coordination among relevant authorities for the fishing sector at the national and local level, as appropriate, and define their functions and responsibilities, taking into account their complementarities and national conditions and practice.

RESPONSIBILITIES OF FISHING VESSEL OWNERS, SKIPPERS AND FISHERS

*Article 8*

1. The fishing vessel owner has the overall responsibility to ensure that the skipper is provided with the necessary resources and facilities for the purpose of compliance with the obligations of the Convention.

2. The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including but not limited to the following areas:

- (a) providing such supervision as will ensure that as far as possible fishers perform their work in the best conditions of safety and health;
- (b) managing the fishers on board in a manner which respects safety and health, including fatigue;
- (c) facilitating occupational safety and safety awareness training on board the vessel.

3. The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgement of the skipper, is necessary for the safety of the vessel and its safe navigation, safe operation or the safety of the fishers on board.

4. Fishers shall comply with established applicable safety and health measures.

*Observations on Article 8*

*Argentina.* With regard to the Spanish version of paragraph 1, the wording *patrón* should be inserted after *capitán*, as there is no reason for the words *capitán o patrón* to figure in paragraph 2 and not in paragraph 1.

*Australia.* This clarification of responsibilities is strongly supported. Given that many accidents in the maritime sector involve fishing vessels as a result of non-compliance with basic principles of seamanship on the part of crews/skippers, paragraph 2 could usefully include a new subparagraph: “(d) ensuring compliance with safety of navigation, watchkeeping and associated good seamanship standards.” As regards paragraph 4, the obligations of fishers should also comprise compliance “with lawful and reasonable directions of the skipper”.

*Canada.* CEC: The responsibility for safety should not rest solely with the vessel owner and skipper. The crew must also be held responsible for safe working practices at sea.

*China.* Paragraph 2, subparagraph (c), should be amended as follows: “facilitating training in occupational safety and health on board the vessel”.

*France.* The wording of this Article is very satisfactory, as it clearly shows the chain of responsibility and does not exclude any of the actors.

*Italy.* UILA-PESCA: In paragraph 2, subparagraph (a), the words “as far as possible” should be deleted.

*Lebanon.* In paragraph 1, it is proposed to replace “facilities” with “means”, because the term “facilities” is unclear in this context. Paragraph 2, subparagraph (c), should be amended to read: “... and safety and health awareness training ...”. The Arabic version of paragraph 3 should be redrafted as follows: “... which, from a professional point of view, in the judgment of the skipper, is necessary for the safety of the vessel ...”.

*Morocco.* Paragraph 3 should rather read:

The fishing vessel owner shall not constrain the skipper from taking any decision which, in the professional judgement of the skipper, is necessary for the safety of the fishers, or for the safety of the vessel and its safe navigation or operation.

*New Zealand.* It is suggested to redraft paragraph 2 as follows: “The owner and the skipper have the responsibility for ...”. Furthermore, it should be made clear that paragraph 4 refers to OSH measures as applied by member States.

### PART III. MINIMUM REQUIREMENTS FOR WORK ON BOARD FISHING VESSELS

#### MINIMUM AGE

##### *Article 9*

1. No person under the minimum age shall work on board a fishing vessel.
2. The minimum age at the time of the initial entry into force of the Convention is 16 years.
3. (a) The minimum age may be 15 years for persons who are no longer subject to compulsory schooling as imposed by national legislation, and who are engaged in maritime vocational training.  
(b) Persons of 15 years of age may also be authorized, in accordance with national law and practice, to perform light work during school holidays; in this case they shall be granted a rest of a duration equal to at least half of each holiday period.
4. The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health and safety of young persons, shall not be less than 18 years.
5. The types of employment or work to which paragraph 4 above applies shall be determined after consultation, taking into account the risks concerned and the applicable international standards.
6. The competent authority may, after consultation, authorize the performance of work referred to in paragraph 4 above as from 16 years of age, on condition that the health and safety of the young persons concerned are fully protected and that the young persons concerned have completed basic pre-sea safety training.

*Observations on Article 9*

*Argentina.* As fishing is a hazardous activity per se, Argentina is actually in favour of a minimum age of 18 years. At the very least, the minimum age in the fishing sector should not be reduced to less than 16 years. Thus, paragraphs 3 and 6 should be deleted and a comprehensive reference to Convention No. 138 included. CATT states that the inclusion of some paragraphs of Convention No. 138 and not of others could damage compliance therewith, and that it would be preferable to explicitly refer to this Convention. It should also be remembered that, as established by the ILO, work in fishing is, as a whole, dangerous. Therefore, the minimum age of 18 should be adopted, as a minimum for vessels of 15 metres in length or over, while permitting exceptions following consultation. The Argentinian Naval Prefecture states that the minimum age in paragraph 3, i.e. 15 years, is contrary to national legislation, and that it would be advisable to at least change it to 16 years. The possibility to reduce the minimum age for hazardous work from 18 to 16 years (paragraph 6) is inappropriate, given that it entails a greater risk for fishers and for the safety of the vessel in general.

*Australia.* Given the dangerous nature and high injury rates of the fishing sector, the minimum age for working on fishing vessels should be 18 years for safety reasons. A lower age of 16 years for persons performing vocational training or light work during school holidays would seem appropriate to give exposure to the industry.

*Belgium.* Having ratified Convention No. 138 in 1988, Belgium could support the introduction of a cross reference in this Article. Furthermore, given the terminology employed in this provision (e.g. “work”, “worker”), clarification should be made as to whether persons under 15 years of age who are still subject to compulsory schooling would be allowed to undertake “observation voyages” during school holidays. Without actually carrying out any work aboard, these minors would travel on a fishing vessel and observe the activities on board for the purpose of information about the sector. If need be, it is suggested to adapt the provision to the effect that the possibility of such observation voyages for persons under 15 is retained by means of a permissive clause within Article 9 or the possibility of persons undertaking observation voyages is excluded from the definition of “fisher” in Article 1, subparagraph (e).

CCE: Same as the above reply.

*Brazil.* This provision should include a direct reference to Convention No. 138, ratified by Brazil, and prohibit persons under the age of 18 from working aboard fishing vessels. Special provisions should be laid down concerning the protection of minors working as apprentices, in particular as regards OSH or life on board.

*Canada.* Convention No. 138 is the general international labour standard on minimum age for employment, and any new language should be consistent with it. Moreover, only minimum age requirements specific to work in the fishing industry should be included in this Article. Paragraph 3, subparagraph (b), should be deleted, since Convention No. 138 stipulates the conditions under which light work may be carried out, and the introduction of a new requirement to restrict employment during school holidays could create a barrier to ratification.

*China.* Paragraph 3, subparagraph (a), should be amended as follows: “While the minimum age may ... training, it shall be approved by the competent authority in an

appropriate way.” The cases where the minimum age may be 15 years should be limited in number and necessitate approval from the competent authority.

*Finland.* National legislation provides that fishing work can only be performed by a male person of 16 or a female person of 17 years of age or more. The reduction to 15 years of age according to paragraph 3 would, thus, not be justified in terms of the protection of young persons. Also, an age limit of 18 for dangerous work is not provided for in national legislation.

*France.* The provisions of this Article and Convention No. 138 need to be better harmonized. Otherwise, its wording accommodates national concerns regarding the protection of young workers. The limited flexibility provided in paragraph 3 is essential to avoid an even greater exodus of young persons from the fishing industry.

*Guinea.* In the fishing sector of developing countries, there is a tendency to engage children of parents exercising the fishing profession. The proposed instruments should include provisions protecting these “child fishers” who are exposed to the inherent risks and hazards of the fishing activity.

*Iceland.* The minimum age in paragraph 2 should be 15 years instead of 16, and paragraph 3 should be deleted accordingly. Alternatively, in paragraph 3, the words “and who are engaged in maritime vocational training” (subparagraph (a)), as well as the phrase “in this case they shall be granted a rest of a duration equal to at least half of each holiday period” (subparagraph (b)) should be deleted.

*Indonesia.* The minimum age should be 18 years.

*Italy.* UILA-PESCA: Paragraph 3, subparagraph (b), authorizing persons of 15 years of age to perform light work during school holidays, should be removed.

*Lebanon.* New provisions on child labour should not be worded differently from the fundamental Convention No. 138. There is no objection to a minimum age of 16 years; however, under Convention No. 138 the minimum age is 15 years, and may, under certain circumstances, be limited to 14. To avoid adoption of different minimum ages in different countries, it should be clarified whether the meaning of “transport, storage and communication” provided for in Article 5, paragraph 3, of Convention No. 138 includes work in the fishing sector. Paragraph 3, subparagraph (a), should refer to Article 6 and Article 7, paragraphs 1 and 2, of Convention No. 138, and subparagraph (b) to Article 7, paragraph 1, of that Convention. It is proposed to redraft paragraph 4 for the purpose of consistency with Article 3, paragraph 1, of Convention No. 138: “... jeopardize the health and safety or morals of ...”. As for paragraph 6, it should be redrafted as follows: “... on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction on sea or vocational training in the relevant branch of activity, including basic pre-sea safety training”. Otherwise training followed by young persons would only include the issue of safety, which would not be in accordance with Article 3, paragraph 3, of Convention No. 138.

*Norway.* The proposed Convention should be consistent with Convention No. 138, while the flexibility built into the present text should be retained.

*Portugal.* A cross reference to Convention No. 138 would better guarantee the application of its principles to the fishing sector. However, the inclusion of such reference into Article 9 would not seem to be very coherent.

*Spain.* Although the general minimum age for admission to employment is regulated in Convention No. 138, it would be justified for the minimum age in this Convention to be higher, given that conditions of work in the fishing sector are more hazardous than in other sectors. The minimum age for the fishing sector should be 16 years and should be raised to 18 in the case of work likely to jeopardize the health, safety or morals of young persons, as prescribed in Article 3, paragraph 1, of Convention No. 138. In paragraph 3, subparagraphs (a) and (b), should be consolidated to read: "The minimum age ... training; they may perform light work during school holidays; in this case ...". This would avoid confusion to the effect that only those young persons aged 15 years who have completed compulsory schooling and are engaged in maritime vocational training may perform work on board fishing vessels. According to national law, persons aged under 16 years cannot work in fishing activities under any circumstances; Spain is, however, aware of the feelings of countries such as France, which are keenly interested in this provision, in order to avoid possible loopholes of educational systems where compulsory education may be completed at the age of 15.

*Sweden.* Article 9 takes as a starting point Convention No. 112, which is outdated and has been revised through Convention No. 138. Of the 29 States that had ratified Convention No. 112, 21 have denounced it as a consequence of ratifying Convention No. 138, and four countries having ratified Convention No. 138 have accepted a lower age limit than that prescribed in Convention No. 112. Hence, paragraphs 3 and 6 should, as far as practicable, tie in with Articles 7 and 3 of Convention No. 138. Mere reference appears insufficient, since under Convention No. 138 the minimum age for light work is 13 years. It is recalled that the Tripartite Meeting on Safety and Health in the Fishing Industry (1999) established the hazardous nature of work aboard fishing vessels.

*Switzerland.* The establishment of a minimum age for employment of 16 years in paragraph 2 creates a problem of consistency with Conventions Nos. 138 and 182, which apply to all branches of activity, including the fishing sector. The fundamental Conventions set the minimum age at 15 years in general, less than 15 for light work and 18 for dangerous work. A minimum age of 16 for the fishing sector would give rise to more such exceptions, weakening Convention No. 138, and would ultimately result in the situation that led to the formulation of Convention No. 138, namely a plethora of different minimum ages set by sectoral Conventions. Paragraph 2 should, therefore, be deleted. Furthermore, since it is extremely hard to ascertain what activities in the fishing sector could be classed as light work, paragraph 3, subparagraph (b), should be removed. Lastly, for the sake of consistency, it should be taken into account that the fishing sector – at least the maritime one – has the characteristics of intrinsically dangerous work as defined in Article 3, subparagraph (d), of Convention No. 182, that are enumerated in Paragraph 3 of Recommendation No. 190: working in confined spaces (b), in an unhealthy environment (temperatures, noise levels, vibrations) (d), working with dangerous machinery, equipment and tools (c), manually handling or transporting heavy loads (c), working under particularly difficult

conditions (e.g. for long hours or during the night) (e), and with the potential for children to be exposed to physical, psychological or sexual abuse in such an environment (a). It should be recalled that the minimum age for employment in such cases is 18 years, using the wording of Article 3, subparagraph (d), of Convention No. 182. Accordingly, paragraph 5 should be deleted, and paragraph 6 should be redrafted along the lines of Paragraph 4 of Recommendation No. 190: “The competent authority could, after consultation, authorize the performance of work referred to in paragraph 4 above, on condition that the health, safety and morals of the children concerned are fully protected, and that the children have completed basic pre-sea safety training.”

*Tunisia.* It would be preferable to insert a reference to Convention No. 138 and thereby avoid weakening provisions laid down in fundamental Conventions.

*Ukraine.* It would be desirable to prohibit persons under 18 from working aboard fishing vessels, as provided in national legislation. See also comments under Article 26, subparagraph (c), and Paragraphs 1-3 of the proposed Recommendation.

*United States.* USCIB: With respect to paragraph 3, requiring a rest period of at least half of each holiday period for young persons 15 years of age is overly prescriptive and may prove impracticable given the nature of the work. Parents or legal guardians should make such decisions.

#### MEDICAL EXAMINATION

##### *Article 10*

1. No person shall work on board a fishing vessel unless they have a valid medical certificate attesting that they are medically fit to perform their duties.

2. The competent authority may, after consultation, grant exemptions from the application of the preceding paragraph, taking into account the health and safety of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, type of fishing operation and national traditions.

##### *Observations on Article 10*

*Argentina.* For the reasons given under Article 3, paragraph 2, should be deleted. The Argentinian Naval Prefecture states that it is not appropriate to authorize exceptions allowing fishers to work aboard fishing vessels without valid medical certificates attesting their medical fitness.

*Australia.* Whilst referring to medical examinations is sensible, it has a history of opposition, especially from owner-operators. Moreover, persons undergoing vocational training, which is of short duration and only intended to give school-leavers some exposure to the industry, should not be required to pass medical examinations.

*France.* There are two aspects to the fitness certified in paragraph 1, which should appear in the text, namely the fitness to navigate and the fitness to carry out the work. Strong reservations are expressed with regard to paragraph 2, which allows fishers to

exercise one of the most hazardous professions without attestation of their medical fitness.

*Iceland.* Paragraph 1 should read as follows: "... unless they are fit to perform their duties. If there is any doubt about their fitness, the fishers are obliged to have a medical examination if the skipper so requires."

*Lebanon.* Every person should hold a medical certificate before beginning work in any field, and some activities require certain additional health conditions. Since paragraph 2 allows for exemptions from the general obligation to have a medical certificate, it should be redrafted.

*New Zealand.* The word "person" should be replaced with the term "fishers" in paragraph 1 because the current wording is too all-inclusive.

*Norway.* Paragraph 6 of the proposed Recommendation should be moved to the Convention and become new paragraph 2 of Article 10. If the medical certificate was not signed by a medical practitioner approved by the competent authority, this document would not attest to much, and Norway would question its value. Also, the period of validity for medical certificates should not exceed two years.

*Spain.* Given that in paragraph 1, "medically fit" is rendered in Spanish as *aptitud física*, the words "physically and psychologically" should replace the word "medically". It is just as important for the security of the rest of the crew to verify and certify the worker's *psychological* health, especially if one considers that a vessel is a confined and isolated space on which people are forced to live together for months at a time.

*Ukraine.* A provision concerning compulsory inspection of fishing vessel crews should be included in the Convention.

*United States.* USCIB: The term "person" should be replaced with "fisher". Further, the requirement for medical certification should be limited to fishers who have direct responsibility for the safe operation of the vessel and safety of the crew, such as skippers, mates, navigators, watch standers, engineers, and fishers holding a mariner's document or licence issued under governmental authority.

IMHA: Paragraph 2 allows for too many subjective exemptions from the requirement of medical examination (e.g. national traditions) and should be more objective and restrictive. This preventive activity is crucial for *all* vessels, since emergency cases resulting from non-prevention rely on the quick availability of medical assistance regardless of vessel size. Non-compulsory medical examination would result in individual/public health and economic damages. Accordingly, Chapter IV of the ILO/WHO *Guidelines for conducting pre-sea and periodic medical fitness examinations for seafarers* only permits exemptions for *single* voyages.

#### Article 11

Each Member shall adopt laws, regulations or other measures providing for:

- (a) the nature of medical examinations;
- (b) the form and content of medical certificates;

- (c) the medical certificate to be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a medical certificate; practitioners shall enjoy full professional independence in exercising their medical judgement in terms of the medical examination procedures;
- (d) the frequency of medical examinations and the period of validity of medical certificates;
- (e) the right to a further examination by another independent medical practitioner in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; and
- (f) other relevant requirements.

### *Observations on Article 11*

*France.* The appeal procedure envisaged in subparagraph (e) is essential.

*Lebanon.* In subparagraph (c), the phrase “or, in the case of a certificate solely concerning eyesight ... certificate;” should be deleted. A qualified medical practitioner recognized by the competent authority is the appropriate person to issue medical certificates, and there is no need for other bodies to deliver certificates concerning eyesight. It is also proposed to add a new clause to subparagraph (e) designating the authority empowered to determine which one of the two medical certificates for the same person and case is valid.

*New Zealand.* It is considered that the intent of this wording could already be achieved through Article 10, and that the prescriptive directions of this provision would be better placed in the Recommendation.

*Norway.* Paragraph 10 of the proposed Recommendation should be moved to the Convention and become new Article 12, since the right to administrative appeal is a fundamental right which should be guaranteed to all fishers.

*Spain.* Subparagraph (e), which reiterates the right to be examined by an independent medical practitioner, conflicts with subparagraph (c), which provides that medical certificates have to be issued by persons who “enjoy full professional independence”. The unhappy formulation of the provision leads to the question of which independence should prevail, the first or the second. It is recommended to use a text similar to that in Article 14, subparagraph (c), which refers to means of settling disputes in connection with work agreements and leaves it to national legislation to determine procedures. Subparagraph (e) should, thus, be redrafted as follows: “means of settling disputes concerning medical certification, in the event that a fisher has been refused a certificate or has had limitations imposed on the work he or she may perform, and does not agree; and”.

*Ukraine.* In Ukraine, panels of doctors at specially accredited institutions of preventive medicine carry out medical examinations, and their conclusions cannot be revised by an independent doctor. Thus, subparagraph (e) should be removed, and subparagraph (c) should refer to panel(s) of medical practitioners.

## PART IV. CONDITIONS OF SERVICE

## MANNING AND HOURS OF REST

*Article 12*

Each Member shall adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that:

- (a) their vessels are sufficiently and safely manned with a crew necessary for the safe navigation and operation of the vessel and under the control of a competent skipper; and
- (b) fishers are given rest periods of sufficient frequency and duration for the safe and healthy performance of their duties.

*Observations on Article 12*

*Argentina.* It would be appropriate for this Article to clearly provide that the crew should be sufficient in number to ensure both safe navigation and safe operation of fishing activities.

*Australia.* Manning and hours of rest is a core safety provision, which should also clearly apply to single-handed owner-operators.

*France.* It is, in practice, very difficult to apply working-hour restrictions to the fishing sector, given that, on board vessels, it is almost impossible to distinguish periods *other* than periods of rest. Thus, the concept of sufficient rest in subparagraph (b) is necessary.

*New Zealand.* This Article is supported. New Zealand is currently undertaking a study into fatigue on all commercial ships, which may result in a code of practice.

## FISHERS' WORK AGREEMENTS AND LIST OF PERSONS ON BOARD

*Article 13*

Each Member shall adopt laws, regulations or other measures:

- (a) requiring that fishers working on vessels flying its flag have a fisher's work agreement comprehensible to them that is consistent with the provisions of the Convention;
- (b) specifying the minimum particulars to be included in fishers' work agreements in accordance with the provisions contained in Annex I.

*Observations on Article 13*

*Australia.* Matters such as inclusion of work agreements, keeping agreements on board and frequency of payment are inconsistent with national practice and reflect outdated concepts of industrial relations that are no longer required in Australia's circumstances of awards and work contracts or catch-sharing arrangements. Such details

should be left out of the Convention for the purpose of widespread ratification. In its reply, Queensland also signals that it would have difficulty complying with this Article.

*Lebanon.* Subparagraph (a) should be partly redrafted as follows: "... comprehensible to them, simply drafted, and consistent with ...".

*New Zealand.* Subparagraph (b) and Annex I cover matters that are more properly included in a Recommendation than a Convention, which should have a principle-based approach. Moreover, it is cautioned that the definition of "fisher" includes self-employed persons, but that the terms of a genuine independent contracting arrangement are not subject to employment legislation (although OSH requirements apply).

*United Kingdom.* See comment under Annex I.

*United States.* USCIB: It is impracticable to impose upon vessel owners the duty to translate written fishers' work agreements in languages comprehensible to every fisher given the many multilingual regions and the diversity of workforces. Fishers' agreements are legally binding documents that must be clearly and accurately translated to avoid misinterpretation. In many countries such sophisticated, competent translation resources will be difficult to locate and prohibitively expensive. Therefore, Article 13 should be amended to read: "... have a written fisher's work agreement that is consistent with the provisions of the Convention drafted in the official language of the Member's country or, if practicable, in the predominant language of a region most represented by the majority of the crew."

#### Article 14

Each Member shall adopt laws, regulations or other measures regarding:

- (a) procedures for ensuring that a fisher has an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded;
- (b) maintenance of records concerning the fisher's work under such an agreement; and
- (c) the means of settling disputes in connection with such an agreement.

#### Observations on Article 14

*Australia.* It is unclear whether this is intended to apply to all vessels or just those flying the flag of the Member. Furthermore, the concept of a service record book is inconsistent with national practice. Service should be able to be established by reference to an employer.

*France.* The wording of subparagraph (b) is imprecise. It should be made clear that records concerning the fisher's work under the agreement can be kept using any method, be it the traditional form of a service book or more up-to-date methods.

*New Zealand.* It would be helpful to clarify what "records" are intended to be covered under subparagraph (b).

*Norway.* The Norwegian Fishing Vessel Owners' Association criticizes the fact that fishers would be able to "detain" the vessel until they are "satisfied" with the content of the work agreement. The Government does not believe that this requirement would cause problems for the industry, although the "recruitment process" on board fishing vessels is more casual than that for seafarers.

*United States.* USCIB: In view of the comment under Article 13, this Article should be amended to read: "Each Member should adopt ... : (a) ... on the terms of the fisher's work agreement including language translation assistance before it is executed; ... (c) the means and venue of settling disputes ...".

#### *Article 15*

The fisher's work agreement, a copy of which shall be provided to the fisher, shall be carried on board and be available to the fisher and, in accordance with national law and practice, to other concerned parties on request.

#### *Observations on Article 15*

*Australia.* See comment under Article 13.

*Finland.* This Article is in harmony with national legislation, which requires that contracts be made in writing.

*France.* MEDEF: It appears redundant to carry the work agreement on board, if a copy has already been provided to the fisher; one of the two options should suffice. Furthermore, the term "concerned party" is too vague and needs to be clarified, since, in practice, not all third persons concerned have access to the fisher's work agreement.

*New Zealand.* It may be helpful to clarify who "other concerned parties" is intended to cover.

#### *Article 16*

Articles 13 to 15 inclusive, and Annex I, do not apply to a fishing vessel owner who is also single-handedly operating the vessel.

#### *Article 17*

Every fishing vessel shall carry a list of the fishers on board, a copy of which shall be provided to appropriate persons ashore prior to or shortly after departure of the vessel.

#### *Observations on Article 17*

*Argentina.* It is suggested to replace the words "appropriate persons on shore" with the term "the competent authority" and to delete the words "or shortly after".

*France.* The notion “appropriate persons ashore” should be more precise and should, at least, be amended to read “authorities and/or appropriate persons ashore”.

*Lebanon.* As it is crucial that the authority be provided with a list of the fishers on board *prior* to the departure of the vessel, the implications of the term “after” are unclear. The Government enquires whether this covers new fishers that may be taken on board from other ports after departure.

*New Zealand.* The intent of this Article is generally supported but the wording should be amended so that ships do not need to carry the list on board.

*Nicaragua.* CTN: The time limit for providing the list of fishers on board should be fixed. Hence, the provision should read as follows: “... provided to the appropriate authorized person ashore prior to departure of the vessel or within X hours after departure.”

*Tunisia.* It is suggested to exclude fishing vessels of less than 5 t from this requirement, because they usually carry out subsistence fishing, and it would be impracticable for them to carry, in all circumstances, a list of persons on board.

#### IDENTITY DOCUMENTS, REPATRIATION RIGHTS AND RECRUITMENT AND PLACEMENT SERVICES

##### *Article 18*

Fishers working on board fishing vessels that undertake international voyages shall enjoy treatment no less favourable than that provided to seafarers working on board vessels flying the flag of the Member and ordinarily engaged in commercial activities, with respect to:

- (a) identity documents;
- (b) repatriation conditions;
- (c) recruitment and placement services.

##### *Observations on Article 18*

*Argentina.* The square brackets in subparagraph (a) should be eliminated and the text retained. Furthermore, this provision should be extended to vessels undertaking national voyages. CATT states that, taking into account the entry into force of Convention No. 185 and other standards applicable to seafarers when in port or on foreign territory, it is essential that fishers on board vessels undertaking international voyages benefit, as far as identity documents are concerned, from conditions similar to those applying to seafarers.

*Australia.* Fishers on fishing vessels undertaking overseas voyages should have identity documents. Requirements for identity documentation on such vessels inevitably will have to be the same as for seafarers and should not be of a lesser standard.

*Belgium.* The idea that fishers on board vessels undertaking international voyages should have identity documents is supported. However, fishers’ identity documents

need not necessarily be the same as those required for seafarers. It would be preferable to delete the mention of identity documents in this Article and create a separate provision simply stating that these fishers should have “an identity document”.

*CCE:* Same as the above reply.

*Brazil.* Fishers’ identity documents, as provided in subparagraph (a), should comply with Convention No. 185, which allows for the application of its provisions to fishers following consultation. In Brazil, there are no fishing vessels that undertake international voyages and, even in case of foreign vessels fishing in the national EEZ, fishers must have a work permit in order to stay in the country. Brazil, therefore, understands that it would not need to issue fishers’ identity documents.

*Canada.* The reference to identity documents in subparagraph (a) should be deleted. Conventions Nos. 108 and 185 include provisions making it possible to apply these instruments to commercial maritime fishing. In addition, agreement was reached to remove the reference to identity documents from the draft consolidated maritime labour Convention.

*France.* Equivalent treatment of fishers on the above three points is supported. Repatriation rights, in particular, should apply to all fishers.

*Greece.* It would be advisable that subparagraph (a) be deleted, since it has already been agreed in the framework of the draft consolidated maritime labour Convention that there should be no reference to identity documents.

*Japan.* The “identity document” issued by each Member to its nationals would not always be based on Conventions Nos. 108 or 185, since these instruments are not included in the Preamble. Actual implementation of subparagraph (a) might, therefore, prove difficult, given the numerous nationalities on board fishing vessels and the various types of “identity documents” issued by Members to the fishers. Moreover, it has been decided that provisions concerning seafarers’ identity documents are not to be included in the draft consolidated maritime labour Convention. Thus, it would be appropriate to delete subparagraph (a). It would further be appropriate to either delete subparagraph (c) or to adjust it to the draft consolidated maritime labour Convention, according to which the control of recruitment and placement services is the responsibility of the State in which the services operate, and not a flag state responsibility.

*New Zealand.* The proposed wording is supported.

*Norway.* The brackets around subparagraph (a) should be removed, without, however, specifically referring to Convention No. 185. There would be no need for this Article if additional requirements for large vessels were developed. See comment under Article 30.

*Portugal.* As regards subparagraph (a), the provisions on identity documents applicable to seafarers should also apply to fishers, especially to those working on vessels that undertake international voyages.

*Spain.* Identity documents are already regulated in Convention No. 185 and, therefore, to ensure consistency with the wording of the draft consolidated maritime labour Convention, it is suggested to delete the bracketed text in subparagraph (a).

*Tunisia.* Fishers to whom this Article applies should have identity documents for the purpose of maritime security and, from a practical point of view, for the identification of persons working in the sector.

*United Kingdom.* It has already been agreed that there will be no reference to Seafarer IDs in the draft consolidated maritime labour Convention. Moreover, Convention No. 185 includes the option of extending its scope to the fishing sector. The reference in the proposed fishing sector Convention should, therefore, be deleted.

*United States.* USCIB: This Article should be deleted. The term “seafarer” broadly encompasses a vast array of occupations including barge operators, shippers, pilots, merchant mariners and others employed in government service, etc. Provisions relating to fishers’ identity documents, repatriation, and recruitment and placement should be specific to those engaged in commercial fishing as defined within the instrument.

#### PAYMENT OF FISHERS

##### *Article 19*

Each Member shall, after consultation, adopt laws, regulations or other measures providing that fishers are ensured a monthly or regular payment. The competent authority shall, after consultation, define the fishers to be covered by this provision.

##### *Observations on Article 19*

*Australia.* See comment under Article 13. It would be preferable to have a clause that guarantees fishers who are not on catch-sharing arrangements a minimum salary under the respective flag state legislation. Frequency of payment is best left to be arranged between the parties, possibly with participation of relevant industrial organizations.

*Canada.* CEC: Canadian fishing crews are usually paid at the conclusion of fishing trips based on the sale value of the catch. The timing of interim or final cash payments is not for the Government to dictate but a matter for discussion between the parties.

*France.* This Article should be supplemented to the effect that the principle of monthly or regular payment is affirmed, while allowing for flexibility in case of payments based on a share of the catch.

*Indonesia.* Fishers should be paid in the form of a standard salary with mandatory minimum wage.

*New Zealand.* It would be helpful to clarify what is intended by “regular payment” and what flexibility is envisaged under this Article in relation to self-employed fishers.

*Norway.* The Norwegian Fishing Vessel Owners’ Association feels that this Article could be strongly in contrast with the practice of payments based on a share of

the catch. Although the majority of seagoing vessels in Norway have introduced a monthly prepayment system, this is not the general rule in the international fleet.

*South Africa.* The national competent authority does not have the power to determine the wages of fishers. It is therefore proposed to broaden the provision and insert after “competent authority” the words “or any other government agency or agencies established in terms of national law”.

*Spain.* The general rule is that the workers in the fishing sector share the profits obtained from the catch and are not paid in the form of a wage. If the intention is to guarantee minimum remuneration for fishers, irrespective of the catch, the following alternative wording is suggested: “Each Member shall, after consultation, adopt laws, regulations or other measures providing that fishers receive minimum remuneration that is not below the minimum wage established for other workers. The competent authority shall, after consultation, define the fishers to be covered by this provision.”

*United States.* USCIB: Financial risks and rewards are inherent in the share-based compensation structure which is common practice in the industry. Typically, crew share earnings cannot be determined until the fish is sold and there is no guarantee that this will occur on a scheduled or monthly basis. However, advances against the settlement of anticipated estimated earnings should be made available to fishers for their protection and benefit. Therefore, Article 19 should be amended to read: “... fishers are paid in accordance with the terms expressly defined in their fisher’s agreement and agreed to by both parties prior to the commencement of the employment relationship. The competent authority should, after consultation, adopt measures to ensure that fishers may receive advance(s) against earnings when impacted by operational shut-downs, mechanical failure or other circumstances that may affect the well-being and welfare of fishers.”

## PART V. ACCOMMODATION AND FOOD

### *Article 20*

[Each Member shall adopt laws, regulations or other measures with respect to accommodation, food and potable water on board for fishing vessels that fly its flag.

#### *Observations on Article 20*

*Australia.* Queensland recognizes the importance of these matters to the health and safety of workers.

*Brazil.* See comment under Article 22.

*Canada.* The inclusion of proposed Article 20 in the Convention is supported.

*Cyprus.* OEB: The employers’ associations members of the IOE plan to further discuss the complicated issue of accommodation and food in the upcoming months.

*France.* The proposed Convention and Recommendation must contain provisions concerning accommodation. Moreover, many of the provisions in this area are fundamental provisions that should apply to *all* fishers, regardless of vessel size.

*Mauritius.* Supports the Articles relating to accommodation and food.

*New Zealand.* The proposed wording is supported.

*Spain.* The square brackets around Articles 20, 21 and 23 should be deleted, while retaining the content, which is roughly similar to the provisions of Conventions Nos. 68 and 126.

*Tunisia.* For practical reasons, it is proposed to exclude fishing vessels of less than 12 metres in length from Part V concerning accommodation and food.

*European Union.* Council Directive 1997/70/EC, as amended by Commission Directives 1999/19/EC and 2002/35/EC, sets up a maritime safety regime for fishing vessels of 24 metres and over (related to the SFV PROT 1993). This instrument is not only a minimum standard but rather establishes safety requirements for the construction and maintenance of fishing vessels, which should be applied in a consistent way in EU Member States. Should the draft provisions on accommodation affect the construction of the vessel in relation to safety, they ought to be compatible with the EU legislation.

#### *Article 21*

Each Member shall adopt laws, regulations or other measures requiring that accommodation on board fishing vessels that fly its flag shall be of sufficient size and quality and shall be appropriately equipped for the service of the vessel and the length of time fishers live on board. In particular, such measures shall address, as appropriate, the following issues:

- (a) approval of plans for the construction or modification of fishing vessels in respect of accommodation;
- (b) maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;
- (c) ventilation, heating, cooling and lighting;
- (d) mitigation of excessive noise and vibration;
- (e) location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces;
- (f) sanitary facilities, including water closets and washing facilities, and supply of sufficient hot and cold water; and
- (g) procedures for responding to complaints concerning substandard accommodation.

#### *Observations on Article 21*

*Brazil.* See comment under Article 22.

*Canada.* This Article is supported.

*Cyprus.* OEB. See comment under Article 20.

*New Zealand.* The proposed wording is supported.

*Spain.* See comment under Article 20.

*Tunisia.* See comment under Article 20.

#### Article 22

[Fishing vessels to which [Annex II] applies shall as a minimum comply with the standards contained therein.]

#### Observations on Article 22

*Argentina.* It would be preferable that not only the general provisions of Articles 20-23 but also Annex II be obligatory. The Argentinian Naval Prefecture adds that, while the country has not ratified Convention No. 126, Annex II is a modified version of that Convention, which lays down minimum accommodation requirements directly linked to safe navigation. CATT states that issues relating to accommodation, food and drinking water are among the principle aspects of fishing that call for special attention. Only a sufficiently detailed and compulsory standard would contribute to a practical amelioration of conditions.

*Brazil.* A reference to Annex II, within the body of the Convention, is supported. Furthermore, Brazil is in favour of the use of the word “should” in this annex. Having ratified Convention No. 126, Articles 20-23 are considered appropriate for discussion, as long as Annex II is linked to the proposed Convention. Moreover, it would be beneficial to establish a simplified amendment procedure for Annex II, which would render it more flexible and adaptable to changes within the fishing industry.

*Canada.* Some of the provisions in Annex II could be included in or attached to the Recommendation in order to provide guidelines for the implementation of Articles 20, 21 and 23.

*Cyprus.* OEB: See comment under Article 20.

*New Zealand.* The proposed wording is generally supported.

*Norway.* The initial Norwegian position was to strive for a Convention giving all fishers the same rights as regards working and living conditions and make Annex II mandatory for all vessels. As a secondary standpoint, it is supported that the requirements for larger fishing vessels may be stronger than for smaller vessels. Thus, the square brackets should be removed and the text of Article 22 kept to the effect that Annex II becomes mandatory for the vessels within its scope. The requirements of Annex II should be applied to vessels of 24 metres LOA and over, and might be applied to vessels between 15 and 24 metres LOA. Both vessel owners and fishers would benefit from these standards. The vessel owners’ asset, the vessel, would become more valuable because easier to sell, while the fishers would benefit from a decent workplace. If parts of Annex II should become non-mandatory, the whole annex should be incorporated into the Convention along the lines of the draft consolidated maritime labour Convention, the idea being to require Members to take the

provisions into consideration, since ILO Recommendations do not get the attention they deserve. In addition, a simplified amendment mechanism for Annex II should be adopted.

*Spain.* The square brackets in and around this Article should be deleted while retaining the content.

*United Kingdom.* The United Kingdom supports in principle the inclusion of additional provisions for larger vessels.

### Article 23

The food carried and served on board fishing vessels shall be of an appropriate quantity, nutritional value and quality for the service of the vessel and potable water shall be of sufficient quantity and quality.]

#### Observations on Article 23

*Brazil.* See comment under Article 22.

*Canada.* This Article is supported.

*Cyprus.* OEB. See comment under Article 20.

*New Zealand.* The proposed wording is supported.

*Spain.* See comment under Article 20.

*Tunisia.* See comment under Article 20.

*European Union.* This provision is not covered by EU Directives.

## PART VI. HEALTH PROTECTION, MEDICAL CARE AND SOCIAL SECURITY

### MEDICAL CARE

#### Article 24

Each Member shall adopt laws, regulations or other measures requiring that:

- (a) fishing vessels shall carry appropriate medical equipment and medical supplies for the service of the vessel, taking into account the number of fishers on board, the area of operation and the length of the voyage;
- (b) medical equipment and supplies carried on board shall be accompanied by instructions or other information in a language and format understood by the fishers concerned;
- (c) fishing vessels shall have at least one person on board who is qualified or trained in first aid and other forms of medical care, and has the necessary knowledge to use the medical equipment and supplies for the vessel concerned, taking into account the number of fishers on board, the area of operation and the length of the voyage;

- (d) fishing vessels shall be equipped for radio or satellite communication with persons or services ashore that can provide medical advice, taking into account the area of operation and the length of the voyage;
- (e) fishers shall have the right to medical treatment ashore and to be taken ashore in a timely manner for treatment in the event of serious injuries or illnesses.

#### *Observations on Article 24*

*Lebanon.* Subparagraph (b) should be amended as follows: "... in a language understood by the fishers concerned, and with simplified drafting". In subparagraph (d), it is proposed to add after "radio or satellite communication" the words "or other means of communication".

*Ukraine.* The term "medically" should be added after the words "at least one person who is", and the word "or" after "qualified" should be replaced with "and".

*United States.* USCIB: Subparagraph (b) should be amended to read: "medical equipment ... should be accompanied by instructions ... in the official language of the Member's country and the language understood by the skipper or other designated first-aid responders on board the vessel."

IMHA: In subparagraph (b), it should be specified that the instructions accompanying medical equipment and supplies should have the "format of a medical guide".

#### *Article 25*

The standards for medical care on board fishing vessels that undertake international voyages or remain away from land for a period prescribed by the competent authority shall be no less favourable than those provided to seafarers on vessels of a similar size ordinarily engaged in commercial activities.

#### *Observations on Article 25*

*Lebanon.* In the Arabic version, it is proposed to add the word "medical" in the second line after the word "care" for the purpose of clarification.

*United States.* USCIB: This Article should be deleted for the reason mentioned under Article 18. Standards for medical care on board fishing vessels undertaking international voyages or remaining away from land for a period prescribed by the competent authority should be applicable and specific to fishing vessels taking into account the size of the crew and area of operation.

#### *Article 26*

Each Member shall adopt laws, regulations or other measures concerning:

- (a) the prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management, training and on-board instruction of fishers;
- (b) training for fishers in the handling of types of fishing gear they will use and in the knowledge of the fishing operations in which they will be engaged;
- (c) the obligations of fishing vessel owners, fishers and others concerned, due account being taken of the safety and health of fishers under 18 years of age;
- (d) the reporting and investigation of accidents on board fishing vessels flying its flag;
- (e) the setting up of joint committees on occupational safety and health.

### *Observations on Article 26*

*Argentina.* The meeting places for the joint OSH committees envisaged in subparagraph (e) should be specified. It is preferable that these meetings take place on shore. CATT states that OSH committees should only work on shore, while committees to evaluate occupational risks should be established on board.

*Belgium.* In the context of the Act of 5 December 1968 on collective agreements and joint committees, the terms “joint committee” and “joint body” carry a specific meaning, which is very different from that in subparagraph (e). In order to avoid any confusion, it would be advisable to replace the term “joint committees” with some other concept, e.g. “bodies composed jointly”. Furthermore, it seems preferable and in keeping with Article 26, subparagraph (e), to establish a committee of this type at *sectoral* level, by making use, if need be, of existing bodies with similar competences. It would, therefore, not be desirable for the Convention to generally require these bodies to meet on board or ashore. Bodies created at sectoral level would obviously meet on land, while bodies established at enterprise level might, under certain circumstances, meet on board.

CCE: Same as the above reply.

*Brazil.* Joint OSH committees as provided in subparagraph (e) should meet regularly aboard vessels. The fishing vessel owner on shore should be made aware of the results of these meetings, should regularly send technicians aboard to assess the issues raised and measures proposed, and should provide the means for solving identified problems.

*Canada.* It is not supported to add prescriptive language in subparagraph (e) as to where OSH committees are to meet. Any necessary guidance on the implementation of Article 26 should be included in the Recommendation. Occupational health and safety issues can arise on board a vessel or on shore, so committees should meet in the location best addressing the issue.

CEC: As for subparagraph (b), it is not the Government’s role to require standards for the training of fishers in relation to handling fishing gear and fishing operations. This should remain within the purview of the owner/management of the vessel.

*Finland.* Subparagraph (a) requires member States to prevent occupational accidents, diseases and work-related risks by various measures, such as risk evaluation and management, training and on-board instruction of fishers. The fact that more precise, detailed guidelines have been included in the proposed Recommendation is

supported; the reason being that the Convention is to be applied to all vessels and to self-employed fishers.

*Lebanon.* Doubts are raised as to the possibility of really *preventing* occupational accidents, diseases and work-related risks on board fishing vessels or in any other sector. For this reason, subparagraph (a) and the title should be redrafted using the term “avoid”. Since it seems that subparagraph (c) is incomplete, the following wording is proposed: “the obligations of ..., to guarantee occupational safety and health, and to avoid accidents, due account being taken of ...;”. As regards subparagraph (e), these committees can meet on board fishing vessels or on land according to the needs and the nature of the issues to be discussed. The Government further enquires who would be members of these committees and whether the State would be represented.

*Mauritius.* The tripartite Advisory Council for Occupational Safety, Health and Welfare proposes that the joint OSH committees provided for in subparagraph (e) should be held both on board and ashore.

*Norway.* See comment under Article 1, subparagraph (e). As regards subparagraph (e), the joint committees should meet both on shore and on board, but a distinction could be made between small and large fishing vessels. Shore-based committees could be suitable for small vessels with a very limited sized crew, while large vessels should be required to have on-board committees. See also comment under Article 30. Furthermore, the Convention should be strengthened in the area of OSH, since this is a fundamental issue for all fishers. It is proposed to insert a new Article 27 with the following wording inspired from Paragraphs 20-22 of the proposed Recommendation:

In order to contribute to the continuous improvement of safety and health of fishers, member States shall have in place programmes for the prevention of accidents on board fishing vessels to ensure the reporting and dissemination of information regarding occupational accidents and illnesses and measures to ensure prevention. When establishing methods and programmes concerning safety and health in the fishing sector, competent authorities shall take into account any relevant international guidelines concerning occupational safety and health management systems. The skipper shall ensure risk evaluation and management, as appropriate with the participation of fishers or their representatives, and onboard instruction of fishers.

*Spain.* In subparagraph (c), the following wording should be added after “concerned”: “specifically, the obligations of the captain or master to discharge the obligations of the owner on board”. When dealing with OSH and accident prevention, it is important that national regulations make reference to the extremely important figure of the captain/master, who has the highest level of responsibility on board, represents the owner on the vessel and plays a key role in the safety of the crew. As for subparagraph (e), joint OSH committees should be set up on shore to carry out comprehensive studies on prevention and accident rates at the enterprise level and on board each vessel in order to apply comprehensive plans to the specific reality of each vessel.

*Tunisia.* For the purpose of greater flexibility, it is proposed to allow joint OSH committees to meet both on board fishing vessels and on shore.

*Ukraine.* Subparagraph (c) should be deleted, in order not to leave room for the employment of individuals under the age of 18 on fishing vessels (cf. comment under

Article 9). As for subparagraph (d), the following additions should be made: “the opportunity for accidents to be investigated by a panel headed by the captain of the vessel; presentation of all documents pertaining to the investigation of any accident in which they have been involved to fishers who are not citizens of the State whose flag the vessel flies; reporting of any accident to the competent authorities of the State of which fishers involved in it are citizens; if fishers die through accidental or natural causes, presentation of all documents pertaining to the investigation of accidents or events to the competent authorities of the State of which they were citizens.”

*United Kingdom.* Subparagraph (b) refers to training in the handling of fishing gear and is almost the only reference to training in the Convention itself. It would be appropriate to include a more general reference to training along the following lines: “Taking into account the provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F), each Member should adopt measures to ensure that fishers are appropriately trained for the duties they have to perform.”

*United States.* USCIB: In some instances setting up a joint committee may be impractical. Thus, subparagraph (e) should be amended to read: “(e) the establishment of joint committees on occupational safety and health as may be practicable based on the size of the crew.”

IMHA: The wording “health promotion and” should be inserted at the beginning of subparagraph (a). This term would add value to the mere concept of “prevention”.

#### SOCIAL SECURITY

##### *Article 27*

[Each Member shall ensure that fishers are entitled to benefit from social security protection on conditions no less favourable than those applicable to other workers.]

##### *Observations on Article 27*

*Argentina.* It is supported to guarantee to fishers conditions that are no less favourable than those applied to other workers. In this sense, it is important to highlight the existence in Argentina of standards common to all maritime workers, whether they work on board fishing vessels or on any other commercial vessel. Moreover, bilateral social security agreements for the fishing sector have been concluded with other countries, such as Spain and Italy.

*Belgium.* Fishers in Belgium enjoy the same level of social security protection as salaried workers, while seafarers enjoy a more favourable status. To date, Belgium has signed no bilateral social security agreements with other countries.

CCE: Same as the above reply.

*Brazil.* In Brazil, fishers benefit from the same social security protection as seafarers and workers in other economic sectors. There is no information about bilateral social

security agreements covering the fishing sector between Brazil and any other country. The solution under the draft consolidated maritime labour Convention, according to which the country of nationality bears the main responsibility for the seafarer's social security, while the flag State has the subsidiary responsibility, is considered acceptable.

*Canada.* In general, Canadian fishers have the same social security protections as other workers. In addition, special regulations extend social security protections to self-employed fishers. Basic medical care is available to all. Canada has entered into bilateral agreements with approximately 45 countries in order to facilitate access to social security benefits by persons who have worked both in Canada and in one of the signatory countries.

*Finland.* Social security for self-employed fishers appears problematic because national OSH legislation is not applicable to them. Furthermore, the maritime safety requirements for vessels in Finland are aimed at all vessels in the marine register, i.e. vessels that must undergo inspection.

*France.* The broad diversity in national situations has to be taken into account in this area, as too burdensome or detailed provisions could impede widespread ratification. On the other hand, it seems necessary to affirm the responsibility of the flag State and, in particular, to lay down the principle that the flag State should provide social security coverage for fishers residing in its territory; however, a clause should permit exemptions, where regional integration systems are in place. With regard to countries with incomplete systems, the principle of progressive, stage-by-stage coverage should be retained.

*Japan.* In the draft consolidated maritime labour Convention, Members are to provide social security protection to all seafarers ordinarily resident in their territory, irrespective of their nationality. Thus, it would be appropriate to add the words "ordinarily resident in its territory" after "fishers" and the words "resident in its territory" after "workers".

*Netherlands.* Members should be obliged to protect fishers against all social security risks catalogued in Convention No. 102. Furthermore, it is necessary that the responsibilities of the flag State and the State of residence be stipulated explicitly, in case they do not coincide. Finally, during the drafting of Convention No. 102, it has been decided to exclude seafarers and fishers from the scope of application, on the ground that their conditions of work require a highly specialized system of protection. The latter has been inserted in a separate section of the current draft entitled "Protection in the case of work-related sickness, injury or death" (Article 29). However, social security as defined in Convention No. 102 includes "work-related sickness, injury or death", which in the terminology of Convention No. 102 is called "employment injury". Therefore, it is desirable to integrate the current Article 29 into the social security section. For the above reasons, Articles 27, 28 and 29 should be replaced with the following Articles:

#### *Article 27*

1. Members shall undertake steps, according to their national circumstances, to achieve progressively comprehensive social security protection for seafarers who reside in their territory.

2. The social security protection referred to in paragraph 1 shall include: medical care, sickness benefit, unemployment benefit, old-age benefit, family benefits, maternity benefits, invalidity benefits and survivors' benefit.

#### *Article 28*

1. Notwithstanding Article 27, the Member whose flag the vessel is flying shall take measures to provide fishers, irrespective of their place of residence, with protection for employment injury in accordance with national laws or regulations or practices.

#### *Article 29*

At the time of the ratification, the protection to be provided by the Member in accordance with Article 27, paragraph 1, shall include at least two of the eight branches listed in Article 27, paragraph 2.

*New Zealand.* The proposed wording is supported.

*Norway.* Clarification on the implications of this proposal would be necessary. The Norwegian social security system does treat fishers differently from "other workers" as unemployment, sickness and various other social security benefits are financed by the fishers themselves through a system of payment of a "product fee" based on the value of the catch. The level of the payment depends on this "product fee", and at present the system leaves fishers with an entitlement but not at the same rate as members of the National Security Scheme. The question of changing the fishers' status with regard to the social security system is being discussed, but a final conclusion has not yet been reached. Accordingly, the present Article is difficult to accept, but Norway would like to seek a solution based on the above.

*Portugal.* In Portugal, registered seafarers who work in the fishing sector, as is the case with seafarers who work in the commercial maritime sector, come under the general regime for employed workers. This regime also covers local and coastal fishers who are subject to a special contributions system: while fishers working in the industrial fishing sector pay 29 per cent tax on derived income, local and coastal fishers pay 10 per cent of the auction price of their catch. As for social coverage for the elderly, fishers come under a special regime, which brings forward the age of access to the respective benefits calculated according to the rules of the general regime. Beyond existing bilateral agreements with other countries, in order to ensure that national workers and their respective families who are not covered by those agreements and who work aboard vessels belonging to foreign companies do not fall through the social security net, Portuguese legislation allows them to make voluntary social security contributions and thus to be covered by the social security system, should they so desire.

*South Africa.* With respect to social security, it should be taken into consideration that member States are at different levels of development, and that the provision of social security assumes different norms in member States. The compulsion "Each

Member shall ensure that fishers are entitled to ... social security protection ...” places an undue burden on member States that do not have an extensive social security net.

*Spain.* It should be pointed out that in Spain the minimum level of social protection for fishers is the same as that for other maritime workers. The only difference relates to the unemployment benefit. Own-account workers engaged in fishing are not entitled to unemployment benefit, neither do they contribute to it. This exclusion does not only refer to fishers, but applies to all own-account workers, irrespective of the activity in which they are engaged. As regards bilateral agreements with other countries on social security, it should be mentioned that, in addition to the implementation of Council Regulations Nos. 1408/71 and 574/72, which are applicable to all countries in the European Economic Area and Switzerland, Spain has signed social security agreements applicable to fishers with Andorra, Argentina, Australia, Brazil, Bulgaria, Canada, Chile, Ecuador, Mexico, Morocco, Paraguay, Peru, Philippines, Russian Federation, Tunisia, Ukraine, United States, Uruguay and Venezuela. As for the wording of Article 27, it is desirable to provide for more extensive and detailed regulation on a subject of such crucial importance with regard to work on board vessels as social security benefits. This is the sector with the highest accident and injury rates, and it is unavoidable that international and national legislation protect fishers and their dependants so that they will no longer be third-class workers. They should at least be placed on an equal footing with other seafarers by providing them with regulations based on the principles laid down in the draft consolidated maritime labour Convention. For these reasons, the text in square brackets should be deleted and replaced by the following:

1. Members should ensure that all fishers and, to the extent provided in national legislation, their dependants, have access to social security protection in accordance with this Convention, without prejudice to any more favourable conditions referred to in paragraph 8 of article 19 of the Constitution of the International Labour Organisation.

2. Members commit themselves to adopting measures, in accordance with their national circumstances, individually and through international cooperation, to gradually achieve full social protection of fishers. Full social protection is understood to cover the following branches: medical care, sickness benefit, unemployment benefit, old-age benefit, occupational injury benefit, family benefit, maternity benefit, disability benefit and survivor's benefit.

3. Members shall ensure that fishers and their dependants are entitled to benefit from social security protection on conditions no less favourable than those applied to workers ashore.

*Tunisia.* In Tunisia, fishers working on fishing vessels of 30 t or more fall under the general social security system.

*Ukraine.* This provision strengthens the protection of fishers working outside of their own country for a foreign employer. These fishers should be able to receive social protection in their own country, irrespective of the social guarantees available in the country of the employer or the flag State (which are discussed in this Article). Such a mechanism could be implemented through the voluntary participation of fishers in State social insurance.

*United States.* USCIB: The following language consolidating Articles 27 and 28 is recommended: “Each Member shall adopt laws, regulations or other measures to

ensure that fishers are entitled to benefit from social security protection on conditions no less favourable than those applicable to other workers provided that fishers contribute to the Member's national social security fund on an equal basis to non-fishers."

*European Union.* The inclusion of social security provisions in a global instrument is regarded as positive. Council Regulation 1408/71 on the coordination of social security schemes is not a minimum standard, but provides for the applicable social security rules in case of mobility of EU workers or workers of third countries legally residing in an EU Member State. Its basic principle is the application of the social security provisions of the country of work (flag State). Any ILO text dealing directly or indirectly with the applicable social security legislation should be consistent with EU law or include wording similar to that in the draft consolidated maritime labour Convention (Standard A.4.5, paragraph 4), in order to ensure compatibility with EU legislation on the free movement of workers and social security.

#### Article 28

Each Member shall, with regard to the principles of equality of treatment and the maintenance of social security protection rights, adopt measures that take into account the situation of non-national fishers.

#### Observations on Article 28

*France.* The questions of coordination and continuity of acquisition of social security protection rights are vitally important. To this effect, a provision should be incorporated into the Convention promoting international cooperation, in particular by means of bilateral Conventions. On the same lines, the provisions of this Article should be supplemented to take into account the issue of non-national fishers' country of residence.

*Japan.* It would be appropriate to delete this Article, since the meaning of, in particular, the terms "principles of equality of treatment" and "take into account the situation of non-national fishers" is not clear.

*New Zealand.* It should be clarified what is meant by "adopt measures that take into account the situation of non-national fishers". It would not be appropriate to treat non-national fishers more favourably than other non-national workers for social security purposes. By way of clarification, it is suggested to add the following wording similar to Article 27 at the conclusion of this Article: "... the situation of non-national fishers, on conditions no less favourable than those applicable to other non-national workers".

*South Africa.* The Government endorses the principle of equality with respect to the social security net. However, this should be left to national laws and regulations.

*Spain.* In a globalized industry like the maritime sector in general and fishing in particular, it is increasingly frequent for workers to be employed on vessels flying different flags using crews from all over the world. Hence it is essential that legislation be adapted to these situations to avoid discriminatory treatment of fishers based on their nationality, through a twofold approach: (i) application of the same social

security benefits irrespective of the fisher's nationality; and (ii) maintenance of social security rights, whether acquired or in the course of acquisition, irrespective of the flag flown by the vessel on which the fisher works. Therefore, a second paragraph should be added to read as follows: "To the extent compatible with national legislation and practice, Members shall cooperate, through bilateral or multilateral agreements or other agreements, to ensure maintenance of social security rights granted through contributory or non-contributory systems, whether acquired or in the course of being acquired, of all fishers, irrespective of where they reside."

*United States.* USCIB: In view of the amendment suggested under Article 27, this Article should be deleted.

PROTECTION IN THE CASE OF WORK-RELATED SICKNESS, INJURY OR DEATH

*Article 29*

1. Each Member shall take measures to provide fishers with protection for work-related sickness, injury or death determined in accordance with national laws or regulations or practice.

2. In the event of injury due to occupational accident or disease, the fisher shall have access to:

- (a) appropriate medical attention; and
- (b) the corresponding compensation in accordance with national laws.

3. Taking into account the characteristics within the fishing sector, the protection referred to in paragraph 1 above may be ensured through:

- (a) a system for fishing vessel owners' liability; or
- (b) compulsory insurance, workers' compensation or other schemes.

*Observations on Article 29*

*France.* Protection in the case of work-related accident or sickness is an imperative of prime importance. The fishing profession, wherever it is exercised, is so dangerous that this protection must be put in place first. Hence, work-related accident and sickness protection must be compulsory as provided for in this Article.

PART VII. ADDITIONAL REQUIREMENTS FOR VESSELS OF [...] METRES IN LENGTH  
OR MORE

*Article 30*

[Taking into account the number of fishers on board, the area of operation and the length of the voyage, a Member may, after consultation, exclude additional requirements for the vessels concerned.]<sup>1</sup>

<sup>1</sup> Text to be developed by the Office with a view to being examined by the Conference.

*Observations on Article 30*

*Argentina.* The existence of a specific Part on large vessels is supported. In the case of Argentina, this is particularly important, as almost all the approximately 13,000 fishing employees work on board industrial fishing vessels. Moreover, CATT would like the additional requirements for large vessels to be applicable to vessels of 15 metres in length or over, envisaging an additional Part for vessels of 24 metres in length or over, i.e. vessels which carry out fishing activities in international waters, whether distant seas or areas near foreign ports. These two Parts should contain additional requirements concerning medical examination, training and qualifications, manning and hours of rest, accommodation, OSH, medical care and social security.

*Australia.* Further to the general comment, these provisions definitely should apply to any fishing vessel of over 500 gt, for instance over 50 metres, and to any factory vessels that carry non-fishing process workers. This lower boundary can be further guided by the size determined in the draft consolidated maritime labour Convention.

*Belgium.* Should the proposed texts differentiate between vessel sizes for the application of the provisions or set additional measures for large fishing vessels, it would be preferable to see classifications consisting of vessels of up to 15 metres in length, 15 metres and over, and 24 metres and over. These limits were put forward at the ILC in June 2004 and correspond to the relevant EU legislation. However, such differentiations only seem desirable in the application of provisions concerning accommodation and food, i.e. chiefly Annex II. All other provisions should be applied in the same way to all fishers, without distinction and whatever the size of the vessel on which they are employed.

CCE: Same as the above reply.

*Brazil.* The text of this provision should be retained and should establish additional requirements for vessels of more than 24.4 metres in length.

*Canada.* Additional requirements for accommodation and related provisions may be appropriate for larger vessels. Vessel length should not be used as a basis for additional requirements in the following areas: minimum age for employment, medical examination, manning and hours of rest, fishers' work agreement, repatriation rights, recruitment and placement, payment of wages, medical care, and occupational safety and health and accident prevention. Appropriate Convention and Recommendation provisions addressing these issues should be applicable to *all* vessels, regardless of size.

*Cyprus.* OEB: The employers' organization expresses its disappointment as to the wide acceptance by Governments of the Workers' request to include the principle of categorization of fishing vessels and therefore the application of different conditions to different vessels. It hopes that through pending discussions, more Governments will align themselves with the Employers' position to create a general instrument of broad application that deals with conditions of work in the fishing sector regardless of vessel size.

*France.* MEDEF: A categorization of fishing vessels according to size or other criteria would considerably diminish the impact of and interest in this international instrument. It seems vital for this Convention to retain a broad scope of application.

*New Zealand.* It is felt that this Article offers a possibility for “imposing” rather than “excluding” additional requirements for vessels concerned, after taking into account the number of crew, area of operation and length of the voyage. New Zealand has no suggestions for additional requirements and is therefore unable to recommend a vessel length.

*Norway.* The size of vessels for which additional requirements should be developed could be 15 metres and 24 metres. Article 18 should provide the basis for the additional requirements, and should be incorporated into Article 30, rather than maintaining a separate existence. For example, a provision on repatriation could read: “Fishers shall have the right to be repatriated at no cost to themselves to a destination specified in the fishers’ work agreements or collective bargaining agreements if their employment expires while they are abroad.” Identity documents should be issued to fishers, since the entry into force of the ISPS Code has had the effect that, although fishing vessels are not covered per se, fishers have to have IDs when entering ports covered by the ISPS Code; however, no reference should be made to any specific Convention. In addition, it is proposed to have a minimum age limit of 16 for large vessels, rather than letting Article 9 apply. As regards OSH, paragraph 24 on occupational safety and health management systems of the proposed Recommendation should be made mandatory for vessels undertaking international voyages/seagoing vessels of 24 metres and above. Also, large vessels should have onboard joint committees (see comment under Article 26).

*United Kingdom.* The UK supports in principle the inclusion of additional provisions for larger vessels.

*United States.* USCIB: This Article should be deleted. The objectives of this updated Convention are to address the yet unmet needs of the majority of the world’s fishers – decent working conditions, appropriate medical care, access to social benefits where they exist, safety and health protection with international oversight. The additional requirements for vessels of various lengths, tonnages or crew sizes, will only add complexity, which will create barriers to ratification rather than compel it. In many developed countries, the fishing industry is already highly regulated and the vessel categories by which it has defined its standards have been developed through historic and progressive advancement. The establishment of higher standards through arbitrary classification of vessels will not serve to improve safety or working conditions for fishers but will create a bureaucracy of juxtapositional standards that cannot be complied with.

*European Union.* It should be noted that most EU Directives on OSH are applicable to the fishing sector regardless of vessel size, e.g. 89/391/EEC “framework directive”, 89/655/EEC “work equipment”, 89/656/EEC “personal protective equipment”, 90/269/EEC “manual handling”, 92/58/EEC “safety signs”, 2003/10/EC “noise”, 2002/44/EC “vibrations” and Recommendation 2003/670/EC “list with occupational diseases”. Also, any new ILO text on this matter should be analysed in the context of possible implications for SFV PROT 1993, Council Directive 97/70/EC as amended and Council Directive 93/103/EC concerning the minimum safety and health requirements for work on board fishing vessels. Provisions concerning medical care not covered by Council Directive 92/29/EEC but compatible with it would not raise

problems. As regards OSH and accident prevention, it is advisable to clarify the responsibilities of actors on board and prevention aspects in line with Council Directive 93/103/EC, as it is important that the responsibility of the owner for OSH is not shifted to other persons. Major inconsistencies with Council Directive 2000/34/EC on working time and hours of rest, Council Directive 94/33/EC on minimum age or Council Directive 91/533/EC on information of the worker on the conditions applicable to the contract or employment relationship, should be avoided. Lastly, it should be recalled that the Charter of Fundamental Rights of the European Union could provide useful guidance on issues such as recruitment and placement and the access of jobseekers to these services – and possibly on other matters.

#### PART VIII. COMPLIANCE AND ENFORCEMENT

##### *Article 31*

Each Member shall exercise effective jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the standards of the Convention including, as appropriate, inspections, reporting, monitoring, appropriate penalties and corrective measures, in accordance with national laws or regulations.

##### *Observations on Article 31*

*Canada.* CEC: There are high costs associated with the effort to develop and enforce new legislation, policies and standards; costs that an already overburdened public service simply cannot afford to embrace in the current climate of cost constraints. New requirements in any field should, thus, only be introduced where needed, and only if Governments intend to enforce compliance, since inconsistent enforcement creates instability and inequity at the national level. Poor regulation and enforcement by other States is an associated issue in that Canadian fishing vessels must not be placed at a competitive disadvantage by having to comply with questionable international requirements, while competitors flying foreign flags are not subjected to the same rigour of compliance by their Governments.

*New Zealand.* The proposed wording is supported but jurisdiction will need to be shared between two or three agencies in New Zealand.

##### *Article 32*

Fishing vessels that undertake international voyages shall be required to undergo a documented periodic inspection of living and working conditions on board.

##### *Observations on Article 32*

*Argentina.* It is proposed to insert the words “national and” prior to “international voyages”.

*Japan.* Contents and methods of “a documented periodic inspection”, which are to be determined by the flag States in due course, should be clarified in the proposed text.

*Norway.* The documented periodic inspections of living and working conditions on board should be carried out at intervals of no more than three years. Alternatively, inspection intervals could be aligned with the requirements of SFV 1977.

*Tunisia.* As proposed by the Office, the words “operate internationally” should be replaced with “undertake international voyages”, in order to provide more consistency with the other Articles of the Convention.

### Article 33

1. The competent authority shall appoint a sufficient number of qualified inspectors to fulfil its responsibilities under Article 31.

2. Each Member shall be responsible for inspection of the on-board living and working conditions of fishers on vessels that fly its flag, whether such inspections are carried out by public institutions or other competent bodies.

### Observations on Article 33

*Canada.* CEC: See comment under Article 31.

*China.* Paragraph 1 should be amended as follows: “The competent authority shall take appropriate measures so as to fulfil its responsibilities under Article 31.” Measures to carry out inspection should be taken by the competent authorities of various countries in the light of their respective national conditions.

### Article 34

1. If a Member which has ratified the Convention and in whose port a fishing vessel calls in the normal course of its business or for operational reasons receives a complaint or obtains evidence that the fishing vessel does not conform to the standards of the Convention, after it has come into force, it may prepare a report addressed to the government of the country in which the fishing vessel is registered, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.

2. In taking such measures, the Member shall forthwith notify the nearest representative of the flag State and shall, if possible, have such representative present. It shall not unreasonably detain or delay the vessel.

3. For the purpose of this Article, “complaint” means information submitted by a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel, including an interest in safety or health hazards to its fishers.

### Observations on Article 34

*Australia.* The questions of who will carry out the fishing equivalent port state control (PSC) function and who will pay are not addressed – possibly creating the

undesirable option of commercial cargo shipping paying for the fishing vessel regulatory function. Paragraph 1 could lead to the situation where a port State orders repairs to rectify the unseaworthiness of a fishing vessel and is liable to pay for the repairs. For fishing vessels that undertake international/overseas voyages, a PSC mechanism similar to that proposed in the draft consolidated maritime labour Convention would be a useful enforcement tool that should be added to the Convention.

*China.* The last phrase of paragraph 1 (“and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.”) and all of paragraph 2 should be deleted so that this Article can be accepted and implemented by the greatest number of countries possible. Inclusion of such compulsory Article(s) would render the implementation of this Convention problematic for many underdeveloped countries or countries with different standards.

*France.* The provisions on PSC should be limited to the mechanism described and not go beyond it. Indeed, in the fishing sector, PSC does not yet have structures and rules, and thus guarantees, comparable to those existing for commercial shipping.

*Japan.* As regards paragraph 1, the words “the standards of the Convention” should be replaced by “the standards of the Convention in respect of safety or health”.

*New Zealand.* The proposed wording is supported.

#### Article 35

Each Member shall apply the Convention in such a way as to ensure that the fishing vessels flying the flag of States that have not ratified the Convention do not receive more favourable treatment than the fishing vessels that fly the flag of Members that have ratified it.

#### Observations on Article 35

*Japan.* This provision to control vessels flying the flag of States that have not ratified the Convention is more severe than the corresponding provision of the draft consolidated maritime labour Convention. Since it is necessary to adjust it to the draft consolidated maritime labour Convention, this Article should read: “Each Member shall apply the Convention in such a way as to ensure that the fishing vessels flying the flag of States that have not ratified the Convention do not receive more favourable treatment than the fishing vessels that fly the flag of Members that have ratified it.”

### ANNEX I [TO THE CONVENTION]

#### FISHER’S WORK AGREEMENT

The fisher’s work agreement shall contain the following particulars, except in so far as the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations:

- (a) the fisher’s family name and other names, date of birth or age and birthplace;

- (b) the place at which and date on which the agreement was concluded;
- (c) the name of the fishing vessel or vessels on board which the fisher undertakes to serve;
- (d) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;
- (e) the capacity in which the fisher is to be employed or engaged;
- (f) if possible, the place at which and date on which the fisher is required to report on board for service;
- (g) the scale of provisions to be supplied to the fisher, unless some alternative system is provided for by national law;
- (h) the amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage;
- (i) the termination of the agreement and the conditions thereof, namely:
  - if the agreement has been made for a definite period, the date fixed for its expiry;
  - if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisher shall be discharged;
  - if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission; provided that such period shall not be less for the owner of the fishing vessel than for the fisher;
- (j) the insurance that will cover the fisher in the event of death, injury or illness in connection with their work on board the vessel; and
- (k) any other particulars which national law may require.

### *Observations on Annex I*

*Belgium.* Annex I, subparagraph (i), second bullet point, requires that, if the fishers' work agreement has been made for a voyage, the port of destination be stipulated in it. This provision is inconsistent with national legislation, according to which such agreements are concluded for the length of a "voyage at sea", defined as "the period of time elapsing between the moment at which the fishing vessel leaves a port and the moment at which it puts in at a port for reason of discharge of the catch or force majeure". This wording was employed because it has proved difficult to determine in advance at which port the voyage and, hence, the agreement will end, since the "port of destination" depends on the catch made during the voyage, the weather conditions, and so on. It is suggested that the provision should be amended to allow the recent national legislation on articles of agreement for maritime fishing, which has been implemented in collaboration with the sector, to be retained.

CCE: Same as the above reply .

*Brazil.* Annex I should figure in the body of the Convention.

*Lebanon.* The provisions of Annex I should be included in the proposed Recommendation.

*New Zealand.* See comment under Article 13.

*Norway.* The fisher's work agreement has only one party to it. The omission of the employer should be rectified.

*Spain.* The worker has the right to know for whom he or she is going to work and who is responsible for meeting his or her entitlements as the other party to the employment relationship. Hence, the following words should be added at the end of subparagraph (c): “, as well as the name of the fishing vessel owner for whom the fisher is to work”.

*United Kingdom.* It would be helpful to clarify who the parties to a work agreement are in circumstances where the crew is composed of self-employed share fishermen.

### **Observations on the proposed Recommendation concerning work in the fishing sector**

The General Conference of the International Labour Organization,  
 Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 93rd Session on 31 May 2005, and  
 Taking into account the need to revise the Hours of Work (Fishing) Recommendation, 1920, and the Vocational Training (Fishermen) Recommendation, 1966, and  
 Having decided upon the adoption of certain proposals with regard to work in the fishing sector, which is the fifth item on the agenda of the session, and  
 Having determined that these proposals shall take the form of a Recommendation supplementing the Work in Fishing Convention, 2005 (hereinafter referred to as “the Convention”);

adopts this            day of June of the year two thousand and five the following Recommendation, which may be cited as the Work in Fishing Recommendation, 2005:

#### **PART I. CONDITIONS FOR WORK ON BOARD FISHING VESSELS**

##### **PROTECTION OF YOUNG PERSONS**

1. Members should establish the requirements for the prior training of persons between 16 and 18 years of age working on board fishing vessels, taking into account international instruments concerning training for work on board fishing vessels, including occupational safety and health issues such as: night work, hazardous tasks, work with dangerous machinery, manual handling and transport of heavy loads, work in high latitudes, work for excessive periods of time and other relevant issues identified after an assessment of the risks concerned.

#### *Observations on Paragraph 1*

*Australia.* The adequacy of arrangements recommended to Members which have ratified the Convention is determined by the availability of national training packages and their implementation through states and territories. The qualifications in the Maritime Training Package endorsed on 29 August 2001 reflect the competency requirements for the occupational pathways of persons working on board fishing and other

maritime vessels operating in international and Australian coastal and inshore waters. The qualifications and competency units have been carefully designed in conjunction with maritime sector advisors to align closely with the regulatory requirements and framework of the various international, national, state and territory marine authorities. A number of these qualifications have been declared as traineeships in Queensland, where the State Training Authority, through the Department of Employment and Training, regulates apprenticeships, traineeships and vocational education and training. The matters relating to protection of young people and competency and training are provided for within current systems.

*Canada.* There is a need to ensure consistency between the provisions of Article 9 and the relevant Paragraphs in the Recommendation, as well with the provisions of Convention No. 138.

*Lebanon.* Since only Conventions to which a State is party are binding for this country, Paragraph 1 should be amended as follows: "... taking into account international labour instruments ratified by each Member concerning issues related to training for work on board fishing vessels and occupational safety and health such as: ... and transport of heavy loads; principles of unratified international Conventions may be consulted."

*Mauritius.* Supports the Paragraphs relating to the protection of young persons.

*Ukraine.* With reference to Article 9, this Paragraph should be deleted, in order not to leave room for the employment of individuals under the age of 18 on fishing vessels.

2. The training of persons between 16 and 18 years of age might be provided through participation in an apprenticeship or approved training programme, which should operate under established rules and be monitored by the competent authority and should not interfere with the person's general education.

### *Observations on Paragraph 2*

*Australia.* See comment under Paragraph 1.

*Canada.* See comment under Paragraph 1.

*Ukraine.* With reference to Article 9, this Paragraph should be deleted, in order not to leave room for the employment of individuals under the age of 18 on fishing vessels.

3. Members should take measures to ensure that the safety, lifesaving and survival equipment carried on board fishing vessels carrying persons under the age of 18 is appropriate for the young persons concerned.

### *Observations on Paragraph 3*

*Lebanon.* It is proposed to add the following phrase at the end of this paragraph: "and that they have been trained to use such equipment".

*Ukraine.* With reference to Article 9, this Paragraph should be deleted, in order not to leave room for the employment of individuals under the age of 18 on fishing vessels.

#### MEDICAL EXAMINATION

##### *Nature of medical examination and content of medical certificate*

4. When prescribing the nature of the examination, Members should pay due regard to the age of the person to be examined and the nature of the duties to be performed.

5. In particular, the medical certificate should attest that the person is not suffering from any disease likely to be aggravated by or to render them unfit for service on board a fishing vessel or likely to endanger the health of other persons on board.

##### *Observations on Paragraph 5*

*South Africa.* Although implied, a new Paragraph should be inserted after Paragraph 5: “A medical certificate issued by a medical practitioner approved by the competent authority should not unduly prejudice work seekers from gaining employment if the condition stated on the medical certificate does not relate to or will not be aggravated by the work that a fisher is required to do.”

##### *Medical certificate*

6. The certificate should be signed by a medical practitioner approved by the competent authority.

##### *Observations on Paragraph 6*

*Norway.* See comment under Article 10.

##### *Period of validity of the medical certificate*

7. In the case of young persons of less than 21 years of age, the medical certificate should remain in force for a period not exceeding one year from the date on which it was granted.

##### *Observations on Paragraph 7*

*Canada.* The competent authority should, after consultation, determine the period of validity of a medical certificate in all cases.

CEC: The period of validity for medical certificates of persons less than 21 years should be addressed in the same fashion as for crew over 21 years, i.e. leaving it up to the competent authority to prescribe.

*France.* It would be desirable to replace the words “21 years of age” with “18 years of age”.

*Lebanon.* A new phrase should be added at the end reading: “In certain circumstances as provided for by national laws or regulations, medical examinations should be carried out in addition to the annual examination or at shorter intervals to ensure effective supervision of the health situation of young persons.”

*Norway.* The Norwegian Fishing Vessel Owners’ Association would like to harmonize the “age requirements” for medical certificates with the age limits under the provisions on minimum age.

*Spain.* If this provision concerning the period of validity of the medical certificate is intended to protect young persons as a high-risk group warranting special attention in regard to risk prevention, in order to maintain their health and physical integrity, the same argument should apply to workers who have reached a certain age and thus are incontestably in a high-risk group, which should also be taken into consideration from the standpoint of both the health of the individual concerned and that of the rest of the crew. Hence, the words “or persons over 55 years of age” should be added after “persons of less than 21 years of age”.

8. In the case of persons who have attained the age of 21 years, the competent authority should determine the period for which the medical certificate should remain in force.

9. If the period of validity of a certificate expires in the course of a voyage, the certificate should continue in force until the end of that voyage.

#### *Right to administrative appeal*

10. Arrangements should be made to enable a person who, after examination, is determined to be unfit for work on board fishing vessels, or on board certain types of vessels, or for certain types of work on board vessels, to apply for a further examination by a medical referee or referees who should be independent of any fishing vessel owner or of any organization of fishing vessel owners or fishers.

#### *Observations on Paragraph 10*

*Canada.* The competent authority should, after consultation, determine the appropriate administrative recourse method.

CEC: While a further examination might be sought from another independent medical doctor, the concept that there should be a medical “referee” is not accepted. Governments should dictate the process or content of appeals between crew and vessel owners/operators.

*Norway.* See comment under Article 11.

*Spain.* After the words “for certain types of work on board vessels” the rest of the provision should be replaced by the following: “and who disagrees with such

determination, to avail himself or herself of an objective and impartial dispute resolution procedure”. See comment under Article 11.

#### *International guidance*

11. Competent authorities should take into account international guidance on medical examination and certification of persons working at sea, such as the ILO/WHO Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations for Seafarers.

#### *Special measures*

12. For fishers exempted from the application of the provisions concerning medical examination in the Convention, the competent authority should take alternative adequate measures to provide health surveillance for the purpose of occupational safety and health.

#### *Observations on Paragraph 12*

*Lebanon.* See comment under Article 10.

### COMPETENCY AND TRAINING

13. Members should:

- (a) ensure that competencies required for skippers, mates, engineers and other persons working on board fishing vessels take into account generally accepted international standards concerning training and competencies of fishers;
- (b) address, with regard to the vocational training of fishers, the issues of: national planning and administration, including coordination; financing and training standards; training programmes, including pre-vocational training and short courses for working fishers; methods of training; and international cooperation;
- (c) ensure that there is no discrimination with regard to access to training.

#### *Observations on Paragraph 13*

*Argentina.* This Paragraph establishes that the international standards concerning training and competencies of fishers should be taken into account. However, STCW-F has only been ratified by four countries; therefore not achieving the number of signatory members necessary for entry into force. Therefore, the provision should be made mandatory and complemented with text to the effect that, where there are no existing international standards on the issue, national regulations are to be taken into account. The appropriate place to include such obligatory provision would be after Article 11.

*Australia.* See comment under Paragraph 1.

*Lebanon.* The meaning of the term “national planning and administration” in clause (b) should be clarified. Furthermore, the content of this clause should be re-

examined in order to allow for training to be organized at different levels for different fisher functions.

## PART II. CONDITIONS OF SERVICE

### RECORD OF SERVICE

14. At the end of each voyage, a record of service in regard to that voyage should be available to the fisher concerned or entered in their service book.

#### *Observations on Paragraph 14*

*Canada.* CEC: While records of service could be provided in relation to payment for service, the industry should not be required to have a service book for fishers engaged on its vessels.

*France.* See comment under Article 14. This Paragraph employs the term “service book”. As the nature of such service book is not explained, it should either be defined or referred to as “their service book or other document”.

### SPECIAL MEASURES

15. For fishers excluded from the scope of the Convention, the competent authority should take measures to provide them with adequate protection with respect to their conditions of work and with means of dispute settlement.

## PART III. HEALTH PROTECTION, MEDICAL CARE AND SOCIAL SECURITY

### MEDICAL CARE ON BOARD

16. The competent authority should establish the list of medical supplies, including women’s sanitary protection and discreet environmentally friendly disposal units, and equipment to be carried on fishing vessels appropriate to the risks concerned.

#### *Observations on Paragraph 16*

IMHA: It should be added that the instructions accompanying the medical supplies and equipment should have the format of the ILO/IMO/WHO *International Medical Guide for Ships*, the third edition of which is in preparation.

17. Fishing vessels carrying 100 or more fishers and ordinarily engaged in international voyages of more than three days’ duration should carry a qualified medical doctor.

*Observations on Paragraph 17*

*Lebanon.* The number of fishers on board, over which the vessel is required to carry a doctor, should be smaller than 100, especially if the presence of a doctor is also conditional upon the voyages being international and of more than three days' duration.

*Mauritius.* At the level of the tripartite Labour Advisory Board, workers' representatives suggest that fishing vessels with 50 or more fishers should carry a qualified medical doctor.

*Nicaragua.* CTN: The text should be amended to read as follows: "Fishing vessels carrying 50 or more persons and ... shall carry a qualified medical doctor."

*South Africa.* The cost of acquiring medical attention when the vessel is three days away can outweigh the cost of employing a medical practitioner for the period. It is unacceptable that fishers have access to medical attention only if the vessel is away for more than three days. It is therefore proposed that this should be amended to be two days.

*United States.* USCIB: It would not be economically or practically feasible to employ a qualified medical doctor to serve aboard as a member of the crew. However, there should be a qualified medical officer onboard who has advanced shipboard medical training and whose primary duty it is to provide medical care and administer medicine in consultation with a licensed medical physician through radio or satellite communication on a 24-hour basis. The consulting physician must be knowledgeable of the conditions at sea, the physical requirements of the work performed and the medical supplies and equipment available.

18. Fishers should receive training in basic first aid in accordance with national laws and regulations, taking into account applicable international instruments.

*Observations on Paragraph 18*

*Lebanon.* This provision should be amended as follows: "... taking into account the international instruments ratified by the State."

19. There should be a standard medical report form specially designed to facilitate the confidential exchange of medical and related information concerning individual fishers between the fishing vessel and the shore in cases of illness or injury.

## OCCUPATIONAL SAFETY AND HEALTH

20. In order to contribute to the continuous improvement of safety and health of fishers, member States should have in place programmes for the prevention of accidents on board fishing vessels which should, inter alia, provide for the gathering and dissemination of occupational health and safety materials, research and analysis.

*Observations on Paragraph 20*

*Canada.* The wording should be amended to read: "... programmes for the prevention of workplace injuries and occupational illnesses."

*Lebanon.* The term "avoid" should be used instead of "prevention", as it is difficult to actually stop accidents in all activities.

21. Information concerning particular hazards should be brought to the attention of all fishers and other persons on board through official notices containing instructions or guidance on such hazards or other appropriate means.

22. When establishing methods and programmes concerning safety and health of fishers, the competent authority should take into consideration technological progress and knowledge in the field of occupational safety and health, as well as relevant international instruments.

*Observations on Paragraph 22*

*Lebanon.* It is proposed to amend the provision as follows: "... as well as relevant international instruments ratified by the State."

*Technical specifications*

23. Members should, to the extent practicable and as appropriate to the conditions in the fishing sector, address the following:

- (a) seaworthiness and stability of fishing vessels;
- (b) radio communications;
- (c) temperature, ventilation and lighting of working areas;
- (d) mitigation of the slipperiness of deck surfaces;
- (e) machinery safety, including guarding of machinery;
- (f) vessel familiarization for fishers or fisheries observers new to the vessel;
- (g) personal protective equipment;
- (h) fire-fighting and lifesaving;
- (i) loading and unloading of the vessel;
- (j) lifting gear;
- (k) anchoring and mooring equipment;
- (l) safety and health in living quarters;
- (m) noise and vibration in work areas;
- (n) ergonomics, including in relation to the layout of workstations and manual lifting and handling;
- (o) equipment and procedures for the catching, handling, storage and processing of fish and other marine resources;
- (p) vessel design, construction and modification relevant to occupational safety and health;
- (q) navigation and vessel handling;

- (r) hazardous materials used on board the vessel;
- (s) safe means of access to and exit from fishing vessels in port;
- (t) special safety and health requirements for young persons;
- (u) prevention of fatigue;
- (v) other issues related to safety and health.

### *Observations on Paragraph 23*

*Australia.* It would be useful if Members would also address navigational equipment (i.e. charts, compass, GPS, etc.) and radar reflectors, and the reference to lifesaving could be extended to refer to training and equipment, including EPIRBs.

#### *Occupational safety and health management systems*

24. (1) When establishing methods and programmes concerning safety and health in the fishing sector, competent authorities should take into account any relevant international guidelines concerning occupational safety and health management systems, including the *Guidelines on occupational safety and health management systems* of the International Labour Office.

(2) Risk evaluation in relation to fishing should be conducted as appropriate, with the participation of fishers or their representatives and should include:

- (a) risk evaluation and management;
- (b) training, taking into consideration the relevant provisions of Chapter III of the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F Convention);
- (c) on-board instruction of fishers.

(3) To give effect to the provision of subparagraph 2(a) above, Members should adopt, after consultation, laws, regulations or other measures requiring that:

- (a) all fishers are regularly actively involved in improving safety and health through continually identifying hazards, assessing risks and taking action to address the risks through safety management;
- (b) an occupational safety and health management system is established that may include an occupational safety and health policy, provisions for fisher participation and provisions concerning organizing, planning, implementing and evaluating the system and taking action to improve the system;
- (c) a system is established for the purpose of assisting in the implementation of the fishing vessel owner's or the organization's safety and health policy and programme and to provide fishers with a forum to influence safety and health matters.

(4) When developing the provisions referred to in subparagraph 2(a), Members should take into account the possible and relevant international instruments developed on risk assessment and management.

### *Observations on Paragraph 24*

*Lebanon.* This provision recommends to take into account any relevant international guidelines (subparagraph (1)), the relevant provisions of Chapter III of the

STCW-F Convention (subparagraph (2)), and the possible and relevant international instruments (subparagraph (4)). It is hoped that there is no obligation in this respect: the State should consult the relevant provisions but might take them into consideration according to its will.

*United Kingdom.* There should be reference to “occupational health and safety policies and programmes” rather than “management systems”. This would be in line with the requirements in the draft consolidated maritime labour Convention and would avoid the possible implication that specialized administrative systems were required.

25. Members should establish a list of diseases known to arise out of exposure to substances or dangerous conditions in the fishing sector.

#### SOCIAL SECURITY

26. (1) Members should take measures to extend social security protection progressively to all fishers.

(2) To this end, Members should maintain up-to-date information on the:

- (a) percentage of fishers covered;
- (b) range of contingencies covered; and
- (c) level of benefits.

#### *Observations on Paragraph 26*

*Mauritius.* Supports the Paragraphs relating to social security.

27. The benefits referred to in Article 29 of the Convention should be granted throughout the contingency.

#### *Common provisions*

28. Every claimant should have a right of appeal in the case of refusal of the benefit or complaint as to quality and quantity of the benefit.

29. Members should take steps to secure the protection of foreign fishers, including by entering into agreements to that effect.

#### *Observations on Paragraph 29*

*Lebanon.* This provision should be amended as follows: “Members should consider to take the necessary steps to secure the protection of foreign fishers according to national legislation.” The State should be given the choice whether or not to enter into agreements to that effect.

## PART IV. OTHER PROVISIONS

30. In its capacity as a coastal State, a Member might require, when it grants licences for fishing in its exclusive economic zone, that fishing vessels comply with the standards of the Convention.

*Observations on Paragraph 30*

*Indonesia.* Additional requirements should exist for vessels of 12 metres in length or more, except those engaged in subsistence and recreational fishing.

*Lebanon.* This provision seems to impose an obligation on fishing vessels of a country which has not ratified the Convention to comply with the standards stipulated in the Convention. This would go against the liberty of any State to ratify or not to ratify a Convention.

## [ANNEX II

[Not currently attached to either the Convention or Recommendation]

## ACCOMMODATION ON BOARD FISHING VESSELS

## PART I. GENERAL PROVISIONS

1. The provisions of this annex should apply to fishing vessels [of more than 24.4 metres in length].

2. This annex might be applied to vessels of [between 13.7 and 24.4 metres] in length where the competent authority determines, after consultation, that this is reasonable and practicable.

3. In respect of vessels which normally remain away from their home ports for periods of less than 36 hours and in which the crew does not live permanently on board when in port, the provisions concerning the following do not apply:

- (a) lighting in paragraph 35 below;
- (b) sleeping rooms;
- (c) mess rooms;
- (d) sanitary accommodation;
- (e) sick bay;
- (f) space to hang oilskins;
- (g) cooking equipment and galley.

4. In the case of vessels referred to in paragraph 3 above, adequate sanitary installations as well as messing and cooking facilities and accommodation for resting are provided.

5. The provisions of Part III of this annex might be varied in the case of any vessel if the competent authority is satisfied, after consultation, that the variations to be made provide corresponding advantages as a result of which the overall conditions are no less favourable than those that would result from the full application of the provisions of the annex.

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PART II. PLANNING AND CONTROL OF CREW ACCOMMODATION

6. Before the construction of a fishing vessel is begun, and before the crew accommodation of an existing vessel is substantially altered or reconstructed, detailed plans of, and information concerning, the accommodation should be submitted to the competent authority for approval.

7. The competent authority should inspect the vessel and satisfy itself that the crew accommodation complies with the requirements of the laws or regulations or other measures, on every occasion when:

- (a) a fishing vessel is registered or re-registered;
- (b) the crew accommodation of a vessel has been substantially altered or reconstructed; or
- (c) a complaint that the crew accommodation is not in compliance with the terms of this annex has been made to the competent authority in the prescribed manner and in time to prevent any delay to the vessel, by a recognized fishers' organization representing all or part of the crew or by a prescribed number or proportion of the members of the crew of the vessel.

PART III. CREW ACCOMMODATION REQUIREMENTS

GENERAL ACCOMMODATION STANDARDS

8. The location, means of access, structure and arrangement of crew accommodation in relation to other spaces should be such as to ensure adequate security, protection against weather and sea and insulation from heat or cold, undue noise or effluvia from other spaces.

9. Emergency escapes should be provided from all crew accommodation spaces as necessary.

10. Every effort should be made to exclude direct openings into sleeping rooms from fish holds and fish meal rooms, from spaces for machinery, from galleys, lamp and paint rooms or from engine, deck and other bulk store rooms, drying rooms, communal wash places or water closets. That part of the bulkhead separating such places from sleeping rooms and external bulkheads should be efficiently constructed of steel or other approved substance and should be watertight and gastight.

11. External bulkheads of sleeping rooms and mess rooms should be adequately insulated. All machinery casings and all boundary bulkheads of galleys and other spaces in which heat is produced should be adequately insulated when there is a possibility of resulting heat effects in adjoining accommodation or passageways. Care should also be taken to provide protection from heat effects of steam and/or hot-water service pipes.

12. Internal bulkheads should be of approved material which is not likely to harbour vermin.

13. Sleeping rooms, mess rooms, recreation rooms and passageways in the crew accommodation space should be adequately insulated to prevent condensation or overheating.

14. Main steam and exhaust pipes for winches and similar gear should, whenever technically possible, not pass through crew accommodation or through passageways leading to crew accommodation; where they do pass through such accommodation or passageways they should be adequately insulated and encased.

15. Inside panelling or sheeting should be of material with a surface easily kept clean. Tongued and grooved boarding or any other form of construction likely to harbour vermin should not be used.

16. The competent authority should decide to what extent fire prevention or fire-retarding measures should be required to be taken in the construction of the accommodation.

17. The wall surface and deck heads in sleeping rooms and mess rooms should be easily kept clean and, if painted, should be light in colour; lime wash should not be used.

18. The wall surfaces should be renewed or restored as necessary.

19. The decks in all crew accommodation should be of approved material and construction and should provide a surface impervious to damp and easily kept clean.

20. Overhead exposed decks over crew accommodation should be sheathed with wood or equivalent insulation.

21. Where the floorings are of composition the joining with sides should be rounded to avoid crevices.

22. Sufficient drainage should be provided.

23. All practicable measures should be taken to protect crew accommodation against the admission of flies and other insects.

#### NOISE AND VIBRATION

24. Noise and vibration in accommodation spaces should not exceed limits established by the competent authority taking into account international instruments.

#### VENTILATION

25. Sleeping rooms and mess rooms should be adequately ventilated taking into account climatic conditions.

26. The system of ventilation should be controlled so as to maintain the air in a satisfactory condition and to ensure a sufficiency of air movement in all conditions of weather and climate.

27. Vessels regularly engaged on voyages in the tropics and other areas with similar climatic conditions should, as required by such conditions, be equipped both with mechanical means of ventilation and with electric fans, provided that one only of these means need be adopted in spaces where this ensures satisfactory ventilation.

28. Vessels engaged elsewhere should be equipped either with mechanical means of ventilation or with electric fans. The competent authority might exempt vessels normally employed in the cold waters of the northern or southern hemispheres from this requirement.

29. Power for the operation of the aids to ventilation required should, when practicable, be available at all times when the crew is living or working on board and conditions so require.

#### HEATING

30. An adequate system of heating the crew accommodation should be provided taking into account climatic conditions.

31. The heating system should, when practicable, be in operation at all times when the crew is living or working on board and conditions so require.

32. The heating system should be capable of maintaining the temperature in crew accommodation at a satisfactory level under normal conditions of weather and climate likely to be met with on service; the competent authority should prescribe the standard to be provided.

33. Radiators and other heating apparatus should be so placed and, where necessary, shielded and fitted with safety devices so as to avoid risk of fire or danger or discomfort to the occupants.

#### LIGHTING

34. All crew spaces should be adequately lighted. The minimum standard for natural lighting in living rooms should be such as to permit a person with normal vision to read on a clear day an ordinary newspaper in any part of the space available for free movement. When it is not possible to provide adequate natural lighting, artificial lighting of the above minimum standard should be provided.

35. In all vessels electric lights should, as far as practicable, be provided in the crew accommodation. If there are not two independent sources of electricity for lighting, additional lighting should be provided by properly constructed lamps or lighting apparatus for emergency use.

36. Artificial lighting should be so disposed as to give maximum benefit to the occupants of the room.

37. Adequate reading light should be provided for every berth in addition to the normal lighting of the cabin.

38. A permanent blue light should, in addition, be provided in the sleeping room during the night.

#### SLEEPING ROOMS

39. Sleeping rooms should be situated amidships or aft; the competent authority might, in particular cases, if the size, type or intended service of the vessel renders any other location unreasonable or impracticable, permit the location of sleeping rooms in the fore part of the vessel but in no case forward of the collision bulkhead.

40. The floor area per person of sleeping rooms, excluding space occupied by berths and lockers, should not be less than:

- (a) in vessels of [13.7] metres but below [19.8] metres in length: [0.5] square metre;
- (b) in vessels of [19.8] metres but below [26.8] metres in length: [0.75] square metre;
- (c) in vessels of [26.8] metres but below [35.1] metres in length: [0.9] square metre;
- (d) in vessels of [35.1] metres in length or over: [1.0] square metre.

41. The clear headroom in the crew sleeping room should, wherever possible, be not less than 1.90 metres.

42. There should be a sufficient number of sleeping rooms to provide a separate room or rooms for each department.

43. The number of persons allowed to occupy sleeping rooms should not exceed the following maxima:

- (a) officers: one person per room wherever possible, and in no case more than two;
- (b) ratings: two or three persons per room wherever possible, and in no case more than the following:
  - (i) in vessels of [35.1] metres in length and over, four persons;
  - (ii) in vessels under [35.1] metres in length, six persons.

44. The competent authority might permit exceptions to the requirements of the preceding two paragraphs in particular cases if the size, type or intended service of the vessel make these requirements unreasonable or impracticable.

45. The maximum number of persons to be accommodated in any sleeping room should be legibly and indelibly marked in some place in the room where it can conveniently be seen.

46. Members of the crew should be provided with individual berths of adequate dimensions. Berths should not be placed side by side in such a way that access to one berth can be obtained only over another.

47. Berths should not be arranged in tiers of more than two; in the case of berths placed along the vessel's side, there should be only a single tier where a sidelight is situated above a berth.

48. The lower berth in a double tier should not be less than [0.30] metres above the floor; the upper berth should be placed approximately midway between the bottom of the lower berth and the lower side of the deck head beams.

49. The minimum inside dimensions of a berth should, wherever practicable, be 1.90 metres by 0.68 metres.

50. The framework and the leeboard, if any, of a berth should be of approved material, hard, smooth and not likely to corrode or to harbour vermin.

51. If tubular frames are used for the construction of berths, they should be completely sealed and without perforations which would give access to vermin.

52. Each berth should be fitted with a spring mattress of approved material or with a spring bottom and a mattress of approved material. Stuffing of straw or other material likely to harbour vermin should not be used.

53. When one berth is placed over another, a dust-proof bottom of wood, canvas or other suitable material should be fitted beneath the upper berth.

54. Sleeping rooms should be so planned and equipped as to ensure reasonable comfort for the occupants and to facilitate tidiness.

55. The furniture should include a clothes locker for each occupant, fitted with a hasp for a padlock and a rod for holding clothes on hangers. The competent authority should ensure that the locker is as commodious as practicable.

56. Each sleeping room should be provided with a table or desk which might be of the fixed, drop-leaf or slide-out type, and with comfortable seating accommodation as necessary.

57. The furniture should be of smooth, hard material not liable to warp or corrode or to harbour vermin.

58. The furniture should include a drawer or equivalent space for each occupant which should, wherever practicable, be not less than 0.056 cubic metre.

59. Sleeping rooms should be fitted with curtains for the sidelights.

60. Sleeping rooms should be fitted with a mirror, small cabinets for toilet requisites, a book rack and a sufficient number of coat hooks.

61. As far as practicable, berthing of crew members should be so arranged that watches are separated and that no day worker share a room with watchkeepers.

#### MESS ROOMS

62. Mess-room accommodation separate from sleeping quarters should be provided in all vessels carrying a crew of more than ten persons. Wherever possible it should be provided also in vessels carrying a smaller crew. If, however, this is impracticable, the mess room might be combined with the sleeping accommodation.

63. In vessels engaged in fishing on the high seas and carrying a crew of more than 20, separate mess-room accommodation might be provided for the skipper and officers.

64. The dimensions and equipment of each mess room should be sufficient for the number of persons likely to use it at any one time.

65. Mess rooms should be equipped with tables and approved seats sufficient for the number of persons likely to use them at any one time.

66. Mess rooms should be as close as practicable to the galley.

67. Where pantries are not accessible to mess rooms, adequate lockers for mess utensils and proper facilities for washing them should be provided.

68. The tops of tables and seats should be of damp-resisting material without cracks and easily kept clean.

69. Wherever practicable mess rooms should be planned, furnished and equipped to give recreational facilities.

#### SANITARY ACCOMMODATION

70. Sufficient sanitary accommodation, including washbasins and tub or shower, should be provided in all vessels.

71. Sanitary facilities for all members of the crew who do not occupy rooms to which private facilities are attached should, wherever practicable, be provided for each department of the crew on the following scale:

- (a) one tub or shower for every eight persons or less;
- (b) one water closet for every eight persons or less;
- (c) one washbasin for every six persons or less.

72. Cold fresh water and hot fresh water or means of heating water should be available in all communal wash places. The competent authority, after consultation, might fix the minimum amount of fresh water which should be supplied per person per day.

73. Washbasins and tub baths should be of adequate size and constructed of approved material with a smooth surface not liable to crack, flake or corrode.

74. All water closets should have ventilation to the open air, independently of any other part of the accommodation.

75. The sanitary equipment to be placed in water closets should be of an approved pattern and provided with an ample flush of water, available at all times and independently controllable.

76. Soil pipes and waste pipes should be of adequate dimensions and should be constructed so as to minimize the risk of obstruction and to facilitate cleaning. They should not pass through fresh water or drinking water tanks; neither should they, if practicable, pass overhead in mess rooms or sleeping accommodation.

77. Sanitary accommodation intended for the use of more than one person should comply with the following requirements:

- (a) floors should be of approved durable material, easily cleaned and impervious to damp and should be properly drained;
- (b) bulkheads should be of steel or other approved material and should be watertight up to at least 0.23 metres above the level of the deck;
- (c) the accommodation should be sufficiently lighted, heated and ventilated.

78. Water closets should be situated convenient to, but separate from, sleeping rooms and washrooms, without direct access from the sleeping rooms or from a passage between sleeping rooms and water closets to which there is no other access, provided that this requirement should not apply where a water closet is located between two sleeping rooms having a total of not more than four persons. Where there is more than one water closet in a compartment they should be sufficiently screened to ensure privacy.

79. Facilities for washing and drying clothes should be provided on a scale appropriate to the size of the crew and the normal duration of the voyage.

80. The facilities for washing clothes should include suitable sinks equipped with drainage, which might be installed in washrooms if separate laundry accommodation is not reasonably practicable. The sinks should be provided with an adequate supply of cold fresh water and hot fresh water or means of heating water.

81. The facilities for drying clothes should be provided in a compartment separate from sleeping rooms, mess rooms and water closets, adequately ventilated and heated and equipped with lines or other fittings for hanging clothes.

#### SICKBAY

82. Whenever possible, an isolated cabin should be provided for a member of the crew who suffers from illness or injury. On vessels of 45.7 metres or over in length, there should be a sickbay.

#### SPACE TO HANG OILSKINS

83. Sufficient and adequately ventilated accommodation for the hanging of oilskins should be provided outside but convenient to the sleeping rooms.

## CLEAN AND HABITABLE CONDITION

84. Crew accommodation should be maintained in a clean and decently habitable condition and should be kept free of goods and stores which are not the personal property of the occupants.

## COOKING EQUIPMENT AND GALLEY

85. Satisfactory cooking equipment should be provided on board and should, wherever practicable, be fitted in a separate galley.

86. The galley should be of adequate dimensions for the purpose and should be well lit and ventilated.

87. The galley should be equipped with cooking utensils, the necessary number of cupboards and shelves, and sinks and dish racks of rust-proof material and with satisfactory drainage. Drinking water should be supplied to the galley by means of pipes. Where it is supplied under pressure, the system should contain protection against backflow. Where hot water is not supplied to the galley, an apparatus for heating water should be provided.

88. The galley should be provided with suitable facilities for the preparation of hot drinks for the crew at all times.

89. A provision storeroom of adequate capacity should be provided which can be kept dry, cool and well ventilated in order to avoid deterioration of the stores. Where necessary, refrigerators or other low-temperature storage space should be provided.

90. Where butane or propane gas is used for cooking purposes in the galley the gas containers should be kept on the open deck.

## PART IV. APPLICATION TO EXISTING SHIPS

91. The requirements of this annex should apply to fishing vessels constructed subsequent to the coming into force of the proposed Convention for the Member concerned.]

*Observations on Annex II*

*Argentina.* The length parameters in paragraphs 1 and 2 of the annex should be reduced. With regard to paragraph 1, a change from 24.4 metres to 15 metres in length is suggested, retaining in paragraph 2 the possibility of extending application to vessels between 13.7 metres and 15 metres in length. CATT agrees that Annex II should be applicable to vessels of 15 metres in length or over. ACPP wishes to retain the length limits in paragraphs 1 and 2 as is.

*Australia.* The crew accommodation standards derived from ILO Convention No. 126 are supported, since they address many direct and indirect human factors issues such as noise and vibration, ventilation, heating, lighting, sleeping facilities, cleanliness, feeding, and hot drinks at all times. Paragraph 4 is probably intended to end "are to be provided". Paragraph 63 perpetuates outdated concepts of separation of skippers, officers and crew, which are contrary to modern safety practices that

encourage greater interaction among crew members to break down social and cultural barriers that may obstruct communications, leading to failures in safety management and bridge resource management and, possibly, to safety incidents.

*Belgium.* See comment under Article 30.

CCE: Same as the above reply.

*Brazil.* See comment under Article 22.

*Canada.* See comment under Article 22. Provisions with respect to accommodation should apply to new fishing vessels.

*Cyprus.* OEB: See comment under Article 20.

*Japan.* Annex II, as a whole, should be moved to the Recommendation. Members should be able to apply its provisions flexibly, based on consultations with the representative organizations of employers and workers. Regarding the vessel sizes to which Annex II should apply, each Member should also be permitted to use other units of measurement than length. When converting the units of measurement, it should be taken into account that Japanese vessels are more slender than European vessels, i.e. that European vessels' gross tonnage is generally two or three times bigger than that of Japanese vessels of the same length.

*Lebanon.* The best place to put this annex would be in an appendix to the Recommendation. The Fishermen Trade Union in Beirut and Suburbs indicates that the general provisions of Convention No. 126 would be sound and practicable, but cannot be applied to national vessels, because Lebanese fishing boats do not exceed 13 metres in length.

*Nicaragua.* CTN: It is crucial that Annex II be part of the Convention.

*Norway.* It is proposed that the requirements in Annex II should be applied to vessels of 24 metres LOA and over, and might be applied to vessels between 15 and 24 metres LOA. See also comment under Article 22.

*Spain.* For the time being, it is not recommended to amend in Annex II the limits on vessel length (paragraphs 1 and 2) or minimum floor area per person for sleeping rooms (paragraph 40) or maximum number of persons per sleeping room (paragraph 43), which are currently set out in Convention No. 126, without having carried out in-depth studies on this subject, as this may have a substantial impact on the fleets.

FNCP: If the intention is to adjust the square-bracketed limits in paragraphs 1, 2, 40 and 43, it should be borne in mind that this could heavily affect the fishing fleets. It is not recommendable to amend them without having carried out adequate studies on the subject. Even if new structural regulations could lead to the participation of the Financial Instrument for Fisheries Guidance (FIG), the investments required would not have the result of making the fishing vessel more productive (and if it was more productive, it would not receive subsidies), which will discourage the employer. Lastly, draft national legislation determines the safety and pollution prevention regulations to be met by fishing vessels under 24 metres in length and regulates crew accommodation, including lighting, sleeping rooms, mess rooms, sanitary facilities, galleys, etc., with special provisions for vessels remaining outside their home ports for less than 36 hours. Therefore, any amendments which might have an impact on this draft legislation should be communicated to the sector.

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*United Kingdom.* The United Kingdom supports in principle the inclusion of additional provisions for larger vessels.

*European Union.* See general remarks under Article 30. Since the relevant EU Directives only impose minimum standards, provisions not covered by these Directives but compatible with them do not raise problems, as for example those regarding tropical areas (i.e. flies, electric fans), laundry facilities or space to hang oilskins. Also, even if the notion of “comfort” (e.g. paragraph 54) is not included in the relevant EU legislation, it does not contradict the pertinent Directives, as it could reflect the overall goal of well-being at work expressed in the Framework Directive on OSH. The discussion on noise and vibration is still pending under the draft consolidated maritime labour Convention, including debate on references to international standards, and Commission services understand the willingness of stakeholders not to cite figures. The ILO text on facilities for sick or injured fishers for all vessels is compatible with Directive 92/29/EEC. Problems arise only where the ILO text provides for an obligation to have a sick bay on vessels of 45.7 metres, since Directive 92/29/EEC does not relate this obligation to length but to cumulative elements: “more than 500 gross registered tonnes, with a crew of 15 or more workers and engaged on a voyage of more than three days.” Amendments should be envisaged to maintain coherence with what has already been established. The provisions on ventilation are more stringent than those of Directive 93/103/EC, which only refer to obligations, *if* mechanical ventilation is provided. The obligation contained in paragraph 27 is, however, compatible with the Directive and might reflect arrangements already enforced in Member States.

## OFFICE COMMENTARY

### General comments

This commentary takes into account replies received by the Office to Report V (1), *Work in the fishing sector*, as well as views expressed at the Tripartite Meeting of Experts on the Fishing Sector (Geneva, 13-17 December 2004).

To assist the Tripartite Meeting of Experts on the Fishing Sector, and to give it a basis for its discussions, the Office had prepared a document entitled *Proposed provisions for accommodation, large fishing vessels and social security*. The document provided text, and related commentary, for:

- Part V, Accommodation and food (provisions relating to all vessels, including large vessels);
- Part VII, Additional requirements for vessels of [...] metres in length or more;
- Social security.

The Report of the Tripartite Meeting of Experts on the Fishing Sector, attached in the Appendix, provides a summary of the discussions. Annex I to the Appendix contains a document, adopted by the Meeting, entitled *Provisions for accommodation, large fishing vessels and social security proposed by the Tripartite Meeting of Experts on the Fishing Sector*. This contains provisions on which there was consensus and provisions on which there was no consensus at the Tripartite Meeting of Experts on the Fishing Sector. The document should not be read on its own, as in many cases there was no agreement on the text, but should be read with the report of that meeting. This is particularly true with regard to the provisions relating to the proposed new Part VII concerning large vessels.

Following the Tripartite Meeting of Experts on the Fishing Sector, the Office prepared the texts of the proposed Convention concerning work in the fishing sector and the proposed Recommendation concerning work in the fishing sector. These texts are found in Report V (2B).

As concerns Part V, Accommodation and food, of the proposed Convention, as a result of the Tripartite Meeting of Experts on the Fishing Sector and of the replies to Report V (1), the Office prepared revised versions of the articles in that Part and of the provisions in the related annex (now Annex III of the proposed Convention). The provisions in Annex III, Fishing vessel accommodation, include provisions that are aimed at all new, decked fishing vessels, followed by provisions for vessels of “[24] metres in length and over which are not less than [100] gt” or, in some cases, to vessels of “[45] metres in length and over and not less than [500] gt”. Furthermore, the Meeting discussed and, in some cases, agreed to include certain provisions on fishing vessel accommodation in the proposed Recommendation. It may be noted that figures in the proposed Convention and the proposed Recommendation, i.e. “[24] metres” have often been left in square brackets, as no agreement had been reached on the figure to be used. The issue of accommodation is discussed in more detail in this Office commentary.

As concerns the request to develop proposals for a new Part VII concerning “Additional requirements for vessels of [...] metres in length or more”, instead of developing an entirely separate Part, the Office has placed the provisions, issue by issue, immediately after the related provisions concerning all vessels. For example, additional provisions concerning medical care on vessels of “[24] metres in length and over or those engaged on international voyages” are found immediately after provisions concerning medical care for all fishers. The Office has done this for several reasons. First, this structure will make the proposed Convention and the proposed Recommendation easier to understand. Second, it will allow for a more efficient debate at the International Labour Conference (ILC) (otherwise, each issue, e.g. medical care, would have to be dealt with twice during the discussion of the proposed Convention text). Third, it will allow the ILC greater flexibility in determining, for example, whether the provisions for large vessels should apply to large vessels (e.g. 24 metres in length and over), to vessels engaged on international voyages, to vessels at sea for a certain length of time or engaged on voyages taking them a certain distance from their home port, or to a combination of any or all of these criteria. The following table indicates where these new provisions have been inserted in the proposed Convention and the proposed Recommendation.

#### **Proposed Convention – new provisions concerning large vessels**

<b>Issue</b>	<b>Article</b>
Medical examination	Art. 10(3), Art. 12
Manning and hours of rest	Art. 14
Fisher’s work agreement	Art. 20, Annex II(2)
Payment of fishers	Art. 24
Medical care	Art. 30
Occupational safety and health and accident prevention	Art. 32
Compliance and enforcement	Art. 39
Accommodation	Annex III

#### **Proposed Recommendation – new provisions concerning large vessels**

<b>Issue</b>	<b>Paragraph</b>
Competency and training	Para. 12
Payment of fishers	Para. 15
Accommodation	Paras. 27 and 31
Medical care on board	Para. 37

In the proposed Convention, the Office has also included new provisions concerning repatriation (Article 21), recruitment and placement (Article 22) and social security (Articles 34 and 35) and, primarily as a result of replies received to Report V (1), has made substantial changes to the provisions concerning enforcement (Articles 39 and 41). A new annex has also been added (Annex I). There are also other additions, deletions and changes that are noted in this Office commentary.

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## Commentary on the proposed Convention concerning work in the fishing sector

### *Office commentary on the Preamble*

At the 92nd Session of the ILC, the Committee on the Fishing Sector discussed, including in the Preamble, a reference not only to the Declaration on Fundamental Principles and Rights at Work but also to the fundamental Conventions themselves.<sup>1</sup> The Office has reflected this in the fifth preambular paragraph.

The Tripartite Meeting of Experts on the Fishing Sector discussed, in the context of the draft provisions concerning recruitment and placement, the desirability of including a paragraph in the Preamble concerning the need to protect and promote the “employment rights” of fishers. The Office has included such a paragraph (the eighth preambular paragraph); however, it has not included the word “employment”, taking into account the nature of the work relationship in much of the fishing sector.

At the 92nd Session of the ILC, the Committee on the Fishing Sector agreed to leave in square brackets Article 18, subparagraph (a) (referred to as point 28(a) in the discussion), which referred to identity documents.<sup>2</sup> Having deleted this text from the proposed Convention, the Office has placed a reference to the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185), in the sixth preambular paragraph.

As suggested by a member State in its reply to Report V (1), the Office has inserted the words “occupational safety and health” into the tenth preambular paragraph.

## PART I. DEFINITIONS AND SCOPE

### DEFINITIONS

#### *Article 1*

#### *Article 1(a)*

The expression “rivers and inland waters” used in Article 1(a) of the proposed Convention found in Report V (1) has been replaced by “rivers, lakes and canals”, in order to avoid any misunderstandings as to its meaning.

Certain replies to Report V (1) have called for a definition of “subsistence fishing”, which is used in the definition of “commercial fishing”. The Office has not included a definition of this term, but notes that the FAO Fisheries Glossary has defined “subsistence fishery” as “a fishery where the fish caught are shared and consumed directly by the families and kins of the fishers rather than being bought by middle-(wo)men and sold at the next larger market”.

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<sup>1</sup> *Provisional Record* No. 21, ILC, 92nd Session, Geneva, 2004, paras. 267-279.

<sup>2</sup> *ibid*, para. 574.

*Article 1(e)*

In the definition of “fisher”, the Committee on the Fishing Sector had left the words “and shore-based persons carrying out work aboard a fishing vessel” in square brackets. Based on replies to Report V (1), the Office has removed the square brackets around these words and has added the words “and fisheries observers”.

*Article 1(h)(iii)*

The square brackets around “50 tonnes” have been removed. The term, which is used in the Torremolinos International Convention for the Safety of Fishing Vessels and its Protocol, refers to weight.

*Article 1(l)*

The Tripartite Meeting of Experts on the Fishing Sector agreed that the Convention should provide for the possibility that a Member could use length overall (LOA), as well as length (L), as a measurement unit, as this may be more cost-effective for competent authorities and fishing vessel owners. The Office has therefore included a definition of the term “length overall” in Article 1, subparagraph (l). The definition is a simplified version of the definition used in Article 2 of the European Union Council Regulation (EEC) No. 2930/86 of 22 September 1986 defining the characteristics for fishing vessels. The full text of Article 2 of that Regulation reads:

1. The length of a vessel shall be the length overall, defined as the distance in a straight line between the foremost point of the bow and the aftermost point of the stern.

For the purposes of this definition:

- (a) the bow shall be taken to include the watertight hull structure, forecastle, stem and forward bulwark, if fitted, but shall exclude bowsprits and safety rails;
- (b) the stern shall be taken to include the watertight hull structure, transom, poop, trawl ramp and bulwark, but shall exclude safety rails, bumkins, propulsion machinery, rudders and steering gear, and divers’ ladders and platforms.

The length overall shall be measured in metres with an accuracy of two decimals.

2. When the length between perpendiculars is mentioned in Community legislation, it shall be defined as the distance measured between the forward and the after perpendiculars as defined by the International Convention for the Safety of Fishing Vessels.

The length between perpendiculars shall be measured in metres with an accuracy of two decimals.

*Article 1(o)*

Several replies to Report V (1) called for a definition of the term “international voyage”. The Office has included such a definition, drawing inspiration, in part, from the legislation of certain member States. The definition it has provided in subparagraph (o) would not restrict the concept of international voyage to visiting the ports of another State, but would cover a voyage outside the waters under the jurisdiction of the State whose flag the vessel flies.

However, the Office draws the attention of the Committee to a reply by Canada to Report V (1) calling for the inclusion of the concept of duration of the voyage in the definition of “international voyage”. The Office has not included this concept in the definition as this might restrict the use of the term “international voyage” elsewhere in the Convention where, for example, it could be combined with the concept of duration in the form of the length of a voyage in nautical miles, or time, or the area where fishing operations take place. Should the ILC decide to change the definition in subparagraph (o), it may wish to bear in mind the potential impact this might have on several other new provisions.

The concept of “distant water fishing” was discussed at the Tripartite Meeting of Experts on the Fishing Sector. The Office considered using this term in conjunction with specific (usually more stringent) provisions concerning certain “large vessels”. The FAO has, in *The state of world fisheries and aquaculture, 1998*, defined “distant-water fisheries production” as “catches taken in FAO fishing areas that are non-adjacent to the flag state of the fishing vessel used”. However, the Office considers that the use of this term might be problematic, as, for example, it would require a definition of what is meant by “fishing areas”, as well as clarification of the term “non-adjacent”. The Office has therefore not used the term in the Convention.

#### SCOPE

##### *Article 2*

Paragraph 3 has been added to take into account views expressed at the Tripartite Meeting of Experts on the Fishing Sector concerning the possible voluntary extension, after consultation, of the protection provided in the Convention for fishers working on larger vessels (i.e. vessels of 24 metres in length and over) to fishers working on smaller vessels (i.e. vessels of less than 24 metres in length). This is also the first time the words “[24] metres in length and over” appear in the Convention. As may be recalled, at the 92nd Session of the ILC, the Committee on the Fishing Sector had decided, following a recorded vote, that the Office should develop a new Part VII concerning “Additional requirements for vessels of [...] metres in length or more”. The Office has changed the wording to “metres in length and over” to be consistent with the provisions of Convention No. 126 as well as wording in certain IMO Conventions. The meaning, however, remains unchanged.

##### *Article 5*

At the 92nd Session of the ILC, the Committee on the Fishing Sector had agreed to an amendment that would allow the competent authority, after consultation, to decide to use “other units of measurement defined in the Convention”. This was aimed at allowing a competent authority to use not only length (L) but also gross tonnage as a means of measurement. As noted above, the Tripartite Meeting of Experts on the Fishing Sector generally agreed to the idea of allowing the use of not only (L) but also length overall (LOA), at least as regards provisions concerning fishing vessel accommodation, as an alternative means of measurement. Because of this change, and to ensure that the flexibility provided through the use of “other units of measurement” is within

reasonable limits, the Office has created a new Annex I, which sets out proposed equivalent length overall (LOA) and gross tonnage (gt) figures to length (L), as used in the proposed Convention and its annexes, and the proposed Recommendation.

The figures for LOA used in Annex I are based on figures proposed to, and generally accepted as equivalents by, the Tripartite Meeting of Experts on the Fishing Sector. These figures had been drawn from information obtained from the United Kingdom. However, since the Meeting, the Office has made 26.5 metres LOA (as opposed to 27 metres LOA) the figure equivalent to 24 metres (L), based on a figure developed by the IMO from a larger sampling of vessels.<sup>3</sup>

The figures used for gross tonnage (gt) in Annex I are estimates made by the Office after reviewing IMO data and also data provided by Japan to the Tripartite Meeting of Experts on the Fishing Sector. However, the Office notes that the IMO Secretariat, after looking into the issue of L and gt equivalent figures, has recently written that "... it was determined not to be practical to have an acceptable figure of gt which could be deemed as equivalent to [a registered length of] 24 m".<sup>4</sup> This leaves open the question of whether it is practical for the international labour Convention to attempt to establish L to gt equivalences. However, this problem may have arisen because such figures were not included in IMO instruments (i.e. the Torremolinos Protocol of 1993) at the time the instruments were adopted.

The Office understands that for some member States gross tonnage as a unit of measurement is a better indicator of the size of the vessel. For example, in their countries, fishing vessels are generally slender compared to those of other countries, so that, for example, a vessel of 24 metres in length would have much less internal space (and thus a lower gross tonnage) than a fishing vessel of similar length in another country. The main impact of such a difference would appear to relate to the provisions concerning such matters as the size of sleeping rooms in accommodation spaces. However, the Office believes that this would be less essential for other matters not directly linked to the available internal space of a vessel. For this reason, the Office has also proposed, with regard to the application of certain requirements concerning internal accommodation space, both length and gross tonnage.<sup>5</sup> If this latter approach is accepted, there might not be a need to provide for the gross tonnage equivalent figures currently found in the proposed new Annex I.

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<sup>3</sup> At the 93rd Session of the IMO Council (15-19 November 2004), document No. C 93/4/Add.2, entitled *Report of the status of Conventions and other multilateral instruments in respect of which the Organization performs functions, including the 1993 Torremolinos Protocol: Consideration of legal and practical implications of amending the entry-into-force provisions of the 1993 Torremolinos Protocol*. Annex 5 of that document notes, in paragraph 9, that 26.47 metres length overall corresponds to 24 metres length as registered, which is itself the length (L) as defined in the Torremolinos Protocol and the same as the length (L) set out in Article 1 of this proposed Convention.

<sup>4</sup> Annex 5 of IMO Council document No. C 93/4/Add.2, see above.

<sup>5</sup> See the Office commentary on Annex III concerning fishing vessel accommodation, under Part V, Accommodation and food.

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PART II. GENERAL PRINCIPLES

IMPLEMENTATION

*Article 6*

In its reply to Report V (1), New Zealand asked whether voluntary codes of practice would be considered as “other measures”. If the Government of New Zealand is referring to codes of practice adopted by the competent authority, which would be at the national level, they would be considered as “other measures”. If these national codes of practice were not binding, they would appear to be insufficient to ensure application of the Convention.

RESPONSIBILITIES OF FISHING VESSEL OWNERS, SKIPPERS AND FISHERS

*Article 8*

In response to a reply to Report V (1) by Australia, the Office has included subparagraph (d) of paragraph 2, which reads “ensuring compliance with safety of navigation, watchkeeping and associated good seamanship standards”, and has redrafted paragraph 4 so that it reads: “Fishers shall comply with the lawful and reasonable orders of the skipper and applicable safety and health measures.”

PART III. MINIMUM REQUIREMENTS FOR WORK ON BOARD FISHING VESSELS

MINIMUM AGE

*Article 9*

This Article has been reformulated taking into account replies to Report V (1), particularly those calling for greater consistency between the proposed Convention and Convention No. 138. The wording of the provision concerning light work during school holidays by persons of 15 years of age has been slightly modified without affecting the substance.

The Office had made proposals to the Tripartite Meeting of Experts on the Fishing Sector concerning prohibition of night work for persons under 18 years of age working on large fishing vessels. However, the Meeting indicated that those provisions should apply to all fishers, regardless of vessel size, and such changes are now reflected in paragraph 6.

The Office has included a new paragraph 7 to make it clear that this Article shall not affect any more stringent obligations assumed by the Member arising from the ratification of other international labour standards, for example Conventions Nos. 138 and 182.

The Office draws attention to the difference between the proposed Convention and the draft consolidated maritime labour Convention: the latter does not provide for the possibility for persons below the age of 16 to work on board commercial ships.

## MEDICAL EXAMINATION

*Article 10*

In response to replies to Report V (1), the words “national traditions” have been deleted from paragraph 2, as these were considered too vague.

Paragraph 3 of this Article concerns vessels of more than 24 metres in length. Taking into account discussions at the Tripartite Meeting of Experts on the Fishing Sector, the paragraph provides that “the exemptions in paragraph 2 shall not apply to a person working on a fishing vessel of [24] metres in length and over or on an international voyage or normally remaining at sea for more than three days”. The Office understands, however, that there is not yet clear consensus on the inclusion of the provision in the Convention.

*Article 11*

In its reply to Report V (1), Spain raised several points concerning subparagraph (e), including the suggestion that the means of settling disputes should be left to national legislation. While the Office has not introduced such a change, if the suggestion by Spain were to be accepted, subparagraph (e) might be moved to the Recommendation.

*Article 12*

This new Article deals with fishing vessels above a length to be specified.

The Tripartite Meeting of Experts on the Fishing Sector did not reach a clear consensus on the inclusion of paragraph 1 in the proposed Convention or the proposed Recommendation.

With regard to the maximum period of validity of the medical certificate of a young person, in paragraph 2, the Office has harmonized the age (18 years) with the age used in Article 9, taking into account a reply to Report V (1) as concerns the proposed Recommendation.

## PART IV. CONDITIONS OF SERVICE

## MANNING AND HOURS OF REST

*Articles 13 and 14*

At the Tripartite Meeting of Experts on the Fishing Sector, the question was raised as to whether the IMO SOLAS Convention required States to establish safe manning for fishing vessels and whether States were to require that fishing vessels carry safe manning documents. The Office has sought to clarify this matter.

SOLAS, Chapter 1, *General provisions*, provides, in Regulation 3, *Exceptions*, that:

- (a) The present regulations, unless expressly provided otherwise, do not apply to:  
... (vi) Fishing vessels.

SOLAS Chapter V, *Safety of Navigation*, Regulation 1, *Application*, provides, generally, that it applies to “all ships on all voyages”. In paragraph 4, it provides that:

The Administration shall determine to what extent the provisions of regulations 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 do not apply to the following categories of ships: ... 3 fishing vessels.

SOLAS, Chapter V, *Safety of Navigation*, Regulation 14, *Ships’ manning*, provides that:

1 Contracting Governments undertake, each for its national ships, to maintain, or, if it is necessary, to adopt, measures for the purpose of ensuring that, from the point of view of safety of life at sea, all ships shall be sufficiently and efficiently manned. [A footnote refers to the “Principles of safe manning”, adopted by the Organization by resolution A.890(21), as amended by resolution A.955(23).]

2 Every ship to which chapter I applies shall be provided with an appropriate minimum safe manning document or equivalent issued by the Administration as evidence of the minimum safe manning considered necessary to comply with the provisions of paragraph 1.

It would therefore appear that States party to SOLAS are to maintain or to adopt measures ensuring that fishing vessels are sufficiently and efficiently manned, but are not required to provide them with an appropriate safe manning document or equivalent issued by the Administration.

The new Article 14 has been included in response to the request that the Office develop proposals on a new Part VII concerning “Additional requirements for vessels of [...] metres in length or more”; these were submitted to the Tripartite Meeting of Experts on the Fishing Sector. At the Meeting, there was no strong opposition to paragraph 1(a), although the Employers suggested that consideration might be given to moving it, and the rest of the Office’s proposal, to the Recommendation. There was also inconclusive discussion of whether a proposed provision concerning safe manning documents should appear in the Convention or in the Recommendation. The provisions now seen in paragraph 1, subparagraph (b), and in paragraphs 2 and 3, were discussed but, as there was no agreement, the text was left as proposed by the Office. The Office has since reworded the provision to make it consistent with the provision of Convention No. 180, on which it is partly based.

#### CREW LIST

The section previously entitled “Fishers’ work agreements and list of persons on board” has been divided into two separate sections: “Crew list” and “Fisher’s work agreement”. The title “List of persons on board” was changed to “Crew list”, which is considered a “term of art” in the industry.

#### Article 15

The intent of this Article is to cover not only members of the crew but also fisheries observers and other persons on board the vessel when it departs on a voyage.

In response to a reply to Report V (1) requesting further clarification in this Article, the text has been modified to indicate that this information shall be provided

“prior to departure of the vessel, or communicated ashore immediately after departure of the vessel”. This could be done, for example, by radio.

A sentence has been added to provide that: “The competent authority shall determine to whom such information shall be provided.”

#### FISHER’S WORK AGREEMENT

##### *Article 16*

In its reply to Report V (1), an employers’ organization (USCIB) expressed concern that this Article could result in a requirement that all work agreements should be translated into the language of each fisher on board. The Office draws attention to this practical issue, but has not changed the provision.

Annex II, referred to in Article 16, now has two parts: Part 1, which concerns minimum particulars to be included in the fisher’s work agreement; and Part 2, which provides additional particulars to be included in fisher’s work agreement for fishers working on fishing vessels of [24] metres in length and over, or working on vessels engaged on international voyages.

In Part 1 of Annex II, the Office has included a new subparagraph (d) that provides that the fisher’s work agreement shall include “the name of the employer, or fishing vessel owner, or other party to the agreement with the fisher”. This had been requested in replies to Report V (1).

##### *Article 17*

In its reply to Report V (1), an employers’ organization (Norwegian Fishing Vessel Owners’ Association) expressed concerns that subparagraph (a) could be problematic for the fishing industry, as it might lead to delays in the departure of vessels. The Office draws attention to this practical issue, but has not changed the text.

In its reply to Report V (1), New Zealand requested clarification of what was intended by the “records” to be maintained in subparagraph (b). The Office notes that such records may be necessary, *inter alia*, for the fisher’s tax purposes or for providing evidence of time at sea for the purpose of upgrading his or her competency certificates. As suggested by France, the records could be kept using any method, whether it is a traditional form of service book or a more up-to-date method.

##### *Article 18*

The Office notes that a few replies to Report V (1) requested clarification of the term “concerned parties”. In this regard, the Office refers to the discussion of this issue in the Report of the Committee on the Fishing Sector.<sup>6</sup>

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<sup>6</sup> *Provisional Record* No. 21, ILC, 92nd Session, Geneva, 2004, paras. 519-544.

*Article 20*

The new Article 20 has been included in response to the request that the Office develop proposals on a new Part VII concerning “Additional requirements for vessels of [...] metres in length or more”; these were submitted to the Tripartite Meeting of Experts on the Fishing Sector. The proposals have been modified as a result of views expressed at that Meeting and for other reasons, described as follows.

At the Tripartite Meeting of Experts on the Fishing Sector, an expert noted that it was not unusual for fishers to have agreements with parties other than the fishing vessel owner. During the Meeting, the provision was redrafted to make it the responsibility of the fishing vessel owner to ensure that each fisher had a written and signed work agreement, but not necessarily to sign the agreement, although the Office is not sure that that change was acceptable to all. To ensure that the fisher remains protected in the event of default by the recruitment and placement agency, the Office has, since the Meeting, included a new paragraph that provides that the fishing vessel owner retains overall responsibility even if the fisher’s work agreement may be between the fisher and a recruitment and placement agency.

As noted above, Annex II(2) sets out additional particulars to be included in the fisher’s work agreement for fishers working on fishing vessels of “[24] metres in length and over or working on a vessel engaged on an international voyage”. At the Meeting, during the discussion of the issue of manning and hours of rest, the Government expert from Japan noted that the best way of setting fixed hours of rest per day would be through social dialogue and the fisher’s work agreement. The Office has tried to take this suggestion into account by including a provision on this issue in subparagraph (e) in Annex II(2), which would seem the most appropriate place for it.

## REPATRIATION

The Office notes that the text of the proposed Convention in Report V (1) had included a section entitled “Identity documents, repatriation rights and recruitment and placement services”. The proposed Convention now provides separate sections for “Repatriation” and “Recruitment and placement”. There is no section entitled “Identity documents”, as provisions on this issue have been deleted, taking into account replies to Report V (1), and a reference to the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185), has been included in the Preamble.

*Article 21*

The new Article 21 has been included in response to the request that the Office develop proposals on a new Part VII concerning “Additional requirements for vessels of [...] metres in length or more”; these were submitted to the Tripartite Meeting of Experts on the Fishing Sector. Those proposals drew upon the main elements of the Repatriation of Seamen Convention, 1926 (No. 23), the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), and the provisions of the draft consolidated maritime labour Convention (CMLC).

At the Tripartite Meeting of Experts on the Fishing Sector, there was inconclusive discussion as to whether the provisions should apply to large vessels (e.g. 24 metres in length or more), to vessels engaged on international voyages, to vessels on voyages

taking them a certain distance from their home port (bearing in mind that in some large countries a fisher could require repatriation from a port that, though in his or her home country, is far from the home of the fisher or the port of embarkation), or to a combination of any or all of these criteria. The Office could not find a reason to limit the protection in this Article to any particular category of fishers and, bearing in mind the possibility for exclusions provided in Article 3, has therefore not included any such limits in this Article.

Paragraph 2 provides that the cost of repatriation is to be borne by the fishing vessel owner. The Office notes that, as provided in the Articles concerning the fisher's work agreement, the fisher might have an agreement with a party other than the owner. This paragraph would, however, make it clear that the responsibility for repatriation would remain with the fishing vessel owner.

#### RECRUITMENT AND PLACEMENT

##### *Article 22*

The new Article 22 has been included in response to the request that the Office develop proposals on a new Part VII concerning "Additional requirements for vessels of [...] metres in length or more"; these were submitted to the Tripartite Meeting of Experts on the Fishing Sector, and drew upon the main concepts set out in Convention No. 179 and in the draft consolidated maritime labour Convention. However, the discussion at the Meeting on this matter was not conclusive.

When preparing the text of Article 22, the Office considered that such protection should not only apply to fishers working on large vessels or vessels engaged on international voyages, but to all fishers. It is, however, aware that some of the most serious problems concerning this issue involve fishers on "distant-water" vessels. It has, therefore, not limited the scope of this Article to a specific category of fishers. The Office has also included a new paragraph 3(c) and paragraph 4 concerning the regulation of recruitment and placement agencies, drawn from Article 4 of Convention No. 179. This was felt to be particularly important in light of the fact that, under proposed changes to the Articles concerning the fisher's work agreement, recruitment and placement agencies could be party to such agreements.

#### PAYMENT OF FISHERS

##### *Article 23*

The Office has made changes to Article 23 that are aimed at clarifying the text, but not changing its meaning. It notes that several replies to Report V (1) have questioned the practicability of guaranteeing a regular wage payment to fishers, bearing in mind the tradition of paying fishers in whole or in part on the basis of the catch. However, the Office has not changed the text, as it would appear that the words "fishers who are paid a wage are ensured a monthly or regular payment" already takes this concern into account.

*Article 24*

The new Article 24 has been included in response to the request that the Office develop proposals on a new Part VII concerning “Additional requirements for vessels of [...] metres in length or more”; these were submitted to the Tripartite Meeting of Experts on the Fishing Sector. The Office has drafted the Article so that it applies to “fishing vessels of [24] metres in length and over or engaged on international voyages”. It has used the words “payments received”, in order to include share fishers.

## PART V. ACCOMMODATION AND FOOD

As noted elsewhere in this report, at the 92nd Session of the ILC, the Committee on the Fishing Sector agreed that consultations should be held on the issue of accommodation before the 93rd Session of the ILC in 2005, and that the Office should devise a mechanism to facilitate the process. The Tripartite Meeting of Experts on the Fishing Sector also considered, *inter alia*, proposals on Part V, Accommodation and food, and the related Annex III, Fishing vessel accommodation.

When preparing the text for the Tripartite Meeting of Experts on the Fishing Sector, the Office had:

- sought to address the main concepts of Convention No. 126, as well as Annex II of the proposed Conclusions prepared by the Office for the 92nd Session of the International Labour Conference;
- taken into account provisions of the draft consolidated maritime labour Convention, so as not to provide text wholly incompatible with that instrument;
- simplified the text, where possible, to eliminate non-essential details that might hinder ratification;
- taken into account amendments on accommodation submitted in the ILC Committee on the Fishing Sector;
- drafted provisions for all vessels, with additional text requirements for large fishing vessels;
- sought to avoid, where possible, conflicts with guidance provided in relevant FAO/ILO/IMO instruments; and
- sought to propose requirements that would be cost-effective to implement.

The Tripartite Meeting of Experts on the Fishing Sector discussed the Office proposals, with consensus on some, but not all, of them. Following the Meeting, the Office made changes to what had been Article 22 in Report V (1) and is now Article 28 in Report V (2B). Article 28 provides that a Member “shall give full effect to Annex III concerning fishing vessel accommodation”. Article 28 also provides that “this annex may be amended in the manner provided for in Article 43”, the effect of which is to make amendments to the annex subject to a tacit acceptance procedure that is less time-consuming and costly to the ILO, and would make it much easier to keep the technical standards on fishing vessel accommodation current with the developments in, and the needs of, the sector.

Annex III draws upon both Convention No. 126 and Annex II of the proposed Convention found in Report V (1). It applies to “all new, decked fishing vessels, subject to any specific exemptions provided for in accordance with Article 3 of this Convention”. However, it also provides that the competent authority “shall also apply the requirements of this annex to existing vessels, when and in so far as it determines that this is reasonable and practicable”. The annex provides for the possibility of variations under certain conditions, but these are to be reported to the ILO in accordance with Article 4 of this Convention. The annex, after consultation, may also be applied to certain smaller vessels.

It is to be recalled that, at the 92nd Session of the ILC, an important and contentious issue had been whether certain higher requirements should apply to vessels of 24 metres or more in length or 15 metres or more in length. This issue has been addressed by including, in Annex III, paragraph 4, the following provision:

The requirements for vessels of [24] metres in length and over may be applied to vessels of [15] metres in length and over which are less than [24] metres in length where the competent authority determines, after consultation, that this is reasonable and practicable.

The remainder of Annex III is structured by issue (e.g. planning and control, design and construction, noise and vibration, etc.). Within each issue, there are provisions that apply to all vessels, followed by additional provisions that apply to larger vessels. For the larger vessel requirements, the Office has used the criteria of “for vessels of [24] metres in length and over which are not less than [100] gt”, for the reasons described earlier in the commentary. For additional requirements for even larger vessels, the Office has used “for vessels of [45] metres in length and over which are not less than [500] gt”. The figures remain in square brackets as they have been discussed, but have not yet been agreed upon. Other figures in the annex, such as those concerning the square metres of floor space per fisher in sleeping rooms, have also been left in square brackets because they have not yet been agreed upon.

## PART VI. HEALTH PROTECTION, MEDICAL CARE AND SOCIAL SECURITY

### MEDICAL CARE

#### *Article 30*

The new Article 30 has been included in response to the request that the Office develop proposals on a new Part VII concerning “Additional requirements for vessels of [...] metres in length or more”; these were submitted to the Tripartite Meeting of Experts on the Fishing Sector. The Article has been drafted so that it applies to “fishing vessels of [24] metres in length and over or those engaged on international voyages or normally remaining at sea for more than three days”.

The Office notes that the Worker experts made additional proposals during the Meeting concerning provisions for medical care on large fishing vessels. While the proposals were not agreed upon, the Meeting did agree to include those and related provisions on fishing vessel owner liability in its report in order for them to be considered prior to the 93rd Session of the ILC.

## OCCUPATIONAL SAFETY AND HEALTH AND ACCIDENT PREVENTION

*Article 31*

The Office has made no substantive changes to this text. However, in Paragraph 42 of the proposed Recommendation, it has proposed guidance concerning the joint committees envisaged in Article 31(e).

The Office draws attention to the comments by Denmark to Report V (1), which were also expressed at the Tripartite Meeting of Experts on the Fishing Sector: that the Convention should include a mandatory provision to protect fishers from noise and vibration on board fishing vessels, whether included as a provision for all vessels or, as a first step, for larger vessels (and thus under Article 32). In this regard, the Office has sought to determine where and how to include such a provision, bearing in mind that this is one of the many aspects of occupational safety and health that could be singled out. A list of technical specifications is contained in Paragraph 45 of the proposed Recommendation.

*Article 32*

The new Article 32 has been included in response to the request that the Office develop proposals on a new Part VII concerning “Additional requirements for vessels of [...] metres in length or more”; these were submitted to the Tripartite Meeting of Experts on the Fishing Sector. There was an inconclusive debate at the Meeting as to whether these provisions should be applied to all vessels or only to larger vessels. The Office has drafted the Article so that it applies to “fishing vessels of [24] metres in length and over or those engaged on international voyages”.

The Tripartite Meeting of Experts on the Fishing Sector also discussed the need to clarify the respective responsibilities of the fishing vessel owner and skipper with regard to risk assessment, a matter that has been partially addressed in Article 8, but may require further attention.

Article 32, paragraph 2(b), which was discussed by the Tripartite Meeting of Experts on the Fishing Sector, provides that the competent authority shall “require that fishing vessels owners, skippers, fishers and other relevant persons be provided with sufficient and suitable guidance, training material, or other appropriate information on how to assess and manage risks to safety and health on board fishing vessels”. The Office draws attention to the possible need to clarify who would be responsible for providing such guidance or information.

## SOCIAL SECURITY

*Article 33*

During the discussion of the social security provisions by the Committee on the Fishing Sector at the 92nd Session of the ILC, it was agreed to keep one of the provisions (Article 27 in the proposed Convention found in Report V (1)) in square brackets.<sup>7</sup> As a

<sup>7</sup> *Provisional Record* No. 21, ILC, 92nd Session, Geneva, 2004, paras. 678-694.

result of the views expressed at the Tripartite Meeting of Experts on the Fishing Sector, the Office has redrafted this Article, which now appears as Article 33, and has inserted the words “ordinarily resident in its territory” before “fishers”. The Office notes that “other workers” would be considered to be other comparable workers. For example, if there were a social security scheme for self-employed workers, self-employed fishers would not be excluded, and if there were a social security system for employees, fishers who are employees would not be excluded.

The Office also draws attention to certain replies to Report V (1), as well as views expressed by certain experts at the Tripartite Meeting of Experts on the Fishing Sector, concerning the need for more precise language on the social security contingencies to be covered and the possible merging of the provisions concerning social security and the provisions concerning protection in the case of work-related sickness, injury and death.

#### *Articles 34 and 35*

In its proposals to the Tripartite Meeting of Experts on the Fishing Sector, the Office took account of the text of the provisions concerning social security in the draft consolidated maritime labour Convention, and proposed an additional provision to read as follows: “Members shall undertake to take steps, according to national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for all fishers.”

The Office has redrafted the proposed provision based on comments received on Report V (1) and views expressed at the Tripartite Meeting of Experts on the Fishing Sector. It has now divided this into two separate Articles – Article 34 and Article 35. These distinguish between the social security protection to be provided by Members to all fishers who are ordinarily resident in the territory (Article 34) and the social security protection to be provided to fishers who are not ordinarily resident in the territory but work on fishing vessels which fly the flag of the Member (Article 35). In both Articles, the Member would have an obligation to “undertake to take steps, according to national circumstances, to achieve progressively comprehensive social security protection” for fishers. However, Article 35 provides that, for fishers who are not ordinarily resident in the country, Members could provide such protection “individually and through international cooperation, including through bilateral and multilateral social security arrangements”.

#### *Article 36*

As concerns what had been Article 28 in Report V (1), and is now Article 36 in the proposed Convention, the Office has reformulated the text following the introduction of Articles 34 and 35. This Article should be read in conjunction with Article 35.

#### PROTECTION IN THE CASE OF WORK-RELATED SICKNESS, INJURY OR DEATH

#### *Article 37*

In this Article, the words “medical attention” have been replaced with “medical care” to be consistent with the rest of the Convention.

As noted earlier, at the Tripartite Meeting of Experts on the Fishing Sector, the Worker experts proposed new provisions on fishing vessel owners' liability. While the proposals were not agreed upon, the Meeting did agree to include those and related provisions in its report in order for them to be considered prior to the 93rd Session of the ILC.

## PART VII. COMPLIANCE AND ENFORCEMENT

### *Article 39*

One reply to Report V (1) requested clarification of the contents and methods of a "documented periodic inspection". The Office has attempted to do this, at the same time bearing in mind that the requirements for larger vessels or vessels engaged on international voyages may be different from those for smaller vessels operating only in domestic waters. In doing so, it has provided that the document to be carried would be "issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of this Convention concerning living and working conditions". It has also provided that the document should be valid for a limited period, perhaps three years (as suggested by Norway). Finally, it has suggested that the validity period of the document could be harmonized with that of the International Fishing Vessel Safety Certificate.<sup>8</sup> The latter would lead to greater efficiency in the use of the competent authority's resources.

### *Article 40*

The Office has redrafted what had been Article 33 in Report V(1), and is now Article 40 in the proposed Convention, to provide for the possibility of the authorization of public institutions or other organizations to carry out inspections and issue documents. This new text takes into account the provisions of the draft CMLC. Furthermore, this concept is consistent with the delegation of authority provided in the definition of "inspector" in the Labour Inspection (Seafarers) Convention, 1996 (No. 178), Article 1, paragraph 7(b). In practice, this provision would make it clear that such organizations, e.g. classification societies, could carry out these inspections on behalf of the Member. Although it is not specifically stated, this provision would also allow a Member to authorize the public institutions or organizations of another Member that it recognizes as competent and independent to carry out inspections and issue documents on its behalf.

### *Article 41*

In Part VIII concerning compliance and enforcement of the text of the proposed Convention in Report V (1), there is no provision concerning complaint procedures. In its proposals submitted to the Tripartite Meeting of Experts on the Fishing Sector, the

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<sup>8</sup> See the Torremolinos Protocol of 1993, Chapter I, Regulations 6 and 7.

Office indicated that, rather than including complaint procedures in the Annex concerning fishing vessel accommodation, which would have been consistent with Convention No. 126 and Annex II of the proposed Convention as found in Report V (1), it would move the issue of complaint procedures to the Part concerning compliance and enforcement. This it has done, creating a new Article. The Article addresses complaints to both flag state and port state authorities. Paragraph 5 was included to make it clear that complaints found to be “manifestly unfounded” would not require an investigation.

### PART VIII. AMENDMENT OF ANNEXES I AND III

#### *Article 43*

This new Article provides a tacit acceptance procedure for amendments to Annexes I and III. As noted in the discussion of Part V, this Article would provide for a more cost-effective means of amending these annexes to keep them current with the developments in, and the needs of, the fishing sector. The Conference may wish to consider whether this amendment procedure should be applied to these two annexes, Annex III only, or perhaps all three annexes of the Convention.

### **Commentary on the proposed Recommendation concerning work in the fishing sector**

#### PART I. CONDITIONS FOR WORK ON BOARD FISHING VESSELS

##### PROTECTION OF YOUNG PERSONS

#### *Paragraphs 1-5*

As requested, the Office had prepared proposals concerning “Additional requirements for vessels of [...] metres or more” for Paragraphs 4 and 5. However, at the Tripartite Meeting of Experts on the Fishing Sector, it was generally agreed that the two new provisions proposed should apply not only to large vessels but to all vessels.

##### MEDICAL EXAMINATION

#### *Paragraphs 6-10*

In light of the new provisions concerning medical examination in the proposed Convention, the provisions that were to be found in the proposed Recommendation in Report V (1), in Paragraph 5, concerning what the medical certificate should attest to, and in Paragraphs 7 and 8, concerning the period of validity of a medical certificate for young persons, have been deleted.

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As concerns Paragraph 8, the Office draws attention to its comments on Article 11(e) of the proposed Convention.

#### COMPETENCY AND TRAINING

##### *Paragraphs 11 and 12*

As requested, the Office had prepared proposals concerning “Additional requirements for vessels of [...] metres in length or more” for Paragraph 12. The Office draws attention to its comments on Article 14 of the proposed Convention.

#### PART II. CONDITIONS OF SERVICE

##### RECORD OF SERVICE

##### *Paragraph 13*

The words “should be available” have been changed to “should be made available”.

##### PAYMENT OF FISHERS

##### *Paragraph 15*

As requested, the Office had prepared proposals concerning “Additional requirements for vessels of [...] metres in length or more”, which were submitted to the Tripartite Meeting of Experts on the Fishing Sector. This text is based on those proposals.

#### PART III. ACCOMMODATION

##### *Paragraphs 16-32*

This is a new Part. The Office refers to its comments on Part V concerning accommodation and food of the proposed Convention.

#### PART IV. HEALTH PROTECTION, MEDICAL CARE AND SOCIAL SECURITY

##### *Paragraph 37*

As requested, the Office had prepared proposals concerning “Additional requirements for vessels of [...] metres in length or more”, which were submitted to the

Tripartite Meeting of Experts on the Fishing Sector. Paragraph 37 is based on those proposals.

#### OCCUPATIONAL SAFETY AND HEALTH

##### *Paragraphs 38-47*

As requested, the Office had prepared proposals concerning “Additional requirements for vessels of [...] metres in length or more”, which were submitted to the Tripartite Meeting of Experts on the Fishing Sector. At the Meeting, a number of experts indicated that such provisions might be applicable to all vessels. For this reason, the Office has reorganized the Paragraphs concerning occupational safety and health along the lines seen in the proposed Recommendation, and has made this guidance applicable to all vessels. It has included, in Paragraph 42, additional guidance on the joint committees referred to in Article 31(e), and in Paragraph 46, a reference to the FAO/ILO/IMO *Code of safety for fishermen and fishing vessels*, Part A, Safety and health practice for skippers and crews.

#### SOCIAL SECURITY

##### *Paragraphs 48 and 49*

The Office has made changes to Paragraphs 48 and 49 to take into account changes made in Articles 33-36 of the proposed Convention.

##### *Paragraph 50*

The Office has changed the word “claimant” to “person protected”.

Bearing in mind the changes and additions to those articles concerning social security of the proposed Convention, what was originally Paragraph 29 of the proposed Recommendation in Report V (1) has been deleted.

#### PART V. OTHER PROVISIONS

##### *Paragraph 51*

The term “exclusive economic zone” is not defined in the proposed Convention or in the proposed Recommendation. The Office intends that the definition of the exclusive economic zone found in Article 55 of the United Nations Convention on the Law of the Sea would apply.

## **APPENDIX**

### **Report of the Tripartite Meeting of Experts on the Fishing Sector**

## REPORT OF THE DISCUSSION

### Introduction

1. At the 92nd Session of the International Labour Conference (ILC), the Committee on the Fishing Sector debated the issue of a new fishing standard. During its deliberations, the Committee agreed that the Office should ensure that consultation on Part V and Annex II of the Conclusions, both of which concerned accommodation on board fishing vessels, should take place, through an appropriate mechanism, between the end of the 92nd Session of the ILC and its subsequent session and that the Office should develop a new Part of the Convention concerning "Additional requirements for vessels of [...] metres in length or more" in order to address the specific needs of fishers working on larger vessels.

2. As a result of the abovementioned call for consultations, the Governing Body, at its 290th Session (June 2004), agreed that the ILO should hold a Tripartite Meeting of Experts on the Fishing Sector from 13 to 17 December 2004. The purpose of the Meeting would be to review and formulate provisions on accommodation and deal with any other pending issues identified by the Committee on the Fishing Sector of the 92nd Session of the ILC. To that effect, the Meeting of Experts reviewed a document entitled *Proposed provisions for accommodation, large fishing vessels and social security* (TMEFS/2004) prepared by the Office.

### Participants

3. The Governing Body, at its 290th Session, decided that the Meeting should comprise six Government, six Employer and six Worker experts and agreed that Governments on the reserve list could be invited to attend at no cost to the Office.

4. At its 291st Session it further agreed that, in addition to the Government experts (from Canada, Chile, Japan, Norway, South Africa and Spain), other Government experts (from Denmark, France, Germany, Namibia, Portugal, Thailand, the United Kingdom and the United States) could attend as observers, together with other invited observers from international governmental organizations and non-governmental international organizations.

5. A list of participants is annexed to this report (see Annex II).

### Opening address

6. The Secretary-General welcomed the participants and outlined the background to the Meeting and its purpose. The Meeting would provide important guidance to the Office, in the form of specific proposals, for the preparation of Report V (2) for the 93rd Session of the ILC, and thus facilitate the second discussion of the fishing standard in June 2005.

### Appointment of the Chairperson

7. The participants appointed Mr. Joseph O'Neill, Government expert from Canada, as Chairperson for the Meeting. Ms. Rose Karikari Anang, Employer expert from Ghana, and Mr. Peter Sand Mortensen, Worker expert from Denmark, were appointed as spokespersons for the Employer and Worker experts, respectively. Mr. Haakon Storhaug, Government expert from Norway, was appointed as Chairperson of the Government experts and observers.

### Presentation of the document for discussion

8. The Executive Secretary introduced TMEFS/2004. One of the issues identified for discussion was the definition of "large fishing vessels" to be used in the new Part VII. The Office was seeking guidance on whether it should use 24 metres in length or more, as used in several FAO and IMO Conventions concerning the fishing sector. Another important issue was the definition of an "international voyage", which could provide an alternative means to determining the new provisions' scope of application. To assist the Meeting in addressing the issues of accommodation and food, the Office had prepared the commentary, contained in TMEFS/2004, and the proposed provisions, contained in Appendix 1 of TMEFS/2004. It had taken into consideration the existing text of the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), the annex of the proposed Conclusions put before the 92nd Session of the Conference in June 2004, the amendments to the proposed Conclusions that were submitted to the Committee on the Fishing Sector at the Conference, and the latest available versions of the draft revised version of the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels and Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels. The Office proposed in the first part of Appendix 1 of TMEFS/2004 that length overall (LOA) might be used as an alternative means of determining the size of a vessel to the definition of length (L) in Article 1(k) of the proposed Convention, to facilitate the application. Appendix 1 of TMEFS/2004 also included a provision based on a similar provision in Convention No. 126 allowing for variations of the Convention's requirements for certain vessels. An appended table featured suggested provisions that would apply to all vessels, additional provisions for large or specific vessels, and suggested text for a Recommendation. It included the essential elements of Convention No. 126 as well as additional issues, such as noise and vibration. Additional requirements for larger vessels were contained in Appendix 2, which included additional Convention and Recommendation provisions for vessels over a length yet to be determined. To assist the discussion on the issues of social security, compliance and enforcement, Appendices 3, 4 and 5 contained excerpts from *Provisional Record* No. 21, Report of the Committee on the Fishing Sector (ILC, 92nd Session, Geneva, 2004), as concerns the issues of accommodation and food, additional requirements for larger vessels, and social security.

### General discussion

9. The spokesperson for the Employer experts said that her group welcomed the proposal to continue discussion on issues which had not been resolved during the 92nd Session (June 2004) of the ILC. Only at the 291st (November 2004) Session of the Governing Body had the Employers learnt that the Office had extended the invitation to nine additional Governments. The Employer experts objected to that decision as a matter of principle. It ran counter to the principle of tripartism which required equal representation at all times, except in sectoral meetings. The Employer experts had understood that additional Government experts would only be present as observers and would not participate fully. The Employers had not been consulted on

that. Since the Meeting's purpose was to exchange views with the aim of protecting fishers, the Employer experts did not, however, oppose the participation of the Government observers and welcomed their expertise, which would enrich the debate. The spokesperson for the Employer experts reminded the participants to take into account the low ratification rate of existing fishing instruments. The Employer experts were interested in a Convention that would be widely ratifiable and wanted to create a basis for discussion during the next session of the ILC in 2005 that would lead to protection for the large number of fishers not covered. They were also interested in addressing issues such as social security protection for fishers working on foreign vessels.

10. The spokesperson for the Worker experts considered the Meeting important since it set out to secure the adoption of a fishing Convention. He suggested that discussions should proceed with a minimum of formalities. Fishing was a hazardous industry with a considerable decent work deficit. Provisions for suitable accommodation, equipment and welfare facilities were essential to attracting new entrants to the industry. The Worker experts accepted the need for different standards for smaller vessels, as well as flexibility for vessels operating close to the shore. The challenge was to reflect the diversity of the industry, while at the same time providing a meaningful standard that would not reduce the existing levels of protection currently enjoyed by many fishers. Particularly, the nature of larger vessels' operations required more prescriptive standards given that fishers regularly lived and worked on those vessels for a considerable time. Regarding the issue of social security protection, the Worker experts did not share the view voiced in earlier discussions that it should follow the draft consolidated maritime labour Convention, as the overwhelming majority of fishers worked on fishing vessels which flew the flag of the country in which they resided. The Worker experts were willing, however, to consider differing views and adopt a pragmatic approach.

11. The Chairperson announced that if no consensus was reached on changes to the text proposed by the Office, or to its placement, the text would remain as it was. New agreed text and agreed deletions would be indicated. Reasons for change or retention would be reflected in the report of the discussions.

## **Accommodation and food**

### *General discussion*

12. The Worker expert from Argentina, speaking on behalf of the Worker experts, said that the deplorable conditions which often prevailed on fishing vessels required developing precise provisions with the aim of improving working and living conditions. Convention No. 126 already dealt with those issues, as did the text discussed during the 92nd Session (June 2004) of the ILC. The Meeting needed to achieve consistency. The draft consolidated maritime labour Convention discussed during the Preparatory Technical Maritime Conference (PTMC) (September 2004) also needed to be examined. The Worker experts favoured more prescriptive provisions for large vessels and would like to examine issues such as ventilation, heating, lighting, sanitary facilities, noise and vibration. Provisions were also needed for design and construction, minimum height, noise and vibration, etc., of close workplaces of fishing vessels (e.g. processing in enclosed spaces). They requested the Office to take those matters into account.

13. The spokesperson for the Employer experts proposed to review the proposed text on accommodation and food found in TMEFS/2004 in parallel with the draft contained in Report V (1) for the 93rd Session of the ILC. That would allow the Meeting to arrive at minimum standards which would cover a large number of fishers and facilitate the adoption of a Convention in June 2005. Prescriptive provisions as demanded by the Workers would, however, only apply to larger vessels.

14. Speaking on behalf of the Government experts, the Government expert from Norway outlined their discussion on the definition of vessel sizes. Some Government experts felt that the choice of length as the only criterion was too restrictive and suggested that tonnage should also be considered, possibly by introducing a formula for conversion. Article 5 as suggested in Report V (1) for the 93rd Session of the ILC did not provide sufficient guidance for port state control. Convention No. 126 was rather old and referred to gross registered tonnage (grt). Agreement had not been reached on those matters. Certain clauses had been discussed and an attempt to define “waters” had been made, based on the definition of “exclusive economic zone” as used in the United Nations Convention on the Law of the Sea, 1982. One Government expert had considered 36 hours to be too restrictive.

15. The Government observer from the United Kingdom reminded those member States which already had high standards, and which were aiming to create a Convention that would reflect those, to bear in mind that the intention was to reach a global set of minimum standards. The ratification of a new Convention should by no means lead to a reduction of existing national standards. Convention No. 126 contained a large amount of detail and had only been ratified by a handful of member States. The aim was to bring the world up to a certain level and to avoid too many details, as those could constitute a barrier to ratification.

16. The Government expert from Japan observed that fishing vessels’ design differed considerably from country to country. To define the size of vessels only by “length” was not objective. He further stated that the Office should carry out research on the conversion between “length” and “tonnage”. Convention No. 126 had not been properly functioning as an international instrument since it had not been ratified by many countries because it was too detailed and not practicable for many countries. The aim was to improve accommodation and food where conditions were poor. Responsible member States recognized the need to improve working conditions on board ships and should be assisted in their efforts by offering a reasonable and practicable standard as a guideline to each country in establishing appropriate working conditions for its fishers.

17. The Government expert from South Africa supported the approach by the Office to simplify the provisions of Convention No. 126.

18. The Government expert from Norway declared that his Government had ratified all the international fishing instruments, including the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, and Convention No. 126 and had not encountered implementation problems resulting from their level of detail. The question was how little detail an instrument could contain before it became meaningless. Both fishers and fishing vessel owners had an interest in detailed standards on accommodation. Only with clear international standards could fishing vessel owners internationally trade their vessels. To his delegation, only social security provisions presented a real problem, since Norwegian laws had provisions that were exclusive to fishers.

19. The Government experts from Canada, Chile and Spain, the Government observer from Denmark and the Employer expert from the United Kingdom supported the position of the Government observer from the United Kingdom. The Government expert from South Africa cautioned that maritime administrations in developing countries might introduce legislation for the first time as a result of the instrument, and would need a certain amount of detail for the purpose of implementation.

20. The Government observers from Denmark and France said that the Office proposal was a good basis for discussion. The Government expert from Spain requested that the minima in Convention No. 126 not be lowered, as that would be problematic for countries having ratified that instrument. The Employer expert from the Netherlands indicated that concerns of member States with higher standards were taken care of by Article 6, paragraph 2, of the pro-

posed Convention, which guaranteed that nothing in the Convention would affect more favourable conditions or provisions already applicable to the fishers concerned.

21. The Government expert from Spain and the Government observer from France believed that the figures for length (24 metres and 15 metres) used in the Office text were in line with international standards. The Government expert from Chile was concerned about the application of the Convention to vessels under 18 metres in length, because such vessels were used for artisanal fishing in his country, and about the reference to 36 hours because it did not take into consideration different realities in respect of fleet and coastline characteristics.

22. The observer from the Food and Agriculture Organization of the United Nations (FAO) said that, with regard to Appendix 1 concerning accommodation and food, the Office had taken the right approach to solving the existing problems. The Recommendation column on the issue of application made specific reference to the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels and the Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels. Those references would not create an obligation upon member States but were a useful identification of relevant international guidance. The provisions on accommodation to be developed should not conflict with the revised Code and Guidelines.

23. The spokesperson for the Employer experts proposed that Articles 20, 21 and 23 of the text of the proposed Convention in Report V (1) for the 93rd Session of the ILC in 2005 should be used as a basis for the Convention, and the provisions proposed by the Office in Appendix 1, which were very detailed, should be included in the Recommendation. The Government expert from Japan shared that view.

24. The Worker expert from Argentina firmly rejected that suggestion. The Office proposal was a good basis for discussion. The issue at stake was which provisions should be mandatory and which recommendatory. The Government experts from Norway and Spain and the Government observers from Denmark, Germany and the United Kingdom agreed. The Government expert from Norway said that as many provisions as possible should be made mandatory, as Recommendations did not have a good track record of being followed or taken into consideration. The Employer experts, having remarked that higher existing standards would not be affected by the instrument, agreed to discuss Appendix 1.

25. The Worker expert from Argentina considered that the inclusion of length overall (LOA) equivalents was reasonable, but expressed concern about inconsistencies between length (L) and LOA. There was a need to be as precise as possible. The Executive Secretary explained that, when developing the LOA figures, the Office had drawn on the United Kingdom system, and had rounded them off for the purpose of simplicity. The Government observer from the United Kingdom stated that the figures had been determined by calculating an average length using the national database for registered fishing vessels. The Government observer from France said that the country's database had produced similar figures. The Meeting agreed on the LOA equivalents in Appendix 1.

26. Concerning variations of the provisions, the spokesperson for the Employer experts inquired as to the meaning of the term "waters of the Member". The Secretary-General indicated that the definition of that term would have to be in accordance with the United Nations Convention on the Law of the Sea, which provided for two possibilities, either territorial waters (12-mile limit) or the exclusive economic zone (EEZ) within 200 miles from the shoreline. Following a discussion, the Worker expert from Argentina proposed to remove the reference to a territorial limit. Some Members had smaller territorial waters than others. Moreover, in providing for variations where it would be difficult for the Convention to apply, the time limit was far more relevant. The spokesperson for the Employer experts, the Government experts from Canada, Norway and South Africa, and the Government observer from France supported that

position. The Meeting therefore agreed to delete the words “operating only within the [waters] of the Member and”.

27. The Government expert from Japan suggested that the reference to 36 hours in the same paragraph should be changed to 72 hours. The Government experts from Norway and South Africa strongly opposed that proposal. Although the time limit of 36 hours did not pose a problem in principle, the Government expert from Norway cautioned that many fishing vessels had a very brief turnaround time between voyages and that that could lead to fishers effectively spending much more than 36 hours at sea. The Worker expert from Argentina agreed and proposed that the time limit should be 24 hours. The Government experts from Norway and Spain, and the Government observers from Denmark and France supported that position. The spokesperson for the Employer experts agreed to 24 hours. The majority of the participants therefore agreed to a 24-hour limit.

28. The Meeting also decided to keep the phrase “Such variations shall be reported under [provision of the Convention],” which would allow for variations to be reported on according to standard ILO procedure.

29. The spokesperson for the Worker experts expressed concern about the use of terms such as “as reasonable and practicable” throughout the Convention text proposed by the Office. Those could result in de facto non-binding text. He sought a legal opinion on the use of such terminology instead of clear-cut prescriptions.

30. The Legal Adviser stated that the wording “as reasonable and practicable” aimed at introducing an element of flexibility in the implementation of a provision of the Convention. It enabled the establishment of proportionality or ratio between the measures to be adopted under the Convention and the available means, which would have to be reasonable and practicable from a technical, financial, etc. point of view. Firstly, the term had been used in different forms in several international labour Conventions, in order to resolve a problem due to a different approach of member States when implementing a Convention drafted in absolute terms. In some systems, a provision without a qualifying phrase such as “as reasonable and practicable” would be construed as an absolute requirement. In other systems, the same provision would be understood as implying an obligation of means of application but not of results. The qualifying phrase would be already implied and thus superfluous, whereas in the first system it would need to be specified. In continental law, the introduction of that term in a French text could be interpreted as reducing the level of protection, although that might not necessarily be the intention of the drafter. Thus, it would be important that the intention of the drafters be clearly established, e.g. in the report accompanying the Convention, as it would not be acceptable for the two authentic versions of an international labour Convention (English and French) to reveal such an important difference as the inclusion or suppression of several words. Secondly, the term “as reasonable and practicable” needed to be examined in its context and could not be defined irrespective of the relevant provision. Where a precise obligation existed, e.g. “The competent authority shall take measures to reduce noise and vibration”, the addition of the term at the beginning would make the provision void of substance, whereas its insertion after the obligation to “reduce” might only serve to lower the level of protection. Thus, the same term could have different effects according to its place in the provision. In the instance under discussion, the use of the term “as reasonable and practicable” could be justified in provisions applicable to *all* vessels, because the obligation might be difficult to respect in case of small vessels and, therefore, could not be applied in an absolute manner. If used, it should, however, be ensured that the insertion of the phrase would not void the provision of its content. Yet, in the part of the Convention applicable to *large and specific* vessels, it might well be possible to draft more precise provisions, thus avoiding such flexibility clauses in the initial Office text. If the instrument became difficult to apply, the Conference would still be able to take a stand and table amendments providing for the necessary flexibility. Another danger was the use of the term “as

far as possible”, which was much more vague than “as reasonable and practicable”. Good drafting practices required that such indistinct concepts be avoided. If indispensable, they should at least be consolidated, in order not to introduce multiple nuances into the instrument.

### *Application*

31. The Government expert from Japan drew the attention of the Meeting to the fact that, while Annex II in Report V (1) for the 93rd Session of the International Labour Conference 2005 dealt with the issue of application to new fishing vessels, the Office proposal did not contain such provision. The Government expert from Norway voiced the same concern and recommended the inclusion of a “grandfather clause”, since the term “new fishing vessel” was defined in Article 1 of the text of the proposed Convention, and the provisions of Appendix 1 should normally only be applicable to new vessels. The Government observer from the United Kingdom and the Worker expert from Argentina shared those views. In order for the clause to be adequately captured, the Secretary-General suggested the following wording for the column “Convention – All vessels”: “The provisions of this Part of the Convention should apply to new fishing vessels. Notwithstanding this application, the competent authority shall also apply the requirements of this Part to existing vessels, when and in so far as it determines that this is reasonable and practicable.”

32. The Government expert from Japan stated that it would be difficult to apply the Convention to small coastal fishing vessels. An exclusion clause similar to the one in Convention No. 126 should be included. The Government expert from Chile shared that view, stating that the provisions on accommodation should not be mandatory for vessels of less than 24 metres in length. The fact that the application of the provisions for large vessels to smaller vessels was optional did not accommodate their broader concerns. The Government expert from Norway found that the abovementioned concerns were adequately taken care of by Articles 2 and 3. He supported the length figures of 15 metres and 24 metres and wished to see the brackets removed. The Government expert from South Africa and the Government observers from Denmark and France agreed. The Worker expert from Argentina advised his intention to revert to the issue of length later on because it should be considered together with other issues.

33. The Worker expert from Argentina suggested to add at the end of the provision applying to large and specific vessels the words “as it is established in this Convention”, in order to ensure that all fishers, even those not considered as crew, should benefit from the standards provided in the Convention. Following queries, the Executive Secretary said that the intent had been to cover those fishers with canoes or pirogues who were not part of the main vessel, but operated alongside the large fishing vessel and slept on its deck. The Government observer from the United States suggested rewording the sentence so as to capture the meaning of the phrase and removing the word “small vessels”, in order not to create difficult categories.

34. The Government expert from Norway proposed that the reference to the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels and Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels should be in the Convention itself, rather than in the Recommendation, since it would otherwise get lost. As it was a non-binding code of practice, due consideration would have to be given to using “should” instead of “shall” in order to avoid making the code mandatory. The Government expert from Canada and the Government observer from Denmark suggested leaving the reference in the Recommendation. The Government expert from South Africa wished to add the words “with revisions and additions” at the end.

35. The spokesperson for the Employer experts suggested removing “waters” from the second paragraph of the Preamble preceding the table in Appendix 1 and reducing the number

of hours from 36 to 24. Moreover, all provisions on large and specific vessels should be moved to the Recommendation. The Employer expert from France added that Articles 20, 21 and 23 were sufficient for the Convention. Provisions taken from Convention No. 126 created problems in implementation and put ratification at risk. While many developed countries had more rigorous regulations, the ability of countries with lower standards to ratify the proposed Convention had to be considered. The spokesperson for the Worker experts opposed the proposal to move further text to the Recommendation. The current text had the necessary balance between facilitating improvement and enabling maximum ratification and already aimed at a minimum level of obligatory standards.

36. The spokesperson for the Worker experts recalled their original proposal to use 15 metres as a limit for determining large vessels. After considering the views of the Government experts and in order to build consensus, the Workers would accept a 24-metre limit regarding accommodation, while keeping the possibility for States to extend the regulations for larger vessels to vessels over 15 metres. That was not supported by the spokesperson for the Employer experts who requested to keep the square brackets. The Government expert from Japan reiterated that the definition of vessel size by length needed further discussion, and that consideration should be given to providing a solution for the conversion from length to tonnage.

37. The spokesperson for the Employer experts was opposed to adding the wording “as established in this Convention” at the end of the Convention text on the issue of application for large vessels and specific vessels. The text referred to fishers carried on board for the sole purpose of operating from small vessels who were not part of the fishing vessel’s crew. Reference to suitable accommodation and sanitary facilities was sufficient, since those were temporary situations. The Government observer from the United Kingdom considered that there would not be sufficient space on the vessels to provide the same accommodation to all fishers, be they employed or temporarily carried on board. The real issue was to avoid people sleeping on decks. He commended the Worker experts’ proposal, but noted that the Convention aimed to protect a group which had previously had no protection as concerned accommodation. The Worker expert from Argentina had in mind the plight of fishers who were working and living on deck without access to any facilities. There was no doubt that those fishers were part of the crews of larger vessels, although they were considered to be on board only temporarily. They should not be subjected to conditions other than those of the mother ship. The Government observer from the United States remarked that the difference between the role of temporary workers coming on board and those who were part of the crew needed to be clarified. The Government observer from Denmark agreed that new text was needed, as did the Secretary of the Worker experts, who pointed to the lack of any distinction between various conditions. Temporary fishers could be on board vessels for months at a time, leading to unacceptable conditions and situations of exploitation. In other situations, fishers came on board only to sell their catch. New text was needed.

### *Planning and control*

38. Speaking on behalf of the Government experts, the Government expert from Norway explained that there had been general support for the Office text. The proposed wording should be amended by replacing “re-registered” by reference to “change of flag”. Paragraph 1 of the current text on large vessels and specific vessels should also be amended by replacing “an entity authorized by it” with “a recognized organization”. Clarification was also necessary in referring to only one competent authority. The Worker experts agreed. The spokesperson for the Employer experts proposed that the section under the heading “All vessels” be moved to the Recommendation.

39. The Government expert from Norway reported that the Government experts supported the current text as well as the Worker experts' suggestion concerning frequent inspections carried out by skippers for large vessels. The Government expert from South Africa confirmed that, but suggested that a different location for the text might be worth considering. The Employer experts did not accept the Worker experts' proposals regarding regular inspection. Public institutions that conducted inspections existed for that reason and skippers had enough authority to conduct inspections, even if a provision was not included in the Convention. The Employer expert from the Netherlands also reminded the Meeting that Article 8, adopted during the ILC in June 2004, had clarified the role of the skipper in providing supervision and ensuring that work was performed in the best conditions of safety and health. The complaint procedures would allow fishers to seek improvements if accommodations were not up to standard. The Worker expert from Argentina thanked the Government group for its support and explained that the Worker experts had proposed regular inspections by the skipper and crew because it was a practical and effective measure to improve conditions on board ship. Article 8 referred only to occupational safety and health. The Worker experts' proposal was taken from the proposed consolidated maritime labour Convention, and would complement the work of the competent authority. The spokesperson for the Employer experts observed that fishing and shipping were different, and it could be inappropriate to insert text from a maritime standard into one for fishing, unless it were critically assessed by the Meeting. The Government observer from the United Kingdom commented, as a co-author of Appendix 1, that the words included there were for convenience and to help keep track of important issues, rather than to prescribe solutions. The Executive Secretary noted that the idea of inspections had also already been introduced, under the heading "Clean and habitable conditions". The spokesperson for the Employer experts pointed out that the proposed text was too prescriptive and should be moved to the Recommendation.

#### *Design and construction*

40. The Government expert from Norway said that the Government experts supported the Worker experts' proposal to insert a new paragraph in the Convention under the part relating to all vessels. It was based on text proposed by the Office for paragraph 8 of Annex II in Report V (1) for the 93rd Session of the ILC and read: "The location, means of access, structure and arrangement of crew accommodation in relation to other spaces shall be such as to ensure adequate safety, protection against weather and sea and insulation from heat or cold, undue noise or effluvia from other spaces." The Worker expert from Argentina said that that text was important to the Worker experts, because it summed up the general principles on the design of boats. It was opposed by the Employer experts, since that text was already contained in Annex II.

41. The Government expert from Norway, on behalf of the Government experts, said that direct openings between sleeping accommodation and machinery or processing space should not be allowed in a modern instrument. The Executive Secretary recalled that two alternative texts had been discussed in the Government experts' meeting, one specifying that there should be no direct openings between sleeping rooms and machinery space or fish processing and storage areas, and another adding the proviso of "except for purpose of emergency escape". The latter suggestion was supported by the Government expert from Spain, the Government observer from Denmark and the spokesperson for the Employer experts, who remarked that the purpose of a fishing standard was to find a balance between protecting the workers and enabling ratifications. It was also supported by the Worker experts, who, however, asked for a legal opinion on the ramifications of the wording "reasonable and practicable" as used in that paragraph and elsewhere.

42. The Government expert from Norway reported that most Government experts preferred 198 cm, because a higher minimum might affect stability. One Government expert, however, had preferred the 190 cm stipulated in Article 10, paragraph 4, of Convention No. 126; another had suggested 203 cm, in line with the proposed consolidated maritime labour Convention.

43. The Worker expert from Argentina explained that the Worker experts would have preferred 208 cm, but could accept a lower minimum that would take into account that the average height of people was much greater now than 40 years ago when the 190 cm mark had been set. The question of the vessel's stability was not an issue, and could be solved by technical means. The spokesperson for the Employer experts preferred a minimum height of 198 cm, but would compromise if stability issues were sufficiently taken into account.

44. The Government observer from the United States suggested adding the text "to the satisfaction of the administration", to allow competent authorities to determine their national standards.

45. The observer from the Food and Agriculture Organization of the United Nations noted that revised Part B of the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels and the Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels stipulated that the headroom in accommodation spaces should, wherever possible, be 200 cm. The Government observer from France agreed. That norm was accepted internationally and would not constrain ratification. He supported the proposal from the Government expert from South Africa to adopt a minimum height of 200 cm. The Government observer from the United Kingdom pointed out that there were no stability problems from increasing the minimum height in new designs. In light of the discussion, the Worker expert from Argentina and the spokesperson for the Employers agreed to the proposal for 200 cm.

46. The Government expert from Japan, reserving the right to maintain the basic idea set out in paragraph 16, pointed out that there could be a problem of stability for Japanese vessels, the sizes of which were limited by tonnage for the purpose of restricting fishing effort, if the minimum height were to be raised. He continued to prefer 190 cm as the standard, since even the current Convention No. 126, which had set a standard of 190 cm, had failed to attract many ratifications. The spokesperson for the Employer experts observed that that problem was addressed by the second sentence of the paragraph in discussion, which provided the necessary flexibility.

47. The suggestion by the Worker experts to include a provision requiring larger ships operating in mosquito-infested areas to be fitted with appropriate devices as required by the competent authority was supported by the Employer experts. The Government experts did not agree since that was not a problem specific to large vessels and was already sufficiently covered by the text proposed for all vessels.

48. The wording for the Recommendation on design and construction proposed by the Worker experts was supported by the Government experts and observers as well as the Employer experts.

#### *Noise and vibration*

49. The Government expert from Norway, speaking on behalf of the Government experts, signalled general support for the provisions proposed by the Office. There had been queries as to the kind of "standards for noise and vibration" to be adopted by the competent authority according to the proposed Office text of the Convention (large vessels and specific vessels). It had been agreed that the best source for guidance on standards regarding noise reduction would be IMO resolution A.468, to which a reference could be made in the Recommendation.

50. The Government expert from Japan suggested to move the provisions concerning noise and vibration to the Recommendation. The relevant provisions of the most recent draft of the consolidated maritime labour Convention were recommendatory, and the IMO resolution did not apply to vessels of less than 1,600 gt. The spokesperson for the Employer experts could accept the provision for all vessels, since the text of the proposed Convention in Report V (1) for the 93rd Session of the ILC, 2005, already mentioned the concept of mitigating excessive noise and vibration. However, the proposed provision for large vessels should be made recommendatory. The Government expert from Japan agreed. The Government observers from France and Germany and the Government expert from Norway disagreed, preferring the text as drafted.

51. The Chairperson acknowledged the lack of consensus on the text concerning large vessels of the proposed Convention. The Meeting accepted the following slightly modified Worker experts' proposal for the Recommendation: "The limits for noise levels for working and living spaces should be in conformity with the international guidelines of the International Labour Organization on exposure levels to ambient factors in the workplace and, where applicable, the specific protection recommended by the International Maritime Organization, and with any subsequent amending and supplementary instruments for acceptable noise levels on board ships."

#### *Ventilation*

52. The Government expert from Norway, speaking on behalf of the Government experts, supported the proposed Office text for the Convention (all vessels) and accepted the Worker experts' proposal for large vessels. The spokesperson for the Employer experts rejected both proposals tabled by the Workers, since there was no need explicitly to mention the two means of ventilation.

53. Following an exchange of views on different aspects of ventilation, it was agreed that a results-oriented way of redrafting the provision should be found. The Chairperson requested the Office to redraft the provision.

#### *Heating and air-conditioning*

54. The Government expert from Norway, speaking on behalf of the Government experts, did not support the recurring amendment proposed by the Worker experts to add "and safely". That had been rejected, since it was self-evident that the means of heating should be safe. The Worker experts' suggestion regarding the Convention text for large vessels was supported in order not to concentrate solely on tropical climates. The Government experts also agreed with the Workers' amendment for the Recommendation. The spokesperson for the Employer experts indicated that, although overly prescriptive, her group could go along with all three Worker proposals. The latter two were adopted.

#### *Lighting*

55. The Government expert from Norway, speaking on behalf of the Government experts, accepted the Office text. The Worker experts' proposal to add the words "and safety" to the Convention text was superfluous.

56. The observer from the Food and Agriculture Organization of the United Nations, referring to the fourth paragraph of the proposed Office text for the Convention (all vessels),

said that it was not necessary to make a reference to emergency lighting. He suggested a simpler text, taken from Part B of the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels, which read as follows: "A permanent night light should, in addition to the normal lighting, be provided in sleeping rooms during the night. Mess rooms and alleyways, that contain emergency escape facilities from the crew accommodation, should also be provided with a permanent night light during the night." That proposal was supported by the Worker experts.

57. The Government expert from Japan, the spokesperson for the Employer experts, the Government expert from Spain and the Government observers from France and the United Kingdom preferred the Office text, noting that a permanent night light in sleeping accommodations could be a nuisance.

58. The Chairperson found that there was consensus on preserving the Convention text as prepared by the Office. The Meeting accepted the text proposed by the Worker experts for the Recommendation.

59. The Government observer from France noted that the "minimum standard for lighting" in the Office text for the Convention (large vessels and specific vessels) referred to "a clear day". The strength of the lighting source was not the key issue, rather the amount of light available in a given space. It was important that those two concepts were not confused. In France, the amount had to equal at least 120 lux.

#### *Sleeping rooms*

60. The Government expert from Spain, referring to the first paragraph, preferred the alternative text, which seemed to have been taken from European Union Council Directive 93/103/EEC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels. The Government expert from South Africa supported that position. The Government expert from Chile stated that, if the provisions for large vessels referred to vessels of 24-45 metres in length, then the range was too broad. It was unreasonable to demand the same conditions of space in the sleeping rooms of vessels of 24 and 45 metres in length.

#### *Location*

61. The Government expert from Norway said that the Governments preferred the alternative Office text with the addition of "but in no case forward of the collision bulkhead". The spokesperson for the Employer experts supported that proposal, which was also agreed to by the Worker experts. The remaining paragraphs on sleeping rooms for all vessels were agreed as drafted by the Office.

#### *Paragraphs 1 and 2*

62. The Government expert from Norway said that regarding floor space in large vessels and specific vessels, the majority of Government experts preferred the Office text. The majority of Government experts also preferred 45 metres to facilitate ratification, while there had been some support for 24 metres.

63. The Government expert from Spain said that the scale of 24-45 metres was very wide and suggested creating intermediate scales of 24-35 metres and 35-45 metres. While that suggestion addressed the concerns of the Government expert from Chile, the Government expert

from Norway opposed it. Another cut-off point would complicate matters and make the instrument less ratifiable. The Government expert from Japan stated that the floor area per person should be the same level as the current requirement in Convention No. 126 in order to promote ratification, i.e. 0.75 square metres and 1 square metre for vessels of [24]-[45] metres and [45] metres and over, respectively. The Government experts had therefore considered extending the application of paragraph 5, so that the competent authority could permit exceptions and the necessary flexibility would be achieved. However, no clear consensus had been reached.

64. The spokesperson for the Employer experts did not support the first or the second paragraphs, which were overly prescriptive and the matter should be addressed in a Recommendation.

#### *Paragraphs 3 and 4*

65. The Government expert from Norway explained that there had been majority support among the Government experts for paragraph 3 of the Office text. The Employer experts agreed, since they understood the provision to be a standard clause.

66. The Worker experts proposed to amend paragraphs 3 and 4 to read “For vessels of [24] metres in length or more and less than 45 metres the number of persons allowed to occupy each sleeping room shall be: (a) officers: one person per room wherever possible, and in no case more than two; (b) ratings: two persons per room wherever possible, and in no case more than four. For vessels of [45] metres in length or more, the number of persons allowed to occupy each sleeping room shall be: (a) officers: one person; (b) ratings: one person per room wherever possible and in no case more than two.” The Worker expert from Argentina said that it was a very sensitive issue. Moreover, when designing vessels there was not much difference in designing rooms to accommodate two or four persons. The Worker experts wanted a maximum of two per room on vessels of 24 metres and individual sleeping rooms or a maximum of two per room on vessels of 45 metres or larger. The Government expert from Norway, on behalf of the Government experts, said the Worker experts’ proposal was too prescriptive. They preferred the Office text. The spokesperson for the Employers’ group agreed.

#### *Paragraph 5*

67. Speaking on behalf of the Government experts, the Government expert from Norway supported the Office text. The Worker experts opposed the provision and sought its deletion. Since the Employer experts had opposed the paragraphs the provision was referring to, they suggested the issue be discussed during the next session of the ILC in June 2005. The Government expert from Japan stated that the exception explained in that paragraph should also be applied to paragraphs 1 and 2 in larger vessels as well as paragraph 3 in all vessels.

#### *Paragraph 6*

68. The Government expert from Norway, on behalf of the Government experts, supported the Office text on minimum inside dimensions of berths. The Government expert from Japan added that there had been some discussion as to whether to add the words “whenever practicable”. The spokesperson for the Employer experts opposed the suggestion by the workers to use 1.98 by 0.8 metres as minimum dimensions. The matter should be dealt with in the Recommendation.

*Paragraph 7*

69. The Government expert from Norway reported that paragraph 7 regarding the provision of a desk and chair was supported by the Government experts. Unlike the Worker experts, the Employer experts opposed the provisions.

*Paragraph 8*

70. The Government expert from Norway reported that the Government experts had raised a cost issue, but had no major objections to the paragraph on separate sleeping rooms. The spokesperson for the Employer experts said that the paragraph for all vessels on the provision of privacy also covered large vessels. The paragraph for large vessels was therefore redundant in its current form. The spokesperson for the Worker experts pointed out that, while provisions to ensure privacy applied to all vessels, sometimes, due to lack of resources, a curtain or blanket was used to separate sleeping spaces for men and women. To address the Employer experts' call for a clearer wording, the secretary of the Worker experts proposed to replace the Office text with the following: "The provision of separate sleeping rooms for men and women is desirable for all vessels and shall be provided on vessels of [24] metres or more in length". The spokesperson for the Employer experts and the Government experts supported that suggestion.

71. The Worker experts suggested to insert text on furniture for large and specific vessels, based on Standard A.3.1.5 of the draft consolidated maritime labour Convention. The Government expert from Norway said that the Government experts preferred wording contained in provision 11.3.11 in Part B of the revised FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels. The spokesperson for the Employer experts did not support either proposal.

72. The spokesperson for the Employer experts and the Government expert from Norway, speaking on behalf of the Government experts, supported the inclusion of the text proposed by the Worker experts in the Recommendation.

*Mess rooms*

73. The Government experts and observers, as well as the Worker experts, supported all paragraphs of the Office text concerning all vessels. The spokesperson for the Employer experts disagreed and said that those provisions should be in the Recommendation. She reminded the Meeting of the initial and consistent position of the Employer experts that the provisions on accommodation should be dealt with in the Recommendation, so that the Convention would be as flexible as possible and encourage ratification. Her objections did not simply result from concerns about specific formulations, but came from her understanding that the Convention should not become overly prescriptive. In that respect, only Articles 20, 21 and 23 contained in Report V (1) for the 93rd Session of the ILC should remain in the Convention, while the whole of Appendix 1 should be moved to the Recommendation. The Employer expert from the Netherlands added that the Meeting should strive to formulate appropriate recommendations to help governments to write their own laws and regulations.

74. The Government expert from Norway, speaking on behalf of the Government experts, accepted the provision requiring mess rooms on large vessels to be separate from sleeping quarters. The spokesperson for the Employer experts reiterated that Article 21, paragraph (e), of the proposed Convention in Report V (1) for the 93rd Session of the ILC (2005) already required member States to adopt laws, regulations or other measures addressing the issue of mess rooms. Details on how the competent authority should implement that requirement

belonged in the Recommendation. The Worker experts strongly objected to the Employer experts' position on the basis that Article 21 was too general and could allow for fishers to eat in cabins or on deck, as opposed to having specific facilities.

75. The Government expert from Norway, speaking on behalf of the Government experts, said that the Governments wanted the provision referring to separate mess-room facilities for officers and ratings to be deleted. That decision should be a matter of company policy. The Employer experts supported the proposal, since in most fishing vessels mess rooms were combined. They argued that, nowadays, the industry tried to nurture cooperation and team spirit by avoiding divisions between officers and ratings. The Worker expert from Argentina opposed that position. If the decision were to be left to companies, and separate facilities for mess rooms were not foreseen during the construction of the vessel, the fishing vessel owners would not provide them afterwards. Their historical separation should be retained. Eating together would not necessarily increase team spirit. Finally, the Meeting agreed to keep the provision but to move it to the Recommendation.

76. The Government expert from Norway, speaking on behalf of the Government experts, suggested that the provision requiring a refrigerator and facilities for making hot and cold drinks in mess rooms should be moved to the Recommendation, since it was overly prescriptive for the Convention. However, Governments agreed that there should be some refrigeration on board and could accept the provision under the section "Galley" requiring food storerooms and refrigeration. The spokesperson for the Employer experts agreed. The spokesperson for the Worker experts disagreed, stating that access to a refrigerator and facilities for making hot and cold drinks in mess rooms was a minimum standard already existing in the industry. That was a fundamental condition, since many vessels making extended voyages did not possess such facilities in galleys. The provision could also be found in Convention No. 126 and should remain in the new Convention. He also suggested eliminating the words "in the mess-room or elsewhere". The Chairperson noted the lack of consensus on the issue and decided to leave the text as drafted.

77. As for the Worker experts' proposed text for the Recommendation, the Government expert from Norway, speaking on behalf of the Government experts, supported it. The spokesperson for the Employer experts rejected it, saying that it was too detailed for the Recommendation.

### *Sanitary accommodation*

#### *Paragraph 1*

78. The Government expert from Norway said that the Government experts had no major problems with the Office text concerning all vessels. The wording "reasonable standards of comfort" at the end of the paragraph was, however, imprecise and should be redrafted. The spokesperson for the Employer experts proposed the deletion of "toilets, washbasins, and tubs or showers" in the first sentence; it was too detailed. The second sentence should be amended to read: "These facilities shall at least meet minimum standards of health and hygiene." The Worker expert from Argentina supported the text proposed by the Office and agreed to the Government experts' suggestion of redrafting. The Employer expert from the Netherlands, speaking on behalf of the Employer experts, could not agree with the number of facilities to be provided on larger vessels because it would mean an increase of the standards given in Convention No. 126.

#### *Paragraph 2*

79. The Government expert from Norway, on behalf of the Government experts, supported the Office text and opposed the deletion of "as far as possible", as suggested by the

Worker experts. Contamination could technically not be eliminated under all circumstances. The Worker expert from Argentina suggested the Office should redraft the paragraph taking into account the Government experts' concerns and the Legal Adviser's opinion on certain formulations to achieve flexibility. The spokesperson for the Employer experts also preferred the Office text.

### *Paragraph 3*

80. The Meeting supported the Office text.

### *Paragraph 4*

81. In regard to the text in paragraph 4, the Government expert from Norway said that the Government experts supported the Office text, as well as the proposal of the Worker experts to add the words "after consultation". The Government observer from Denmark proposed that the word "fishers" be changed to the word "persons" so as to cover all people on board. The spokesperson for the Employer experts said that the differences between the terms "fishers" and "persons" had been discussed at the 92nd Session of the ILC, and that the paragraph should refer to "fishers". She said that the Employer experts supported the Worker experts' proposed changes. The secretary of the Worker experts said that the proposal of the Government observer from Denmark needed discussion, as on some vessels, non-fishers, such as fishery observers, were present for significant periods of time. He requested that the Office look into that matter.

### *Paragraph 5*

82. Speaking on behalf of the Government experts, the Government expert from Norway supported paragraph 5 and suggested that the text "water closets" be replaced by "sanitary facilities". The Employer and Worker experts agreed. Additionally, the spokesperson for the Employer experts proposed that the text "ventilation to the open air" be changed to "adequate ventilation". That was not supported by the Worker expert from Argentina as the reference to "open air" was most important. The Government observer from the United Kingdom agreed since for that type of ventilation to be efficient it needed to ventilate to open air.

### *Paragraph 6*

83. The Meeting supported the Office text.

84. The Government expert from Norway, on behalf of the Government experts, proposed to replace the Office text on large vessels and specific vessels with paragraph 71 of Annex II in Report V (1), since the proposed text was too ambitious. The Worker expert from Argentina did not support that proposal. The paragraph proposed by the Office dealt well with a crucial aspect and was a real improvement. It should be seriously considered.

85. Regarding the proposal by the Worker experts to append "Furthermore, separate sanitary facilities for women shall be provided", the Government expert from Norway said that most Government experts understood their intent, but since it would not be easy to implement, they did not support it. The spokesperson for the Employer experts agreed and suggested transferring it to the Recommendation. That view was opposed by the Government observer from

Denmark who reminded the Meeting of the need to consider further the conditions aboard ships at sea for several weeks.

86. The Government and Employer experts supported the text for the Recommendation proposed by the Worker experts.

#### *Laundry facilities*

87. The Meeting supported the Office text for all vessels on laundry facilities.

88. The Government expert from Norway, speaking on behalf of the Government experts, said that the first provision proposed by the Office for large vessels and specific vessels was acceptable. There had been some concern, however, that the provision contained too much detail. The spokesperson for the Employer experts and the Government expert from South Africa suggested that the provision for vessels of 24 metres in length or more was redundant, as the provision for all vessels already contained similar text. The Government expert from France disagreed since the provision for all vessels specified that laundry facilities would be made available “as appropriate to the service of the vessel”. That meant that certain vessels, for example those undertaking trips of under 24 hours, might not need to have laundry facilities. The provision for large vessels and specific vessels had been added to ensure that those vessels would always have laundry facilities, regardless of the service of the vessel. The Government expert from Japan stated that an “ironing facility” should not be obligatory.

89. The spokesperson for the Worker experts proposed to add more specific wording for large vessels so that the laundry facilities available would be on a scale appropriate to the number of fishers on board and the duration of the voyage. The wording “as appropriate” was too vague. Alternatively, the Office could propose additional text. The Worker experts’ proposals to add a reference to ironing, and to refer to drying clothes in the subsequent paragraph, were supported by the Government experts who wanted both paragraphs to be in the Recommendation.

90. Regarding the provision for vessels of 45 metres in length or more, the Government expert from Norway and the Government observer from France recalled the Government experts’ opinion that it should be moved to the Recommendation. The Government observer from the United Kingdom agreed, provided that the provision for vessels of 24-45 metres in length was kept in the Convention. Otherwise, both provisions could be falsely interpreted as recommendations for all vessels. That move was opposed by the spokesperson for the Worker experts.

#### *Facilities for sick or injured fishers*

91. The Government expert from Norway, speaking on behalf of the Government experts, accepted the text proposed by the Office for all vessels. However, the use of “isolated” might be a problem for smaller vessels. The observer from the International Maritime Health Association clarified that an isolated room was necessary for a person with an infectious disease, or other condition requiring isolation. The Convention could stipulate that an isolated cabin should be provided whenever needed. On smaller vessels, where there might not be a room dedicated for that purpose, it could mean a redistribution of rooms to allow for the creation of an isolated room when the need arose. The spokesperson for the Employer experts’ suggestion to substitute “Wherever possible” with “If necessary” was supported.

92. The Government expert from Norway, speaking on behalf of the Government experts, accepted the Office text for large vessels and specific vessels. The Worker expert from Argen-

tina agreed. The spokesperson for the Employer experts said that the formulation was acceptable but had not decided whether it belonged in the Convention or in the Recommendation.

#### *Other facilities*

93. Speaking on behalf of the Government experts, the Government expert from Norway accepted the Office text for all vessels and added that the decision between “oilskins” or “foul weather gear” could be left to the Office. That was agreed to by the spokesperson for the Worker experts.

94. The spokesperson for the Employer experts proposed altering the provision to read: “Wherever possible, adequate facilities for hanging [oilskins] [foul weather gear] shall be provided.” The Government observer from the United Kingdom said that that could mean such facilities being placed in sleeping accommodation. The original intent had been to avoid that, as it was important that foul weather gear could not contaminate sleeping accommodation. In response to that remark, the spokesperson for the Employer experts said that the phrase “outside but convenient to sleeping rooms” could be reinserted. The Government observer from France agreed with the comment of the Government observer from the United Kingdom and clarified that new vessels were under discussion. The spokesperson for the Employer experts agreed but small vessels could also be included; hence the proposal to specify a facility and not necessarily an accommodation. The Worker expert from Argentina also agreed with the explanation of the Government observer from the United Kingdom and said that the views voiced should be considered by the Office when drafting text.

#### *Bedding, mess utensils and miscellaneous provisions*

95. The Government expert from Norway and the Worker expert from Argentina supported the text as proposed by the Office. In response to a request for clarification by the spokesperson for the Employer experts on the meaning of “other linen”, the Executive Secretary stated that it referred to tablecloths, towels, washcloths and other linens of that nature. The text referred to articles that fishers would need but would not normally bring on board themselves. The Employer expert from the Netherlands said that articles such as towels and duvets had always been the private property of the fishers aboard. In response to the spokesperson for the Worker experts, who had said that the purpose of the provision was to avoid fishers having to bring their own linen on board, the spokesperson for the Employer experts suggested deleting the phrase “and other linen”.

#### *Recreational facilities*

96. The Government experts and observers and the Worker experts supported the text for large vessels proposed by the Office. The spokesperson for the Employer experts supported the wording, but suggested to move the first paragraph to the Recommendation.

97. Speaking on behalf of the Government experts, the Government expert from Norway said that the second paragraph should be moved to the Recommendation, as it was overly prescriptive. The Government expert from Canada added that the provision provided good guidance but had too much detail for the Convention.

98. The Worker expert from Argentina, speaking on behalf of the Worker experts, introduced his group’s text for a Recommendation, which linked with the Office text proposed for

large and specific vessels. The Government expert from Norway, speaking on behalf of the Government experts, explained that there had been discussion on the wording of the first sentence, but that his group supported the Worker experts' proposals for the Recommendation. The spokesperson for the Employer experts said the first two paragraphs of the proposal were acceptable, but the third paragraph was too ambitious and could not be accepted. The Meeting agreed that the first two sentences should be added to the Recommendation.

#### *Communication facilities*

99. The Government expert from Norway, speaking on behalf of the Government experts, and the Worker experts endorsed the Office text for all vessels on communication facilities. The Worker expert from Argentina explained that often the only method of communication on board was satellite telephone, which was very costly. The text proposed by the Office covered that eventuality, which was especially important given the number of crews with members from developing countries. The spokesperson for the Employer experts proposed to change the text to read: "All fishers on board shall be given reasonable access to communication facilities to the extent practicable and at cost." It was unnecessary to refer to "personal reasons" as that was implied, especially if the facilities were being provided "at cost". That wording was required, since it was impossible to determine what reasonable expense was. The Government observer from France suggested to amend the proposal to read "at cost price as a maximum", since some employers might also choose to provide communication facilities free of cost. Reflecting on the original text, the spokesperson for the Worker experts said that that was perhaps the only occasion where there had been flexibility in favour of fishers. "Reasonable expense" meant a cost that was accessible to fishers. Communication costs could be so high that the communication facilities would become practically inaccessible. The Government expert from Chile agreed and reminded the Meeting of the importance of home calls at sensitive times, despite their high costs, especially in developing countries. The participants agreed that the Office should redraft the text in line with the proposal by the Government observer from France.

100. The text proposed by the Worker experts to be included in the future Recommendation was not supported by the Government experts, being considered as unnecessary. The Worker expert from Argentina agreed to withdraw the text.

#### *Galley and food storage facilities*

101. The Government expert from Norway, speaking on behalf of the Government experts, and the Worker expert from Argentina, supported the first paragraph of the Office text for all vessels. The spokesperson for the Employer experts agreed with the provision but proposed to replace the words "satisfactory cooking equipment" with "appropriate cooking equipment". Following discussions as to which term was stronger or preferable, the Government expert from Norway suggested to delete the word "satisfactory" as it was superfluous. The Meeting agreed.

102. The Meeting accepted the second paragraph of the Office text for all vessels.

103. As for a proposal by the Worker experts requiring the storage of gas containers on the open deck, the Government expert from Norway, speaking on behalf of the Government experts, did not support it, in order to avoid duplication of provisions. That safety issue had already been addressed in the Torremolinos International Convention for the Safety of Fishing Vessels and the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels. The spokesperson for the Employer experts agreed with the Worker experts' proposal. The Government

expert from Spain agreed but suggested to add “and should be checked regularly”. It was essential for the safety of the crew regularly to check pressurized gas containers, not only at refill. While the Worker expert from Argentina and the Government experts from Norway and South Africa supported the Spanish proposal, the spokesperson for the Employer experts opposed it. The Government observer from the United Kingdom cautioned that some member States would not have the facilities to check and that fire protection issues were already covered by other international instruments. The Government observers from Denmark and France and an observer from the Food and Agriculture Organization of the United Nations endorsed that position. The Meeting accepted the Worker experts’ proposal without the addition.

104. The Government expert from Norway, speaking on behalf of the Government experts, and the Worker expert from Argentina supported the third paragraph of the Office text for all vessels. The spokesperson for the Employer experts said that the provision would be acceptable if the last sentence were deleted. It was superfluous, since it only advised that the best way to keep provisions dry and cool was by means of a refrigerator. The Government experts from Canada, Chile, Norway and Spain, and the Government observers from France and the United Kingdom, preferred the Office text. The spokesperson for the Employer experts agreed because of the qualifying phrase “where possible”. The Meeting so decided.

105. The Government expert from Norway, speaking on behalf of the Government experts, accepted the Worker experts’ proposal for large vessels requiring that vessels over 24 metres in length (as opposed to over 45 metres) had a separate galley. The spokesperson for the Employer experts suggested that the provision should be in a Recommendation.

106. The Government expert from Norway, speaking on behalf of the Government experts, supported the second paragraph applicable to large vessels as proposed by the Office. The Government expert from Norway also felt that large vessels should have a freezer and that that concern might be taken care of by replacing “refrigerator *or* other low-temperature storage” with “refrigerator *and* other low-temperature storage”. The Government experts and observers and the Worker expert from Argentina supported that position. The spokesperson for the Employer experts agreed with the wording but said that the provision should be in the Recommendation.

#### *Food and water*

107. The Government expert from Norway, speaking on behalf of the Government experts, agreed with the first paragraph applicable to all vessels as proposed by the Office. The Worker expert from Argentina also supported the provision but suggested to add the word “drinking” before “water”. The spokesperson for the Employer experts stated that they could accept the Office text as amended by the Workers, if the word “palatable” preceding “food and water” was deleted. The term was too subjective and the issue of quality was already addressed in the provision. The Worker expert from Argentina disagreed, since “palatable” could serve to take cultural, religious or gastronomic backgrounds into account, thus going beyond quality. The Government expert from South Africa and the Government observer from France expressed doubts about “palatable” being the right term to take care of the Worker experts’ concerns. The Meeting asked the Office to redraft the provision accordingly.

108. The Government expert from Norway, speaking on behalf of the Government experts, supported the Worker experts’ proposal to make it obligatory for the competent authority to establish requirements for the minimum standard and quantity of food and water on board (“shall”). However, the Government expert from Norway found the provision as amended too onerous, since the formulation could raise enforcement problems for his country where such operational issues were left to the vessel owners and the competent authority only got involved

when inspecting the vessels. The spokesperson for the Employer experts also disagreed with the amendment. Given that the guidelines of the World Health Organization could be used for port state control purposes, the Government observer from the United Kingdom suggested to leave the wording of the second paragraph applicable to all vessels as it was (“may”). The Worker experts and the Government experts from Canada and Spain shared that view. The Meeting so decided.

109. The Government expert from Norway, speaking on behalf of the Government experts, supported the Worker experts’ proposal for large vessels, which required the competent authority to ensure that vessels carried on board food and water meeting certain conditions. Whereas the provision applying to all vessels obliged the competent authority to establish requirements in that regard, that provision dealt with enforcement. The spokesperson for the Employer experts did not support the proposal. The Chairperson noted that there was no consensus.

110. The Worker experts’ proposal for the Recommendation, which dealt with training and qualification of ships’ cooks, was accepted by consensus.

#### *Clean and habitable conditions*

111. The Government expert from Norway, speaking on behalf of the Government experts, and the Worker expert from Argentina supported the wording in the first paragraph of the Office text for all vessels. Following queries from the spokesperson for the Employer experts as to who would be maintaining the accommodation in clean and habitable conditions, it was agreed that it would not be advisable to specify such details, since Article 8 clearly established that the owner had the overall responsibility to ensure that the skipper was provided with the necessary means to comply with the Convention. The provision for large vessels dealing with inspections by the skipper also indicated that the skipper was responsible for clean conditions on board. The Office text was accepted as it was.

112. The Meeting supported the wording in the second paragraph of the Office text for all vessels.

113. The Government expert from Chile proposed a new provision for all vessels on the issue of waste. It should read: “Waste should be kept in closed, well-sealed containers and should be removed from food-handling areas whenever necessary.” The Government expert from Norway, while agreeing in principle, inquired whether the issue came within the scope of the International Convention for the Prevention of Pollution from Ships (MARPOL), thus duplicating provisions. The Government expert from South Africa understood that the issue was the handling of waste on board, not its disposal. The Worker expert from Argentina, the Government expert from Spain, the Government observer from Germany and the spokesperson for the Employer experts agreed in principle with the Chilean proposal. The Meeting decided to insert such a provision.

114. The Government expert from Norway, speaking on behalf of the Government experts, and the Worker expert from Argentina accepted the provision for large vessels, as proposed by the Office. The spokesperson for the Employer experts requested the text to be moved to the Recommendation.

#### *Variations*

115. The Government expert from Norway, speaking on behalf of the Government experts, and the Worker expert from Argentina supported the Office text. The spokesperson for the Employer experts preferred to move the provision to the Recommendation.

**New Part VII. Additional requirements for vessels of [...] metres in length or more***General observations*

116. The Government expert from Norway observed that the Government experts believed that most of the issues addressed in the provisions of the new Part VII should be dealt with without regard to vessel size. Government experts and observers respected the decision of the ILC that standards should be developed for larger vessels. It was, however, difficult to arrive at more stringent standards that should only apply to larger vessels. This did not mean that they thought these were sufficiently dealt with in Report V (1) for the 93rd Session of the ILC. Governments were in favour of including more details and guidance.

117. The spokesperson for the Employer experts recalled that the Employers had stressed at the ILC in 2004 that they did not want to create two classes of fishers, and that the Convention should apply to all fishers. It appeared to her that the Government experts were of the same opinion. The Employer experts wanted a Convention with a Recommendation regardless of vessel size. Therefore, she suggested that the title should be amended to read: "Additional recommended requirements for vessels of [...] metres in length or more." Moreover, there should be an introductory text that read: "The additional requirements for vessels of [...] metres in length or more are listed in this Appendix as a Recommendation."

118. The secretary of the Worker experts questioned the Meeting's authority to revisit decisions reached by a formal vote during the ILC. The secretary of the Employer experts said that the purpose of the Meeting was not to make decisions, only recommendations for discussion at the next session of the ILC. While the Employer experts would like to recommend that the issue be reconsidered then, they were not intending to revisit decisions taken in the ILC. The Government expert of Norway expressed the view that the intention of the Meeting was to consider whether or not it was possible for the Office to arrive at more stringent standards with respect to operations on larger vessels. The Meeting had to identify areas which were suitable for further consideration in that regard. He did not support the Employer experts' proposal. He preferred to have more details in the Convention than in the text under discussion and was opposed to transferring all details to the Recommendation.

*Criteria for distinction*

119. The Government expert from Norway, on behalf of the Government experts, felt that vessel length as sole criterion for distinction was problematic and suggested that its time spent at sea was a more relevant parameter. That concept was preferred to the term "international voyage", since the Government experts had difficulty defining the term in a fishing context. The Government observer from Germany added that if a distinction based on vessel length was made, there was a danger of creating two classes of fishers. Fishers on vessels slightly smaller than the suggested 24 metres performed similar work but would have different protection. The duration of the voyage was a better criterion. The Government expert from Japan reminded the Meeting of his earlier concerns on vessel size defined by length as indicators.

120. The secretary of the Worker experts agreed that the term "international voyage" was difficult to define and suggested the use of the term "distant-water fishing" instead. A definition could be found by redrafting the definitions for "distant-waters fisheries production" used by the FAO and found at the end of the introduction in TMEFS/2004. That definition was especially important given that Article 32 in Report V (1) foresaw periodic inspections. There was a need to ensure that the Convention was compatible with other relevant international instruments. A Convention should cover developing countries without lowering existing standards.

However, special attention needed to be paid to large-vessel operations. Many of those vessels operated outside their flag States' waters and EEZs. In response to a request for clarification by the Employer expert from the Netherlands, he explained that the Worker experts were referring to vessels coming under international jurisdiction in distant waters, for instance under the jurisdiction of the port of another State. It was important to recognize that many situations prevailed and that fishing was often different from merchant transport.

121. The Government observer from Germany pointed out that the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F) used the terms "limited waters", which referred to waters under a member State's own jurisdiction, and "unlimited waters", which referred to waters outside its jurisdiction, and suggested that those might also be helpful in coining an appropriate definition. The Government observer from France preferred language based on the FAO definition, and reminded the Meeting to also consider difficulties arising from nations adjacent to overseas territories.

122. The Government observer from the United Kingdom said that while the length of ship was an appropriate criterion when discussing accommodation, it was not the case in other areas. He agreed with the Government expert from Norway and added that, during the first session of the Committee, the Office had been asked to develop additional provisions for larger fishing vessels since there had not been sufficient time to identify the required areas. The Office had complied with the request and had drafted such provisions. The Meeting under way could well decide that there should not be additional provisions relative to the length of the ship. Such conclusion would not conflict with the decisions taken in June 2004. The length of a ship could be considered for accommodation provisions, and time at sea as a criterion for other areas.

#### *Minimum age*

123. The Government experts felt that the provision should apply to all vessels. The Government expert from Norway said that a minimum age of 18 years for work at night was too stringent because some fishing operations could only take place at night. Moreover, those rules had safety implications, since they severely limited watchkeeping. It was important that young fishers received training. They should be allowed to perform night work as part of a structured and supervised training programme, making the exclusion of young fishers from any night work problematic. The text in paragraphs 4 and 5 of Article 9 in Report V (1) sufficiently addressed those concerns. Since the term "night" did not appear anywhere else in the Convention the definition was not necessary. Should recommendatory text refer to it, a definition should be inserted in the Recommendation. On the subject of whether different provisions on minimum age should be included in the Convention, the Government observer from the United Kingdom pointed out that certain technical requirements made it necessary to apply the length-of-ship criterion, since not all vessels could carry the same amount of equipment. However, as far as social provisions were concerned, all vessels needed to be equally treated. The spokesperson for the Employer experts said that the text on minimum age should be transferred to the Recommendation. The issue should be dealt with regardless of vessel size and the current text of Article 9 in Report V (1) was sufficient.

124. The Worker expert from Argentina supported the Office text and asked for the definition of "night" to be retained. He introduced text for an additional Recommendation as follows: "The working hours of young fishers should not exceed eight hours per day and 40 hours per week and overtime should be worked only where unavoidable for safety reasons; while sufficient time should be allowed for all meals, young fishers should be assured of a break of at least one hour for the main meal of the day." The spokesperson for the Employer experts agreed. The Government observer from the United Kingdom said that the Meeting

was not the appropriate forum to discuss the provision on minimum age, as there was agreement that it was a provision that should apply to all vessels and the Meeting was currently only discussing additional provisions for vessels of a certain length. The Government expert from South Africa agreed and added that the Workers should raise those issues as an amendment to Article 9 during the next session of the ILC, as the provision currently conflicted with Article 9.

125. The Secretary-General explained that no consensus had been reached. In keeping with the procedures established, text would remain as proposed by the Office and the discussion would be taken up again at the upcoming ILC. The Office would draw attention at that time to any possible conflicts between that provision and other parts of the Convention.

#### *Medical examination*

126. The Government expert from Norway, speaking on behalf of the Government experts, said that there should be a small provision on medical examinations. Some Government experts had preferred 18 years in paragraph 3, others had suggested moving the provision to the Recommendation. The Government observer from the United Kingdom could not agree to the first paragraph, as it limited the application of paragraph 2 of Article 10 in Report V (1), rendering the provisions incompatible with national legislation. The United Kingdom did not oppose medical examinations; Article 10 was sufficient and gave discretion to administrations to decide whether or not a medical examination was necessary. The observer from the International Maritime Health Association reminded the Meeting of the importance of medical examinations, especially for older fishers. Medical examinations were preventative and were designed to prevent harm to personal health, to protect public health and to avoid economic damage. If exemptions were granted from that requirement, they should be limited – for example, to a single voyage. The secretary of the Worker experts said that the provision on medical examinations should be retained in the Appendix in the form proposed by the Office, because if Article 10, paragraph 2, applied to larger vessels, then there would be a conflict with the STCW-F. By retaining the provision in Appendix 2, larger ships would be exempt from Article 10, paragraph 2. The bracketed text in paragraph 1 of the proposed provision should be deleted, as it was inconsistent with the STCW-F. This was opposed by the spokesperson for the Employer experts. The competent authority should retain discretion over exemptions to medical examinations. Accordingly, the Employer experts could not accept paragraph 1 of the provision in Appendix 2. The entire provision should be moved to the Recommendation, paragraph 2 in Appendix 2 deleted, and the first part of the subsequent paragraph amended to read: “The medical certificate shall state in particular that: (a) hearing and sight are satisfactory for fishers for whom acceptable levels of hearing or sight have a direct relationship to the safe and effective performance of the fishing duties; and ... .” The Government expert from Norway said that the provision on medical examination should remain mandatory for larger vessels, especially as it had been decided that the Convention would not have a general requirement regarding validity. Paragraph 2 of that provision was necessary to ensure harmonization of medical certificates on a global scale. The Government expert from Canada noted that the Meeting was in agreement as to the importance of the issue and suggested that discussion be continued during the next session of the ILC. The Employer expert from the Netherlands, noticing that several references had been made to the STCW-F during the Meeting, asked the Office for clarification on the status of that Convention. The Executive Secretary clarified that the STCW-F had not come into force due to an insufficient number of ratifications. The Employer expert from the Netherlands added that in its nine years of gathering dust the STCW-F had only received four ratifications, representing slightly over 3 per cent of the world’s fishing vessels’ tonnage, where 15 ratifications were required for the Convention to come into force.

*Manning and hours of rest*

127. The Government expert from Norway, speaking on behalf of the Government experts, said that paragraph 1 could form the basis of an Article for larger vessels. Minimum levels of manning for safe navigation was the only area that governments could regulate and they opposed the Worker experts' proposal to extend responsibility beyond that. The term "international voyages" might not be useful in the context of that provision. In paragraphs 2-4, the emphasis should be on hours of rest as there was no possibility of controlling hours of work. The last three paragraphs should be moved to the Recommendation. The Government expert from Japan noted that the best way of setting fixed hours of rest per day would be through social dialogue and the working agreement. Thus, account would be taken of the characteristics of different fisheries. The provision proposed by the Office should be moved to the Recommendation or deleted, as it was too prescriptive. The spokesperson for the Worker experts agreed with paragraph 1 of the proposed Office text. The spokesperson for the Employer experts wondered if, given the discussion, it might not be better to move the provision in its entirety to the Recommendation and revisit the issue during the next session of the ILC.

128. The Worker expert from Argentina suggested that the following text be inserted:

In addition, for vessels of [24] metres in length or more Members shall require that all fishing vessels that fly their flag have a sufficient number of adequately trained fishers on board to ensure that the vessel is operated safely, efficiently and with due regard to safety under all conditions, taking into account concerns about fatigue and the particular nature and conditions of the fishing operations and any processing of the catch. When determining, approving or revising manning levels, the competent authority shall take into account the principles in applicable international instruments on manning levels as well as the need to avoid or minimize excessive hours of work to ensure sufficient rest and to limit fatigue.

The Government observer from the United Kingdom pointed out that the reference to the processing of the catch was problematic. Unlike fishers and operators of vessels, the administration did not have the necessary expertise to set the number of persons processing the catch. The Government expert from Norway shared that view. If the provision began, for instance, with the words "Members shall require that all fishing vessel owners ensure", the paragraph could be supported for the Convention, since there was some measure of support for safe manning as a requirement. The spokesperson for the Employer experts said that they could only support the Worker experts' proposal in the Recommendation if the remainder of the first paragraph after "is operated safely" was deleted. The Worker expert from Argentina only agreed to delete the words "and any processing of the catch". The Government expert from Norway and the Government observer from the United Kingdom felt that the problem persisted with regard to "fishing operations". The Chairperson concluded that there was no consensus.

129. The Worker experts proposed to merge paragraph 1 in the Office text for the Convention with Paragraph 1 of the Recommendation, which related to a document specifying the minimum level of manning, into a new paragraph 1 for the Convention. The draft consolidated maritime labour Convention (CMLC) provided for a minimum safe manning document, and the IMO SOLAS Convention usually did not cover fishing vessels. The Government expert from South Africa supported the proposal, stating that there could not be port state control without a safe manning document to refer to. The Government expert from Norway disagreed, as the fishing Convention was not the right place for a safe manning document. Except for the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), the ILO was not the right organization to deal with that matter. Safe manning documents for merchant vessels were regulated by the IMO SOLAS Convention. At present there was no safe manning document in force for fishing vessels. Should there be one, it would have to be built on the IMO document. The Government observer from Denmark

shared that view since, on fishing vessels, port state control would only take place in case of complaint; it could not constitute the reason to have such a document. The CMLC did not define the minimum safe manning document, which only existed through the SOLAS Convention. The Office should study the question in greater depth. The spokesperson for the Employer experts agreed. The Executive Secretary recalled that Article 34 of Report V (1) for the 93rd Session of the ILC in 2005 provided that an inspection could take place if there had been a complaint or if a vessel did not conform to the standards of the Convention. The Chairperson noted the absence of consensus.

130. The Chairperson asked for further comments on paragraphs 2, 3 and 4 of the Office text. The Government expert from Canada found that the bracketed part of paragraph 2 was drafted in collective agreement language. It was not the right place for that level of detail and would constitute a potential barrier to ratification. The Government experts from Chile and Norway, the Government observer from the United Kingdom and the spokesperson for the Employer experts supported that position and suggested either to delete the phrase or to move it to the Recommendation. The Government observer from France agreed with paragraphs 2-4. The Government expert from Spain found the reasons allowing for temporary exceptions in paragraph 3 too vague. The words “limited and specified reasons” should be replaced with “objective or technical reasons or for reasons solely related to the organization of labour and respecting the general principles for the protection of health and safety of workers”. That proposal had been supported by the European Commission and was inspired from European Union Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of the organization of working time to cover sectors and activities excluded from that Directive. The Government observer from France disagreed because the proposal added constraints not encountered in Directive 2000/34/EC, nor in Convention No. 180, which contained the same provision but allowed for exceptions through collective agreements. The Worker experts shared that view. The Government expert from Norway agreed, noting that, even if the wording had been taken from Directive 2000/34/EC, it was important not to take it out of context. The Directive contained an essential provision allowing for derogations through collective bargaining, which made it viable for the fishing sector. The Worker expert from Argentina suggested removing the square brackets and keeping the entire paragraph 2. The Government expert from South Africa felt that, if the three paragraphs applied to vessels over 24 metres in length, they should be moved to the Recommendation, in which case the need for paragraph 3 would fall away. The period of voyage should be specified. The Chairperson concluded that as there was no consensus the text would be left as it was.

#### *Fishers’ work agreement*

131. The Government expert from Norway, speaking on behalf of the Government experts, said that that item applied to fishers on all vessels, not just on large vessels. Even the requirement of a written work agreement was not more stringent for large vessels since, in view of the numerous items required in Report V (1) for the 93rd Session of the ILC in 2005, the work agreement would, de facto, have to be in written form. Although governments had not discussed the proposed wording of the Office text, in principle, paragraphs 1 and 2 of the Office text could be moved to the part of the Convention applying to all fishing vessels. Paragraph 3, which was between square brackets, should be retained as a recommendation for large vessels. The Government expert from Chile and the Worker experts disagreed, stating that paragraphs 1-3 should stay in the part of the Convention applicable to vessels over 24 metres in length. The spokesperson for the Employer experts could not support either of those positions expressed and suggested to move all paragraphs to the Recommendation.

132. The Employer expert from the Netherlands was concerned about requiring a written contract (paragraph 1) for all fishing vessels and inquired whether a non-written contract had implications for the labour relationship. A representative of the Office explained that, in most countries, a labour relationship was deemed to exist even without a written contract. The Employer expert from the Netherlands cautioned that the highest court for social security disputes in the Netherlands had ruled that a labour relationship did not exist without a written contract and had thus refused the seafarers/fishers concerned the social security benefits due to them, precisely because the Seamen's Articles of Agreement Convention, 1926 (No. 22) and the Fishermen's Articles of Agreement Convention, 1959 (No. 114), as implemented in the Dutch labour law for seafarers and fishers, prescribed a written contract for all seafarers and fishers. Thus, such a general requirement could have a negative impact on fishers, given that non-written contracts were often a reality in the fishing sector.

133. The Employer experts further questioned the inclusion of the term "fishing vessel owner" in paragraph 2, since the employer was often not the fishing vessel owner, but a contractor. The Executive Secretary clarified that Article 1, paragraph (d), of the proposed Convention in Report V (1) for the 93rd Session of the ILC in 2005 considered as "fishing vessel owner" the owner of the fishing vessel or any other organization or person who has assumed the responsibility for the operation of the vessel. Nevertheless, the Employer expert from the Netherlands felt that Article 1(d) did not completely solve the problem of employment services posting fishers on vessels. The Employer experts said that it was necessary clearly to identify the party contracting with the fisher. The Government expert from Norway indicated that the CMLC had solved the problem of workers being employed by multiple employers on a single vessel by establishing that it was the role of the shipowner to ensure that they had work agreements. The Government observers from France and the United Kingdom shared that view. The Office should redraft paragraph 2 to the effect that the employer and the fisher would sign the work agreement, while the owner would ensure that fishers had a work agreement. The Employer experts agreed but had concerns about self-employed fishers. The Government observer from Denmark pointed out that Article 16 of the proposed Convention accommodated those concerns.

### *Repatriation rights*

134. The Government expert from Norway, speaking on behalf of the Government experts, stated that the provisions concerning that item should apply to all vessels on an international voyage, not just those above a certain size. Although governments had not discussed the proposed wording of the Office text, in principle, paragraphs 1-4 could be moved to the part of the Convention applicable to all fishing vessels. The Government experts did not support the Worker experts' proposal for the Recommendation text, since the Office text already covered most of it. The Government observer from the United Kingdom believed that Article 18 of the proposed Convention adequately covered that issue, as different levels of protection for seafarers and fishers did not make sense. The fact that the Worker experts' proposal for the Recommendation was drawn from the CMLC only confirmed that. Moreover, if additional repatriation provisions for large vessels were created, there would be two different sets of repatriation rules, one for vessels over 24 metres, and one for vessels under 24 metres governed by Article 18. The Government expert from South Africa and the Government observer from Namibia shared that view. The Worker experts insisted on the need for repatriation provisions for vessels over 24 metres, as smaller vessels were less likely to venture into international waters. The question was not one of application but of degree of application. There had been proposals to delete Article 18, and the link with the CMLC would not work because the fishing Convention would be finalized before the CMLC. The Employer experts preferred repatriation provisions to apply to all vessels and found the Workers' proposal for the Recommendation unnecessary.

*Recruitment and placement*

135. The Government expert from Norway, speaking on behalf of the Government experts, said that length was not a relevant parameter for that provision. Applying those provisions only to large vessels risked having different systems for recruitment and placement for different fishers. Although governments had not discussed the proposed wording of the Office text, in principle, the provisions could be moved to the part of the Convention applicable to all fishing vessels. The spokesperson for the Employer experts proposed modifying the Office text by replacing “only after consultation” at the end of paragraph 1 with “in accordance with national law and practice”. The two provisions should apply to all vessels and should be moved to the Recommendation. The Worker experts said that the provisions belonged in the Convention and should apply to vessels of 24 metres in length or more. During the previous ILC, however, all parties desired flexibility for smaller vessels. It was in that spirit that those provisions had been placed in the section for large vessels. Moreover, size might not be the only factor determining whether or not more than the minimum standards should apply. The period the vessel remained at sea might also be a determining factor.

136. The Government observer from Denmark noted that the Government experts’ position that those provisions should apply to all vessels was born from the desire not to exclude certain groups of fishers from having fundamental rights. A compromise could be to adopt an additional provision: “Nothing in this Article shall be deemed to prevent Members from extending these provisions to all fishing vessels, after consultation.” That could also be used as a model for previous items. There was already a similar provision in the section on accommodation. The proposal would give governments the possibility to extend certain fundamental rights to all fishers. The secretary of the Worker experts, the Government expert from Norway and the Government observer from Namibia supported that position, as it preserved flexibility for smaller vessels while being promotional. The spokesperson for the Employer experts also indicated support but added that the provision should be moved to the Recommendation so that governments could apply it as they saw fit. The Chairperson noted that there were no Government experts’ objections to the proposal of the Government observer from Denmark. The proposal had been noted by the Office and the issue would be revisited at the next ILC.

137. The Worker experts also proposed to modify the first sentence of paragraph 1 to read: “... ensure that the service is operated in an orderly manner that protects and promotes fishers’ employment rights as provided in this Convention and in national laws.” The proposal dealt with the problems that existed in some countries regarding the operation of recruitment and placement services. Recruitment services for fishers should protect fishers and their rights and should promote, as part of the employment system, the retention of any public service operated by a member State, as well as the rights contained in those future provisions. That text had been taken from, and was practically identical to, Standard A1.3 of the CMLC. Several Government experts and observers had difficulties with the term “promote”, found in the Worker experts’ proposal. In particular, the Government observer from the United Kingdom wondered if the Meeting could not limit itself to Article 18, which met the same purpose. Assuming a member State already had implementing legislation, he asked whether promotion would then mean establishing additional services for fishers. The Government expert from Norway suggested that the text could be moved to the Preamble, as it applied to the entire Convention. But it was unclear how such a promotional provision might be implemented in national legislation. A representative of the Office explained that the implications of promotional language on national law varied depending on where that language appeared in a Convention. If such text appeared in an operational paragraph, governments would be required to provide concrete information. The Worker expert from Argentina conceded that the text could be moved to the Preamble. The Chairperson indicated that the placement of the text would be left to the Office.

138. The Government expert from South Africa expressed concern about the requirement of “a standardized system of licensing or certification”. He observed that the Private Employment Agencies Convention, 1997 (No. 181), did not require a country which ratified it to have a system of registration. The Government expert from Chile expressed a similar concern indicating that Chile did not have a public service for recruitment, relying solely on the services of recruitment agencies. The Government expert from Norway said that his country did not have a system of licensing and certification either, but relied on the last part of that phrase, which stated that those private agencies could operate in conformity with some “other form of regulation”.

#### *Payment of wages*

139. The Government expert from Norway, speaking on behalf of the Government experts, said that that provision should also apply to all fishers, possibly in an expanded Article 19. Some Government experts had felt that the duration of the voyage could be included in the provision to ensure that earnings were transmitted to fishers’ families. The Government expert from South Africa highlighted two separate concepts in the provision: wage payment and wage protection. An Employer expert from the Netherlands said that, while there were no major concerns with the text of the provision, it should be moved to the Recommendation. The Meeting agreed to change the wording “Members shall ensure” to “Members shall require”, as it was not clear how governments could “ensure” regular payment. The Government expert from Norway, speaking on behalf of the Government experts, and referring to the Recommendation text on payment of wages, stated that, given the discussion on international voyages, that text was probably superfluous. The Government expert from Chile and an Employer expert from the Netherlands supported the proposed text as drafted by the Office.

#### *Medical care*

140. The Government expert from Norway, speaking on behalf of the Government experts, said that those provisions also applied to all vessels. Some Government experts said that Article 24 was already sufficiently detailed. The spokesperson for the Employer experts said that medical care was applicable to all fishers, and that the provisions found in Report V (1) were sufficient.

141. The Worker experts had suggested expanding the title to read “Medical care and fishing vessel owners’ liability” and had also proposed the following Convention provisions for medical care, in addition to those proposed in the Office text, which should apply to vessels over 24 metres:

1. Each Member shall ensure that all fishers on vessels that fly its flag are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board.
2. The protection and care under the above paragraph shall, in principle, be provided at no cost to the fisher.
3. Members shall ensure that measures providing for health protection and medical care (including essential dental care) for fishers working on board a vessel that flies their flag are adopted which:
  - (a) ensure the application to fishers of any general provisions on occupational health protection and medical care relevant to their duties, as well as of special provisions peculiar to work on board fishing vessels;
  - (b) ensure that fishers are given health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary

medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise;

- (c) give fishers the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable;
- (d) ensure that, to the extent consistent with the Member's national law and practice, medical care and health protection services while a fisher is on board ship or landed in a foreign port are provided free of charge to fishers; and
- (e) are not limited to treatment of sick or injured fishers but include measures of a preventive character including health promotion and health education programmes.

4. Members shall adopt laws and regulations establishing requirements for on-board hospital and medical care facilities and equipment and training on vessels that fly their flags. (CMLC, R.4.1.1-2, A4.1 and A4.3.)

142. The Workers had additionally proposed a new Convention section entitled "Fishing vessel owners' liability" with the following provisions:

1. Each Member shall adopt laws and regulations requiring that owners of fishing vessels that fly its flag are responsible for health protection and medical care of all fishers working on board the fishing vessels in accordance with the following minimum standards:

- (a) fishing vessel owners shall be liable to bear the costs for fishers working on their fishing vessels in respect of sickness and injury of the fishers;
- (b) fishing vessel owners may obtain insurance coverage to provide compensation in the event of the death or the long-term disability of fishers due to an occupational injury, illness or hazard;
- (c) fishing vessel owners shall be liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured fisher has recovered, or until the sickness or incapacity has been declared of a permanent character;
- (d) fishing vessel owners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement.

2. National laws or regulations may limit the liability of the fishing vessel owners to defray the expense of medical care and board and lodging to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

3. Where the sickness or injury results in incapacity for work the fishing vessel owners shall be liable:

- (a) to pay full wages as long as the sick or injured fishers remain on board or are left behind in the territory of a State other than the Member;
- (b) to pay wages in whole or in part as prescribed by national laws or regulations from the time when the fishers are repatriated or landed until their recovery or until they are entitled to cash benefits under the legislation of the Member concerned.

4. National laws or regulations may limit the liability of the fishing vessel owners to pay wages in whole or in part in respect of a fisher no longer on board to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

5. National laws or regulations may exclude the fishing vessel owners from liability in respect of:

- (a) injury incurred otherwise than in the service of the vessel;
- (b) injury or sickness due to the wilful act, default or misbehaviour of the sick, injured or deceased fisher;
- (c) sickness or infirmity intentionally concealed when the engagement is entered into.

6. In so far as such liability is assumed by the public authorities, national laws or regulations may exempt the fishing vessel owners from liability to defray the expense of medical care and board and lodging and burial expenses.

7. Fishing vessel owners or their representatives shall take measures for safeguarding property left on board by sick, injured or deceased fishers and for returning it to them or to their next of kin. (CMLC, A4.2.)

143. The Worker expert from Argentina affirmed that medical care and fishing vessel owners' liability concerning medical care were especially important in the case of large vessels. The importance of those issues was not limited to large vessels, but extended to vessels with complex machinery on board, which increased the potential for accidents. The areas of operation should also be considered in that context. The concerns of the Government experts could be addressed by the Government observer of Denmark's proposal on creating a provision to allow Governments to apply those provisions to all vessels. The secretary of the Worker experts indicated that a link had been made between those provisions and social security, in an attempt to link long-term social security benefits and longer term social security benefits and to address the problem of non-domiciled fishers. The references to social security were made in anticipation of a forthcoming complex discussion and were proposed as a possible solution to that issue. The spokesperson for the Employer experts believed that the proposed change to the heading of the section was not necessary. Owner liability could vary according to national law and practice and was adequately covered in the provisions of Report V (1). In view of the many references to social security, a complicated issue that had not yet been discussed, the Worker group's proposal was not acceptable. Several Government experts and observers objected to the discussion of social security in the context of medical care, and the Government observer from Denmark advocated separate consideration of fishing vessel owner liability. In any event, the amount of detail was too extensive for the scope of the Meeting. The Meeting decided to include the proposals into the report in order for them to be considered prior to the ILC in 2005.

144. The observer from the International Maritime Health Association also suggested that the Convention should provide that the medical guide to be carried on large vessels should be based on or equivalent to the International Medical Guide for Ships.

#### *Occupational health and safety and accident prevention*

145. The Government expert from Canada said that, due to the importance of safety and health, the provisions on occupational safety and health should apply to all vessels. The Government experts from Chile and Spain and the Government observer from France shared that view. The Government expert from South Africa said that, while in principle it was desirable that the same provisions regarding occupational safety and health applied to all vessels, in practice it was necessary to have different regimes for larger and smaller vessels. However, he did support the requirement in paragraph 4 for basic safety training for all fishers. The secretary of the Worker experts shared that view because of the differences among the world's fishing vessels. The more industrial a vessel became, the more extensive the applicable regime needed to be. The debate at the ILC and the calls for flexibility for smaller vessels pointed to a need for demarcation between larger and smaller vessels, even if later on the standards might be extended to the smaller vessels. The words in brackets "and engaged in international voyages" should be deleted so that the provisions applied to vessels over 24 metres. The Government expert from Norway agreed with the Worker experts and stressed the need for risk assessment, even if that meant that the requirements were only brought in for larger vessels and extended to others in time, as made possible by the Danish compromise proposal. Paragraph 6 should be moved to the section on medical care. In paragraph 4, the text in square brackets should be deleted, as there should be no exceptions to such a basic requirement. The Worker expert from

Argentina supported that position. The spokesperson for the Employer experts felt that Article 26 of the proposed Convention adequately dealt with occupational safety and health and accident prevention and risk assessment.

146. The Government expert from Spain said that it was unclear who had the responsibility to evaluate risks and manage health and safety. It should be emphasized that the overall responsibility for risk assessment fell to the fishing vessel owner. Thus, in the first paragraph, the words “an evaluation of the risks for health and safety on board fishing vessels” should be added after “establish”, and in the second paragraph, the wording “on how to assess and manage risks to safety and health” should be replaced with “on risks to safety and health on board fishing vessels”. The Employer expert from the United Kingdom said that the skipper was ultimately responsible for risk assessment whether he or she was the owner or not. The skippers – with the full involvement of their crews – were the only people with the intimate working knowledge of their vessels capable of compiling valid risk assessments. The Government observer from the United Kingdom said that it was the responsibility of governments to ensure that there was legislation that required the assessment to be carried out; it was the responsibility of the owner to ensure that the assessment was carried out; and that of the skipper to carry it out. The Government expert from Norway shared that view and requested that the Office text reflect the responsibilities more clearly. The Government observers from Denmark and Namibia felt that the issue was adequately covered in Article 8 of the proposed Convention. The Government expert from Chile supported the amendment proposed by Spain to paragraph 2, and the secretary of the Worker experts accepted both proposals by the Government expert from Spain.

#### *Social security*

147. The Government observer from the United Kingdom proposed an amendment to Article 27 of the proposed Convention: “Members shall ensure that fishers who are subject to their social security legislation and, to the extent provided in their national law, their dependants shall be entitled to benefit from social security protection no less favourable than that enjoyed by shore workers.” The new text was drawn from the CMLC. The Government observer from France supported that position. The Government expert from Japan said to add “ordinarily resident in its territory” after “fishers” and also to add “resident in its territory” after “workers”, since it was not the flag State but the State of residence that should be responsible for the provision of long-term benefits to fishers. He also stated that he would take the proposal by the United Kingdom back home to give it serious consideration. Furthermore, the Government observer from the United Kingdom could not support the written amendment submitted to the Office by the Government of the Netherlands as it seemed too complicated. In the Office proposal, the words “including bilateral or multilateral social security agreements” should be added after “cooperation”, in order to enable the extension to non-nationals. The Government observer from France shared that view.

148. An adviser to the Government observer from France shared the concern of the observer from the United Kingdom about specifying the draft text on the issue of social security. At the same time, he said that, as it was a delicate subject on which it was difficult to reach consensus given the huge diversity of situations existing in different countries, it was important not to end up with a proposal that was either too cumbersome or too detailed. Care should be taken to produce an instrument that would be ratifiable by as many States as possible. In that respect, he suggested that a number of approaches could be taken up, some of which were covered in the text proposal recently submitted by the Government of the Netherlands and broadly based on the draft consolidated maritime labour Convention. It would be necessary:

1. to clearly specify the responsibility incumbent on the flag States: on that point France shared the view of the Netherlands, which favoured the principle that the flag State should provide cover for the fishers resident in the territory of that State;
2. to stress the need, also contained in the Netherlands proposal, for a clause allowing a derogation from that principle when regional integration systems were in place;
3. to put in place a provision to promote international cooperation, in particular through bilateral agreements, in order to settle issues of coordination and of continuity in the acquisition of rights;
4. to know whether or not to specify, as the Netherlands proposal did, the branches comprising social security coverage, and above all to examine the relevance of requiring that at least two of them were covered by the member States when they ratified the Convention. In his view, a large number of countries might find that requirement excessive, given that the most important branch, the branch relating to occupational accidents and diseases, was the object of compulsory protection under Report V (1), Article 29. Given how dangerous the maritime fishing occupations were, it was clear that such coverage should be given priority;
5. lastly, for countries with only incomplete, or even non-existent, systems to consider the possibility of providing for progressive coverage on a step-by-step basis.

149. The Government observer from Denmark said that the text from the Government of the Netherlands was a good basis for discussion.

150. The Government expert from Japan supported the additional text suggested by the Office under the heading “Social security” on page 7 of TMEFS/2004. He pointed out that some wording in Article 28 such as “the principles of equality of treatment” and “take into account the situation of non-national fishers” was unclear and misleading. He proposed that Article 28 should be deleted and replaced by the Office’s suggested text.

151. The secretary of the Worker experts said that there were three fundamental issues which needed to be addressed. The first was to question the extent to which the problems faced in fishing were the same as the problems faced in maritime transport. The Worker experts believed that there was not much common ground as the overwhelming majority of fishers worked on vessels that flew the flag of the country they resided in and there were much fewer non-domiciled fishers than seafarers. The second issue was the situation of the European Union, which declared provision A.4.5.4 of the CMLC necessary for ratification by European Union members. That was more an issue for seafarers. The third issue was that the Social Security (Minimum Standards) Convention, 1952 (No. 102), was more relevant in the fishing sector. The Meeting should not be seeking to replicate the Conventions for seafarers on that issue.

152. The spokesperson for the Employer experts recalled that there was a fundamental issue that the Meeting needed to consider regarding social security, that being the difference between developed and developing countries.

153. The Government expert from Norway observed that the social security system for fishers in Norway differed from the main social security system, mainly because of the self-employed status of fishers.

154. The Chairperson said that the Office would take note of the views expressed in the brief discussion.

**Discussion of provisions for accommodation, large fishing vessels and social security discussed at the Tripartite Meeting of Experts on the Fishing Sector**

155. The Secretary-General introduced document TMEFS/2004/5 (at Annex I to this report), which contained provisions on which there had been consensus – both original and new text – as well as provisions on which there had been no consensus – the original Office text. As had been decided at the start of the Meeting, the Office text had been left untouched wherever consensus was not reached. Thus, the document needed to be read in conjunction with the report of the discussion (TMEFS/2004/4), which summarized the issues, the positions taken during the Meeting and the outcome of the consideration of the issues. Both the experts' points made during the Meeting and the comments received by the end of the year from constituents would be taken into account when the Office formulated the provisions to be included in Report V (2) for the 93rd Session of the ILC.

156. The Government expert from Norway reported that the Government experts and observers had only briefly looked through the document, focusing their discussions on the way forward. As a result of those discussions, and in the light of the explanations provided by the Secretary-General, at the next session of the Fishing Committee they favoured creating two working groups to concentrate on accommodation and social security.

157. The Secretary-General informed the Meeting that, following the Conference's decision in June 2004 to establish a working party to look at accommodation in June 2005, the Office had organized for interpretation to be made available if the Committee set up a working party during the next session of the ILC. Thus, a working party could meet in parallel with the Committee. Should additional working parties be required, they would have to be held within the existing resources, for example one after the other.

158. The spokesperson for the Worker experts said that the words "and other" had erroneously been deleted from paragraph 1 of the provisions for a Convention for all vessels on bedding, mess utensils and miscellaneous. Secondly, the Meeting had agreed to replace "water" with "drinking water". That should also be taken into account in the title of the section.

159. The spokesperson for the Employer experts regretted that the text made it difficult to distinguish where consensus had been reached, where modifications to text had been agreed upon, and where consensus had not been reached. The text should show where there had been no consensus. For instance, the title of the column "Convention – Large vessels and specific vessels" should have square brackets around the word "Convention" to indicate that there was no consensus. The Government expert from Japan noted earlier comments by the Secretary-General that it would be difficult to distinguish between the different degrees of consensus and agreed with the Office method, provided that there was a note stating that the text did not necessarily reflect the consensus of the Meeting. He also stated that there were problems with the use of the word "proposed" in the title of the new document. That might not reflect the outcome. The Government observer from the United Kingdom saw no need for text to be added to the document indicating experts' differing views. All the concerns that had been raised in the Meeting would be reflected in the report, which was the correct place, not in TMEFS/2004/5. That text would remain open for discussion and additions were unnecessary. However, he agreed with the Government expert from Japan that the title of the document was inappropriate. The spokesperson for the Worker experts opposed the proposal to insert square brackets as suggested by the Employer experts, and agreed with the Government observer from the United Kingdom. The Government expert from Canada agreed with the proposal made by the Government expert from Japan to change the title. The secretary of the Employer experts, in the light of what had been said, did not request a visual distinction of the various degrees of consensus in

the current text, provided that there was a note of the concern of the Employer experts relating to the title “Convention – Large vessels and specific vessels”.

160. The Secretary-General reiterated that the document should not be read on its own. In response to the proposal made by the Government expert from Japan, the title of the document could be changed to “Provisions for accommodation, large fishing vessels and social security discussed at the Tripartite Meeting of Experts on the Fishing Sector”. An asterisk after “Sector” with a footnote could explain that the text contained provisions on which there had been consensus and provisions on which there had been no consensus and refer to the report.

161. The Government observer from the United Kingdom fully agreed. The secretary of the Worker experts felt that the proposal made by the secretary of the Employer experts would be difficult and confusing. The Government expert from Chile underlined the importance of minority views in any discussion. He continued to support the establishment of requirements for larger vessels, since not all vessels could be governed by the same provisions.

162. The Legal Adviser informed the Meeting of proposed changes in the works of the Drafting Committee. The Legal Adviser said that it was proposed that the next session of the Conference should, on a trial basis, modify the drafting committee of the technical committee set up to examine work in the fishing sector. The drafting committees of Conference technical committees were in essence responsible for ensuring that texts were legally correct and for harmonizing the English and French language versions of proposed instruments. The work involved was complex, owing to the amendments and subamendments made to texts. Under the terms of article 59, paragraph 1, of the Standing Orders of the Conference, drafting committees had to be set up during the early sittings of the technical committees.

163. If the Officers of the technical committee noted that there was a consensus, the Committee could request its drafting committee to draft provisions which would then be submitted to the technical committee in the form of amendments, the provisions relating to time limits and support for amendments not being applicable in such cases. That “innovation” in no way affected the normal functions of the committee drafting committee or those of the Conference Drafting Committee.

164. The secretary of the Worker experts thanked the Legal Adviser for that helpful suggestion. The spokesperson of the Employer experts added that she had taken note and that the Employers’ group would take a decision on that suggestion at the next session of the ILC.

### **Closing remarks**

165. The Secretary-General pointed out that the Meeting had a number of positive developments and that it had given additional possibilities to the constituents to make inputs to the draft text of the instrument and substantially increase their ownership of the process. There had not been enough time to discuss all important issues during the last session of the ILC, and the Meeting had provided an opportunity to discuss accommodation, larger vessels and social security.

166. The spokesperson of the Worker experts said that, while some progress had been made, there were a large number of unresolved issues. However, a structure was now in place which would provide the flexibility required for fishers engaged in small-scale or artisanal fisheries, while preserving many of the existing standards. It would enable a balance between the flexibility and meaningful standards to be established and a large number of fishers who were not currently covered could be. At the same time, the Convention could promote the movement towards higher standards. The Workers considered that some issues were so

fundamental that there was a need to retain some of the detailed technical requirements found in existing instruments. That was particularly important in the case of accommodation and medical care, and everyone who had ever been on a fishing vessel would know why. The Workers were concerned that the issue of sleeping rooms had not been adequately addressed. He hoped that the Meeting had provided enough guidance to the Office and that they would be able to produce a high quality text, which would enable the discussions to be concluded the following year. He stressed that the Workers were not in the business of adopting meaningless standards or of increasing protection for some at the expense of others. The Workers very much hoped that it would be possible to adopt a balanced Convention, which provided protection for fishers involved in small-scale fisheries and artisanal fisheries while, at the same time, preserving the essential measures contained in existing ILO Conventions and promoting higher standards for all. There was a need to approach the negotiations in a positive manner and accept that some of the issues were very sensitive and very important to fishers. The Workers did not want to be put in the position where they would have to conclude that they would be better off with the existing standards and the various documents of guidance, which were being finalized. The Workers wished to move the process forward in a positive manner and were open to collaborate with other participants on outstanding matters before the next session of the Fishing Committee. He thanked the Chair for steering the Meeting through sometimes turbulent waters and choppy seas.

167. The spokesperson for the Employer experts thanked all experts and observers for their helpful and interesting contributions. Whenever experts met, diverse opinions would be voiced. The Meeting had shown that all participants were united in their passion for and commitment to the fishing sector. The discussions and, in particular, the Worker experts' paper would be of great use for the preparations for the next session of the Committee.

168. The Government member of Norway, speaking on behalf of the Government group, remarked that there had been some progress and that the group meetings especially had been of great help to his group. The discussions held were very constructive and very valuable contributions had been made, which reflected the diversity of views on those issues.

169. The Chairperson said that it had been a pleasure to chair the Meeting. The report of the discussions, as well as the revised versions of the proposed text, would be of great assistance to the Office in preparing the discussion documents for the next and final debate on the fishing standard. He thanked all participants, in particular the spokespersons, for their constructive and cooperative participation. Much had been accomplished by the Meeting, but the real challenge was to come.

170. After examining the text of the provisions discussed at the Meeting, the experts adopted it.

171. The draft report was sent to the experts and other participants for review. Changes received by February 2005 have been incorporated in the final version.

Geneva, February 2005.

*(Signed)* J. O'Neill,  
Chairperson.

ANNEX I

INTERNATIONAL LABOUR ORGANIZATION

Sectoral Activities Programme

**Provisions for accommodation, large fishing vessels  
and social security discussed at the Tripartite  
Meeting of Experts on the Fishing Sector**

Geneva, 13-17 December 2004

This text contains provisions on which there was consensus and provisions on which there was no consensus at the Tripartite Meeting of Experts on the Fishing Sector.

## Part V. Accommodation and food: Proposed provisions

[Elements on accommodation provisions for inclusion in a proposed new Annex II and possibly Part VII.]

1. The following shall apply to all decked fishing vessels. Where the length of the vessel as defined in the Convention is not known, the overall length may be used as the means of determining the size of the vessel with regard to the provisions of this Part of the Convention. In such cases, the equivalent overall lengths to lengths specified are:

- 15 metres length (L) – overall length equivalent: {16.5} metres;
- 24 metres length (L) – overall length equivalent: {27} metres;
- 45 metres length (L) – overall length equivalent: {50} metres.

2. The competent authority may, after consultation, permit variations of the provisions of this section for fishing vessels ~~operating only within the [waters] of the Member and~~ normally remaining at sea for less than 24 {36} hours where the fishers do not live on board in port. In the case of such vessels, the competent authority shall ensure that adequate facilities are provided so as to ensure that the fishers concerned have adequate facilities for resting, eating and sanitation purposes. ~~[Such variations shall be reported under [provision of the Convention].]~~

3. Any variations made by a Member under paragraph 2 above shall be indicated in its first report under article 22 of the Constitution of the International Labour Organization.

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
Application	<del>The provisions of this Part shall apply to new fishing vessels. Notwithstanding the requirements of Articles 2 and 3 of this Convention,</del> The competent authority shall also apply the requirements of this Part of the Convention to existing vessels, when and in so far as it determines that this is reasonable and practicable.	The requirement for vessels of [24] metres in length or more may, after consultation, be applied to vessels of [15 metres in length or more to less than 24] metres in length where the competent authority determines, as a result of consultation, that this is reasonable and practicable. <u>Fishers working on board feeder vessels which do not have appropriate accommodation and sanitary facilities shall be provided with such facilities on board the mother vessel.</u>	When establishing requirements or guidance, competent authorities should take into account relevant international guidance on accommodation, food, and health and hygiene relating to persons working or living on board vessels [including the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels and the Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels]; <u>and any revisions thereof.</u>

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
Planning and control	<p>The competent authority shall satisfy itself that, on every occasion when:</p> <ul style="list-style-type: none"> <li>– the vessel is newly constructed;</li> <li>– the crew accommodation of the vessel has been reconstructed or substantially altered; or</li> <li>– the vessel <del>changes its flag is registered or re-registered;</del></li> </ul> <p>such fishing vessel complies with the requirements of this Part of the Convention. [Definition: the term “re-registered” means registered on the occasion of a change in the territory of registration of the vessel.]</p>	<p><del>When fishers are carried on board for the sole purpose of operating from small vessels and are not part of the fishing vessel’s crew, such fishers shall be provided with suitable accommodation and sanitary facilities.</del></p> <p>For vessels of [24] metres in length or more, on every occasion when:</p> <ul style="list-style-type: none"> <li>– the vessel is newly constructed; or</li> <li>– the crew accommodation of the vessel has been reconstructed or substantially altered;</li> </ul> <p>the competent authority shall require detailed plans of, and information concerning, accommodation to be submitted to the competent authority, or an entity authorized by it, for approval.</p> <p>For vessels of [24] metres in length or more, on every occasion when:</p> <ul style="list-style-type: none"> <li>– the vessel <del>changes its flag is registered or re-registered;</del> or</li> <li>– the crew accommodation of the vessel has been reconstructed or substantially altered;</li> </ul> <p>the competent authority shall inspect the accommodation for compliance with this Convention. In addition to the above inspections, the competent authority may carry out additional inspections of crew accommodation at its discretion.</p>	<p>Where the competent authority requires an initial or periodic survey or inspection for other purposes (e.g. safety survey) consideration should be given to carrying out an inspection of crew accommodation at the same time.</p> <p>The competent authority should work with relevant organizations and agencies to develop and disseminate educational material and on-board information and guidance concerning safe and healthy accommodation and food on board fishing vessels.</p>

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
Design and construction	<p>There shall be adequate headroom in all accommodation. For spaces where fishers are expected to stand for prolonged periods, the minimum headroom shall be prescribed by the competent authority.</p> <p><u>There shall be no direct openings into sleeping rooms from fish rooms and machinery spaces, except for the purpose of emergency escape. Direct openings or from galleys, storerooms, drying rooms or communal sanitary areas shall be avoided where reasonable and practicable.</u></p> <p>The accommodation shall be adequately insulated; the materials used to construct internal bulkheads, panelling and sheeting, floors and joinings, shall be suitable for the purpose and shall be conducive to ensuring a healthy environment.</p> <p>Sufficient drainage shall be provided in all accommodation spaces.</p> <p>All practicable measures shall be taken to protect fishing vessels against the admission of flies and other insects, particularly when those vessels are operating in mosquito-infested areas.</p>	<p>The competent authority may authorize public institutions or <del>recognized other</del> organizations or individuals that <del>are it recognizes as</del> competent and independent to carry out the above inspections. [Complaint procedures to be moved to the enforcement section.]</p> <p>For vessels of [24] metres in length or more, the minimum permitted headroom in all accommodation where full and free movement is necessary shall not be less than <u>200</u> <del>{208}</del> <del>{198}</del> centimetres.</p> <p>The competent authority may permit some limited reduction in headroom in any space, or part of any space, in such accommodation where it is satisfied that such reduction: (i) is reasonable; and (ii) will not result in discomfort to the fishers.</p> <p>For vessels of [24] metres in length or more, there shall be no direct openings into sleeping rooms from fish rooms and machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas; that part of the bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or another approved <del>material substance</del> and be watertight and gas-tight.</p>	<p><u>External bulkheads of sleeping rooms and mess rooms should be adequately insulated. All machinery casings and all boundary bulkheads of galleys and other spaces in which heat is produced should be adequately insulated when there is a possibility of resulting heat effects in adjoining accommodation or passageways. Care should also be taken to provide protection from heat effects of steam and/or hot water service pipes.</u></p> <p><u>Internal bulkheads should be of approved material which is not likely to harbour vermin. Sleeping rooms, mess rooms, recreation rooms and passageways in the crew accommodation space should be adequately insulated to prevent condensation or overheating.</u></p> <p><u>Main steam and exhaust pipes for winches and similar gear should, whenever technically possible, not pass through crew accommodation or through passageways leading to crew accommodation; where they do pass through such accommodation or passageways, they should be adequately insulated and encased.</u></p>

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
	Emergency escapes shall be provided from all crew accommodation spaces as necessary.		<p><u>Inside panelling or sheeting should be of material with a surface easily kept clean. Tongued and grooved boarding or any other form of construction likely to harbour vermin should not be used.</u></p> <p><u>The competent authority should decide to what extent fire prevention or fire-retarding measures should be required to be taken in the construction of the accommodation.</u></p> <p><u>The wall surface and deck heads in sleeping rooms and mess rooms should be easily kept clean and, if painted, should be light in colour; lime wash should not be used.</u></p> <p><u>The wall surfaces should be renewed or restored as necessary.</u></p> <p><u>The decks in all crew accommodation should be of approved material and construction and should provide a surface impervious to damp and easily kept clean.</u></p> <p><u>Overhead exposed decks over crew accommodation should be sheathed with wood or equivalent insulation.</u></p> <p><u>Where the floorings are of composition, the joining with sides should be rounded to avoid crevices.</u></p>
Noise and vibration	The competent authority shall take measures to limit excessive noise and vibration in accommodation spaces.	For vessels of [24] metres in length or more, the competent authority shall adopt standards for noise and vibration in accommodation spaces which shall ensure adequate protection to fishers from the effects of such noise and	<u>The limits for noise levels for working and living spaces should be in conformity with the international guidelines of the International Labour Organization on exposure levels to ambient factors in the workplace and, where applicable, the specific protec</u>

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
Ventilation	<p>Accommodation spaces shall be ventilated, taking into account climatic conditions. The system of ventilation shall provide air in a satisfactory condition in all conditions.</p> <p>Wherever practicable, ventilation arrangements shall be such as to protect non-smokers from tobacco smoke.</p>	<p>vibration, including the effects of noise- and vibration-induced fatigue.</p> <p>Vessels of [24] metres in length or more shall be equipped with <u>a system of ventilation for accommodation; it shall be controlled so as to maintain the air in a satisfactory condition and to ensure sufficiency of air movement in all conditions of weather and climate</u> <del>mechanical means of ventilation or electric fans.</del> <del>Vessels operating in tropical regions shall be equipped with both mechanical means of ventilation and electric fans.</del> When practicable, ventilation systems shall be in operation at all times when fishers are on board.</p>	<p><u>tion recommended by the International Maritime Organization, and with any subsequent amending and supplementary instruments for acceptable noise levels on board ships.</u></p>
Heating (and air conditioning)	<p>Accommodation spaces shall be adequately heated, taking into account climatic conditions.</p>	<p>For vessels of [24] metres in length or more, adequate heat, through an appropriate heating system, shall be provided, except in fishing vessels operating exclusively in tropical climates. The system of heating shall provide heat in all conditions, as necessary, and shall be in operation when fishers are living or working on board, and conditions so require.</p> <p>For vessels of [24] metres in length or more, <u>with the exception of those regularly engaged in areas where</u></p>	<p><u>The heating system should be capable of maintaining the temperature in crew accommodation at a satisfactory level under normal conditions of weather and climate likely to be met with on service; the competent authority should prescribe the standard to be provided.</u></p> <p><u>Facilities for heating should be designed so as not to endanger health or safety of the fishers or the safety of the vessel.</u></p> <p><u>Radiators and other heating apparatus should be so placed and, where necessary, shielded and fitted with safety devices so as to avoid</u></p>

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
Lighting	<p>All accommodation spaces shall be adequately lighted.</p> <p>Wherever practicable, accommodation spaces shall be lit with natural light in addition to artificial light. Where natural light is provided in sleeping spaces, a means of blocking the light shall be provided.</p> <p>Adequate reading light shall be provided for every berth in addition to the normal lighting of the sleeping room.</p> <p>Where a vessel is not fitted with emergency lighting in sleeping rooms, mess rooms, passageways, and any spaces that are or may be used for emergency escape, permanent night lighting shall be provided in such spaces.</p>	<p><del>temperate climatic conditions do not require this</del> <u>operating in tropical climates</u>, air conditioning shall be provided in accommodation, the bridge, the radio room and any centralized machinery control room and shall be available in work areas, where practicable.</p> <p>For vessels of [24] metres in length or more, accommodation spaces shall be lighted to a standard established by the competent authority. The minimum standard for such lighting shall be such as to permit a person with normal vision to read on a clear day an ordinary newspaper in any part of the accommodation space available for free movement.</p>	<p><u>risk of fire or danger or discomfort to the occupants.</u></p> <p><u>Methods of lighting should not endanger the health or safety of the fishers or the safety of the vessel.</u></p>
Sleeping rooms	<p><del>Sleeping rooms shall be situated amidships or aft. The competent authority may, in particular cases, if the size, type or intended service of the vessel renders such locations unreasonable or impracticable, permit the</del></p>	<p>For vessels of [24] metres in length or more and less than [45] metres, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than [1] square metre.</p>	<p><u>Members of the crew should be provided with individual berths of adequate dimensions. Berths should not be placed side by side in such a way that access to one berth can be obtained only over another.</u></p>

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
	<p><del>location of sleeping rooms in the fore part of the vessel but in no case forward of the collision bulkhead.</del> <del>[Alternative: Where the design, dimensions and/or purpose of the vessel allow, the sleeping accommodation shall be located so as to minimize the effects of motion and acceleration.]</del> <u>but in no case forward of the collision bulkhead.</u></p> <p>The floor area per person, excluding space occupied by berths and lockers, and the number of persons per sleeping room shall be such as to provide adequate space and comfort for the fishers on board, taking into account the service of the vessel.</p> <p>The number of persons allowed to occupy each sleeping room shall not be more than six persons.</p> <p>Wherever practicable, a separate sleeping room or sleeping rooms shall be provided for officers.</p> <p>The maximum number of persons to be accommodated in any sleeping room shall be legibly and indelibly marked in some place in the room where it can be conveniently seen.</p> <p>The members of the crew shall be provided with individual berths of appropriate dimensions. Mattresses shall be of a suitable material.</p> <p>The sleeping rooms shall be so planned and equipped as to ensure reasonable comfort for the occupants and to facilitate tidiness.</p>	<p>For vessels of [45] metres in length or more, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than [1.5] square metres.</p> <p>For vessels of [24] [45] metres in length or more the number of persons allowed to occupy each sleeping room shall not be more than four persons.</p> <p>For vessels of [24] metres in length or more, sleeping rooms for officers shall be for one person wherever possible and in no case shall the sleeping room contain more than two berths.</p> <p>The competent authority may permit exceptions to the requirements of the two preceding paragraphs in particular cases if the size, type or intended service of the vessel make the requirements unreasonable or impracticable.</p> <p>For vessels of [24] metres in length or more, the minimum inside dimensions of the berths shall not be less than [1.90 by 0.68 metres].</p> <p>For vessels of [24] metres in length or more a desk suitable for writing with a chair shall be provided.</p> <p><u>The provision of separate sleeping rooms for men and women is desirable for all vessels, and shall be provided on vessels of 24 metres or more in length.</u></p> <p><del>For vessels of [24] metres in length or</del></p>	<p><u>Berths should not be arranged in tiers of more than two; in the case of berths placed along the vessel's side, there should be only a single tier when a sidelight is situated above a berth.</u></p> <p><u>The lower berth in a double tier should not be less than [0.30] metres above the floor; the upper berth should be placed approximately midway between the bottom of the lower berth and the lower side of the deck head beams.</u></p> <p><u>The framework and the lee-board, if any, of a berth should be of approved material, hard, smooth and not likely to corrode or to harbour vermin.</u></p> <p><u>If tubular frames are used for the construction of berths, they should be completely sealed and without perforations which would give access to vermin.</u></p> <p><u>Each berth should be fitted with a spring mattress of approved material or with a spring bottom and a mattress of approved material. Stuffing of straw or other material likely to harbour vermin should not be used.</u></p> <p><u>When one berth is placed over another, a dust-proof bottom of wood, canvas or other suitable material should be fitted beneath the upper berth.</u></p> <p><u>The furniture should be of smooth, hard material not liable to warp or corrode or to harbour vermin.</u></p>

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
	<p>Equipment provided shall include: berths, individual lockers sufficient for clothing and other personal effects and a suitable writing surface.</p> <p>Sleeping accommodation shall be so situated or equipped as to provide men and women with appropriate levels of privacy, as practicable.</p>	<p><del>more, men and women shall be provided with separate sleeping rooms:</del></p>	<p><u>Sleeping rooms should be fitted with curtains for the sidelights.</u></p> <p><u>Sleeping rooms should be fitted with a mirror, small cabinets for toilet requisites, a book rack and a sufficient number of coat hooks.</u></p> <p><u>As far as practicable, berthing of crew members should be so arranged that watches are separated and that no day worker shares a room with watch keepers.</u></p>
Mess rooms	<p>Vessels shall be provided with mess-room accommodation suitable for their service. Where practicable, mess-room accommodation shall be separate from sleeping quarters.</p> <p>The dimensions and equipment of each mess room shall be sufficient for the number of persons likely to use it at any one time.</p> <p>Mess rooms shall be as close as possible to the galley.</p>	<p>For vessels of [24] metres in length or more, mess-room accommodation shall be separate from sleeping quarters.</p> <p><del>For vessels of [45] metres or more, taking into consideration the number of officers on board, a separate mess-room facility for officers shall be provided.</del></p> <p>For vessels of [24] metres in length or more, there <del>shall</del> <u>should</u> be available <del>(in the mess room or elsewhere)</del> and accessible to fishers at all times: a refrigerator of sufficient capacity and facilities for making hot and cold drinks.</p>	<p>For vessels of [45] metres or more, taking into consideration the number of officers on board, a separate mess-room facility for officers <u>should</u> <del>shall</del> be provided.</p>
Sanitary accommodation	<p>Sanitary facilities [(toilets, washbasins, and tubs or showers)], appropriate for the service of the vessel, shall be provided for all persons on board. These facilities shall at least meet minimum standards of health and hygiene and reasonable standards of <u>quality comfort</u>.</p>	<p>For vessels of [24] metres in length or more, for all fishers who do not occupy rooms to which facilities are attached, there shall be provided at least one tub and/or shower, one <u>toilet water closet</u> and one washbasin for every [4] persons or less.</p>	<p><u>Toilets should be of an approved type and provided with an ample flush of water, available at all times and independently controllable.</u></p> <p><u>Soil pipes and waste pipes should be of adequate dimensions and should be constructed so as to minimize the risk of obstruction and to facilitate cleaning. They</u></p>

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
Laundry facilities	<p>The sanitary accommodation shall be such as to eliminate as far as practicable possible contamination of other spaces.</p> <p>The sanitary facilities used by women fishers shall allow for reasonable privacy.</p> <p>Cold fresh water and hot fresh water shall be available to all fishers and other persons on board, in sufficient quantities to allow for proper hygiene. The minimum amount of water to be provided may after consultation be established by the competent authority.</p> <p>Where sanitary facilities water closets are provided, they shall be fitted with ventilation to the open air, independent of any other part of the accommodation.</p> <p>All surfaces in sanitary accommodation shall be such as to facilitate easy and effective cleaning. Floors shall have a non-slip deck covering.</p>	<p>For vessels of [24] metres in length or more, facilities for washing, and-drying and ironing clothes shall be provided.</p>	<p><u>should not pass through fresh water or drinking water tanks, neither should they, if practicable, pass overhead in mess rooms or sleeping accommodation.</u></p> <p><u>Sanitary accommodation intended for the use of more than one person should comply with the following requirements:</u></p> <p>(a) <u>floors should be of approved durable material, easily cleaned and impervious to damp and should be properly drained;</u></p> <p>(b) <u>bulkheads should be of steel or other approved material and should be watertight up to at least 0.23 m above the level of the deck;</u></p> <p>(c) <u>the accommodation should be sufficiently, lighted, heated and ventilated.</u></p> <p><u>Toilets should be situated convenient to, but separate from, sleeping rooms and wash-rooms, without direct access from the sleeping rooms or from a passage between sleeping rooms and toilets water closets to which there is no other access, provided that this requirement should not apply where a toilet is located between two sleeping rooms having a total of not more than four persons. Where there is more than one toilet in a compartment, they should be sufficiently screened to ensure privacy.</u></p>

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
Facilities for sick or injured fishers	<del>Whenever necessary. Wherever possible,</del> an isolated cabin shall be <u>made available</u> <del>provided</del> for a fisher who suffers illness or injury.	For vessels of [45] metres in length or more, such facilities shall be provided in a compartment separate from sleeping rooms, mess rooms and <del>toilets-water closets</del> , adequately ventilated and heated and equipped with lines or other <u>means fittings</u> for <del>drying hanging</del> clothes.	For vessels of [45] metres in length or more, there shall be a separate sick bay. The space shall be properly equipped and shall be maintained in hygienic state.
Other facilities	<del>An</del> <u>Sufficient and adequate place</u> <del>accommodation</del> for hanging <del>oilskins</del> <del>foul weather gear</del> shall be provided outside but convenient to sleeping rooms.	For vessels of [24] metres in length or more, appropriate recreational facilities, amenities and services shall be provided for all fishers on board. <del>For vessels of less than [45] metres in length, the recreational space may be combined with the mess room.</del>	For vessels of less than [45] metres in length, the recreational space <del>might</del> <u>may</u> be combined with the mess room. <u>Recreational facilities and services should be reviewed frequently to ensure that they are appropriate in the light of changes in the needs of fishers resulting from technical, operational and other developments in the fishing industry.</u> <u>Furnishings for recreational facilities should as a minimum include a bookcase and facilities for reading, writing and, where practicable, for games.</u>
Bedding, mess utensils and miscellaneous provisions	Appropriate eating utensils; and bedding and other linen shall be provided to all fishers on board.		
Recreational facilities			

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
Communication facilities	<p>All fishers on board shall be given reasonable access to communication facilities <del>for personal reasons and at a reasonable expense</del>, to the extent practicable, <u>at a cost not exceeding the actual cost to the fishing vessel owner.</u></p>		
Galley and food storage facilities	<p><del>Satisfactory</del> Cooking equipment shall be provided on board and shall, where practicable, be fitted in a separate galley.</p> <p>The galley, or cooking area where a separate galley is not provided, shall be of adequate size for the purpose, shall be well lit and ventilated, and shall be properly equipped and maintained.</p> <p><u>Where butane or propane gas is used for cooking purposes in the galley, the gas containers shall be kept on the open deck.</u></p> <p>A suitable place for provisions, of adequate capacity, shall be provided which can be kept dry, cool and well ventilated in order to avoid deterioration of the stores. Where possible, refrigerators or other low-temperature storage shall be provided.</p>	<p>For vessels of [24] [45] metres in length or more, there shall be a separate galley.</p> <p>For vessels of [24] metres in length or more, a provisions storeroom and refrigerator <del>and</del> <del>or</del> other low-temperature storage shall be provided.</p>	
Food and drinking water	<p><u>Food and drinking water shall be sufficient having regard to the number of fishers, their religious requirements and cultural practices as they pertain to food and the duration and nature of the voyage, and shall be suitable in respect of quantity, nutritive value, quality and variety.</u> <del>Palatable food and water of</del></p> <p><u>Fishers employed as cooks with responsibility for food preparation should be trained and qualified for their position on board.</u></p>		

Issue	Convention <i>All vessels</i>	Convention	Recommendation <i>Large vessels and specific vessels</i>
Clean and habitable conditions	<p><del>sufficient quantity, quality and nutritional value shall be provided to all fishers on board.</del></p> <p>The competent authority may establish requirements for the minimum standard and quantity of food and water to be carried on board.</p> <p>Accommodation shall be maintained in clean and habitable condition and shall be kept free of goods and stores which are not the personal property of the occupants.</p> <p>Galley and food storage facilities shall be maintained in a hygienic condition.</p> <p><u>Waste shall be kept in closed, well-sealed containers and removed from food-handling areas whenever necessary.</u></p>	<p>For vessels of [24] metres in length or more, the competent authority shall require frequent inspections, by or under the authority of the skipper, to be carried out, to ensure that accommodation is clean, decently habitable and safe, is maintained in a good state of repair, that food and water supplies are sufficient, and that galley and food storage spaces and equipment are hygienic and in a proper state of repair. The results of such inspections, and the actions taken to address any deficiencies found, shall be recorded and available for review.</p>	
Variations	<p>In the case of fishing vessels where there is a need to take into account, without discrimination, the interests of fishers having differing and distinctive religious and social practices, the competent authority may, after consultation, permit fairly applied variations in respect of this part on condition that such variations do not result in overall facilities less favourable than those which would result from the application of the provisions of this Part.</p>		

## New Part VII, Additional requirements for vessels of [...] metres in length or more

The provisions of the present Part apply to vessels of [24] metres in length or more [as well as to vessels engaged in distant-water fishing]. Any Member may, after consultation, extend the protection of this Part to fishers working on vessels of less than 24 metres in length.

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Additional Convention provisions for vessels of [24] metres in length or more

### Minimum age

In addition, for fishing vessels of [24] metres in length or more, the engagement of fishers under 18 years of age for work at night shall be prohibited. [For the purpose of this [Article], “night” shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m.]

### Medical examination

The following provisions shall apply to fishers working on fishing vessels of [24] metres in length or more [which normally remain at sea for a period of more than three days] [engaged on international voyages].

1. Article 10, paragraph 2, shall not be applicable [to this Part of the Convention].
2. The medical certificate shall state in particular that: (a) the hearing and sight of the persons concerned are satisfactory; and (b) they are not suffering from any medical condition likely to be aggravated by service at sea or to render them unfit for such service or to endanger the health of other persons on board.
3. A medical certificate shall be valid for a maximum period of [two] years unless the fisher is under [18] [21] years of age, in which case the maximum period of validity shall be one year.
4. If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the end of that voyage.

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Additional Recommendation provisions for vessels of [24] metres in length or more

### Minimum age

[\* The following text is the only Recommendation text in Part VII that applies to ALL VESSELS.]The working hours of young fishers should not exceed eight hours per day and 40 hours per week and overtime should be worked only where unavoidable for safety reasons. While sufficient time should be allowed for all meals, young fishers should be assured of a break of at least one hour for the main meal of the day.

### Medical examination

### **Manning and hours of rest**

In addition, for vessels of [24] metres in length or more [and engaged on international voyages].

1. The competent authority shall establish a minimum level of manning for the safe navigation of the vessel, specifying the number and qualifications of the fishers required;
2. The competent authority shall, after consultation, establish, for the purpose of limiting fatigue, the minimum amount of rest to be provided to fishers within a 24-hour period and within a seven-day period. [The minimum amount of rest established by the competent authority [shall] [should] be no less than ten hours of rest in any 24-hour period and 77 hours of rest in any seven-day period.]
3. With regard to paragraph 2, the competent authority may permit temporary exceptions, for limited and specified reasons, to the limits it establishes. However, it shall require that, in such circumstances, fishers shall receive compensatory periods of rest as soon as practicable.
4. The competent authority, may, after consultation, establish alternative requirements for ensuring that fishers are provided with sufficient rest. However, such alternatives shall provide a level of protection no less favourable than that provided in paragraph 2.

### **Fishers' work agreement**

In addition, the following provisions shall apply to fishers working on fishing vessels of [24] metres in length or more [and engaged in international voyages].

1. Every fisher to whom this Part applies shall have a clearly written work agreement setting out the terms and conditions of his or her work on board the vessel.
2. Fishing vessel owners shall ensure that fishers have a signed fishers' work agreement. The work agreement shall be signed by the fishing vessel owner or his or her authorized representative, and by the fisher.
- [3. In addition to the minimum particulars to be included in accordance with the provisions of Annex I, the fishers' work agreement shall contain the following:

### **Manning and hours of rest**

1. The competent authority should provide each vessel of [24] metres in length or more with a document specifying the minimum level of manning, including the number and qualifications of the fishers required.

### **Fishers' work agreement**

- (a) the amount of paid annual leave or the formula for calculating it where leave is calculated using a formula, where applicable;
- (b) the health and social security protection benefits to be provided to the fisher by the fishing vessel owner, where applicable;
- (c) the fisher's entitlement to repatriation;
- (d) a reference to the collective bargaining agreement, if applicable.]

### **Repatriation rights**

The following provisions shall apply to fishers working on fishing vessels of [24] metres in length or more [and engaged on an international voyage].

1. Members shall ensure that fishers on fishing vessels that fly their flag are entitled to repatriation in the event that the fishers' work agreement for a specific period or voyage expires abroad or is terminated by the fisher for justified reasons or by the fishing vessel owner; or the fishers are no longer able to carry out their duties under their work agreement or cannot be expected to carry them out in the specific circumstances.
2. The cost of repatriation shall be borne by the fishing vessel owner, except where the fisher has been found in accordance with national laws or regulations or other measures to be in serious default of his or her work agreement obligations.
3. Members shall, by means of laws and regulations or other measures, prescribe the precise circumstances entitling a fisher to repatriation, the maximum duration of service periods on board following which a fisher is entitled to repatriation, and the destinations to which fishers may be repatriated.
4. If a fishing vessel owner fails to provide for repatriation, the Member whose flag the vessel flies shall arrange for the repatriation of the fisher concerned and recover the cost from the fishing vessel owner.

### **Recruitment and placement**

The following provisions shall apply to fishers working on fishing vessels of [24] metres in length or more [and engaged on an international voyage].

### **Repatriation rights**

### **Recruitment and placement**

1. A Member that operates a public service providing recruitment and placement for fishers shall ensure that the service is operated in an orderly manner. If a Member has private services providing recruitment and placement for fishers operating in its territory, such services shall be operated in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained, modified or changed only after consultation.
2. A Member shall, by means of laws and regulations or other measures:
  - (a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;
  - (b) require that no fees or other charges for recruitment and placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and
  - (c) ensure that the competent authority closely supervises all recruitment and placement services.

#### **Payment of wages**

Members shall ~~require~~ ~~ensure~~ that, in the case of fishers working on board fishing vessels of [24] metres in length or more [and engaged on international voyages], and who are paid a wage, payments to them be made on a monthly basis, or at some other regular interval as provided in national laws, regulations or collective bargaining agreements. Such fishers shall be given a means to transmit all or part of their wage earnings to their families at reasonable cost.

#### **Accommodation and food**

See Appendix 1.

#### **Medical care**

The following additional provisions shall apply to fishing vessels of [24] metres in length or more [and engaged on international voyages] [at sea for more than [three] days].

1. The competent authority shall prescribe the medical equipment and medical supplies to be carried on board.

#### **Payment of wages**

For vessels of [24] metres in length or more [and engaged on international voyages], all fishers should be entitled to a minimum wage in accordance with national laws, regulations or collective agreements.

#### **Accommodation and food**

#### **Medical care**

1. When prescribing the medical equipment and medical supplies to be carried, the competent authority should take into account international

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| <p>2. The medical equipment and medical supplies carried on board shall be properly maintained and inspected at regular intervals established by the competent authority by responsible persons [designated] [approved] by the competent authority.</p> <p>3. The vessels shall be required to carry a medical guide [adopted] [approved] by the competent authority.</p> <p>4. The vessel shall have access to a prearranged system of medical advice by radio or satellite communication to vessels at sea, including specialist advice, which shall be available at all times.</p> <p>5. The vessel shall carry on board a list of radio or satellite stations where the medical advice can be obtained.</p> <p>6. <u>To the extent consistent with the Members' national law and practice, medical care while the fisher is on board or landed in a foreign port shall be provided free of charge to the fisher.</u></p> | <p>recommendations in this field, such as the most recent edition of the ILO/IMO/WHO International Medical Guide for Ships and the Model List of Essential Medicines published by the World Health Organization, as well as advances in medical knowledge and approved methods of treatment.</p> <p>2. Inspections of medical equipment and supplies should take place at intervals of no less than 12 months. The inspector should ensure that: expiry dates and conditions of storage of all medicines are checked; contents of the medicine chest are listed and conform to the medical guide used nationally; and medical supplies are labelled with generic names, in addition to any brand names used, expiry dates and conditions of storage.</p> <p>3. The medical guide should explain how the contents of the medical equipment and medical supplies are to be used and should be designed to enable persons other than a medical doctor to care for the sick or injured on board both with and without medical advice by radio or satellite communication. The guide should be prepared taking into account international recommendations in this field, including the most recent edition of the ILO/IMO/WHO International Medical Guide for Ships and the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods.</p> <p>4. Medical advice provided by radio or satellite communication should be available free of charge to all vessels irrespective of the flag they fly.</p> <p>5. The vessel should carry a standard medical report form adopted by the competent authority for use by the skipper and relevant onshore and on-board medical personnel. The form and its contents should be kept confidential and should be used for no other purpose than to facilitate the treatment of persons on board the vessel.</p> |
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**Occupational safety and health and accident prevention**

The following additional provisions shall apply to vessels of [24] metres in length or more [and engaged on international voyages].

1. The competent authority shall, after consultation, require that the fishing vessel owner establish, in accordance with national laws, regulations, collective bargaining agreements and practice, on-board procedures for the prevention of occupational accidents, injuries and diseases, taking into account the specific hazards and risks encountered on the fishing vessel concerned.
2. The competent authority shall require take measures to ensure that fishing vessel owners, skippers, fishers and other relevant persons be provided with sufficient and suitable guidance, training material, or other appropriate information on how to assess and manage risks to safety and health on board fishing vessels.
3. Fishing vessel owners shall have the obligation to provide fishers with appropriate protective clothing and equipment.
4. Fishing vessel owners shall ensure that every fisher on board has received basic safety training approved by the competent authority. [The competent authority may waive this requirement for fishers who have demonstrated equivalent knowledge and experience.]
5. Fishing vessel owners shall ensure that fishers are sufficiently and reasonably familiarized with equipment and its methods of operation, including relevant safety measures, prior to using the equipment or participating in the operations concerned.
6. To the extent consistent with the Member's national law and practice, medical care while the fisher is on board or landed in a foreign port shall be provided free of charge to the fisher.

**Occupational safety and health and accident prevention**

1. The on-board prevention procedures should be so designed as to involve fishers on board in the identification of hazards and potential hazards and in the implementation of measures to reduce or eliminate such hazards.
2. When ensuring that fishing vessel owners, skippers and fishers and other relevant persons are provided with sufficient and suitable guidance, training material, or other appropriate information, the competent authority should take into account relevant existing international standards, codes, guidance and other information, and should keep abreast of and utilize international research and guidance concerning safety and health in the fishing sector, including relevant research in occupational safety and health in general which may be applicable to work on board fishing vessels.
3. Vessels engaged on international voyages should carry documentary evidence that fishers have received basic safety training or have been granted a waiver of the requirement.
4. The competent authority should take measures to ensure regular consultation on safety and health matters with the aim of ensuring that all concerned are kept reasonably informed of national, international and other developments in the field and on their possible application to fishing vessels flying the flag of the Member.

**Social security**

An additional provision after Article 27 in the draft Convention to read:

Members shall undertake to take steps, according to national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for all fishers.

ANNEX II

**LIST OF PARTICIPANTS**

**Experts nominated by Governments  
Experts désignés par les gouvernements  
Expertos designados por los gobiernos**

CANADA  
CANADÁ

Mr. Joseph O'Neill  
Chief Executive Officer, Labour Relations Agency  
Government of Newfoundland & Labrador  
P.O Box 8700  
West block, 4th Floor, Conf. Bldg.  
ST. JOHN'S Newfoundland A1B 4J6  
Canada  
Fax: +709 729 1759  
E-mail: joneill@mail.gov.nl.ca

Adviser: Ms. Linda L'Heureux  
Conseiller technique: Deputy Director, International Labour Affairs Labour Program  
Consejera técnica: Human Resources & Skills Development Canada  
165 Hôtel de Ville Street,  
Place du Portage, Phase II, 8th Floor  
OTTAWA Ontario K1A OJ2  
Canada  
Tel.: +819 953 0049  
Fax: +819 997 0126  
E-mail: linda.lheureux@hrsdc-rhdcc.gc.ca

CHILE  
CHILI

Sr. Andrés González Gutiérrez  
Jefe de Gabinete de la Subsecretaria de Pesca  
Teatinos 120, piso 11  
SANTIAGO  
Chili  
Tel.: +562 4733900 / 56 32 502802  
Fax: +562 4733920 / 56 32 212790  
E-mail: agonzalez@subpesca.cl

JAPAN  
JAPON  
JAPÓN

Mr. Hisashi Endo  
Chief Policy Planner, Fisheries Agency  
Ministry of Agriculture, Forestry & Fisheries  
1-2-1 Kasumigaseki, Chiyoda-ku  
100-8907 TOKYO  
Japon  
Tel.: +813 3502 7889  
Fax: +813 3501 5097  
E-mail: hisashi\_endo@nm.maff.go.jp

Advisers:	Mr. Tadahiro Kawata
Conseillers techniques:	Deputy Director, Maritime Technology Office
Consejeros técnicos:	Research & Technological Guidance Division
	Ministry of Agriculture, Forestry & Fisheries
	Fisheries Agency of Government of Japan
	1-2-1 Kasumigaseki, Chiyoda-ku
	TOKYO
	Japon
	Tel.: +813 3502 8111 Extn. 7328
	Fax: +813 3595 1426
	E-mail: tadahiro_kawata@nm.maff.go.jp

Mr. Masahiko Hayashi  
Counsellor  
Permanent Mission of Japan  
3, chemin des Fins  
Case Postale 337  
1211 GENEVE 19  
Tel.: 022 7173111  
Fax: 022 7173774  
E-mail: masahiko.hayashi-2@mofa.go.jp

Mr. Ichiro Takahashi  
Counsellor  
Permanent Mission of Japan  
3, chemin des Fins  
Case Postale 337  
1211 GENEVE 19  
Tel.: 022 717 3105  
Fax: 022 717 3774  
E-mail: ichiro2takahashi@aol.com

Mr. Yuji Okazaki  
Counsellor  
Fishing Boat & System Engineering Association  
Nakanoshima 4-23-1  
KAWASAKI CITY  
Japon

NORWAY  
NORVÈGE  
NORUEGA

Mr. Haakon Storhaug  
Principal Surveyor  
The Norwegian Maritime Directorate  
P.O Box 8123 Dep.  
N-0032 OSLO  
Norvège  
Tel.: +47 22 45 45 00  
Fax: +47 22 45 47 50  
E-mail: haakon.storhaug@sjofartsdir.dep.no

Advisers: Ms. Mari Kimsås  
Conseillers techniques: Advisor  
Consejeros técnicos: Norwegian Maritime Directorate  
P.O. Box 8123 Dep.  
0032 OSLO  
Norvège

Mr. Bjorn Pettersen  
Senior Eng. Surveyor  
Norwegian Maritime Directorate  
P.O. Box 8123 Dep.  
0032 OSLO  
Norvège  
Tel.: 99011611

SOUTH AFRICA  
AFRIQUE DU SUD  
SÚDAFRICA

Mr. Jan Theron  
Attorney  
55 Lower Main Road  
Observatory  
7925 CAPE TOWN  
Afrique du Sud  
Tel.: +21 448 0300  
Fax: +21 448 8300  
E-mail: jant@iafrica.com

Adviser: Captain N.T. Campbell  
Conseiller technique: Fishing Vessel Safety Co-ordinator  
Consejero técnico: South African Maritime Safety Authority  
P.O. Box 3914  
North End  
6065 PORT ELIZABETH  
Afrique du Sud  
Tel.: +927 41 585 0051  
Fax: +927 41 582 1213  
E-mail: ncampbell@samsa.org.za

SPAIN  
ESPAGNE  
ESPAÑA

Sr. Juan Ramón Brés Garcia  
Inspector Superior de Trabajo y Seguridad Social  
Ministerio de Trabajo y asuntos Sociales  
Acacia 2, C.P. 11007  
CADIZ  
Espagne  
Tel.: +956 288 111  
Fax: +956 274 572  
E-mail: jrbres@telefonica.net

**Experts nominated by the Employers  
Experts désignés par les employeurs  
Expertos designados por los empleados**

Ms. Rose Karikari Anang  
Executive Director  
Ghana Employers' Association (GEA)  
State Enterprises Commission Building, P.O Box 2616  
ACCRA  
Ghana  
Tel.: +233 21 68 07 95  
Fax: +233 21 67 84 05  
E-mail: geadmin@ghanaemployers.org

Ms. Tammy French  
Fishing Employers Representative  
American Seafoods Company  
Market Place Tower, 2025 First Ave Suite 900  
SEATTLE WA 98121  
Etats-Unis  
Tel.: +206 256 2660  
Fax: +206 256 2673 / 448 4867  
E-mail: tammy.French@americanseafoods.com

Mme Marie-Christine Hervouet-Dion  
Chargée de mission affaires sociales  
Union des armateurs à la pêche de France  
Criée – BP 127  
29181 CONCARNEAU Cedex  
France  
Tél.: +33 2 98 97 19 57  
Fax: +33 2 98 50 80 32  
E-mail: uapf29@wanadoo.fr

Mr. Alan Piggot  
 Safety Officer  
 National Federation of Fishers Organization  
 NFFO Offices, Marsden Road, Fish Docks  
 GRIMSBY Lines DN 31 3 SG  
 Royaume-Uni  
 Tel.: +1469 352 142  
 Fax: +1472 242 486  
 E-mail: a.piggott@nffo.org.uk

Mr. Babubal Todi  
 President AIMO  
 Todi Estate, Lower Parel  
 MUMBAI 400013  
 Inde  
 Tel.: +9122 24964556 / 24921330  
 Fax: +9122 24932 210  
 E-mail: shrivinayaka@vsnl.com

Mr. Ment van der Zwan  
 Hermelynnvlinder 12  
 1113 LH DIEMEN  
 Pays-Bas  
 Tel.: +31 255 56 14 77  
 Fax: +31 255 52 21 34  
 E-mail: ment@cv-ym.nl

**Experts nominated by the Workers**  
**Experts désignés par les travailleurs**  
**Expertos designados por los trabajadores**

Sr. Horacio Angriman  
 Secretario de Asuntos Laborales  
 Centro de Capitanes de Ultramar y Oficiales de la Marina Mercante (CCUOMM)  
 Perú 779/83, C1068 AAE  
 BUENOS AIRES  
 Argentine  
 Tel.: +54 11 4300 9700  
 Fax: +54 11 4300 9704  
 E-mail: horacioangriman@capitanes.org.ar

Adviser:	Mr. Juan Rinaldi
Conseiller technique:	Abogado
Consejero técnico:	Sindicato de Obreros Maritimos Unidos
	Calle Perú 1667
	1141 BUENOS AIRES
	Argentine
	Fax: +54 11 4300 7873
	E-mail: somu@ar.inter.net

Mr. Reg Anstey  
President  
Newfoundland & Labrador Federation of Labour  
46A Cottonwood Crescent  
ST. JOHN'S  
Nfld & Labrador A1H1A1  
Canada  
Tel.: +709 754 1660  
Fax: +709 754 1220  
E-mail: ranstey@nfl.nf.ca

Mr. Hideo Kon  
Representative  
All Japan Seamen's Union  
JSU Indonesia Representative Office  
6th Floor, Gedung Menara Duta, H.R. Rasuna Said Kab. B9  
JAKARTA 12910  
Indonésie  
Tel.: +62 21 521 2416  
Fax: +62 21 522 1580  
E-mail: hkong@cbn.net.id

Mr. Katishi Masemola  
General Secretary  
Food & Allied Workers' Union (FAWU)  
NY1 NY110 Streets  
Gugulethu  
Vuyile Mini Centre  
CAPE TOWN  
Afrique du Sud  
Tel.: +27 21 637 9040 / 27 11 331 1319  
Fax: +27 21 637 6164  
E-mail: mapalla@fawu.org.za

Mr. Peter Sand Mortensen  
Klitmøller  
Vestermølleve 37  
7700 THISTED  
Danemark  
Tel.: +45 9796 1955  
Fax: +45 9796 2493  
E-mail: psm@sid.dk

Mr. Abdur Razzaque Talukder  
Vice-President,  
Bangladesh Sanjukta Sramic Federation (BSSF)  
23/2 Topkhana Road  
DHAKA - 1000  
Bangladesh  
Tel.: +880 2 912 80 89/ 955 46 57  
Fax: +880 2 811 61 52

**Representatives of member States present at the sittings**  
**Représentants d'Etats membres présents aux séances**  
**Representantes de Estados Miembros presentes en las sesiones**

DENMARK  
DANEMARK  
DINAMARCA

Mr. Philippe Bauchy  
Centre for Seafarers & Fishermen, Education & Register of Shipping  
Danish Maritime Authority  
38 C, Vermundsgade  
2100 COPENHAGEN  
Danemark  
Tel.: +45 3917 4621  
Fax: +45 3917 4421  
E-mail: pb@dma.dk

Mr. Ralph Sylvestersen  
Principal Ship Surveyor  
Centre for Maritime Safety and Environmental Regulation  
Danish Maritime Authority  
38 C, Vermundsgade  
2100 COPENHAGEN 0  
Danemark  
E-mail: RS@dma.dk

FRANCE  
FRANCIA

M. Philippe Livet  
Inspecteur de la sécurité des navires  
Ministère de l'Équipement, des Transports, de l'Aménagement du Territoire,  
du Tourisme et de la Mer  
Centre de Sécurité des Navires  
92 Quai Gambetta  
62280 BOULOGNE/MER  
France  
Tel.: +33 3 21 30 87 18  
Fax: +33 3 21 32 10 84  
E-mail: csn-boulogne@equipement.gouv.fr

M. Alain Moussat  
Chef du bureau de l'inspection du travail maritime GM/3  
Ministère de l'Équipement, des Transports de l'Aménagement du Territoire,  
du Tourisme et de la Mer  
Direction des affaires maritimes et des gens de mer  
3, place de Fontenoy  
75007 PARIS 07 SP  
France  
Tel.: + 33 1 44 49 83 15  
Fax: + 33 1 44 49 82 54  
E-mail: alain.moussat@equipement.gouv.fr

M. Jean-François Jouffray  
Sous-directeur des affaires juridiques et internationales  
Ministère de l'Équipement, des Transports de l'Aménagement du Territoire,  
du Tourisme et de la Mer  
Etablissement national des invalides de la marine (ENIM)  
3, place de Fontenoy  
75007 PARIS 07 SP  
France  
Tel.: +33 1 44 49 87 06  
Fax: +33 1 44 49 89 21  
E-mail: jean-francois.jouffray@equipement.gouv.fr

M. Jean Bouvier<sup>1</sup>  
Chef du bureau des études juridiques et des conventions internationales  
Etablissement national des invalides de la marine (ENIM)

GERMANY  
ALLEMAGNE  
ALEMANIA

Mr. Armin Knospe  
Head of Division  
Bundesministerium für Gesundheit und Soziale Sicherung  
BMGS, Wilhelm Str. 49  
10117 BERLIN  
Allemagne  
Tel.: +49 1888 441 2245  
Fax: +49 1888 441 1928  
E-mail: armin.knospe@bmgs.bund.de

Mr. Heinz-Werner Anton  
Delegate, BAVEL  
Bundesministerium für Verbraucherschutz  
Wihlelmstr. 54  
10117 BERLIN  
Allemagne  
Tel.: +49 30 20 06 35 98  
E-mail: heinz.anton@bmvel.bund.de

Ms. Lilli Wilding  
Interpreter  
German Federal Ministry of Health and Social Security  
BMGS  
Rochus str. 1  
53123 BONN  
Allemagne  
Tel.: +49 228 941 16 19  
E-mail: lilli.wilding@bmgs.bund.de

---

<sup>1</sup> Did not arrive by 16.12.2004. Non arrivé le 16.12.2004. Sin llogar el 16.12.2004.

NAMIBIA  
NAMIBIE

Mr. Bro-Matthew Shinguadja  
Labour Commissioner  
Office of the Labour Commissioner  
Private Bag 13367  
WINDHOEK  
Namibie  
Tel.: +264 61 211130  
Fax: +264 61 212334  
E-mail: bro.matthew@mol.gov.na

Mr. Kurt Von Francois  
Control Labour Relations Officer  
Ministry of Labour  
Office of the Labour Commissioner  
Private Bag 13367  
WINDHOEK  
Namibie  
Tel.: +264 61 212 309  
Fax: +264 61 212 334

## PORTUGAL

Ms. Carlota Leitão Correia  
Coordenadora do Departamento do Fessoal do Mar  
Instituto Portuário e dos Transportes Marítimos  
Edifício Vasco da Gama  
LISBOA  
Portugal  
Tel.: +351 213 91 45 96  
Fax: +351 213 97 97 96  
E-mail: carlota.leitao@imgscn.pt

M. José Sousa Fialho  
Conseiller  
Mission permanente du Portugal  
33, rue Antoine Carteret  
1202 GENEVE

THAILAND  
THAILANDE

Mr. Sarmart Pattamasukhon  
Labour Technical Officer, Department of Labour Protection & Welfare  
Ministry of Labour  
Mitmaitri Road, Din Daeng  
BANGKOK 10400  
Thailande  
Tel.: +662 246 6101  
Fax: +662 246 6102  
E-mail: sarmart\_p@yahoo.com

UNITED KINGDOM  
ROYAUME-UNI  
REINO UNIDO

Mr. John Downie  
Marine Surveyor  
Maritime and Coastguard Agency (MCA)  
Spring Place 105, Commercial Road  
SOUTHAMPTON Hants SO15 1EG  
Royaume-Uni  
Tel.: 44 23 8032 9400  
Fax: 44 23 8032 9351  
E-mail: john.downie@mcga.gov.uk

UNITED STATES  
ETATS-UNIS  
ESTADOS UNIDOS

Mr. Kenneth Vazquez  
Lieutenant  
Office of Compliance – Fishing Vessel Safety Division  
United States Coast Guard (G-MOC-3)  
2100 2nd Street, SW, Room 1116  
WASHINGTON DC 20593  
Etats-Unis  
Tel.: +1 202 267 0478  
Fax: +1 202 267 0506  
E-mail: kvazquez@comdt.uscg.mil

Mr. John Chamberlin<sup>2</sup>  
Labor Attache  
Permanent Mission of the United States  
11, route de Prégny  
1292 CHAMBESY

---

<sup>2</sup> Did not arrive by 16.12.2004. Non arrivé le 16.12.2004. Sin llegar el 16.12.2004.

**Representatives of the United Nations, specialized agencies  
and other official international organizations**  
**Représentants des Nations Unies, des institutions spécialisées et d'autres organisations  
internationales officielles**  
**Representantes de la Naciones Unidas, de los organismos especializados  
y de otras organizaciones internacionales oficiales**

European Commission  
Commission européenne  
Comisión Europea

Food and Agriculture Organization of the United Nations (FAO)  
Organisation des Nations Unies pour l'alimentation et l'agriculture  
Organización de las Naciones Unidas para la Agricultura y la Alimentación

Mr. Ari Gudmundsson  
Fishery Industry Officer – Vessels  
Fishery Technology Service  
Fisheries Department  
Food and Agriculture Organization of the United Nations  
Viale delle Terme di Caracalia  
00100 ROME  
Italie

International Maritime Organization  
Organisation maritime internationale  
Organización Marítima Internacional

**Representatives of non-governmental international organizations**  
**Représentants d'organisations internationales non gouvernementales**  
**Representantes de organizaciones internacionales no gubernamentales**

International Association of Classification Societies (IACS)  
Association internationale des sociétés de classification

Mr. Alexander Ovchinnikov  
International Association of Classification Societies  
8 Dvortsovaya Nab  
ST PETERSBURG 191186  
Fédération de Russie  
Tel.: +7 812 380 19 56  
Fax: +7 812 380 19 58  
E-mail : ovchinnikov@2s.head.spb.ru

International Christian Maritime Association (ICMA)  
Association maritime chrétienne internationale  
Asociación Marítima Cristiana Internacional

International Collective in Support of Fishworkers (ICSF)  
Collectif international d'appui à la pêche artisanale (CIAPA)  
Colectivo Internacional de Apoyo a los Pescadores Artesanales

Mr. Sebastian Mathew  
Programme Advisor  
International Collective in Support of Fishworkers  
27 College Road  
CHENNAI 600 006  
Inde  
Tel.: +9144 282 75 303  
Fax: +9144 282 54 457  
E-mail: icsf@icsf.net

International Confederation of Free Trade Unions  
Confédération internationale des syndicats libres (CISL)  
Confederación Internacional de Organizaciones Sindicales Libres

Ms. Anna Biondi  
Director  
ICFTU Geneva Office  
46, avenue Blanc  
1202 GENEVE  
Tel.: 022 7384202  
Fax: 022 7381082  
E-mail: anna.biondi@geneva.icftu.org

International Co-operative Alliance (ICA)  
Alliance coopérative internationale  
Allanza Cooperativa Internacional

International Federation of Agricultural Producers  
Fédération internationale des producteurs agricoles  
Federación Internacional de Productores Agrícolas

International Maritime Health Association (IMHA)  
Association internationale de médecine maritime

Ms. Luisa Canals  
President  
International Maritime Health Association  
Italiëlei 51  
2000 ANTWERPEN  
Belgique  
Tel.: +34 655 3607 05  
Fax: +34 977 2299 59  
E-mail: imha@imha.net

International Organization of Employers (IOE)  
Organisation internationale des employeurs  
Organización Internacional de Empleadores

Mr. Jean Dejardin  
Adviser  
International Organization of Employers  
26, chemin de Joinville  
1216 COINTRIN/GENEVE  
Tel.: 022 9290013  
Fax: 022 9290001  
E-mail: dejardin@ioe-emp.org

International Transport Workers' Federation (ITF)  
Fédération internationale des ouvriers du transport  
Federación Internacional de los Trabajadores del Transporte

Mr. Jon Whitlow  
Secretary of the Seafarers' group to the Joint Maritime Commission  
International Transport Workers' Federation  
49-60 Borough Road  
LONDON SE1 1DR  
Royaume-Uni  
Tel.: +44 207 940 9271  
Fax: +44 207 357 7871  
E-mail: whitlow\_jon@itf.org.uk

Mr. Rossen Karavachev  
Senior Section Assistant  
International Transport Workers' Federation  
49-60 Borough Road  
LONDON SE1 1DR  
Royaume-Uni  
Tel.: +44207 940 9275  
E-mail: karavachev\_rossen@itf.org.uk

Mr. Johnny Hansen<sup>3</sup>  
Norwegian Seafarers Union  
PO Box 2000 Vika  
0125 OSLO  
Norvège

Mr. Flemming Smidt  
Secretary  
Specialarbejderforbundet i Danmark (SiD)  
Postbox 392, Kampmannsgade 4  
1790 COPENHAGEN V  
Danemark  
Tel.: +45 33 97 13 26  
Fax: +45 33 97 13 60  
E-mail: flemming.smidt@sid.dk

<sup>3</sup> Did not arrive by 16.12.2004. Non arrivé le 16.12.2004. Sin llegar el 16.12.2004.

Organization of African Trade Union Unity (OATUU)  
 Organisation de l'unité syndicale africaine  
 Organización de la Unidad Sindical Africana

Pan-African Employers' Confederation

World Confederation of Labour  
 Confédération mondiale du travail (CMT)  
 Confederación Mundial del Trabajo

M. Hervé Sea  
 Représentant permanent  
 Confédération mondiale du travail  
 1, rue de Varembe  
 1211 GENEVE 20 CIC  
 Tel.: 022 748 20 80  
 Fax: 022 748 20 88  
 E-mail: herve.sea@cmt-wcl.org

M. Jacques Bigot  
 Secrétaire général  
 Union nationale des syndicats de marin pêcheurs –CFTC  
 2, allée des Chevreuils  
 62630 ETAPLES  
 France  
 Tel.: +33 6 08 46 64 10  
 Fax: +33 3 21 84 88 81  
 E-mail: marins.pecheurs.cftc@wanadoo.fr

World Federation of Trade Unions  
 Fédération syndicale mondiale  
 Federación Sindical Mundial

SECRETARIAT OF THE MEETING  
 SECRETARIAT DE LA RÉUNION  
 SECRETARÍA DE LA REUNIÓN

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 Secrétaire général:  
 Secretario General:

Deputy Secretary-General: Mr. JENNINGS  
 Secrétaire général adjoint:  
 Secretario General Adjunto:

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Executive Secretary: Mr. WAGNER  
Secrétaire exécutif:  
Secretario Ejecutivo:

Experts: Ms. BADER  
Experts: Mr. BAILEY  
Expertos: Ms. BRADY  
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Ms. GONZALEZ  
Mr. GRIMSMANN  
Mr. HAHN  
Mr. LEGOUAS  
Ms. MAYBUD  
Mr. MELETIOU  
Ms. TOMODA  
Mr. VASILLIEV

Representative of the Bureau of Employers' Activities: Mr. SANZOUANGO  
Représentant du Bureau des activités pour les employeurs:  
Representante de la Oficina de Actividades para los Empleadores:

Representatives of the Bureau of Workers' Activities: Ms. CLOUTIER  
Représentants du Bureau des activités pour les travailleurs: Mr. ENEVOLOSEN  
Representantes de la Oficina de Actividades para los Trabajadores:

Clerk of the Meeting and Chief of the Secretariat Services: Ms. JUVET-MIR  
Greffier de la réunion et Chef des services du secrétariat:  
Secretaria de Actas y Jefa de los Servicios de Secretaría: