International Labour Conference, 96th Session, 2007

Report IV (2A)

# Work in the fishing sector

Fourth item on the agenda

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# LIST OF RECURRING ABBREVIATIONS AND ACRONYMS

## 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

| | |
|---|---|
| MLC | Maritime Labour Convention, 2006 |
| 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 | International Convention on Standards of Training, Certification and Watchkeeping |
| STCW–F | International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 |
| UNCLOS | United Nations Convention on the Law of the Sea |

## National employers' and workers' organizations

| | | |
|---|---|---|
| Argentina | CATT | Confederation of Transport Workers of Argentina |
| | UIA | Argentine Industrial Union |
| | CAPeCA | Argentine Chamber of Freezing Fishing |
| | CALaPA | Shipowners/Patagonian Prawn Fisheries Association |
| | CAPA | Argentine Squid-Jigger Owners' Association |

| | | |
|---|---|---|
| Brazil | CNC | National Confederation of Commerce |
| | CNT | National Confederation of Transport |
| Canada | CLC | Canadian Labour Congress |
| Colombia | ANDI | National Association of Entrepreneurs |
| Costa Rica | INCOPESCA | Costa Rica Institute of Fisheries and Aquaculture |
| Denmark | 3F | United Federation of Danish Workers |
| Egypt | GTUWA | General Trade Union of Workers in Agriculture and Irrigation |
| Finland | SAK | Central Organization of Finnish Trade Unions |
| | SAKL | Union of Finnish Professional Fishermen |
| Honduras | COHEP | Honduran Council for Private Enterprise |
| Iceland | ASI | Icelandic Confederation of Labour |
| India | HMS | Hind Mazdoor Sabha |
| Italy | FEDERPESCA | National Federation of Fishing Enterprises |
| | FAI–CISL | Agriculture and Food Industry Workers' Federation–Confederation of Italian Workers' Trade Unions |
| Japan | JSU | All-Japan Seamen's Union |
| Korea, Rep. of | FKSU | Federation of Korean Seafarers' Unions |
| | KODEFA | Korean Deep Sea Fisheries Association |
| | NFCC | National Federation of Fisheries Cooperatives |
| Netherlands | DFPB | Dutch Fish Products Board |
| New Zealand | NZCTU | New Zealand Council of Trade Unions |
| Panama | CMP | Panamanian Chamber of Fishing |
| Spain | FEOPE | Spanish Federation of Fishing Organizations |
| Sri Lanka | UFL | United Federation of Labour |
| | NFSM | National Fisheries Solidarity Movement |
| | CWC | Ceylon Workers' Congress |
| Sweden | MMOA | Merchant Marine Officers' Association |
| | SFR | Swedish Fishermen's Federation |
| Trinidad and Tobago | ECA | Employers' Consultative Association of Trinidad and Tobago |

# INTRODUCTION

The agenda of the 96th Session of the International Labour Conference in 2007 includes an item on "work in the fishing sector". The background to this may be traced back to 2002.

In that year, the Governing Body of the ILO, at its 283rd Session (March 2002), [1] decided to place on the agenda of the 92nd Session of the International Labour Conference in 2004 an item concerning a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector. In preparation for this discussion, the Office produced two reports: Report V(1), [2] and Report V(2). [3] The Conference Committee on the Fishing Sector considered these reports and adopted its own report, [4] which in turn was submitted to, and adopted by, the Conference plenary at its 18th sitting. During this sitting the Conference also adopted a resolution to place on the agenda of the next ordinary session of the Conference an item entitled "Work in the fishing sector". [5]

The second discussion by the Conference of an item concerning a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector took place at its 93rd Session (2005). The Conference Committee on the Fishing Sector established to discuss this item had before it two reports, Report V(2A) [6] and Report V(2B), [7] prepared by the Office on the basis of the replies to Report V(1) [8] as well as views expressed by the Tripartite Meeting of Experts on the Fishing Sector held from 13 to 17 December 2004. [9] The report of the Committee on the Fishing Sector included a proposed Convention and a proposed Recommendation concerning work in the fishing sector, as contained in *Provisional Record* No. 19 of the Conference. [10]

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[1] GB.283/2/1, para. 21(b).

[2] ILO: *Conditions of work in the fishing sector* (a "law and practice" report), Report V(1), International Labour Conference, 92nd Session, Geneva, 2004.

[3] ILO: *Conditions of work in the fishing sector: The constituents' views*, Report V(2), International Labour Conference, 92nd Session, Geneva, 2004.

[4] ILO: *Provisional Record* No. 21, International Labour Conference, 92nd Session, Geneva, 2004.

[5] ILO: *Provisional Record* No. 26, International Labour Conference, 92nd Session, Geneva, 2004, pp. 26/1–26/7.

[6] ILO: *Work in the fishing sector*, Report V(2A), International Labour Conference, 93rd Session, Geneva, 2005.

[7] ILO: *Work in the fishing sector*, Report V(2B), International Labour Conference, 93rd Session, Geneva, 2005.

[8] This report, prepared by the Office on the basis of the first discussion, contained the texts of the proposed Convention and Recommendation. It was sent to governments with the request that they reply, after consulting the most representative organizations of employers and workers, sending any amendments or comments they might wish to make. See ILO: *Work in the fishing sector*, Report V(1), International Labour Conference, 93rd Session, Geneva, 2005.

[9] The report of this meeting may be found in ILO: *Work in the fishing sector*, Report V(2A), International Labour Conference, 93rd Session, Geneva, 2005, appendix.

[10] ILO: *Provisional Record* No. 19, International Labour Conference, 93rd Session, Geneva, 2005.

The Committee's report was submitted to the plenary of the Conference for discussion and adoption. The discussion is contained in *Provisional Record* No. 24 of the Conference. [11]

When put to the vote, the proposed Convention concerning work in the fishing sector was not adopted owing to lack of a quorum. [12] The proposed Recommendation concerning work in the fishing sector was adopted. [13] Following these votes, the Conference adopted a motion to request the Governing Body to place on the agenda of the 96th Session of the Conference in 2007 an item concerning work in the fishing sector based on the report of the Committee on the Fishing Sector at the 93rd Session. In response to a request for clarification, the Legal Adviser said that it would be necessary to review the Recommendation and probably adopt a new Recommendation to replace it. [14]

At its 294th Session (November 2005), the Governing Body decided to include on the agenda of the 96th Session (2007) of the International Labour Conference, with a view to the adoption of a Convention supplemented by a Recommendation, an item concerning work in the fishing sector. It also decided that the Conference should use as the basis for its discussion the report of the Committee on the Fishing Sector of the 93rd Session as well as the outcome of further tripartite consultations. [15]

At its 295th Session (March 2006), the Governing Body decided that the preparation of the discussion of the item concerning work in the fishing sector would be governed by a single-discussion procedure adapted to the special circumstances in which the discussion would take place. Accordingly, it approved a programme of reduced intervals for reports. [16]

In accordance with this programme of reduced intervals and after informal consultations held on 3 May 2006, the Office prepared and sent to governments a first report [17] along with a short questionnaire and a copy of the report of the Committee on the Fishing Sector of the 93rd Session. [18] This was done in fulfilment of the Office's mandate under the ILO Constitution and the Standing Orders of the Conference. Accordingly, and in keeping with article 38, paragraph 1, of the Standing Orders of the Conference, governments were asked to reply to the questionnaire and send any other views on the content of the proposed Convention and Recommendation on work in the fishing sector by 1 September 2006, after consulting the most representative organizations of employers and workers.

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[11] ILO: *Provisional Record* No. 24, International Labour Conference, 93rd Session, Geneva, 2005, pp. 24/1–24/11.

[12] The result of the vote was as follows: 288 in favour, 8 against, with 139 abstentions. As the quorum was 297, and the required two-thirds majority was 290 (of 435 votes cast), the Convention was not adopted because the quorum (total votes for and against) was not reached.

[13] The result of the vote was as follows: 292 in favour, 8 against, with 135 abstentions. As the quorum (votes for and against) was 297, and the required two-thirds majority was 290 (of 435 votes cast), the Recommendation was adopted.

[14] ILO: *Provisional Record* No. 25, International Labour Conference, 93rd Session, Geneva, 2005, pp. 25/3–25/5.

[15] GB.294/2/1, para. 7(a) and GB.294/PV, para. 43.

[16] GB.295/16/3 and GB.295/PV, para. 246.

[17] ILO: *Work in the fishing sector*, Report IV(1), International Labour Conference, 96th Session, Geneva, 2007.

[18] ILO: Report of the Committee on the Fishing Sector, *Provisional Record* No. 19, International Labour Conference, 93rd Session, Geneva, 2005.

At the time of drawing up this report, the Office had received replies from the governments of the following 60 member States: Algeria, Argentina, Australia, Austria, Azerbaijan, Belgium, Benin, Brazil, Burkina Faso, Canada, China, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Ghana, Greece, Hungary, Iceland, Iraq, Italy, Japan, Republic of Korea, Latvia, Lebanon, Lithuania, Mauritius, Mexico, Netherlands, New Zealand, Norway, Panama, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Seychelles, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Ukraine, United Kingdom, Uruguay and the Bolivarian Republic of Venezuela.

The governments of the following 31 member States indicated that their replies had been drawn up after consultation with employers' or workers' organizations or both, and some included in their replies the opinions expressed on certain points by these organizations: Argentina, Belgium, Brazil, Canada, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Finland, Iceland, Italy, Japan, Republic of Korea, Mauritius, Mexico, Netherlands, New Zealand, Panama, Papua New Guinea, Poland, Romania, Seychelles, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand and the United Kingdom. Several other governments indicated that they had sent the questionnaire to the most representative organizations of employers and workers but had not, at the time of sending their replies to the questionnaire, received comments from those organizations.

The governments of some member States sent separately the replies received from employers', workers' or other organizations; in some cases, replies were received directly by the Office.

The Office notes that, in answering the questionnaire, several governments (for example, Czech Republic, Hungary and Switzerland) had no substantive comments.

In October 2006 the Officers of the Governing Body agreed to the convening of the Interregional Tripartite Round Table on Labour Standards for the Fishing Sector, with the purpose of pursuing consultations on the proposed Convention and Recommendation concerning work in the fishing sector in advance of the 96th Session (June 2007) of the Conference. [19] This Round Table, held in Geneva from 11 to 13 December 2006, was composed of the following members: eight representatives of governments of ILO member States (appointed on a regional basis after consultation with the ILO Government group regional coordinators), eight Employer representatives and eight Worker representatives (all appointed by their respective groups). Regional coordinators of the Government group, or their representatives, participated as observers with the right to take the floor on behalf of any country of their respective group. An observer from the Food and Agriculture Organization of the United Nations also participated. The Chairperson was not from among the eight Government representatives.

The Office provided participants at the Round Table with an advance version of the summary of replies received to the questionnaire contained in Report IV(1) of the 96th Session of the Conference. The report of the Round Table can be found in the appendix. It includes an appendix containing the substantive text of a presentation to the Round Table by the Employers and an appendix containing additional information from the Government of Japan regarding fishing vessel accommodation.

[19] GB.297/Inf.2.

## Texts of the proposed Convention and Recommendation concerning work in the fishing sector

In accordance with article 10, paragraph 2(a), of the Constitution of the International Labour Organisation and article 38, paragraph 2, of the Standing Orders of the International Labour Conference, the Office has responsibility for drawing up the final report, including the proposed instruments. In preparing the report, the Office has been bound by the following specifications:

(a) pursuant to article 38, paragraph 2, of the Standing Orders, the report containing the proposed instruments must be drawn up "on the basis of the replies received [to the questionnaire]"; and

(b) in accordance with the directions given by the Governing Body in this unique case, "the Conference should use as a basis for its discussion the report of the Committee on the Fishing Sector of the 93rd Session as well as the outcome of further tripartite consultations".

Normally, the Office would, pursuant to article 38, paragraph 2, of the Standing Orders, make changes to the proposed instruments where suggested by a majority of replies received to the questionnaire. In light of the Governing Body's instructions in this case, the Office has made no substantive changes to the instruments as they were appended to the report of the Committee on the Fishing Sector of the 93rd Session of the Conference. In order to benefit from the additional review of the texts carried out by the Conference Drafting Committee at the 93rd Session of the Conference, the texts of the proposed Convention and Recommendation are submitted in the form of the English and French versions of the instruments submitted for adoption to the 93rd Session of the Conference.

## Contents of Report IV(2A)

The present volume, Report IV(2A), therefore contains the following:

– a summary of the replies received by the Office to each of the five questions posed by the Office in Report IV(1), followed by: an overview of the replies; a brief account of the related discussion at the Interregional Tripartite Round Table on Labour Standards for the Fishing Sector; and the Office commentary based on the replies and the Round Table discussions (in the commentary relating to Question 1, the Office has also set out ideas for possible alternative text for certain provisions concerning the scope of application of the Convention);
– additional commentary by the Office with indicative proposals regarding instances in which the Committee or the Committee Drafting Committee may wish to address alignment of the English and French texts, or to correct any manifest errors or ambiguities that remain – functions that would normally have been carried out by the Office prior to the Conference;
– an appendix containing the report of the Round Table with appendices containing submissions to the Round Table by the Employers and the Government of Japan.

To ensure that the English and French texts of the proposed Convention and the proposed Recommendation concerning work in the fishing sector are in the hands of the governments within the time limit laid down in article 38, paragraph 2, of the Standing Orders of the Conference, these texts have been published in a separate volume, Report IV(2B).

# REPLIES RECEIVED

Several States provided general observations in addition to their replies to the five specific questions asked by the Office in Report IV(1). The Office further notes that many respondents included comments of a general nature in their replies to the specific questions, in particular to Question 5.

## General observations

*Replies*

*Australia*. ILO Conventions need to be widely ratified if they are to command respect from the global community and continue to meet the basic objectives of the ILO. Many Conventions are overly prescriptive or technical, inhibiting ratification by member States that may well comply with the goals of the Conventions. To remedy this, the Office should focus on more flexible and principles-based articles when drafting new instruments. The proposed new Convention on work in the fishing sector should specify broad principles, focused on appropriate goals and protections, and be flexible enough to accommodate different national circumstances and levels of social and economic development, as well as allowing scope for future development. The Convention as it stands is too prescriptive and sets a standard that is too high for many developing nations. As the objective of this Convention is to reach a greater proportion of the world's fishers, adjustments are necessary in order to promote more widespread ratification. Drafting of new instruments should focus on setting appropriate minimum standards, and not be overly inspirational or set standards that are clearly much greater than those required to ensure the basic safety and well-being of fishers. The Office, when preparing draft text, should minimize the level of detail. If more clarity or detail is considered necessary, delegates should be left to develop the necessary language and, where appropriate, this detail should be incorporated into a Recommendation or guidelines. Adopting this approach would make the rejection of proposed new instruments less likely in the future.

*Belgium.* The proposed Convention concerning work in the fishing sector, presented by the Committee on the Fishing Sector to the International Labour Conference during the course of its 93rd Session (2005), received the unanimous support of the Belgian delegation present at the time. The Belgian delegation felt that this proposed text was a balanced instrument, which provided an acceptable level of protection, while taking into account certain aspirations harboured by countries that had difficulty in applying certain standards.

*Canada.* It is important not to lose sight of the objective noted in the preamble to the proposed Convention: to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board, conditions of service, accommodation and food, occupational safety and health protection, medical care and social security. The aim has been to adopt a credible standard that provides

appropriate protection for fishers. The Convention and Recommendation need to be meaningful and practicable to accommodate a diverse industry and should avoid prescriptive provisions that will impede widespread ratification and implementation. While acknowledging the work undertaken by the Committee during two experts' meetings and two discussions at the International Labour Conference, tinkering with the wording of the proposed instruments will not address Canada's concerns that the Convention is too prescriptive as presently drafted. The explanatory note to the Regulations and Code of the recently adopted Maritime Labour Convention provides useful guidance for developing a new instrument based on previously adopted standards. A firm set of rights and principles is stated, Members have a considerable degree of flexibility in the implementation of those rights and principles, and rights and principles are to be complied with and enforced. Members can give effect to the detailed requirements of Part A of the Code through substantial equivalence, a principle that was used to good effect in the 2005 discussions of the proposed fishing instrument. In the drafting of the new Convention concerning work in the fishing sector, consideration should also be given to using the other area of flexibility used in the Maritime Labour Convention whereby the mandatory requirements of many provisions in Part A of the Code are formulated in a more general way, leaving wider scope for discretion as to the precise action to be provided for at the national level.

*Greece*. Every possible effort must be made so that a new proposed Convention can be prepared that would constitute an acceptable working text for the negotiations on this issue during the 96th Session of the Conference and which will lead to the final adoption of the Convention.

*Lebanon.* The proposed Convention relates to fishing operations involving large fishing vessels or a large number of fishers. In Lebanon, however, the fishing sector currently consists of small fishing boats owned by fishers themselves. These boats cannot meet the proposed Convention's requirements and obligations. Consequently, there is no possibility for the time being of implementing the Convention's provisions in Lebanon. The provisions of the proposed Convention, even though they seem to be flexible in some aspects, cannot be implemented on small vessels of less than 13 metres in length. Fishers in Lebanon are not subject to the provisions of the National Social Security Fund.

*Netherlands.* The failure during the 93rd Session of the International Labour Conference to adopt a Convention concerning work in the fishing sector is more than just an "accident at work". None of the Asian governments (which represent about 80 per cent of the fishers) voted in favour of the Convention. Without the support of these countries (and the other countries which did not give their support to the Convention) the goal to adopt an instrument that universally covers fishers will not be achieved. Thus, most fishers will not get a sufficient level of protection. Moreover, a low level of ratification in terms of gross tonnage would not contribute to a level playing field in the fishing sector. From this point of view, the rejection of the Convention [in 2005] can be considered a "blessing in disguise": it creates a new chance to acquire broad support from the world's fishing community. In this respect, the Government of the Netherlands wholeheartedly welcomes the consultation currently undertaken by the Office through the questionnaire as drafted. The current draft text of the Convention could be characterized as overly prescriptive and lacking flexibility. On the one hand, it formulates standards that might be too high for the developing countries. On the other hand, it constitutes a barrier for those countries that use different standards for measurement and weight.

*New Zealand.* Business New Zealand: The inability to agree on a Convention covering work in the fishing sector in 2005 was due in no small measure to uncertainty as to the outcome of the then forthcoming discussions on the Maritime Labour Convention, which covers the parallel issues for seafarers. The Maritime Labour Convention was overwhelmingly endorsed by all present in 2006. Business New Zealand believes that account should therefore be taken of the content and structure of that Convention in formulating the documents for discussion in 2007. There are obvious synergies between the two, and it makes no sense to conduct the discussion independently now that a viable model exists.

*Norway.* No amendments are proposed at this time. The text of the Convention already contains much flexibility. Norway reserves its position until the Conference.

*Commentary*

The Office notes that several of the replies to this and subsequent questions refer to the Maritime Labour Convention, 2006 (MLC), which was adopted at the 94th (Maritime) Session of the International Labour Conference in 2006. The Office, while recognizing the considerable differences between the shipping and fishing sectors, has also occasionally referred to certain provisions of the MLC in its own commentary. Those interested in consulting the text of this instrument can consult the full text, as well as other information, in Arabic, Chinese, English, French, German, Russian and Spanish on the ILO's web site. [1]

However, in the absence of a majority of replies calling for a new approach inspired by the Maritime Labour Convention, the Office has not put forward a comprehensive alternative text.

## Question 1

**Qu. 1** *The proposed Convention concerning work in the fishing sector* [2] *provides, in Part I (Definitions and scope), the possibility for the competent authority, under certain conditions, to exempt certain fishing vessels or fishers from some or all of the provisions of the Convention. Should any additional flexibility be introduced as regards scope?* [3] *If so, please indicate in respect of which provisions and under which conditions.*

*Replies*

*Algeria.* It would not be helpful to exclude certain fishing vessels or fishers from the scope of the Convention. Algerian law and regulations cover all the categories of fishing vessel and fisher covered by the proposed Convention.

*Argentina.* Members should not be given discretion to grant exemptions. Introducing such a clause would effectively allow individual member States to determine the scope of the Convention. This could lead to a wide variety of diverse forms of protection, thus generating inequalities and discrimination in terms of employment access that would favour some groups of workers, while penalizing others. With regard

[1] http://www.ilo.org/public/english/standards/norm/mlc2006/index.htm.

[2] This text is contained in ILO: *Provisional Record* No. 19, International Labour Conference, 93rd Session, Geneva, 2005.

[3] It has been suggested that the proposed Convention should contain additional flexibility for developing countries.

to the possibility of exempting certain fishing vessels – for example, by vessel size – technically speaking, it would not be appropriate to include such exemptions in the general definitions. On the contrary, these should be included in the Parts or provisions. However, such exemptions must not affect the fundamental rights of the workers in question. The occupational hazard supervisory authority indicates that the exemption would cover only subsistence and recreational fishing; all commercial fishing activities would still be included.

CATT: There is no need to establish additional general exemptions. If it is decided that additional flexibility is required, this should be addressed in the specific Part or Article concerned.

CAPeCA/CALaPA/CAPA: The competent authority of each member State should exempt certain vessels or fishers from some of the Convention's provisions, particularly artisanal fishers and vessels of less than 12 metres in length. This stance is in keeping with the views expressed by the Employers' group at the 92nd and 93rd Sessions of the Conference, when it stressed the need to establish an inclusive Convention which strikes a balance between developed States which have regulations and developing countries which lack regulations in this area. The group had also stated that the Convention should seek to establish minimum standards, not maximum standards, since individual member States could always increase protection if practicable in their national contexts. Unfortunately, the work of the Committee on the Fishing Sector did not move in that direction. For this reason, there is now a question as to whether exceptions should be granted, whereas it would have been more appropriate to ask if the protection established as a minimum should be increased for certain activities or vessels. Fishing is the same in all fishing areas or zones. Exemptions might be established only for artisanal or subsistence fishing, for example, in respect of the minimum age, medical examination, recruitment and accommodation.

*Australia.* Does not oppose the text relating to the scope of the Convention as set out in Article 2. There is no need to establish additional general exemptions. If it is decided that additional flexibility is required, this should be addressed in the specific Article or Articles concerned.

*Austria.* In Austria, there is commercial fishing on inland waters on boats of less than 10 metres in length and without living quarters (barges). At most, these boats might have covered wheelhouses, but no cabins, etc. About 150 people are involved in fishing on inland waters, generally as a secondary occupation. In only a few cases (such as federal foresters) are these people employed; most carry on this occupation under the terms of their own fishing rights or leases. The possibility of exempting fishing on rivers and inland waters under the terms of Article 3(1)(a) should be retained.

*Azerbaijan.* Yes. The Convention must be flexible with regard to certain particular categories of fishing vessel, taking into account the length of the vessel, displacement, time spent at sea and gross tonnage.

*Belgium.* It is difficult to see how the Convention could be any more flexible, given that the various provisions already allow for a significant level of exclusion and adaptation: Article 1(c) already refers to the various possibilities for flexibility contained in the proposed Convention: "… any derogation, exemption or other flexible application …"; Article 2 envisages a system of extensions for vessels of less than 24 metres (corresponding to a threshold requested by certain countries); Article 3 envisages the possibility of exclusion; Article 4 goes a long way towards illustrating the progressive (or promotional) aspect of this instrument. Annex III provides a certain amount of freedom with regard to the application of the provisions, in the form of

general provisions set out in extremely broad terms: "The competent authority may, after consultation, also apply the requirements of this Annex to existing vessels, when and in so far as it determines that this is reasonable and practicable." These examples demonstrate that all specific situations, particular concerns and fears have, to a large extent, been taken into account. Moreover, it is a long-standing practice for international labour standards to be drafted in such a way as to allow for universal application, without granting specific regimes to specifically mentioned countries or categories of country. Furthermore, it is impossible to objectively define "developing countries" without intrinsically denying the very notion of development. Underdevelopment cannot be used to justify the exaction of a high human cost from this sector when it is precisely the developing countries that are supposedly unable to compensate for these dramatic circumstances. It would also be unfair on countries that are making considerable efforts to protect their fishers. Finally, it has been established that lesser guarantees regarding the protection of workers do not in any way contribute to the development of countries or societies. Our reply is therefore a categorical "no". The internal flexibility set out here in such a skilful and balanced manner remains the only solution.

*Benin.* There is already sufficient flexibility in the text concerning the scope, and more flexibility is not required.

*Brazil.* It is important to achieve a balance between the existing standards and possible improvements to these standards, on the one hand, and, on the other hand, the flexibility required for widespread ratification, especially in developing countries, where the fishing industry is least regulated. In order to increase the number of ratifications, given the varying traditions regarding fishing in different countries, as well as differences relating to coastlines and maritime currents, there is a need to support the possibility envisaged under Article 3 of allowing the competent authority to exclude certain fishing vessels or fishers from some or all of the provisions of the Convention. Although all of the provisions are important in improving living and working conditions on board fishing vessels, the Convention must put forward minimum standards, in order to allow those countries which have not ratified the existing Conventions to make progress regarding the protection of fishers, ratifying the new Convention in the knowledge that, fortunately, many other countries have already attained levels far beyond these provisions and that they will continue to improve conditions. It is understood that the competent authority, after consultation, may exclude – in particular from provisions relating to accommodation contained in Annex III and provisions in subparagraphs (b) and (d) of Article 29 concerning medical care – fishing vessels engaged in fishing operations in rivers, lakes and canals and in the contiguous zone in archipelagic waters. It is therefore proposed that paragraph 1(a) of Article 3 be amended to read: "fishing vessels engaged in fishing operations in rivers, lakes and canals and in the contiguous zone in archipelagic waters, and". The aim is to facilitate ratification by countries made up of archipelagos. Exclusion is justified by the fact that, in the case of such countries, fishing vessels can more easily reach the coast if there is a problem.

CNC and CNT: Fishing vessels operating on rivers, lakes and canals. Reasoning: The various conditions covering ocean-going fishing vessels should be sufficiently flexible to be able to take into account the differing situations existing in the fishing sector.

*Burkina Faso.* A degree of flexibility is desirable for certain vessels and fishers.

*Canada.* A provision in the Convention providing for the possibility of the competent authority to exempt certain fishing vessels or fishers from some or all of the provisions of the Convention is necessary due to the considerable differences between

different types of fisheries and related economic viability. Additional flexibility could be introduced to this clause by deleting the words "special or substantial" in Article 3(1). There also needs to be flexibility in the specific provisions of the Convention to distinguish between safety, health and comfort factors, as well as consideration of time at sea and benefits relative to costs when setting standards. In Article 3(1)(b) delete the word "limited" and replace it with the word "certain". A lack of flexibility in the wording in this provision would create a barrier to ratification.

CLC: There is no need for any additional flexibility to be provided for the entire Convention and any additional flexibility should be provided for under the specific sections.

*China.* No need for additional flexibility to be introduced. Reasoning: The scope as defined by the proposed Convention can basically be used for operationalization.

*Colombia.* ANDI: Member States should be enabled, through their national legislation and regulations, to exempt from the Convention or specific provisions thereof vessels of less than 24 metres in length or 175 gt, in the light of the specific conditions of service of fishers or of fishing vessel operations, and depending on the duration of the voyage and the particular fishing zone concerned.

*Costa Rica.* Ninety-nine per cent of fishing vessels in Costa Rica are under 24 metres in length. For developing countries such as Costa Rica, certain provisions, such as those contained in Part IV and those on exemptions and/or requirements for "vessels" contained in this proposed Convention should be reconsidered.

*Croatia.* The proposed flexibility seems adequate.

*Cuba.* As regards scope, it must be left to the competent authority to decide whether or not to exempt vessels of less than 24 metres in length operating in inland or coastal waters.

*Denmark.* There is no need for further flexibility in "the scope".

3F: Agrees.

*Egypt.* Tonnage should be used as a basis to determine the scope of application of the Convention, so as to exclude fishing vessels whose tonnage is less than 20 tons from the scope of application. The provisions of the Convention should not apply to existing fishing vessels but should apply to vessels for which the building authorization would be obtained within at least three years from the date of entry into force in order to enable fishing vessel owners to comply.

GTUWA: Fishing vessels working in inland waters, such as rivers and lakes, not exceeding 100 metres in length and 2 metres deep, should be exempted. These vessels and fishermen should also be exempted in terms of fishermen's age, so as to exclude subsistence fishing (family fishing).

*Finland.* Accepts that the present exemption will do. Additional flexibility is not necessary, as Article 3 of the proposed Convention provides that certain fishing vessels can be excluded from its scope.

SAK: Agrees, pointing out that additional flexibility should be provided for under specific sections.

SAKL: Vessels less than 12 metres in length and entrepreneurs should be entirely excluded from the scope.

*France.* Article 3 of the proposed Convention permits the exclusion from all or some of the provisions of the Convention of "fishing vessels engaged in fishing operations in rivers, lakes and canals", as well as "limited categories of fishers or fishing vessels". Exclusion is dependent on the existence of "special and substantial problems" regarding application "in the light of the particular conditions of service of the fishers or the fishing vessels' operations". This Article may be interpreted both in a wide and a restrictive manner. For example, estuary fishing activities could be classified, according to the defining criteria in the proposed Convention, as either freshwater or maritime fishing. The conditions governing exclusion contained in Article 3 could of course be set out in a detailed fashion. However, this is not necessary, as the current text contributes to making the Convention ratifiable on a wide scale. Other provisions that render the text flexible allow the diverse range of national situations to be taken into account. This is the case in particular with regard to the adaptability of the scope of Annex III, which ensues from the introduction of the principle of equivalence during the 93rd Session of the International Labour Conference. The provisions of the proposed Convention are, however, intended to be applied to all fishers and fishing vessels engaged in commercial fishing operations. These choices are appropriate because, although the Convention can prescribe only minimum standards in order to ensure ratification by States where fishing is mainly artisanal or carried out by families, it must provide for additional specific standards for larger vessels. In general, the proposed text seems to be balanced and sufficiently flexible to constitute a reference, in terms of a global standard covering all the working and employment conditions of fishers, for a sector characterized by extremely hard working conditions and often precarious employment. For these reasons, there is no need to introduce any additional flexibility with regard to Article 3 of the proposed Convention.

*Germany.* The flexibility of the wording of the scope of application in Article 3 is sufficient. Self-employed individuals on board fishing vessels should not be included.

*Ghana.* The Convention should provide strong protection for fishers and yet be flexible enough to accommodate diverse operations, conditions and employment relationships prevailing in the industry. It should provide for the needs of artisanal fishing, aquaculture and recreational fishing.

*Greece.* The existing proposed Convention, in particular in Article 2(3) and Article 3(1), provides that the competent authority has the ability to exclude some fishing vessels from the scope of application of all or of certain provisions of the Convention. Considering that the Convention aims, inter alia, to formulate the basic principle relating to the safeguarding of competitiveness (level playing field), it would be likely to achieve the wider possible acceptance if the full implementation of its provisions concerned fishing vessels of 24 metres length or more that sail in international waters.

*Honduras.* COHEP: The text appears very restrictive for a country like Honduras in the current conditions of globalization, and especially for smaller economies like those of Central America, of which Honduras is typical. In Honduras, small-scale fishers number around 25,000 and, while they may be classified as small-scale fishers, the catches allowed are so limited that it would be more appropriate to refer to them as subsistence fishers. Most fishing boats are less than 25 metres in length and are limited in terms of space, and for this reason normally remain within the coastal exclusion area when at sea.

*Iceland.* The Convention should be broad, with general provisions, to enable the majority of countries to ratify it. The goal should be to achieve widespread ratification in

order that the provisions of the Convention apply to the largest possible proportion of the world's fishers, particularly those on smaller vessels. Some nations have, according to national law and practice, set higher standards for their fishing fleets than those put forward in the proposed Convention but that does not affect the need to set minimum standards that could cover all fishers, even those on the smallest fishing boats.

*India.* HMS: No additional flexibility is needed, as the matter was thoroughly discussed in 2004 and 2005. Sufficient safeguards have been provided through the flexibility provided in the provisions concerning definitions and scope.

*Iraq.* Supports the possibility for the competent authority to exempt certain fishing vessels and fishers from some provisions of the Convention, in particular for developing countries.

*Italy.* No.

FEDERPESCA and FAI–CISL: There is no need for further flexibility with respect to the provisions of Part I (Definitions and scope).

*Latvia.* No additional flexibility is necessary.

*Lebanon.* No observations.

*Lithuania.* No additional flexibility should be introduced.

*Mauritius.* No additional flexibility is proposed as regards the scope (Article 2). However, the definition of skipper in Article 1(n) should be amended as follows: "'skipper' means an appropriately qualified person having command of a fishing vessel".

*Mexico.* In Article 1, in the second line of (a) concerning the definition of "commercial fishing", activities involved in developmental/conservation fishing *(pesca de fomento)* and in fishing for training purposes, as well as vessels used for this purpose, should be excluded from the scope of application. The term "developmental/conservation fishing" means fishing with the purpose of study, scientific research, experimentation, exploration, prospecting, development, repopulation or conservation of aquatic flora and fauna resources and their habitat, and for testing equipment and procedures needed for that activity; collection of live specimens in federal waters for the purpose of maintaining and replacing scientific and cultural collections; and collection undertaken for the purpose of decoration or display in public entertainments, aquaria and zoos.

*Netherlands.* Supports the extension of the scope of Article 3 in the sense that it gives developing countries the opportunity to "grow" into the obligations of the Convention. Proposes new text that allows countries whose economies and institutions are not yet sufficiently developed to make temporary exceptions of specified provisions of the Convention. The following matters might be considered for such a temporary exception: medical examination; manning and hours of rest; work agreement, in particular Annex II; and medical care.

DFPB: Certain provisions regarding accommodation should at least be part of the development approach as well, although the Netherlands social partners prefer the solution proposed by the Government under Question 4.

*New Zealand.* New Zealand does not believe that any additional flexibility to exempt certain fishing vessels or fishers from the provisions of the proposed Convention is needed.

NZCTU: Agrees.

*Panama.* Include exceptions for sport and/or recreational fishing and small-scale fishing, with a subsequent requirement for the necessary standards regulating both these activities to be established under national legislation, on the basis of habits and customs.

CMP: Whenever a vessel, even one of less than 24 metres in length, is operating in open waters, the fishers on board must be borne in mind by the authorities under this type of Convention.

*Papua New Guinea.* Agrees with the current proposed provisions of the Convention on the condition that any exemption is universally accepted by member countries.

*Philippines.* The definition of "fishers" should be broadened to include fishers not necessarily on board vessels. The health-care provisions as well as the social security coverage could be expanded.

*Poland.* No need to introduce any additional flexibility. Notes that the definition of a fishing vessel for the purpose of the Convention differs from the definition contained in Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels, as well as in the Medical Examination (Fishermen) Convention, 1959 (No. 113) (which only applies to maritime fishing).

*Portugal.* No. Article 3 and Article 2(3) of the proposed Convention already provide the necessary flexibility.

*Qatar.* Yes. Additional flexibility should be introduced as regards scope of application, since requirements concerning accommodation and food cannot be met by some developing States suffering from lack of necessary fishing and maritime navigation equipment. Furthermore, these requirements (e.g. to adapt sleeping accommodation) would increase the production costs for fishermen, who already suffer from reduced economic return of fishing vessels due to reduced productivity in the most important fisheries.

*Romania.* The flexibility allowed by Articles 3 and 4 of the Convention is sufficient. It allows exceptions to the provisions of the Convention for a limited period without imposing a limit. It is beneficial not to apply the provisions of the Convention to subsistence or recreational fishing, and to ensure that the instrument has flexibility for dealing with vessels and fishers on inland rivers, lakes and canals. Developing countries need to understand an elementary fact: in order not to be stifled by the big players in the market, they must adopt sound practices. Poverty is not an argument for exposing fishers to serious hazards or allowing precarious employment arrangements. Local or regional forms of association can offer ways of allowing adoption of ILO standards.

*Saudi Arabia.* No need to add additional flexibility to the provisions relating to scope.

*Seychelles.* Agrees with Article 2(3) because it feels that the protection provided by the Convention should definitely apply to all fishers working on fishing vessels above 24 metres in length. If a State is able to extend this protection to fishers working on smaller vessels, it should definitely do so.

*Slovenia.* No need to exempt certain fishing vessels of fishers from some or all provisions of the Convention.

*South Africa.* No. There is sufficient scope for the competent authority to apply its mind and issue an exemption under the terms of Article 3(1)(b).

*Spain*. The scope should be as broad as possible. However, in order to obtain a Convention that can be ratified by the greatest number of member States possible, the competent authority could be allowed to exclude certain groups of vessels or fishers from some of the provisions. The criteria for setting certain exemptions should consist of the size of the vessel and the length of time spent at sea. In the case of small fishing boats, quite often the vessel is owned by a family. In some countries the entire crew of one boat may be self-employed. In such cases, it would be difficult to ensure compliance with the contents of Articles 16–20 concerning fishers' work agreements. In no case should authorization be granted for the exclusion from the measures adopted concerning safety, health and accident prevention of any group of fishers based on the size of the vessel or the type of navigation. Shore-based persons carrying out work on board, and other persons not covered by the definition of "fisher" contained in the Convention should also be covered by the measures concerning safety, health and accident prevention. They could, however, be excluded from other provisions, such as those referring to accommodation, food or repatriation.

FEOPE: Not in favour of any kind of exemption. Both the Convention and the Recommendation are basic in nature and far behind the legislation of most of the member States. These exemptions would therefore only serve to worsen competitive conditions for the fishing sector in those States with more advanced social legislation, such as Spain.

*Sri Lanka.* No.

UFL and NFSM: There are millions of fishers – more than 50,000 fishers in Sri Lanka alone – working on board vessels below 24 metres in length for more than three days at a time. There should be a provision to cover all these fishers.

CWC: No need for any additional flexibility to be provided for the entire Convention and any additional flexibility should be provided for under the specific sections.

*Suriname.* Some flexibility should be introduced in respect of the provisions regarding one-man businesses and newly built vessels (built by the owner).

*Sweden.* Swedish fishing is mainly run as "share fishing", whereby one or two families or family members jointly own or man a vessel and the crew on board is remunerated in relation to the proceeds of the catch. Each member of the crew, regardless of whether they are partners in the fishing vessel or not, can primarily be characterized as self-employed. As a rule, the fishers participate in most on-board tasks, including watches on the bridges. The Swedish fishing sector consists mainly of small units that work in day or week tours with small crews. There are no fishing vessels with on-board fish processing. True employment relationships are more or less non-existent within the Swedish fishing sector. As a consequence, the requirements stipulated in Part IV of the proposed Convention – regarding monthly or regular payment, working hours, contracts of service, etc. – can hardly be applied fully. Some of the other proposed rules, for example, the requirement for a public employment service for fishers, transmission of payments to the fishers' families, etc., seem to be more directed towards and relevant to working conditions in a large-scale fishing sector, with factory trawlers that fish for long periods and process the catch on board. The same goes for the detailed regulation on accommodation on board fishing vessels as proposed in Part V of the proposed Convention. One possible alternative might be to give a clearer definition of the types of fishing and the fishing vessels to which the regulations are to apply in order for them to be relevant and have practical significance. The size of crew and length of

fishing tour are parameters that could be used as definitions. Another alternative would be to exclude self-employed fishers from the scope of the Convention.

MMOA: Flexibility regarding the scope drains the whole purpose of the Convention and sends out the wrong signals, both with regard to the Convention itself and also in general when a member State may ratify a Convention with little or no content. The scope should be as wide as possible in order to protect as many fishers as possible.

SFR: Practical professional fishing is a special business activity and not comparable to any other. This is even more true in view of the extremely diverging special circumstances prevailing in the various types of fishing that take place (everything from small-scale lake fishing to large-scale sea-based fishing) and, this being so, to try to regulate working conditions in the fishing sector through an international Convention is not a suitable approach. The special circumstances that apply to each individual type of fishing must be specially studied and thereafter separately regulated if this is deemed necessary. Regarding what has been said from an international perspective, it seems that the approach chosen by the ILO has not been well thought through. The purpose which the proposed Convention should probably try to achieve, as far as can be understood, refers to employees on board fishing vessels. In view of what has been said and in view of other circumstances as well, there is reason to exclude self-employed fishers fully from the scope of the Convention, which should thus only cover employees.

*Syrian Arab Republic.* More flexibility should be introduced as regards developing countries, especially for small vessels (less than 16 metres) engaged in limited areas of operation.

*Thailand.* There is no objection to the provision concerning definitions and scope.

*Trinidad and Tobago.* Fisheries observers should be included in Article 1(e) concerning the definition of “fishers”. Notwithstanding that observers may be employed under a different arrangement (including a different insurance scheme), they are under the supervision of the skipper. In that regard, certain provisions in the Convention are very much applicable, such as: Minimum age (Article 9, paragraphs 3–5); Medical examination (Article 10(1) and (3) and Article 12); Manning and hours of rest (Articles 13(b) and 14(1)(b)); Accommodation and food (Article 27(c)); and Medical care (Article 29(e)). With regard to Article 1(e) concerning the definition of “fishers”, it was pointed out by the ECA that the words “in any capacity” in “every person employed or engaged in any capacity or carrying out” make the definition of fishers too broad and that its scope needs to be narrowed. It was recommended that the definition be rephrased to read “every person employed or engaged in such capacity or carrying out an occupation on board any fishing vessel”. In Article 3, it is recommended that another category, “fisheries observers”, be included.

*Ukraine.* Since almost 50 per cent of the 27 million people working in the fishing sector today are engaged in small-scale or collective fishing and working conditions, medical provision and living conditions differ greatly from those in the heavy fishing sector, it is necessary to provide a separate set of regulations in the Convention. With every new generation of fishing vessels, more efficient vessels appear which are designed to operate safely with smaller crews and a smaller number of people earning a living on board. It should also be borne in mind that differing vessel-construction techniques influence the living conditions of fishers and their working conditions on board. Technological innovations in modern conditions are becoming ever more widespread and this has an immediate effect on the safety and efficiency with which fish

can be caught, which are constantly increasing. Since fishers spend long periods of time on the open sea (not just days, but several months on end), particularly on vessels in ocean-going fishing flotillas, such vessels serve not only as their workplace but also as their home for quite significant periods of time. Naturally, the living conditions of fishers working on very primitive vessels (small scale) are very different from those experienced on large fishing vessels, or even from the conditions for fishers working in small fishing enterprises using cargo vessels. Though legislation exists in most countries of the world to regulate the construction of vessels and crew quarters for more or less large vessels, there is in practice no comparable legislative base for smaller craft, which creates certain difficulties in ensuring reliable health, hygiene and living conditions on a permanent basis in crews' living environment. From this, it can be seen that each fishing sector has its own characteristics and problems, and the living conditions of fishers carrying out small-scale and cooperative fishing are significantly different from the living conditions of fishers on large, industrial vessels. In addition, the various provisions of the Convention must be taken into account when vessels are registered, since the flag State might exclude vessels from its register on the grounds of their small size, and thus an unregistered vessel might not come under the protection of the proposed Convention. The provisions concerning the scope of the Convention are sufficiently flexible, since they provide the possibility for the competent authority (Article 3) to exclude certain categories of fishers or fishing vessels from the provisions of the Convention, after consultation.

*United Kingdom.* The text of Article 3 as drafted is acceptable and provides a reasonable degree of flexibility. But in view of difficulties for some ILO Members, it may be appropriate to widen the wording of Article 3(1)(b) to refer to the possibility of excluding "specified" rather than "limited" categories of fishers, i.e. it is suggested to amend Article 3(1)(b) to read "specified categories of fishers or fishing vessels". This approach would also provide flexibility for developing countries.

*Uruguay.* No exceptions.

*Venezuela, Bolivarian Republic of.* Recalling the 93rd Session of the International Labour Conference, the Employer Vice-Chairperson requested the Office to provide an interpretation of the above paragraph. The representative of the Secretary-General stated in this regard that the purpose of this paragraph was to cover such cases as those of "persons" referred to in Article 11(e), who, for example, had applied for and been refused fishing licences or had failed to obtain medical certificates and thus were not, and perhaps would never become, fishers. If a fisher admitted to employment on a vessel was unaware of the applicable standard, would the failure of a captain or master to ensure that crew had valid medical certificates mean that the crew was not covered by the Convention? Replace Article 3 with: "The competent authority, after consultation, may exclude from the requirements of this Convention, or of the provisions thereof, where their application raises special and substantial problems in the light of the particular conditions of service of the fishers or the fishing vessels' operations: …"

*Overview of the replies to Question 1*

The governments that replied indicated by a ratio of approximately two to one that additional flexibility was not necessary. There were, however, several replies that were not categorical as to whether or not more flexibility was desired. One government indicated that no change was needed but, in its reply to a subsequent question, stated that the Convention should take the form of a non-binding code.

Many governments indicated why they did not want changes to the existing text. It was noted that too much flexibility would lead to diverse forms and varying levels of

protection. The importance of improving protection for fishers on small vessels and in developing countries was stressed. Several governments replied that there was sufficient flexibility in the provisions on scope and definitions and that specific problems could be dealt with in the specific Parts or Articles concerned. A few indicated that the Convention should be less flexible as regards scope, or that certain persons who were not covered, for example shore workers or fisheries observers, should be included, at least as regards certain provisions.

Some governments pointed out that sufficient flexibility was important but did not comment further. In a few cases, they indicated that there was sufficient flexibility for their own fishers and fishing vessels, but that they were open to increasing flexibility if it would lead to wider ratification.

Several governments that sought additional flexibility provided suggestions on how to achieve this, but there was no overwhelming support for any specific approach. Some indicated that the Convention should be flexible with regard to certain categories of fishing vessel, taking into account such issues as vessel length or displacement, time at sea, and tonnage, but were not more specific. Others made specific suggestions, such as excluding, either from the terms of the Convention or from specific provisions, "self-employed" fishers, those on vessels where the crew were family members, those on vessels fishing in archipelagic waters, those on vessels below a certain specified size, or those in developing countries. There were also suggestions related to the status of Annex III (see replies to Question 4).

A few governments indicated that, while flexibility might be called for in relation to some vessels, there should be full implementation for others, such as vessels of 24 metres or more in length that sail in international waters or remain at sea for more than a few days.

The workers' organizations generally replied that additional flexibility was not necessary, as Article 3 of the proposed Convention provided that certain fishing vessels could be excluded from the scope of the instrument, and indicated that any additional flexibility that was needed should be provided under the specific sections of the Convention.

The employers' organizations generally wanted the Convention to be more flexible and less prescriptive. Several indicated that they wanted vessels of a certain size to be excluded, or for the competent authority to be enabled to exempt such vessels, from national legislation or regulations. Specific suggestions were provided. Some wanted specific categories of fishers to be excluded, such as "self-employed" fishers. Some expressed support for the possibility of exclusions, perhaps on a temporary basis, for developing countries as concerns certain provisions (for example, the provisions concerning medical examinations, manning and hours of rest, work agreements, medical care and accommodation).

*Discussion at the Tripartite Round Table*

When the Interregional Tripartite Round Table on Labour Standards for the Fishing Sector considered this question, it discussed the possibility of incorporating into the proposed Convention a "progressive implementation approach". This approach, which had been suggested by the Employers, would allow States, under specified conditions, to implement progressively certain provisions of the Convention over a fixed period of time. It was suggested that this would encourage early and widespread ratification while allowing Members the time needed to put in place or improve necessary infrastructure. The participants sought clarification on various aspects of the proposal, in particular with

regard to the basic level of protection provided to fishers and the possible impact on the exercise of port State control. There was a general willingness to examine further the "progressive implementation approach" and to explore the possibility of incorporating this approach in the Convention. Towards the end of the Round Table, the social partners had found common ground on certain elements of a possible progressive implementation clause:

– such a provision should not have repercussions on member States' obligations resulting from ratifications of other Conventions: any effects should be clearly limited to the Convention itself;
– all provisions of the Convention subject to progressive implementation would remain mandatory; the only question was the time allowed to achieve full implementation;
– member States should only invoke the progressive implementation clause if a clear and objective justification, linked principally to infrastructural shortcomings, existed;
– this clause should not be applicable to all vessels; it was not, however, possible to find common ground on the vessels to which it could not be applied, although consideration was being given to, for example, vessels subject to port State control, those engaged in high-sea fisheries or those of a certain size.

It was agreed that further consultations were needed in relation, inter alia, to limits on how much time could be allowed for progressive implementation, and most importantly the Articles to which such a provision could be applied. As examples of how this approach would and would not be used, the Employers and Workers had identified Article 23 as a provision that should not be subject to the clause, and Article 10, paragraph 1, as a provision that could be subject to progressive implementation.

Although open to consideration of the progressive implementation approach, governments had a number of concerns. These included the need for the Convention to contain a clear set of non-alienable standards applicable to all fishers, and the need to bear in mind the potential impact on port State control and the concept of "no more favourable treatment". They indicated that these concerns should be taken into account during any informal consultations leading up to the Conference or during the Conference itself.

*Office commentary*

The Office notes that the idea of "progressive implementation" is not new to ILO instruments. In fact, it appears in several recently adopted ILO Conventions. The Night Work Convention, 1990 (No. 171), provides, in Article 3, that:

> 1. Specific measures required by the nature of night work, which shall include, as a minimum, those referred to in Articles 4 to 10, shall be taken for night workers in order to protect their health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately. Such measures shall also be taken in the fields of safety and maternity protection for all workers performing night work.
>
> 2. The measures referred to in paragraph 1 above **may be applied progressively**. [emphasis added]

The Maternity Protection Convention, 2000 (No. 183), provides, in Article 7, that:

> 1. A Member whose economy and social security system are insufficiently developed shall be deemed to be in compliance with Article 6, paragraphs 3 and 4, if cash benefits are

provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations.

2. A Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of this Convention under article 22 of the Constitution of the International Labour Organization, explain the reasons therefor and indicate the rate at which cash benefits are provided. In its subsequent reports, the Member shall describe the measures taken **with a view to progressively raising the rate of benefits**. [emphasis added]

The Prevention of Major Industrial Accidents Convention, 1993 (No. 174), provides, in Article 2, that:

Where special problems of a substantial nature arise so that it is not immediately possible to implement all the preventive and protective measures provided for in this Convention, a Member shall draw up plans, in consultation with the most representative organizations of employers and workers and with other interested parties who may be affected, for the **progressive implementation** of the said measures within a fixed time-frame. [emphasis added]

The latter, with its reference to measures "within a fixed time-frame" is perhaps closest to the proposals discussed at the Tripartite Round Table.

The Office wishes to draw attention to certain matters that should be taken into account should such a progressive implementation approach be considered at the Conference.

First, it is noted that Article 3 of the proposed Convention already offers considerable flexibility as regards the definition of the scope of the Convention, whilst making it an obligation to take measures, as appropriate, to progressively extend that scope. It would need to be clarified whether and, if so, how this Article would be affected by the suggested approach.

Further, the relationship between this approach and the flexible provisions already included under the specific headings in the proposed Convention (e.g. Articles 9(6), 10(2), 14(2) and (3)) would have to be determined. The Office also draws the Committee's attention to the proposed Articles 35 and 36, which already provide for progressive implementation of certain aspects of social security protection, but without indicating that this should be done within a fixed period of time.

Furthermore, when considering the issue of flexibility provisions, whether in Articles concerning scope and definitions or elsewhere, the Office draws attention to the comprehensive discussion of this matter in the *Manual for drafting ILO instruments* prepared by the Office of the Legal Adviser. [4]

The Office provides below an example of possible text that would implement the idea of a progressive implementation approach, based on the discussions at the Tripartite Round Table. In doing so, it has also proposed a redrafting and merging of Articles 3 and 4 to improve the clarity of those Articles without changing their substance.

*Proposed new Article 3 (Articles 3 and 4 merged)*

1. Where the application of the Convention raises special problems of a substantial nature in the light of the particular conditions of service of the fishers or fishing vessels' operations concerned, a Member may, after consultation, exclude from the requirements of this Convention, or from certain of its provisions:

(a) fishing vessels engaged in fishing operations in rivers, lakes and canals;

(b) limited categories of fishers or fishing vessels.

[4] Available in English, French and Spanish at http://www.ilo.org/public/english/bureau/leg/manual.htm.

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

3. Each Member which ratifies the Convention shall:

(a) in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation:

(i) list any categories of fishers or fishing vessels excluded under paragraph 1;

(ii) give the reasons for any such exclusions, 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

(iii) describe any measures taken to provide equivalent protection to the excluded categories; and

(b) in subsequent reports on the application of the Convention, describe any measures taken in accordance with paragraph 2.

*New Article 4*

1. Where it is not immediately possible for a Member to implement all of the measures provided for in this Convention owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, the Member may, in accordance with a plan drawn up after consultation, progressively implement all or some of the following provisions within a period not exceeding [… ] years following the date of entry into force of the Convention for that Member:

(a) *[… particular provision of the Convention to be specified]; [etc.]*.

2. Paragraph 1 does not apply to *[… categories of fishing vessels or fishers to be specified]*.

3. Each Member which avails itself of the possibility afforded in paragraph 1 shall:

(a) in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation:

(i) indicate the provisions of the Convention to be progressively implemented;

(ii) explain the reasons and state the respective positions of the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist; and

(iii) describe the plan for progressive implementation; and

(b) in subsequent reports on the application of the Convention, describe the measures taken with a view to giving effect to all of the provisions of the Convention within the period set out in paragraph 1.

In the alternative versions of Articles 3 and 4 proposed above, the Office has, in place of the wording "special and substantial problems", used the wording "special problems of a substantial nature in the light of", as this wording has been used in a number of existing ILO Conventions. [5] The Office further notes that the wording in the proposed new Article 4, "special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions", does not refer to a country's

[5] Including: the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), Art. 1, para. 2; the Safety and Health in Construction Convention, 1988 (No. 167), Art. 1, para. 2; the Night Work Convention, 1990 (No. 171), Art. 2, para. 2; the Maternity Protection Convention, 2000 (No. 183), Art. 2, para. 2; and the Safety and Health in Agriculture Convention, 2001 (No. 184), Art. 3, para. 1(a).

overall level of development but only to problems related to infrastructure or institutions. This is intended to address some of the concerns raised at the Round Table.

The existing Article 3, paragraph 2, of the proposed Convention reads:

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

The Office has also used this wording in its proposed new Article 3 (merging Articles 3 and 4) as shown above. However, it draws the Committee's attention to the use in this paragraph of the words "where practicable" and "measures, as appropriate", which appear to be redundant. The Committee might wish to consider whether the intent of this paragraph would be better indicated by replacing the words "measures as appropriate" with "appropriate measures", although this might also result in a change to the substance of the text.

Furthermore, the Office notes that, under Article 4, paragraph 1, of the proposed Convention (and proposed new Article 3, paragraph 3(a)(iii) of the above text proposed by the Office), each Member, in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation is required, inter alia, to "describe any measures taken to provide equivalent protection to the excluded categories". Although this refers to the categories of fishers or fishing vessels that may be excluded from the requirements of the Convention or certain provisions thereof, as set out in Article 3 of the proposed Convention (or Article 3, paragraph 3(a), of the above text proposed by the Office), the Office observes that this provision does not mirror any substantive obligation in Article 3 of the proposed Convention (or in Article 3, paragraph 3(a), of the text proposed by the Office).

In the proposed new text in Article 4, the Office has provided, in paragraph 1(a), for the possibility of listing those provisions of the Convention which a Member "may, in accordance with a plan drawn up after consultation, progressively implement". The provisions listed could include entire Articles or parts of Articles (for example, Article 10, paragraph 1, or Article 14). In paragraph 2 of the proposed new Article 4, the Office has included text that provides that paragraph 1 does not apply to certain categories of fishing vessels or fishers. It has left these categories in square brackets, as this is a substantive issue which the Committee may wish to consider. However, bearing in mind the replies to Question 1 and the comments made, in particular by government participants at the Round Table, indicating that certain fishing vessels or fishers should not be subject to such a provision, consideration might be given, for example, to including here a reference to "fishing vessels or fishers subject to the requirements of Article 41 of the Convention". In this regard, the Office also draws attention to its proposed redrafting of Article 41, as noted in the section of this report entitled "Additional Office commentary".

The Committee may also wish to consider whether the reference in Article 3 to "fishing vessels engaged in fishing operations in rivers, lakes and canals" should instead read "fishing vessels engaged in fishing operations in rivers, lakes **or** canals" [emphasis added].

The Office also notes that one of the replies to Question 1 suggests including a reference to "archipelagic waters" in Article 3, paragraph 1(a). Although the Office is not proposing specific text on this matter, it notes that the United Nations Convention on the Law of the Sea (UNCLOS), Part IV (Archipelagic States), Article 46, provides that:

For the purposes of this Convention:

(a) "archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands;

(b) "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

The Office further notes the suggestion in the replies to exempt "artisanal fisher" from some or all of the Convention's provisions. In this regard, it observes that this term is defined differently in different countries. However, the FAO *Fisheries Glossary* [6] has defined artisanal fisheries as:

> Traditional fisheries involving fishing households (as opposed to commercial companies), using relatively small amount of capital and energy, relatively small fishing vessels (if any), making short fishing trips, close to shore, mainly for local consumption. In practice, definition varies between countries, e.g. from gleaning or a one-man canoe in poor developing countries, to more than 20 m. trawlers, seiners, or long-liners in developed ones. Artisanal fisheries can be subsistence or commercial fisheries, providing for local consumption or export. Sometimes referred to as small-scale fisheries.

## Question 2

**Qu. 2** *Articles 10, 11 and 12 of the proposed Convention concern the medical examination of fishers. Should additional flexibility be introduced into these Articles? If so, in respect of which specific provisions and under which conditions?*

*Replies*

*Algeria.* The provisions are fully compatible with national laws and regulations, according to which all persons working as fishers are required to undergo periodic medical examinations to verify their physical fitness for seafaring work.

*Argentina.* The authority to grant general exemptions contained in Article 3 is not compatible with that provided for in paragraph 2 of Article 10. Not only does this affect the consistency of the text, but the parameters or reasons for exemptions, as listed in paragraph 2 referred to above, are worded differently to the list contained in Article 3, which in principle would be shorter. It would be more appropriate to maintain the wording of Article 3 and delete paragraph 2 from Article 10, which, according to the Government's proposed amendment, would consist of a single paragraph. The Argentine Maritime Authority: It would not be appropriate to authorize exemptions allowing fishers to work on board fishing vessels without a valid medical certificate attesting to their fitness (Article 10(2)). Although the general principle states that valid medical certificates are compulsory (paragraph 1), the scope given for the competent authority to grant exemptions (paragraph 2) means that this is not an absolute requirement, thus making it difficult to monitor compliance and sanctions. With regard to Article 12, which determines the validity and minimum content of medical certificates of fishers on vessels of 24 metres in length and over, paragraph 1 is a minimum requirement that must not be further reduced or implemented at the discretion of individual Members, which could use any regulation that makes the limited requirement of this Article even more flexible. The Occupational Hazard Supervisory Authority: Additional flexibility is not

[6] http://www.fao.org/fi/glossary/default.asp.

appropriate given that the Occupational Hazard Act incorporates the provisions of the proposed Convention.

CATT: Flexibility has already been created in Article 10(2). However, an additional provision could be introduced specifically for fishers on board artisanal or small-scale fishing vessels operating in countries where existing development or infrastructure levels could make such requirements unreasonable or impractical. This flexibility should in no way be extended to cover workers on board vessels of 24 metres in length and over, or who remain at sea for more than three days.

CAPeCA/CALaPA/CAPA: It is unnecessary to make the medical examination provisions more flexible. All fishers should have a medical certificate duly authorizing them to board the vessel and carry out their duties. Furthermore, medical examinations are necessary to prevent subsequent claims relating to prior ailments or injuries not related to fishing. As regards requirements and validity, an exemption could be envisaged for artisanal fishers and subsistence fishing.

*Australia.* There is sufficient flexibility in Articles 10–12 relating to the medical examination of fishers. The text as proposed is supported.

*Austria.* The flexibility provided by Article 10, paragraphs 1 and 2, appears to be sufficient. However, with regard to paragraph 3, in order to make the proposed Convention more widely acceptable, the wishes of other Members regarding possible exemptions should be discussed again.

*Azerbaijan.* No.

*Belgium.* No. Flexibility is envisaged under paragraph 2 of Article 10 and, to a certain extent, under paragraph 3. Article 11 leaves the authority with plenty of room for manoeuvre. The search for additional flexibility would give rise to new difficulties and would render minimum provisions for the protection of fishers meaningless, in a sector already famous for the risks involved.

*Benin.* The provisions set out in Articles 10, 11 and 12 are adequate.

*Brazil.* No. The provisions on medical examination should be maintained and the existing Articles are already sufficiently flexible, subject to the authorization of the competent authority of each country, following prior consultation.

CNC and CNT: There is a need for additional flexibility. Reasoning: A standard should be introduced that does not oblige owners of fishing vessels and boats to adopt less rigorous standards in order to remain competitive. The competent authority should adopt the relevant international guidelines concerning medical examinations or certificates of physical aptitude for persons working at sea.

*Burkina Faso.* In general, flexibility is needed, especially with regard to medical aspects but without compromising the very purposes of the Convention. For example, owing to the lack of doctors in areas where fishing communities live and are active, it may not be possible for fishers to undergo regular medical examinations even if they wish to do so.

*Canada.* Competent authorities should be responsible for determining appropriate medical certification standards for fishers, including whether having a medical certificate is a bona fide occupational requirement. Mandating medical certificates for fishers, unless it was determined to be a bona fide occupational requirement, could be in contravention of Canadian human rights legislation. Articles 11 and 12 address important issues, such as proof of sufficient eyesight and hearing, and provide useful

guidance but are overly prescriptive as drafted (i.e. by stipulating the maximum period of validity of a medical certificate). In Canada, some jurisdictions do not regulate medical certificates for fishers working on smaller vessels.

CLC: Flexibility is already provided for in Article 10(2). However, an additional provision could be added to cover smaller vessels where the level of development or infrastructure of the country renders it unreasonable or unpractical for all the fishers on smaller vessels to have a valid medical certificate. This flexibility should not extend to vessels of 24 metres in length and over or to vessels that normally remain at sea for more than three days.

*China.* Article 11(c) should be modified as follows: "… the medical certificate to be issued by a duly qualified medical practitioner or hospital or, in the case of a certificate solely concerning eyesight, by a medical practitioner or hospital recognized by the competent authority as qualified to issue such a medical certificate, and the medical practitioner or hospital shall enjoy full professional independence in exercising their medical judgement in terms of the medical examination procedures;". Article 11(e) should be modified as follows: "… the right to a further examination by another independent medical practitioner or hospital in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform;". Reasoning: Medical examinations in some countries are not conducted by an individual medical practitioner independently, rather, the relevant certificate is issued by hospitals.

*Colombia.* No. In view of the conditions in which fishing is carried out, the time spent at sea, and the distance of vessels from medical centres, it is important that fishers undergo a full medical examination.

ANDI: There should be provision for the competent authority to allow exemptions depending on the size of the vessel, the time spent at sea and the fishing zone involved, but such exemptions would not apply to vessels of 24 metres or more in length or more than 175 gt, and would depend on the length of the voyage and the fishing zone involved.

*Costa Rica.* A vessel that remains at sea for more than three days cannot be excluded from the requirement that fishers on board that vessel hold a medical certificate. Article 12(2) should be reconsidered. The Occupational Health Council feels that Article 12(1) should contain a statement to the effect that fishers are physically and psychologically fit to perform their duties and that checks have been carried out to ensure that fishers are not predisposed to consume drugs or substances (legal or illegal) that will prevent them from carrying out their duties.

*Croatia.* Medical certification, as stipulated in the proposed text, is left to the definition and determination of individual Members. This provides enough flexibility.

*Cuba.* Subparagraph (e) of Article 11 should be deleted. Fishers must be examined by qualified and recognized medical practitioners. This should be stipulated clearly in subparagraph (c) of the same Article.

*Denmark.* Article 10(2) provides the necessary flexibility.

3F: Supports this opinion. But consideration should be given to including a regulation in the provisions on medical examination of fishermen that would apply to smaller vessels in countries where the development and infrastructure make it unpractical or unreasonable that fishermen on such vessels should hold a medical certificate. Such exemptions should not apply to a fisherman working on a fishing vessel

of 24 metres in length and over or which normally remains at sea for more than three days.

*Egypt.* Agrees that persons working on board fishing vessels should be subject to initial medical examination as well as to subsequent periodic examinations. They should have medical certificates attesting to their fitness to work and their healthy status. Fishing vessels should be equipped with appropriate medical supplies and there should be a person on board qualified to carry out the necessary first aid. The persons who issue the medical certificate should be approved by the competent authority in order to avoid falsification and fraud of medical certificates and to ensure the validity of the medical certificates.

GTUWA: The competent authority in the State of the fisher's nationality or residence and the State of migration where the fisher works should reach an agreement on the criteria of, and who will sign, the medical certificate and determine the fisher's health and physical ability to work.

*Finland.* The present text provides the needed flexibility. In Finland, the Decree on Medical Examinations of Seafarers (476/1980) does not apply to fishers unless the work is carried out on a vessel provided with a deck and designed for deep-sea fishing.

SAK: Article 10(2) provides the needed flexibility. However, depending on the level of the development and infrastructure of the country, an additional provision might be needed to provide exemption from the requirement of medical examination for fishers on vessels less than 24 metres in length and vessels which normally remain at sea for no more than three days.

*France.* Article 10 of the proposed Convention guarantees that any fisher working on a fishing vessel of 24 metres or more in length or which normally remains at sea for more than three days, shall be examined to ensure that he or she is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the health of other persons on board. Hearing and sight must also be checked. It is understandable that certain States which lack the appropriate medical structures could have difficulty in applying Article 10 of the proposed Convention. However, increasing the possibilities for exemption would substantially reduce the scope of the new text. For France, medical coverage and follow-up care are a general principle. In the light of this, it would seem inappropriate to extend the exemption to categories of fishers other than those included under Article 10 of the proposed Convention.

*Germany.* The medical examination of fishers should be conducted as for every other seafarer, which means that there should be no flexibility.

*Ghana.* Additional flexibility should be introduced in Article 10(1) to include artisanal fishers, aquaculture and recreational fishing.

*Greece.* Article 10(2) already provides the competent authority with flexibility concerning fishermen's medical examinations. The standards of the flexibility could probably be improved by adapting the scope of application of the Convention (see answer to Question 1).

*Honduras*. COHEP: Yes. The provisions must be flexible. In Honduras, the Atlantic zone includes areas of different and sometimes non-existent health services, so flexible provisions would not lead to sanctions against Honduran fishers in future. There should be a degree of flexibility in these provisions in the case of small-scale fishing or

subsistence economies. Without such flexibility, Honduran fishers and their families would be at risk.

*India.* HMS: Flexibility for small vessels should be added to Article 10(2). Ninety per cent of the fishers in Indian and Asian countries belong to small-scale enterprises or are self-employed. There may not be a developed infrastructure, and therefore the requirement may be impractical. However, there need not be any flexibility for vessels above 24 metres in length.

*Iraq.* More flexibility should be introduced.

*Italy.* No.

FEDERPESCA and FAI–CISL: Italian legislation makes provision for medical examinations and their frequency. No further flexibility other than that already provided appears necessary.

*Japan.* There are several items which should be examined in order to improve working conditions, including: (1) accommodation; (2) minimum requirements for minimum age and medical examination; and (3) conditions of service, such as manning and minimum hours of rest. To give due consideration to fishers' health, items (2) and (3) are more essential than accommodation and they should be the first to be addressed.

JSU: Agrees.

*Latvia.* No additional flexibility is necessary.

*Lebanon.* Article 10, paragraph 2, concerning exemptions from medical certification, allows sufficient flexibility: more flexibility may weaken the content of paragraph 1. The requirements for medical examination of seafarers on merchant vessels could be applied to fishers, given the difficulty of work on fishing vessels. It may be necessary for some facilities to charge a fee to obtain the certificate. Article 12, paragraph 1(a), provides that, for a fishing vessel of 24 metres in length, "The medical certificate of a fisher shall state, at a minimum, that: the hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel." This should also be a requirement for work on vessels under 24 metres in length. Article 12, paragraph (3), provides that "If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage." In this regard, the medical certificate should be renewed at least one or two months before its expiration, in order to avoid the expiration of the certificate in the course of a voyage, taking into account exceptional circumstances.

*Lithuania.* No additional flexibility should be introduced.

*Mauritius.* No additional flexibility is necessary.

*Mexico.* It is not necessary to introduce greater flexibility into these Articles, given that Article 12, paragraphs (2) and (3), of the proposed Convention is very clear with regard to the duration of validity of medical certificates.

*Netherlands.* See answer to Question 1.

*New Zealand.* No additional flexibility should be introduced into these Articles. The requirement to be medically fit is important for a hazardous industry such as fishing. Paragraph 2 of Article 10 provides adequate flexibility.

NZCTU: Agrees that no additional flexibility need be introduced. Any attempt to introduce flexibility in respect of vessels 24 metres in length or longer should be strongly resisted.

*Panama.* The Maritime Authority of Panama considers that, given the importance of the question of "fitness to perform duties" and the broad support shown for the Maritime Labour Convention, 2006, the parameters should be the same.

CMP: Articles 11 and 12: In the case of fishers on board vessels smaller than 24 metres in length, the provisions of these Articles should be observed.

*Papua New Guinea.* Agrees with the proposed Convention regarding the examination of the fishers on shore before they board the fishing vessels. However, given the small scale of the fishing industry and the prevailing economic conditions, medical facilities (centres) either offshore or in the fishing vessels may not be affordable.

*Philippines.* As fishing is a very taxing and often hazardous occupation, it would help fishers if the exemption in Article 10, paragraph 2, were removed. In addition, Article 11 could specify the importance of preventative programmes on sexually transmitted diseases, HIV/AIDS, drug abuse and tuberculosis in view of the vulnerability of fishers to such health problems. Subparagraph (e) of Article 11 should be deleted. While the medical examination of fishers should be a requirement for all fishers, there should be the possibility for the competent authority to grant exemptions for fishers not working on board vessels. The period of validity for the medical certificate should be for a maximum of one year regardless of age.

*Poland.* There is no need to change the abovementioned provisions, as Polish legislation is in conformity.

*Portugal.* No. The provisions are already sufficiently flexible.

*Qatar.* Fishing vessels in the State of Qatar do not exceed 24 metres in length, and do not stay at sea for more than three days. Although these vessels can be exempted from the requirement for fishermen to have a medical certificate, legislation in the State of Qatar provides for the need to have a medical certificate to work on fishing vessels. The provisions of the Articles are in full conformity with the law in force in Qatar.

*Romania.* The Articles in question are already flexible. The worker's health is very important.

*Saudi Arabia.* The Articles mentioned in Question 2 are clear, and do not require additional flexibility.

*Seychelles.* Seychelles agrees with the aforementioned Articles but also feels that they are somewhat too flexible and thus should be taken only as minimum requirements.

*Slovenia.* There is no need for additional flexibility to be introduced in Articles 10, 11 and 12 of the proposed Convention.

*South Africa.* As concerns Article 10, no. There is sufficient latitude in the Article allowing length of time and the length of the vessel to be considered. As concerns Article 11, no. Article 11 sets the framework for Article 10 to be effective. It also allows a "medical practitioner" who may be a community or occupational health nurse to undertake the examination where access to a doctor may be problematic. As concerns Article 12, no. As with the previous two Articles, it reflects South African legislative requirements, although these require an annual medical examination. Fishing is known to be an occupation that is physically demanding often in poor weather conditions, and medical fitness standards are of the utmost importance.

*Spain.* No. The wording of Article 10(2) already introduces a great deal of flexibility, in that it authorizes persons to carry out one of the world's most dangerous occupations without a medical certificate attesting to fitness to perform their duties.

The ILO/WHO *Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations for Seafarers*, of 1997, which only allow exemptions for single voyages, should be applied. Given the culture of occupational risk prevention that we are attempting to establish here, it makes no sense, either in this Convention or in the Maritime Labour Convention, 2006, to exclude certain seafarers because they are at sea for three days or less.

FEOPE: This flexibility is neither appropriate nor fitting. However, it would be useful to include some kind of clause guaranteeing that the medical examinations carried out and recorded in some of the signatory countries to the future Convention are also valid in the territory of the other States signatories. This would assist the fishers in their work and enterprises in the management of their human resources. Restrictions would, however, need to be put in place with regard to possible types of discrimination, based on nationality or other factors, which could be practised, in certain territories, under the cover of the application of standards concerning medical examination.

*Sri Lanka.* Provision of a valid medical certificate should be a responsibility of the vessel owner.

UFL and NFSM: The medical examination requirement should be strictly enforced, especially when young fishers engage in fishing, as they should be qualified for fishing operations involving more than three days at sea. All multi-day fishing vessels that operate for more than three days at sea should also be covered by these Articles. There are millions of fishers all over the world, while more than 50,000 fishers in Sri Lanka alone work on fishing vessels less than 24 metres in length for more than three days at a time. There should be a provision to cover all these fishers.

CWC: Flexibility is already provided for in Article 10(2). However, an additional provision could be added to cover smaller vessels where the level of development or infrastructure of the country renders it unreasonable or unpractical for all the fishers on smaller vessels to have a valid medical certificate. This flexibility should not extend to vessels of 24 metres in length and over or to vessels which normally remain at sea for more than three days.

*Suriname.* Flexibility should be introduced regarding the issuance of medical certificates for fishers (owners) working on small vessels (see answer to Question 5).

*Sweden.* For the Swedish fishing sector, medical examinations of fishers are already regulated in existing crewing regulations. The Swedish rules on social security are of a general nature and include fishermen.

MMOA: The Convention has more than enough flexibility in the Articles referred to. Considering the high risks fishermen are exposed to, it is of great importance that they are in good health in order to maintain a safe working environment. More flexibility regarding the medical examination is unnecessary and may increase the risk for fishermen as well as the ship and the environment in general.

SFR: Self-employed persons should be entirely excluded from the scope of the proposed Convention. In Sweden, rules already exist concerning health aspects of fishing and these are applied. To stipulate in the Convention that no fisherman should practise his occupation unless a medical certificate states that the person in question is capable of doing so appears well-meaning, but in reality would entail yet another burden

for the individual fisherman who must be regarded as capable and competent to decide for himself if he can carry on his fishing activities or not. Fishing may be a special occupation, but it cannot be regarded as being of such a nature, and associated with such risk, that it is necessary for all professional fishers to have undergone medical examination and thereby be regarded as fit to practise their own occupation. The ideas, albeit well-meaning, are, in this regard, a very clear example of a completely unnecessary and superfluous set of rules. It is quite another matter that, in certain types of fishing, of a special nature, a requirement for certificates of health, etc., could be justified, but this is a matter of fishing carried on by a fraction of the addressees of the proposed Convention.

*Syrian Arab Republic.* The provisions of the proposed Convention, especially Articles 10, 11 and 12, have sufficient flexibility and are balanced as they stand, to the extent that these requirements are limited to those who work on fishing vessels of 24 metres in length and over. Such provisions are not required for fishers on small-scale fishing vessels.

*Thailand.* There is no objection to Articles 10, 11 and 12 of the proposed Convention.

*Trinidad and Tobago.* As concerns Article 11(c), it is recommended that the sentence "… in the case of a certificate solely concerning eyesight …" should be deleted. There are other medical conditions that pose a danger to fishers and should be declared by virtue of a medical certificate. As concerns Article 12(1)(b), safety should be included. There are effects other than the health of other persons on board that could be affected. The sentence should be rephrased to read: "… the fisher is not suffering from … to endanger the health and safety of other persons on board …". With regard to Article 12(3), the competent authority should be accorded the right to determine the period of validity of the medical certificate.

ECA: With regard to Article 11(e), the use of the word "person" instead of "fisher" needs to be clarified. The definition of "fisher" forms the basis of the whole document and the word "person" does not distinguish between members of the general public and fishers. Consequently, the use of the word "person" as opposed to "fisher" can cause confusion.

*Ukraine.* As regards the Medical Examination (Fishermen) Convention, 1959 (No. 113), it should be noted that, in a number of countries, the relevant legal provisions in legislation on medical services cover all merchant vessels or seafarers, including fishing vessels or fishers as appropriate. Since Convention No. 113 applies to the industrial fishing fleet sector, then it follows that the category of small or cooperative fishing vessels is not protected by this Convention and, consequently, it is impossible to say with certainty that the Convention has a significant effect in improving the health and increasing the occupational safety of the majority of such fishers worldwide. It is therefore necessary that steps be taken to bring this unprotected group of fishers within the scope of the Convention, as either a compulsory or recommended measure.

*United Kingdom.* While the United Kingdom Government can support the text of Articles 10, 11 and 12 as currently drafted, it is recognized that the provisions for medical examination of fishers were a significant concern for some parties. Accordingly, it suggests more flexible text as follows:

*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, exclude from the application of the preceding paragraph fishers or categories of fishers, 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, national traditions and level of development or infrastructure in the member State.
3. The exemptions in paragraph 2 of this Article shall not apply to a certificated officer or person with safety critical responsibilities working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.

In addition to providing more flexibility, the text as outlined would broadly align with the medical fitness requirements of the STCW–F Convention.

*Uruguay.* No changes are necessary.

*Venezuela, Bolivarian Republic of.* Although the medical certificate is a necessary instrument, given the circumstances of each country, it should not be limiting with regard to period of validity, as it could also be used as a means of labour discrimination within the context of the development of labour relations in the fishing sector. Given the tasks involved in fishing work, the environmental conditions, the period of duration of fishing operations and the high level of risk on board a fishing vessel or boat, it is vital that fishers be in good physical and mental health, especially with regard to sight and hearing, so that they may carry out their activities on board properly and efficiently, avoiding the risks linked to persons with health issues. Considers that Articles 10, 11 and 12 should be applied as set out in the proposed Convention. However, in Article 12(2) the period of validity could be reduced to one year for all fishers, including those under the age of 18. This is due to the high risk of contagious diseases on board, sexually transmitted diseases and other diseases present in the surrounding environment, which may spread in a short time, and even more rapidly in the reduced space in which fishing operations are undertaken. Finally, there is concern about suggestions for additional flexibility, all the more when developing countries are used as a basis for these suggestions. This would be contrary to the development of countries, assuming that this development is not only measured in terms of economics.

*Overview of the replies to Question 2*

Governments replied, in a ratio of four to one, that additional flexibility was not necessary in these Articles. Another six appeared to want less flexibility, and several did not answer categorically whether or not additional flexibility was sought.

Of those governments that did not want changes to the text, some indicated that their national laws and regulations were already fully compatible with the provisions of the Convention. Several said medical examination and certificates were needed due to the importance of fishers' health and the hazardous nature of fishing. It was said by one that the requirements for fishers should be comparable with those in the Maritime Labour Convention.

Some governments indicated that the provisions were too flexible, for example, because they did not require all fishers to hold certificates or did not require certificates for fishers on vessels at sea for more than three days. It was also suggested that

Article 10, paragraph 2, should be deleted because it was incompatible with Article 3, which already provided sufficient flexibility.

As to governments that wanted more flexibility, particularly in Article 10, paragraph 2, one of the main reasons given was lack of medical doctors or affordable medical services in some fishing communities, particularly in developing countries. A few governments cited the need for exemptions for artisanal fishers or owner–operators. One said that the requirement for a medical certificate was the responsibility of the vessel owner. Another said that the question of whether or not a certificate should be required should be left to the competent authority. It was suggested that additional flexibility could be introduced for fishers on small vessels or artisanal vessels. It was also suggested that the limitation on exemptions proposed in Article 10(3) should apply only to certified officers or persons with safety critical responsibilities working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days (with special exemptions possible in urgent cases and for a period of limited and specified duration).

As concerns possible changes to Article 11, one government said that the medical examinations should be used to promote prevention of HIV/AIDS, drug abuse and tuberculosis. Another proposed allowing hospitals as well as medical practitioners to issue medical certificates, while yet another was in favour of limiting the conduct of such examinations to qualified medical practitioners. Some wanted the deletion of Article 11(c) and, in one case, paragraph (e). It was suggested that, in (c), the words "in the case of a certificate solely concerning eyesight" be deleted, which would have the effect of allowing someone other than a qualified medical examiner to issue the medical certificate as long as that person issuing the certificate was recognized by the competent authority as qualified to do so.

With regard to Article 12, one government questioned why the eyesight and hearing requirements in Article 12(1)(a) should not apply to fishers on vessels under 24 metres. Another said that Article 12, paragraph 1, must not be further reduced. As to the validity of certificates, some wanted a limitation of one year for fishers of all ages while others suggested leaving the period of validity to the competent authority.

A few employers' organizations referred to the development approach that they had described in their answers to Question 1 (i.e. it should be possible to exempt fishers on board artisanal or small-scale fishing vessels in countries where the existing development or infrastructure levels make such requirements unreasonable or impractical). A few said that self-employed fishers should be excluded. One indicated that it would be useful to put in place measures to ensure that medical examinations were valid and recorded by signatory States. There was a suggestion (from ANDI) that the competent authority should be able to allow exemptions for certain vessels but that such exemptions would not apply, for example, to vessels of 24 metres or more in length or of more than 175 gt.

Several workers' organizations said that sufficient flexibility was already provided in Article 10(2), but that an additional provision could be added to cover smaller vessels where the level of development or infrastructure of the country rendered it unreasonable or impractical for all fishers on small vessels to have a valid medical certificate. Such flexibility should not extend to vessels of 24 metres in length and over or to vessels that normally remained at sea for more than three days. One seemed to indicate that the medical fitness criteria for fishers, and who should sign the certificate, should be left to the competent authority.

*Discussion at the Tripartite Round Table*

As noted in the appendix, the Round Table discussed the issues addressed in Question 2, in particular the possibility of exemptions for certain fishers or fishing vessels where the infrastructure needed to conduct medical examinations and issue medical certificates was lacking. The Employer and Worker representatives suggested that the progressive implementation approach noted above might be the means of providing the necessary flexibility. While the matter was not settled, there appeared to be progress towards a possible solution at the Conference.

*Office commentary*

Regarding the reply by the Government of the United Kingdom suggesting that Article 10 be aligned with the requirements of the STCW–F Convention, the Office points out that the STCW–F Convention sets out in the Annex, Chapter II, Regulations 1–6, the requirements for certification of skippers and officers in charge of a navigational watch on fishing vessels of 24 metres in length and over, in both limited and unlimited waters, for chief engineer officers and second engineer officers of fishing vessels powered by main propulsion machinery of 750 kW propulsion power or more, and for GMDSS radio personnel. These provide that all candidates for such certification shall "… satisfy the Party as to medical fitness, particularly regarding eyesight and hearing;" and that radio operators, skippers, officers, engineer officers and radio officers, when candidates for certification, shall "… satisfy the Party as to medical fitness, particularly regarding eyesight and hearing". They also provide, in Regulation 7, that "Every skipper or officer holding a certificate who is serving at sea or intends to return to sea after a period ashore shall, in order to continue to qualify for seagoing service, be required, at regular intervals not exceeding five years, to satisfy the Administration as to: … medical fitness, particularly eyesight and hearing;". Regulation 8 provides that "Every GMDSS radio personnel holding a certificate or certificates issued by the Party shall, in order to continue to qualify for seagoing service, be required to satisfy the Party as to the following: … medical fitness, particularly regarding eyesight and hearing, at regular intervals not exceeding five years;". However, Chapter III, Basic safety training for all fishing vessel personnel, makes no mention of medical fitness requirements.

The replies also include references to the ILO/WHO *Guidelines for Conducting Pre-Sea and Periodic Medical Fitness Examinations for Seafarers*. The Office points out that these Guidelines can be viewed, in English, French and Spanish, on the ILO web site. [7]

The replies also include the suggestion that the requirements concerning medical examination and certification of fishers should be aligned with those in the Maritime Labour Convention, 2006. The Office observes that while Articles 10–12 of the proposed Convention are generally consistent with those of the MLC (i.e. the period of validity of the medical certificates is the same), the MLC, in Standard A1.2, does differ in certain details (for example, it limits, in paragraph 9, the period during which a medical certificate, which expires during the course of a voyage will remain valid).

[7] http://www.ilo.org/public/english/dialogue/sector/techmeet/ilowho97/index.htm.

## Question 3

**Qu. 3** *Article 14 of the proposed Convention concerns level of manning and minimum hours of rest for certain categories of vessels. Should changes be made to this Article? If so, please indicate the changes proposed and specify the reasons.*

*Replies*

*Algeria*. Article 14 should not be changed, since it sets out the principle of having a minimum crew on board vessels that are 24 or more metres in length and a minimum rest period for fishers working on board fishing vessels engaged in voyages of more than three days. It also allows the competent authority to permit temporary exceptions to the normal rest periods.

*Argentina*. In Argentina, the Argentine Maritime Authority is responsible for ensuring the safe manning of fishing vessels, in order to guarantee the provisions of Article 14(1)(a), with a crew capable of sailing or operating the vessel safely, that is, meeting a minimum requirement for handling the vessel and operating its safety and rescue systems for a determined period, in accordance with the ratified provisions of international Conventions on the safety of life at sea. With regard to suitability or competency, these depend on the abilities of individual crew members, which are taken into account when ensuring the safe manning of the vessel. Before setting sail, all fishing vessels must have a safe manning certificate, which is issued by the Argentine Maritime Authority, under Maritime Ordinance No. 05/89. The operating crew, which ensures that the vessel operates in a normal and efficient manner in the activity and trade chosen by the vessel owner, in this case fishing, is not determined by the Argentine Maritime Authority, but is the responsibility of the vessel owner and the organizations to which the various workers are affiliated, which must adhere to international standards on hours of work and rest. We consider the restrictions established in paragraph 1(b) to be minimum parameters. Furthermore, paragraph 2 is flexible enough to recognize the need to grant exceptions to these minimum legal requirements in specific cases. In addition, paragraph 3 provides even greater flexibility in respect of how these requirements are envisaged. However, alternative requirements must provide at least the same level of protection. For the reasons given above, the Article should not be changed. The Occupational Hazard Supervisory Authority adds that all of the partners involved should be consulted, particularly to determine if the daily and weekly rest periods are sufficient for workers to recuperate both physically and mentally.

CAPeCA/CALaPA/CAPA: Article 14 should be deleted in its entirety, and only the general provision of Article 13 should be retained to the effect that periods of rest must be adequate or appropriate. If Article 14 is maintained, it should clearly state that the maritime authority is responsible for ensuring that vessels are safely manned, and the vessel owner is responsible for determining the crew members required for conducting fishing operations. Labour legislation in a majority of countries incorporates the principle that employers are responsible for managing and organizing their enterprise or production unit. In this case, the production unit is a vessel, which must therefore meet certain requirements or conditions imposed by the maritime authority. A safe crew with the appropriate nautical and navigational skills is therefore necessary. However, the number of workers recruited for commercial operations is the sole responsibility of the employer, just as it is for the employer to determine the number of operators, technicians and engineers involved in production and maintenance at shore-based fish processing plants. On the other hand, it should be possible to adjust rest periods according to the type of fishing or area of operation or the shifts worked on board, for example, on-board jiggers, which operate at night to catch and process squid.

*Australia*. The provisions of particular concern are Article 14(1)(a) and 14(1)(b), which establish specific provisions for manning and hours of rest. As provisions exist for consultation in relation to this Article, if agreement is reached between the parties on a suitable balance of work and rest, then there should be no need to mandate specific requirements.

In response to this, Australia proposes the following alternative wording for Article 14(1)(b):

> [In addition to the requirements set out in Article 13, the competent authority shall:]
> (b) for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish a reasonable level of rest to be provided to fishers.

The next sentence, specifying the necessary minimum hours of rest, should be moved to the Recommendation. Whilst the intent of Article 14 is sound from a health and safety perspective, it may not reflect the reality of some fisheries where earnings are based on a share of the catch. The suggested flexibility measure may serve to address this concern.

*Austria*. Given that exhaustion is a frequent cause of accidents, these provisions should not be made even more flexible.

*Azerbaijan*. No.

*Belgium*. Although it gave rise to a great deal of discussion, Article 14 was adopted by very broad consensus based on the undeniable logic inherent in the solution put forward. It is a key provision in the Convention and a fundamental one with regard to safe navigation at sea. There is no question of reducing the hours of rest set out under paragraph 1(b) of this provision, given that these correspond to the standard set by the Maritime Labour Convention, 2006. The reply is therefore no.

*Benin*. This Article can be retained in its current form, as it allows the competent authority to introduce changes following consultations with organizations of shipowners and workers in the fishing sector.

*Brazil*. No. The proposed text offers adequate protection to fishers from excessive fatigue and it can be accepted by developing countries. It allows the competent authority, always following prior consultations, to permit temporary exceptions to the limits on any 24-hour period or alternative requirements – and thus encourages more ratifications.

CNC and CNT: The competent authority should adopt measures aimed at providing adequate protection with regard to working conditions, as well as a dispute resolution mechanism.

*Canada*. The intent of this requirement is sound from a safety and health perspective but may not reflect the reality of some fisheries or where earnings are based on a share of the catch after expenses. The issue could be addressed by including a provision in this Article of the Convention that the competent authority should determine appropriate standards for fishing operations after consultation. This approach would also address the issue of monitoring and enforcement of these provisions. The second sentence in Article 14(1)(b) is overly prescriptive and should be moved to the Recommendation. Not all Canadian jurisdictions regulate manning and hours of rest in the manner outlined in Articles 13 and 14. These issues are usually addressed in collective bargaining agreements. Including prescriptive wording in this section will create barriers to ratification.

CLC: The minimum hours of rest requirements could be relaxed to reflect the intensity of fishing operations. However, it is essential, for the purposes of limiting

fatigue and given the high number of accidents in the sector and the dangerous nature of the work, that fishers have regular rest periods and are able to have adequate periods of sleep. As the differences in fishing operations make it difficult to establish a realistic international standard, any flexibility should be provided in the collective bargaining agreement.

*China*. In principle, agrees to the provisions of this Article, but appropriate changes should be made. Proposes that States be allowed to make provisions in principle governing the minimum level of manning for vessels of their own countries. If these provisions guarantee in principle a level of manning suitable for the safe navigation and operations of the vessel and for fishers to get minimum rest, then no compulsory provisions should be made on the minimum number of fishers. Minimum hours of continuous rest should be no less than four hours per fisher per day, and 12 hours in any two-day period. Reasoning: As the design of fishing vessels, areas of operations, and practices in different countries and areas are different, the number of fishers is often difficult to fix. Also, because one of the characteristics of fishing on the sea is the frequent need for continuous operations – excluding the case where some owners or masters of vessels neglect the health of fishers for economic gains – there still arise some situations where some fishers take very few hours of continuous rest per day due to the requirements of the operations. Minimum hours of continuous rest for fishers should be provided to ensure, to the extent possible, that all fishers get enough rest to recover their physical strength.

*Colombia*. The level of manning for each activity must be such as to ensure minimum conditions of safety and to comply with the safety and health standards required for any global market.

ANDI: Each State should adopt relevant laws and regulations to ensure that vessels under its flag have a crew that is sufficiently large and competent to ensure that its operations can be carried out safely. In the case of vessels of at least 24 metres or 175 gt, the competent authority should establish the minimum manning level required for the safe operation of the vessel.

*Costa Rica*. Occupational Health Council: The Convention should not exclude vessels shorter than 24 metres in length from the requirements contained in Article 14. Such an exemption would weaken the competent authority's ability to regulate. So-called "self-employed workers" do not, in general, enjoy protection against hazards at work, because, in accordance with the Labour Code, insurance against these risks is only compulsory for wage workers. In the absence of an obligation to be insured, most self-employed workers opt to work without insurance, seeing this as being a more profitable option. As to the working day, an examination of the practice and reality in this sector shows that there are artisanal fishers who work for periods of one day on different vessels or boats. In the same way, the competent authority is limited in its ability to monitor and apply provisions concerning occupational safety and health and working conditions in general in the sector in question. This is why it is so important that the loopholes related to Article 14 of this vital instrument be filled.

INCOPESCA: In Costa Rica, fishing activities carried out aboard boats and vessels must be considered to be atypical in terms of work activities, given that working days in this sector do not fit into the categories of day work, night work or mixed work, which are suitable or reasonable with regard to normal work or work performed on land or in offices, enterprises, factories, etc., given that any fishing trip that lasts up to three months may be considered to be normal. During such trips, the workers might not call in at port or set foot on land. Moreover, work tasks on vessels and tasks related to fishing

are discontinuous or temporary and therefore there are, necessarily, differences with regard to rest periods. Despite this, it is important to recognize periods of rest appropriate to fishing tasks. Therefore, taking into account the favourable conditions required for making a catch, such as the weather, finding a shoal of fish and other elements important to the activity, the workday could be agreed on by the parties, respecting, as far as possible, periods of rest for sleep and eating, all in accordance with the limits set under the Labour Code. The employer undertakes to ensure, especially during times when no fishing activity is being undertaken, that all the workers shall rest and eat accordingly, in order fully to recuperate.

*Croatia*. The proposed Article is acceptable.

Croatian Chamber of Economy: The requirements of subparagraph (b) should perhaps be lessened, because the detailed requirements might in the long run have negative impacts on the costs of operations.

*Cuba*. Add a phrase to the end of Article 14(1)(b) to the effect that other situations requiring different treatment may be addressed in a collective bargaining agreement, depending on national conditions.

*Denmark*. There is no need for further changes in Article 14.

3F: A relaxation of the requirements for hours of rest should be considered to reflect the intensity with which fishing is often carried out. It will often be difficult to establish such general standards due to the diversity in fishing around the world and, therefore, divergences should only be allowed through collective bargaining. The general regulation on hours of rest in the draft proposal for Article 13(b) should therefore still apply in order to limit fatigue, etc.

*Egypt*. Agrees on the content of this text concerning rights and guarantees established for those working on fishing vessels, so as to ensure security and stability and to safeguard the workers' right to determined hours of work and guaranteed hours of rest which should not be less than those established in the laws of the flag State. Exclude small fishing vessels operating in inland waters from the provisions and conditions of this Article.

GTUWA: Consultation as regards this Article should be tripartite, involving the competent authority, the employers and workers, both on a general level in each State and at a private level of each vessel or area.

*Finland*. Taking into account Article 3 of the proposed Convention, no changes are needed. However, it might be advisable to include a provision regarding daily minimum hours of rest.

SAK: Agrees, emphasizing the dangerous nature of the work. However, given the differences in fishing operations, the required flexibility should be provided by collective bargaining agreements instead of an international standard.

SAKL: Because of the nature of fishing, especially deep-sea fishing, and the sometimes extreme weather conditions, flexibility with regard to rest periods is necessary. Under certain conditions, rest at a given time might not be possible because of the safety of the vessel.

*France*. The issue of minimum manning levels must be looked at from a global perspective. If safe navigation is to be ensured, then so must the use of the vessel in safe conditions, especially given the nature of fishing operations. In this regard, several complementary definitions of minimum manning levels coexist within the international

texts in force. The Maritime Labour Convention, 2006, defines minimum manning levels as those which "ensure that ships are operated safely, efficiently and with due regard to security"; the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), stipulates in a more general manner that any commercial vessel shall be "… sufficiently, safely and efficiently manned". As to the texts originating from the International Maritime Organization, crews of commercial vessels must be certified by the flag States which issue, most often themselves, "safe manning certificates", establishing the number of officers and crew members and stipulating that the provisions concerning "the watch" shall be at the discretion of the owner and/or the skipper, but that they shall at least be in accordance with the standards established by the Standards of Training, Certification and Watchkeeping (STCW) Convention, the Convention on the International Regulations for Preventing Collisions at Sea (COLREGs), the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention for the Prevention of Pollution from Ships (MARPOL). Fishing remains a very particular type of maritime labour because, as well as navigating, the crew also operates the vessel when it is at sea. It is thus vital not to limit the notion of minimum manning to that of "minimum level of manning for the safe navigation"; rather an addition should be made in the form of "minimum level of manning for the safe operation". Article 13 of the proposed Convention, in referring to both the safe navigation and safe operation of the vessel, explicitly focuses on the "operation" of the vessel, in particular fishing operations. This Article, which has been drafted in a satisfactory manner, should be maintained.

Article 14 complements the stipulations of Article 13 by strengthening obligations concerning minimum manning levels. There is no need for additional flexibility. The regulation of the working conditions of fishers by requirements regarding minimum hours of rest is relevant because the duration of hours of rest seems to be the only criterion applicable in practice in this regard. Therefore, in the case of France, the decision to regulate the duration of seafarers' hours of rest was taken in agreement with the social partners. The provisions of Article 14 of the proposed Convention regarding minimum hours of rest should not be amended.

*Germany*. Article 14(1)(b) corresponds to the minimum hours of rest as foreseen in Article 21 of Directive 2003/88/EC concerning certain aspects of the organization of working time, which has been transposed into German law (the Seafarers Act). There are no objections to this provision. However, if the exceptions provided for in Article 14(2) and (3), might only be possible in specific cases, this provision would not be acceptable, as the provision is contrary to Article 21 of the Directive. In the Directive, exceptions are possible only if based on law, administrative acts or collective bargaining agreements. The exception criteria in Article 14 should be in line with those in Article 21 of the Directive.

*Ghana*. Article 14 should be retained.

*Greece*. No special comments, given that the limits provided thereof already exist as requirements of the Community legislation and Greece is in compliance.

*Honduras*. COHEP: Within the terms of Article 14(3), it is possible to establish alternative provisions after consultations between fishers, shipowners and governments – obviously ensuring at least the same level of protection. In Honduras, fishing at sea is limited to eight months in the year because of bans (closed seasons). As regards scaly fish, there is no closed season or other restriction and the boats involved are small and have limited space for ice and crew.

*Iceland*. The second sentence of Article 14(1)(b) should be moved from the Convention to the Recommendation and the wording of paragraphs 2 and 3 adjusted accordingly. The very nature of fishing operations makes it difficult to control working time. Fishers cannot control where and when the resource will appear and thus tend to fish as long as fish are being caught and capacity remains in the hold. There is no connection between the time actually worked on board and the fisher's income, as the fisher's pay is based on a share of the catch.

ASI: Opposes moving Article 14(1)(b) to the Recommendation and is in favour of keeping the paragraph as it is in the text of the proposed Convention.

*India*. HMS. According to circumstances prevalent in any country, the rest period can be included in collective bargaining agreements. A mandatory provision for the level of manning and minimum hours of rest is required, considering the accidents and dangerous nature of fishing work.

*Iraq*. Fishing operations in Iraq are very limited and there are no large fishing vessels. Consequently, there is no need to determine hours of work or the numbers of fishers on board.

*Italy*. No.

FEDERPESCA and FAI-CISL: The issue dealt with in Article 14 of the Convention is regulated by national collective labour agreements, as referred to in Legislative Decree 271/99.

*Japan*. Same answer as for Question 2.

JSU: Agrees.

*Korea, Republic of*. The Government, with the representatives of employers and workers, decided not to submit any amendments on Article 14 of the proposed Convention, since tripartite consensus was not reached. The workers' representative organization, the FKSU, supported the proposed Convention. The employers, represented by KODEFA and the NFFC, said that Article 14(1)(b) should be deleted, taking into account that the (excessively) specified rest time may impact on the cost of operations as well as on the livelihoods of those who are paid by the share of the catch.

*Latvia*. No changes should be made.

*Lebanon*. Seeks clarification as to whether sleeping hours and mealtimes are included in the hours of rest (ten hours).

*Lithuania*. No changes should be introduced.

*Mauritius*. No change is proposed to Article 14.

*Mexico*. It is not necessary to change Article 14.

*Netherlands*. See answer to Question 1.

DFPB: The fishing sector requires more flexibility than Article 14 offers. Derogation, through collective bargaining agreements (or similar arrangements where self-employed fishers are concerned) or appropriate legislation, is considered necessary even if the international community is willing to accept the development approach as proposed in the reply of the Netherlands to Question 1.

*New Zealand*. Inclusion of a "fatigue management plan" should be required to enable flexible work arrangements to take into account the intensity and fluctuations of fishing operations, in order to balance the need for flexibility with the need for regular

rest periods, and how this is managed on board. New Zealand supports this Article overall.

NZCTU: Agrees, but adds that recognition of the need for regular rest periods should be specified and details on how this is managed included in collective bargaining agreements.

*Panama*. This Article should conform to the provisions of the STCW-F.

CMP: Even when vessels operating in open waters are less than 24 metres in length, the provisions of the Articles must be observed.

*Papua New Guinea*. Supports the proposed provisions regarding minimum hours of rest for certain categories of vessels but suggests that they provide for fishers also to be ashore during rest periods.

*Philippines*. The minimum period of rest should be flexible, but be no less than eight hours in any 24-hour period.

*Poland*. No. The Law of 23 May on work on board seagoing merchant vessels, which applies also to fishing vessels, regulates this issue and is not more restrictive.

*Portugal*. No amendments to this Article are considered necessary.

*Qatar*. No need for additions or changes to be made to this Article, as its provisions are in conformity with what is in force in the State of Qatar concerning periods of rest granted to those working on board fishing vessels. The system of contracting with fishermen is based essentially on the share system, which is similar to self-employment, i.e. the fisherman is usually the one who has the right of disposal of his periods of rest.

*Romania*. If the vessel is 24 metres or more in length, it must conform to the conditions set out in Article 14. There is no possibility of a time-limited exception. The Article does not need to be changed.

*Saudi Arabia*. Yes. An amendment is required to this Article, especially paragraph 1(a), so that it would read: "For vessels of 12 metres and more in length, a minimum level shall be set for the vessel's crew so as to ensure the safety of navigation and to fix the number and qualifications required of fishers." The reason is that fishing vessels in the Kingdom of Saudi Arabia operate on an inboard engine, their voyages last between three and seven days, and the length of vessels varies between 12 metres and 20 metres. The number and qualifications of the crew of such vessels are therefore required to ensure the safety of navigation whilst vessels which are of a lesser length do not require specific qualifications for the crew because they do not need extensive experience to operate them.

*Seychelles*. The Article is flexible enough as it is. Seychelles is signatory to the STCW Convention, and will incorporate it as a regulation in the Shipping Act, which itself is in the final stage of government approval.

*Slovenia*. There is no need to change Article 14.

*South Africa*. No. Minimum manning levels linked with fatigue are recognized by the IMO as the largest contributing factor to maritime accidents. The hours of rest stated in the Article reflect the provisions of the STCW and the STCW-F. Agreements reached in South Africa through collective bargaining have been set at this level even after objections from employers.

*Spain*. For vessels of 24 metres in length and over, Article 14 sets out regulations which are basically the same as those in Standard A2.3 of the Maritime Labour Convention, 2006. Spain therefore has no objections. What would have a significant impact on safety aboard fishing boats and maritime navigability and safety, whilst guaranteeing compliance with the standard on rest, would be an obligation to post, at least in the case of fishing vessels of 45 metres in length and over, in an easily accessible place, a table with the shipboard working arrangements and containing the schedule of service at sea and service in port and the maximum hours of work or the minimum hours of rest required by the national legislation or collective bargaining agreements in force. Records should be maintained of fishers' daily hours of work or daily hours of rest to allow monitoring of compliance. This table should set out the precise procedure to be followed by each worker in case of an emergency. The minimum hours of rest in Article 14(1)(b) differ greatly from those established in Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organization of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST). Moreover, Article 14(2) only envisages "temporary exceptions to the limits" established in Article 14(1)(b), which would render the Convention unacceptable to Spain, whose rest regime is that envisaged under the Community legal regime.

FEOPE: In Article 14(1)(a), the term "fishers" should be replaced with "seafarers" or, even better, "crew members responsible for the navigation and tendering of the engine". The aim here is to distinguish the above crew members from crew members responsible for the extraction activity of the vessel (crew members carrying out fishing, processing, packing and preserving activities), who have nothing to do with the "safe navigation of the vessel".

*Sri Lanka*. Provide at least six hours of rest every 24 hours.

UFL and NFSM: Article 14 of the proposed Convention concerns the manning and minimum hours of rest for certain categories of vessel. There should be a provision for hours of rest between two consecutive fishing trips. There should be a minimum of three days of rest after a ten-day fishing trip. Most of the time, the fishers tend to go to sea as early as possible for economic reasons and owing to pressure from the boat owner. This causes fatigue and other physical problems. This should be avoided through the provisions for rest in the Convention.

CWC: The minimum hours of rest requirements could be relaxed to reflect the intensity of fishing operations. However, it is essential for the purposes of limiting fatigue, and given the high number of accidents in the sector and the dangerous nature of the work, that fishers should have regular rest periods and adequate periods of sleep. As the differences in fishing operations make it difficult to establish a realistic international standard, flexibility should be provided through the collective bargaining agreement.

*Suriname*. No. Regular periods of rest are necessary in order to ensure safety and health.

*Sweden*. General regulations regarding manning and working hours on board fishing vessels are not to be recommended, as the operation of an individual fishing vessel is largely dependent on the weather, quota regulations, and so on. There is a risk that the proposed working hours provisions may be in conflict with rational fishing and processing of the catch. It is common to have fishing tours of a few days which at times may involve intensive fishing and which, when time for satisfactory handling of the catch is included, cannot comply with the time frame proposed. Consequently, as long as

maritime safety is not disregarded, there is no reason to limit or regulate working hours in the fishing sector in Sweden.

MMOA: There should be no possibility of allowing exemptions of any kind regarding hours of rest. A person suffering from fatigue acts in the same way as a person who is intoxicated by alcohol. The only time it is relevant to disregard minimum hours of rest is when performing work which is necessary for the immediate safety of the ship, persons on board or cargo or for the purpose of giving assistance to other ships or persons in distress at sea.

SFR: As regards maritime safety aspects, without entering into a deeper analysis of the matter, it seems questionable that the ILO – through the proposed Convention – is entering this area, which rightly belongs with the IMO. In the opinion of the SFR, these aspects should rightfully be regulated by the IMO and not the ILO. The SFR considers that self-employed persons should be entirely excluded from the scope of the proposed Convention. To specify in such an instrument that a self-employed person, such as a professional fisherman, in the light of the particular and special circumstances governing the occupation, should rest for a specified number of minutes at certain specific times, is nothing other than absurd. Knowledge of how fishing is carried on in practice seems to be entirely lacking. These statements also apply to employees. The proposed regulation is overzealous in its approach.

*Syrian Arab Republic*. In Article 14(2), the words "during the same voyage" should be added to the sentence.

*Thailand*. There is no objection to the minimum hours of rest in Article 14.

*Trinidad and Tobago*. The proposed Convention acknowledges the fact that fatigue is a major safety concern. Instituting minimum hours of rest is vital in this Convention. This Article offers sufficient flexibility and no change is suggested.

*United Kingdom*. There would be difficulty in applying the hours of work provisions of Article 14(1)(b) to fishing vessels on which the fishers are self-employed, although a member State could no doubt use the derogation in Article 3 to disapply the hours of rest provisions to the self-employed. The existing text also provides flexibility in Article 14(3), which allows the competent authority, after consultation, to establish alternative requirements provided that the same level of protection is assured. Further flexibility could also be provided by introducing scope for exceptions to be approved by the competent authority. Suggested text is as follows:

> In accordance with the general principles of the protection of the health and safety of workers, and for objective or technical reasons or reasons concerning the organization of work, member States may allow exceptions, including the establishment of reference periods, to the limits laid down in this Article. Such exceptions shall, as far as possible, comply with the standards laid down but may take account of more frequent or longer leave periods or the granting of compensatory leave for the workers. These exceptions may be laid down by means of :
>
> (a) laws, regulations or administrative provisions provided there is consultation, where possible, with the representatives of the employers and workers concerned and efforts are made to encourage all relevant forms of social dialogue; or
>
> (b) collective agreements or agreements between the two sides of industry where appropriate.

This text is derived from Article 21, paragraph 5, of Directive 2003/88/EC concerning certain aspects of the organization of working time.

*Uruguay*. Shares the aims of Article 14, but account also needs to be taken of the fact that there may be national standards in place which establish a different regime concerning hours of work or rest for 24-hour periods or 77 hours for seven-day periods.

*Venezuela, Bolivarian Republic of.* Agrees with Article 14 as it stands, since the competent authority should establish a minimum level of manning for the safe navigation of the vessel, specifying the requisite number and qualifications of the fishers, in accordance with their role on board.

*Overview of the replies to Question 3*

Governments replied by a ratio of about three to one that there was no need to change this Article. A few did not answer categorically whether or not changes were being sought.

Of those that did not want change or wanted the provisions to be more stringent, a few indicated that Article 14 should be made consistent with European regional requirements concerning working time on board fishing vessels, pointing out that the relevant EU Directive allows exceptions only if they are based on law, administrative acts or collective bargaining agreements. One provided a specific suggestion for wording for the scope of possible exceptions which would make the text consistent with the relevant EU legislation. Another suggested additional requirements for vessels of 45 metres or more in length, including the posting of a table with shipboard working arrangements containing the schedule of service at sea and in port, maximum hours of work and minimum periods of rest, and the recording of hours of work or rest. Another wanted the higher requirements under Article 14(1) to apply to vessels of 12 metres and over in length as opposed to those of 24 metres and over. Another indicated that self-employed fishers and those working on small vessels needed the protection of Article 14.

Of those that wanted changes to make the provisions more flexible or less stringent, several pointed to the difficulty of regulating hours of rest owing to the nature of fishing operations. Some indicated in general that the changes were needed in order to make the requirements less stringent or prescriptive. Some indicated that they wanted such flexibility in order to be able to take into account national standards or the nature of fishing work in their countries. Some wanted Article 14(1)(b), or at least its second sentence, moved from the Convention to the Recommendation. One drew attention to possible inconsistency with national standards. Some wanted specific exclusions, for example for small fishing vessels operating in inland waters. There were specific suggestions for changing the hours of rest figures, with one reply indicating that the minimum period of rest requirements should be flexible but not less than eight hours in any 24-hour period, and another suggesting that there should be six hours of rest every 24 hours. It was also suggested that it should be left to the State to enact provisions on the minimum level of manning for vessels of their own countries.

It was also observed that Article 14 should be consistent with the requirements of IMO instruments, notably the STCW-F, the STCW, or both.

Alternative methods, which the Office was unable to assess as being more or less flexible, were proposed, such as a requirement for a “fatigue management plan” for fishing vessels.

Clarification was also sought as to whether sleeping hours and mealtimes would be included in the hours of rest figures in Article 14(1)(b).

The employers' organizations that responded for the most part wanted Article 14(1)(b) moved to the Recommendation or wanted the entire Article deleted, citing the nature of fishing operations.

The workers' organizations generally indicated that differences in fishing operations make it difficult to establish a realistic international standard, and that any flexibility should be provided through collective bargaining agreements or through tripartite consultations. There were also suggestions for specific changes to the hours of rest provided for in the Article. Some expressed opposition to any proposal to delete or change Article 14 or to move it to the Recommendation.

*Discussion at the Tripartite Round Table*

Question 3 was discussed at the Round Table. By the end of that meeting, a common understanding was emerging on how the issue could be resolved. It was suggested that the agreement could draw upon relevant provisions in the Maritime Labour Convention, 2006 (in particular paragraph 14 of Standard A2.3), adjusted as necessary, and might to some extent mirror the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180).

*Office commentary*

The Office points out that paragraph 14 of Standard A2.3 of the Maritime Labour Convention, which was alluded to during the Round Table, reads as follows:

> Nothing in this Standard shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. Accordingly, the master may suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

While drawing attention to the above provision, the Office observes that the second sentence ("Accordingly, the master may suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored.") is related to a requirement elsewhere in the MLC, in Standard A2.3, paragraph 10, for the posting of a table with shipboard working arrangements which contains, inter alia, such a "schedule" of service. There is no such provision in the proposed Convention concerning work in the fishing sector.

The Office also draws attention to Article 8, paragraph 3, of the proposed Convention, which addresses in general the issue of the flexibility given to the skipper to take action in the light of safety concerns, by providing that:

> 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 and safe operation, or the safety of the fishers on board.

The Office notes the reference to a "fatigue management plan" in the reply of New Zealand. Such a plan involves: setting out owner expectations; identifying hazards; managing hazards deemed to be significant (or as not significant); assigning responsibilities; training; and monitoring, reviewing and revising the plan. This includes discussions among the skipper, the crew and others, and documentation of the process. [8]

[8] Personal communication with Sharyn Forsyth, Manager, Safety Research and Analysis, Maritime New Zealand, 14 Dec. 2006.

As concerns the references in several replies to certain requirements of the STCW-F, the Office observes that Chapter IV, Watchkeeping, of the Annex to that Convention sets out, in Regulation 1, "Basic principles to be observed in keeping a navigational watch on board fishing vessels". This regulation includes requirements for skippers to ensure that watchkeeping arrangements are adequate for maintaining a safe navigational watch. In paragraph 4.2, Fitness for duty, it provides that:

> The watch system shall be such that the efficiency of watchkeeping personnel is not impaired by fatigue. Duties shall be so organized that the first watch at the commencement of the voyage and the subsequent relieving watches are sufficiently rested and otherwise fit for duty.

This STCW-F provision does not set out specific requirements as to the number of hours of rest to which a watchkeeper, or for that matter any fisher, is entitled for any given period.

Some replies also include references to the hours of rest requirements of the STCW, 1978, as amended in 1995. This Convention, which does not apply to fishing vessels, provides, inter alia, in section A-VIII/1, Fitness for duty, that:

1 All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch shall be provided a minimum of 10 hours of rest in any 24-hour period.

2 The hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length.

3 The requirements for rest periods laid down in paragraphs 1 and 2 need not be maintained in the case of an emergency or drill or in other overriding operational conditions.

4 Notwithstanding the provisions of paragraphs 1 and 2, the minimum period of ten hours may be reduced to not less than 6 consecutive hours provided that any such reduction shall not extend beyond two days and not less than 70 hours of rest are provided each seven day period.

5 Administrations shall require that watch schedules be posted where they are easily accessible.

As concerns the request in one of the replies seeking clarification as to whether sleeping hours and mealtimes are included in the minimum hours of rest set out in Article 14(1)(b), the Office observes that neither the proposed Convention nor the proposed Recommendation includes a definition of "hours of rest" or provides additional guidance on this matter. However, the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), provides, in Article 2(b), that:

> the term 'hours of work' means time during which a seafarer is required to do work on account of the ship;

and in Article 2(c) that:

> the term 'hours of rest' means time outside hours of work; this term does not include short breaks;

These definitions are reproduced in the Maritime Labour Convention, 2006, in Standard A2.3.

## Question 4

**Qu. 4** *Article 28 and Annex III of the proposed Convention concern fishing vessel accommodation.*

*(a)* *Should changes be made to these provisions? If so, in respect of which provisions and why?*

*(b)* *In particular, should the gt equivalency figures contained in paragraph 7 of Annex III be changed? If so, how and why?*

*(c)* *Should the provisions concerning specific dimensions of accommodation spaces and their furnishings be changed? If so, how and why?*

*Replies*

*Algeria*. As concerns (b), the gross tonnage referred to in the Convention do not correspond to the lengths of fishing vessels. There is thus a need to revise the gt equivalency figures in relation to vessel length as proposed in Annex III of the Convention.

*Argentina*. With regard to the provisions contained in Annex III concerning the design of new, decked vessels, the Government of Argentina sees no impediment to maintaining Annex III in the Convention in its current wording. The Government would have preferred that these requirements also apply to smaller vessels (15 metres in length). However, under the agreements reached between the social partners, the proposed restrictions and equivalencies were accepted. There would be nothing to prevent individual authorities from providing legislative measures extending the requirements of Annex III to vessels of 15–24 metres in length, after consultation and when such measures were practical and appropriate. In any case, the principle of substantial equivalence creates additional flexibility for implementing the Convention.

CATT: (a): No changes. (b): Should not be changed. Not only were these figures changed substantially in respect of the International Labour Office's original proposal, but they were the result of an agreement between Employers and Workers, and were supported by a majority of governments. In any case, there are no technical or design constraints on fishing vessels preventing the construction of fishing vessels with improved fishers' accommodation, unless they are merely a means by which some countries can avoid implementing the majority of accommodation requirements on board fishing vessels. Under no circumstances should the gt of 200 be exceeded. (c): During their probable prolonged period of service, fishing vessels may operate in various countries and be manned by crew members of various nationalities. Therefore, any changes to the figures indicated should guarantee global standards, rather than reflecting regional conditions. The provisions contained in Annex III apply only to new vessels. Any changes should have valid grounds, based on adequate and comprehensive data.

CAPeCA/CALaPA/CAPA: Annex III to the proposed Convention should be moved to the Recommendation because it establishes additional requirements concerning accommodation on board fishing vessels of 24 metres in length and over or with a gt of 175, which is too prescriptive, and because it is provided for in other international instruments. If it is kept in the Convention, the wording in Article 28, "shall give full effect to", should be replaced by "shall, where possible and according to the situation of the member State, give effect to".

*Australia*. (a): Prefers that all the technical and prescriptive detail contained in Annex III be moved to the Recommendation. This approach would introduce greater

flexibility in the Convention and alleviate the concerns of many Members regarding the overly prescriptive nature of the text. Guidance could be found in the recently adopted Maritime Labour Convention, 2006 (MLC) regarding the level of detail appropriate to the Convention, as opposed to provisions that would be more appropriate to include in the proposed Recommendation. The MLC contains mandatory requirements in Part A of the Code, while the provisions of Part B of the Code are not mandatory and act as guidelines for implementation. Australia seeks clarification as to whether Annex III, paragraph 44, refers to the provision of a desk per sleeping room or per person. (b): We are concerned about the conversion between length and the gt outlined in paragraph 7 of Annex III, as there is no single fixed relationship between the length of a vessel and its gt. If the inclusion of a conversion factor in Annex III is considered necessary, it should include a range of equivalent values according to the design of the vessel. Alternatively, the conversion factors in paragraph 7 could be deleted altogether to avoid the risk of mandating rigid, inappropriate equivalencies. (c): We note the introduction of the term "substantially equivalent" in the new paragraph in Article 28. Despite the inclusion of this phrase, the provisions in several paragraphs (including the prescriptive text in paragraphs 12, 34–38 and 40, 42 and 44 of Annex III relating to headroom height, floor area and sleeping accommodation) are quite detailed and may not take into account the particular national conditions of some countries; and consideration could be given to their modification. Australia supports the insertion of the words "appropriate to national circumstances" in Article 28, paragraph 2, as a flexibility device to encourage different member States, operating in the context of different social, economic and cultural systems, to ratify the Convention. Consequently, the paragraph in question would read:

> A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III and appropriate to national circumstances, with the exception of provisions related to Article 27.

*Austria*. These provisions do not concern Austria, but there should be further discussion about the wishes of other Members concerning possible exemptions, in the interests of making the Convention more widely acceptable.

*Azerbaijan*. The gt of the vessel should be taken into account when crew accommodation is planned, in accordance with Convention No. 126.

*Belgium*. (a): No. There is no need to make changes to these provisions, some of which were already concessions to the requirements of certain Asian countries. (b): No. (c): No. There is no need to change the provisions concerning accommodation spaces and their furnishings.

*Benin*. No to points (a)–(c).

*Brazil*. (a): Yes. Article 28 should be maintained as proposed in the text, but Annex III should be adapted to include the metric figures and the numbers of persons in sleeping rooms contained in Article 10 of Convention No. 126, the quantity and proportions of sanitary facilities contained in Article 12 of that Convention and the provisions on sickbays contained in that Convention. It would appear that Convention No. 126 was only ratified by 22 member States, many less than the expected number for a consolidated Convention on work in the fishing sector, and it is necessary to take into account that, despite the fact that the measures concerning furnishings and accommodation are not ideal for Anglo-Saxon and North European fishers, who are taller, they are adequate for most Asian countries and developing countries where people are of a different build. As concerns part (b) of the question, the issue should be discussed again prior to the next International Labour Conference, perhaps at a regional

meeting, with the representatives of the Asian countries, which have a different fishing vessel design tradition, and with some naval construction experts. The outcome could be put forward as the basis for eventual amendments to the text during the 96th Session of the Conference. In order for the new Convention to be widely ratified, efforts must be made to increase the protection of a greater number of fishers, putting forward minimum standards in order to get a greater number of countries to ratify the Convention, while trusting that the more developed countries will have on board living and working conditions vastly superior to the minimum standards of any Convention, and to encourage these developments.

CNC and CNT: Remove the condition "as practicable" from paragraph 45 of Annex III. Completely remove paragraph 78, "Variations". The competent authorities should take into account international guidelines regarding accommodation, food, health and hygiene relating to those persons working or living on board vessels.

*Canada*. (a): Article 28 allows for the implementation of Annex III by the adoption of laws, regulations or other measures, after consultation, that are substantially equivalent to those contained in Annex III, with the exception of provisions related to Article 27. One jurisdiction in Canada has advised that the type of cost recovery provided for in Article 27(c) is contrary to their employment standards legislation. Annex III is based on a 40-year old Convention that has not been widely ratified. It would be more appropriate to find guidance in the recently adopted MLC regarding the level of detail appropriate to include in the proposed Convention and clauses that would be more appropriate to include in the proposed Recommendation. For example, the MLC provides for appropriately situated and furnished laundry facilities. Additional provisions related to laundry facilities are contained in the guidelines. This approach could also be used in considering appropriate provisions for inclusion in the Convention and the Recommendation regarding mess rooms. Canada continues to support the position expressed by the Government group at the 2004 meeting of experts regarding both of these issues. With respect to lighting, there is too much detail in the provision as drafted. Again, guidance could be sought from the wording of the MLC. The specific berth dimensions prescribed in the Convention should be moved to the Recommendation, as paragraph 41 under "Other" adequately addresses this issue by indicating that "The members of the crew shall be provided with individual berths of appropriate dimensions." (b): Canada could support the gt equivalency figures listed in paragraph 7 of Annex III as they were the result of a compromise reached by the Conference Committee at the 2005 session of the Conference. However, if this issue is revisited it would look to reinstate the gt equivalency figures proposed by the working party at the 2005 session of the Conference. In Canada, a large fishing vessel is 24.4 metres or more in length and is considered equivalent to 150 tons.

CLC: (a): Article 28 already permits some flexibility through substantial equivalence and Annex III only applies to new, decked vessels. It should be recalled that the detailed provisions are derived from an existing Convention. (b): The gt equivalence was the result of an agreement by the Employers and the Workers, which found favour with a majority of governments. Any change should be based on the provision of detailed information which would clearly show that the figure of 175 gt does not reflect equivalency throughout the world fishing fleet and is not merely a way for some countries to exclude the majority of their fleet from the fishing vessel accommodation provisions. It should, in any event, not exceed 200 gt. (c): Fishing vessels may, during their long period of service, fish in different countries and be crewed by different nationalities. Therefore, any amendment to the existing figures should provide a global standard and not reflect regional differences. It should also be recalled that the

provisions in Annex III only apply to new vessels. Changes should only be made on the basis of a compelling reason supported by the provision of comprehensive data.

*China*. No modifications needed. Reasoning: Specific exemptions to some vessels are provided for in paragraph 1 of Annex III.

*Colombia*. ANDI: Consideration should be given to moving Annex III of the Convention to the Recommendation because it sets out additional requirements concerning accommodation on board vessels of 24 metres or more in length or 175 gt. It is too prescriptive.

*Costa Rica*. Article 28 and Annex III of the Convention do not require any changes, except for paragraph 7 of Annex III.

*Croatia*. Article 28 and Annex III are acceptable.

Croatian Chamber of Economy: In some parts, Annex III stipulates rather strict accommodation requirements. These should be less stringent and allow for more flexibility, regardless of the flexibility provided in Article 3. The gt equivalency figures seem to be inappropriate and should perhaps be increased.

*Cuba*. We do not consider any changes to these three clauses to be necessary.

*Denmark*. There is no need for further changes in the regulations concerning accommodation in Article 28 and in Annex III.

3F: Generally agrees.

*Egypt*. The provisions of this Article should be applied to vessels whose construction begins after a period determined by the competent authority from the date of entry into force of the provisions of this Convention. The competent authority shall determine accommodation, facilities and ventilation conditions, in accordance with the State and in conformity with what is decided by the competent authority (fishing vessel length, area of operation, medical equipment, length of the voyage).

GTUWA: Accepts existing text.

*Finland*. (a): Yes. The provisions are far too detailed, for example "the furniture should be smooth, hard material not liable to warp or corrode or to harbour vermin". (b): No. (c): No. However, it might be advisable to give the minimum dimensions of accommodation.

SAK: (a): Article 28 provides flexibility through substantial equivalency and Annex III only applies to new, decked vessels. (b): The gt equivalency was the result of an agreement by the Employers and the Workers. Any change should be based on the provision of detailed information which clearly shows that the figure of 175 gt does not reflect equivalency throughout the world fishing fleet and is not merely a way for some countries to exclude the majority of their fleet from the fishing vessel accommodation provisions. It should in any event not exceed 200 gt. (c): Fishing vessels may, during their long period of service, fish in different countries and be crewed by different nationalities. Therefore, any amendment to the existing figures should provide a global standard and not reflect regional differences. It should also be recalled that the provisions in Annex III only apply to new vessels. Changes should only be made on the basis of a compelling reason, supported by the provision of comprehensive data.

SAKL: More stringent standards might prove too costly, as structural changes to old boats are usually very expensive.

*France*. (a): The provisions of Article 28 were substantially amended during the 93rd Session of the Conference. In the version of the text proposed by the Committee on the Fishing Sector, Article 28 of the proposed Convention initially consisted of a single paragraph that read as follows: "The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25–27 shall give full effect to Annex III concerning fishing vessel accommodation. This Annex may be amended in the manner provided for in Article 43." Certain provisions of Annex III of the proposed text were considered to be too prescriptive, and consequently a second paragraph was added to Article 28 with the aim of introducing the principle of substantial equivalence: "A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27." Alongside this element of flexibility concerning the application of Annex III, two other elements of a similar nature can be found in the proposed Convention. First of all, in order to take into account "the interests of fishers having differing and distinctive religious and social practices" under paragraph 78 of Annex III, derogations from the latter may be permitted "on condition that such derogations do not result in overall conditions less favourable than those which would result from the application of this Annex." Member States may also decide to use gt as the basis for measurement in place of length with regard to the application of certain provisions of Annex III. In this regard, although it would have been desirable to maintain a single basis of measurement in the interests of a more coherent text, the gt–length equivalency makes it possible to take into account regional specificities regarding the design and construction of vessels. In general, there is therefore no need to introduce additional flexibility in respect of Article 28 and Annex III of the proposed Convention. The application of the principle of equivalence introduces sufficient flexibility to permit the application in practice of the provisions of Annex III.

(b): The method of determining the gt of vessels does not under any circumstances produce mathematical equivalence (an automatic relationship between length and gt). Regardless of the figures maintained, the use of gt as the basis for measurement should not in any case allow a member State to exclude its entire fishing fleet from the scope of the Convention. If the new text is to be a success, there needs to be agreement on gt equivalency. For all that, the equivalency figures currently contained in paragraph 7 of Annex III are not realistic. In order to arrive at a compromise on this widely debated question, it is vital to agree on the implications of the use of any given set of equivalency figures.

(c): The flexibility already contained in the body of the Convention makes it possible to shape the application of the provisions of Annex III according to the particular conditions existing in each State. The provisions regarding the specific dimensions of accommodation spaces and their furnishings should therefore be maintained.

*Germany*. The national provisions partly exceed ILO requirements. There is no need for amendments.

*Ghana*. (a): Should be retained. (b): The gt equivalency figures contained in paragraph 7 of Annex III should not be changed. (c): Proposed provisions concerning specific dimensions of accommodation spaces should be retained.

*Greece*. Has ratified Convention No. 126 and is bound by its respective requirements concerning the conditions of crew accommodation.

*Honduras*. COHEP: (a): The Honduran fishing fleet is old in terms of years of service, and it would not be easy to make changes to comply with the provisions of Annex III, nor would it be possible to enact legislation to that effect. This might be possible, not for the current fleet but for any new vessels entering the national fishing fleet. However, this could apply to vessels sailing outside the economic exclusion zone, to which these provisions should be applicable. (c): In the tropics, where Honduras is situated, air conditioning is difficult because it means that the areas concerned must be closed. Furnishings for reading and writing in crew quarters are relatively unimportant because of the high rates of illiteracy among our fishers. These comments apply to small-scale and subsistence fishers; larger vessels must obviously be fitted out in this way. Therefore, the general provisions should be made more flexible.

*Iceland*. With respect to Annex III, it is proposed that the statement of objective within the Convention be maintained but the more specific standards be moved to a Recommendation.

The gt compared to the length of the vessel should be adjusted to the shipbuilding tradition in different regions of the world.

*India*. HMS: (c): Annex III is only applicable to new vessels and therefore can be effective only as and when new vessels are constructed.

*Iraq*. Fishing operations in Iraq are not so large as to need working time regulation or training. No suggestions.

*Italy*. No.

FEDERPESCA and FAI-CISL: The general system provided for in Annex III does not appear to reflect the situation on the majority of Italian fishing vessels. As concerns (a), the text should be changed to identify the fishing vessels subject to the obligation. At present it is unclear.

The principle underlying the standard should be that the provisions contained in Annex III regarding "accommodation" do not apply to fishing vessels involved in coastal fishing (or those whose fishing range is not greater than 36 hours), without prejudice to a pragmatic position being adopted in the event of force majeure.

*Japan*. (a): As the number of States that have ratified Convention No. 126 remains small, it is difficult to say that it is working well as an international standard to improve the working conditions for fishers. Therefore, the said Convention should be modified so that more States can accept it more easily and actual improvement of the working conditions for fishers will be realized universally. To this end, it is indispensable to: (1) give due consideration to the differences among States in regulations for fishing operations and vessels; and (2) enable progressive improvement in the conditions of work in accordance with the degree of development of the fishing industry and for improvement of the business environment of the fishing operations in the respective State. In the case of Japan, it is essential to introduce the following modifications in (b) and (c) below.

(b): Setting different standards on crew accommodation by vessel size would be more influenced by vessel capacity (i.e. (gt)) rather than by length. As a result, it would obviously be more rational to define the vessel size categories by gt rather than by length. Japan, therefore, defines the vessel size by tonnage for regulations. In the meantime, we understand that most European countries define the vessel size by length. Consequently, Japan has developed more streamlined-shape vessels for faster speed by reducing water resistance (other Asian countries are likely to follow the same idea) while

the design of the European vessels is more chunky in shape. It is thus impossible to define the vessel size using one unit in order to achieve fair application of the Convention. It is therefore essential to introduce a conversion between length and gt, based on relevant data and taking due account of the fair application of the Convention. For fair application of the standards, it is necessary to establish a vessel length which corresponds to each gt-based formula. According to the graph showing the length–gt ratio of European and Japanese vessels (see Appendix II of the Round Table document in the appendix to this report), the conversions have to be defined as follows:

15 m = 75 gt; 24 m = 300 gt; and 45 m = 1,150 gt.

The conversion between gt and length is currently applied to limited provisions in Annex III, namely, those on headroom, floor area per person of sleeping rooms, number of persons per sleeping room, size of berths, numbers of tubs/showers, toilets and washbasins, and sickbays. However, the Convention has to be applied to all the provisions stipulated in Annex III because, as mentioned above, vessel size categories are more appropriately defined by gt rather than by length of the vessel. In any case, it is extremely unfair if a fishing vessel of 23 metres and 300 gt is not subject to the standards while a vessel of 25 metres and 200 gt is. The Government of Japan is not in a position to accept such an unfair Convention, taking our accountability to the fishing operators into consideration. The length–gt conversion mentioned above needs to cover Annex III as a whole, and is an essential prerequisite for Japan to support and adopt the Convention.

(c): As for the proposed Convention, it would be necessary to work out standards for respective subjects that would be flexible enough for member States to accept. The following figures are Japan's acceptable limits for the specific standards. Standards exceeding our acceptable limits have to be "recommendations" instead of mandatory requirements.

Number of persons per sleeping room: Six, or four for vessels of 24 metres in length and over.

Headroom: Average height of nations, plus 15 cm for vessels of 24 metres in length and over.

Floor area per person of sleeping rooms: 1 square metres for vessels of 24 metres in length and over (can be smaller after consultation for those of 45 metres in length or less).

Berth size: Average height of individuals for the country in question plus 15 cm x average breadth of shoulders plus 15 cm (for vessels of 24 metres in length and over).

Tubs or showers: One tub or shower for every eight persons for vessels of 24 metres in length and over.

Toilets: One toilet for every eight persons for vessels of 24 metres in length and over.

Washbasins: One washbasin for every six persons for vessels of 24 metres in length and over.

Japan is reviewing the other standards with a view to accommodating them, provided that our above proposal is accepted.

JSU: Agrees.

*Korea, Republic of.* (b): The Korean Government will not submit any amendments to paragraph 7 of Annex III of the proposed Convention owing to the failure to reach an agreement on this question between the representatives of workers and employers. The FKSU, however, insists on 24 m = 175 gt (the same as the proposed Convention), while the employers' representative organization, the NFCC, calls for

24 m = 280 gt. (c): Paragraph 56 of Annex III "…. for every four persons or fewer" should be changed as follows: "56. On vessels of 24 metres in length and over, for all …. for every six persons or fewer" because the MLC provides for six persons in a room even though merchant vessels have better accommodation compared with fishing vessels.

*Latvia*. (a), (b) and (c): No changes should be made.

*Lebanon*. No observations.

*Lithuania*. (a), (b) and (c): Provisions of the proposed Convention are satisfactory.

*Mauritius*. (a), (b) and (c): No changes are proposed.

*Mexico*. (a): Section 204 (Parts I and II) of the Federal Labour Act stipulates that the employer is required to provide comfortable and clean crew quarters on board and that food must be wholesome, plentiful and nutritious. It is not necessary to change Article 28 or Annex III.

*Netherlands*. Urges reconsideration of the status of Annex III. The mandatory and comprehensive character of this Annex, which forms an integral part of the Convention, has prevented a considerable number of countries from voting in favour of the Convention. Because of that, the Netherlands pleads for a more concise and less coercive set of requirements regarding fishing vessel accommodation. Supports the transfer of Annex III to the Recommendation.

*New Zealand*. The fact that Annex III applies only to new, decked fishing vessels is a practical approach which New Zealand supports. The fact that a competent authority has the discretion to apply these restrictions more broadly is also supported by New Zealand. (a): Article 28 gives sufficient flexibility. (b): No changes should be made to the gt equivalency figures contained in paragraph 7 of Annex III as they are based on an agreement by the workers and employers which found favour with most governments at the previous discussions on this subject in 2005. (c): Paragraph 39 (which refers to the number of persons per sleeping room) is not necessary, as paragraph 38 states that a separate sleeping room or sleeping rooms must be provided for officers, wherever practicable. As a general comment, the provisions for accommodation should not be overly prescriptive, particularly as the perception that the proposed Convention was too prescriptive was one reason for the Employers' abstention in 2005.

NZCTU: (a) and (b): Agrees, and observes that changes to standards should only be made in response to improved global standard, and not for minor regional differences.

*Panama*. No.

CMP: Article 28, Annex III: Agrees.

*Papua New Guinea*. (a): No changes to be made. (b): Agrees to the specified gt equivalency figures as contained in paragraph 7 of Annex III.

(c): Agrees with the current provisions regarding the specific dimensions of accommodation spaces and furnishings as this will allow for convenient and reasonable conditions for fishers on board the vessels.

*Philippines*. In relation to Article 26, add a new subparagraph (h) to read "safety procedures in handling fuel in running the fishing vessel, as well as adequate waste management". Further changes may need to be made in the Annex to take into account vessels under 24 metres in length.

*Poland*. There is no need to modify the provisions.

*Portugal*. None of these provisions should be amended, since the current text is the result of agreements reached with difficulty by a majority of governments and social partners at previous sessions of the International Labour Conference.

*Qatar*. (a): Suggests introducing changes to the provisions of Article 27(c) linked to Article 28, to read as follows: "The vessel owner provides the fisher with food and drinking water according to what is agreed upon between the two parties to the fisher's work agreement." (b): Suggests not changing the gt equivalency figures, and considers that using the total length of vessels as a basis is the best solution. (c): Yes. The provisions concerning specific dimensions of accommodation spaces and their furnishings should be changed, as some developing States cannot provide some of these requirements and equipment (room insulation).

*Romania*. (a): The provisions provide for a general guideline. The provisions of paragraph 7 of Annex III, taken together with those of paragraph 2, allow conformity with specific situations. (b): Yes. Where the vessels in question are generally less than 24 metres in length. However, in that case, they must conform to Article 28 of the Convention. (c): The only possible change of this type would be with regard to the dimension of accommodation spaces. For Europeans, with an average height of 1.7 metres, a room should have a certain height and dimensions. For Asians, on the other hand, with an average height of 1.5 metres, the dimensions might be reduced. All this can be done through consultations between the regulatory authorities and organizations of employers and workers.

*Saudi Arabia*. No changes needed.

*Seychelles*. (a): No changes should be made because these provisions are reasonably flexible. (b): The gt equivalency figures contained in paragraph 7 of Annex III are acceptable for the time being and thus should not be changed. (c): These provisions need not be changed.

*Slovenia*. No changes needed.

*South Africa*. (a): No. Article 28 gives the competent authority sufficient latitude to adopt provisions that are substantially equivalent and this should allow Asian countries the necessary flexibility to ratify the Convention. (b): While the majority of non-Asian governments accept the length determination as the criteria, Asian governments would have to accept the equivalents and any motivation should be considered. The length–gt equivalents seem reasonable from a ship design perspective and also accommodate the long, narrow-beamed vessels typical of Asia. (c): Guidance can be taken from Part B of the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels. The headroom requirement is identical to the Code. The floor area of sleeping rooms in the Code for vessels of 24 m but < 45 m is 1 $m^2$, however the proposed Convention requires 1.5 $m^2$. For vessels of > 45 m, the Code requires 1.5 $m^2$ and the proposed Convention 2 $m^2$. If this is an issue for certain governments, the requirements of the Convention could be reduced to those of the Code. The furnishings required in both sleeping and recreational facilities are an absolute basic minimum and no further reduction should be permitted.

*Spain*. (a): No changes should be made to the provisions contained in the proposed Convention concerning accommodation. (b): Articles 25–28 and Annex III were discussed by a working party set up precisely for this purpose. The result of its deliberations was a recommended text that was treated as a global amendment. Paragraph 7 of Annex III was adopted by the Committee on the Fishing Sector, in June 2005, in the form agreed on by the working party. (c): The entirety of the provisions

referred to and those contained in Annex III concerning accommodation (sleeping rooms, floor area, persons per sleeping room) were discussed in depth by the Committee and adopted by a large majority.

FEOPE: (a): There is no need to make changes to these provisions. (b): It is not necessary to change the figures concerning the specific parameters regarding length and gt, in order that they may be submitted for approval by the authorities. In Spain, as in most States in our region, all fishing vessels, regardless of their dimensions and displacement, are subject to official inspections, with regard to both construction and structural modifications. The purpose of these inspections is to ensure that the vessels comply with strict safety regulations for maritime traffic, in order to protect both the environment and the health of the crew members. There also exists a series of measures of a social nature which require that crew accommodation be maintained in an appropriate condition. Both types of measure interact to such an extent that the latter are taken into account when inspections concerning the former are carried out. Any loophole in the Convention that establishes "softer measures" will give our fishing competitors an advantage over us in terms of the development of their activities. Because of the nature of fishing activities, the work is especially arduous, resulting in a high rate of occupational accidents. Improved accommodation leads to better rest and consequently renders the work less arduous. A lower accident rate means lower production costs. (c): No.

*Sri Lanka*. (a), (b) and (c): No.

UFL and NFSM: (a): Annex III, paragraph 4, the provisions should be applied to fishing vessels below 24 metres in length, which stay at sea more than three days, irrespective of length and gt. The text "the requirements for vessels of 24 metres in length and over may be applied to vessels between 15 and 24 metres in length where the competent authority determines, after consultation, that this is reasonable and practicable" should be changed to read "Any fishing vessel operating more than three days at sea should be subject to the same requirements as vessels of 24 metres in length and over." (b): In Annex III, paragraph 7, takes into account the gt of the fishing vessel but does not take into account the duration of fishing. A new provision should be added as follows: "Irrespective of the gross tonnage of the fishing vessel, accommodation should be provided for on any fishing vessel operating more than three days at sea or in any other body of water." There are millions of fishers, more than 50,000 fishers in Sri Lanka alone work on board fishing vessels below 24 metres in length for more than three days. There should be a provision to cover all these fishers for their welfare in the developing countries.

CWC: (a): Article 28 already permits some flexibility through substantial equivalence and Annex III only applies to new, decked vessels. It should also be recalled that the detailed provisions are derived from an existing Convention.

(b): The gt equivalency was the result of an agreement between the Employers and the Workers, which found favour with a majority of governments. Any change should be based on the provision of detailed information which would clearly show that the figure of 175 gt does not reflect equivalency throughout the world fishing fleet and is not merely a way for some countries to exclude the majority of their fleet from the fishing vessel accommodation provisions. It should, in any event, not exceed 200 gt. (c): Fishing vessels may, during their long period of service, fish in different countries and be crewed by different nationalities. Therefore, any amendment to the existing figures should provide a global standard and not reflect regional differences. It should also be recalled

that the provisions in Annex III only apply to new vessels. Changes should only be made on the basis of a compelling reason supported by the provision of comprehensive data.

*Suriname*. The provisions in Article 26 (hot and cold water, sleeping rooms, etc.) are not applicable to the many small fishing vessels operating in the country.

*Sweden*. Today there are no provisions covering Swedish fishing vessel accommodation. Should any provisions be introduced, they can be developed on the basis of the provisions applicable to the merchant fleet.

MMOA: The Convention should have as wide a scope as possible in order to create decent working and living conditions for as many fishers as possible. The provisions of the Convention should be clear and leave as little discretion as possible to a member State to decide.

SFR: The regulatory zeal is marked in the proposed Convention, as illustrated in the proposed type of rules specified in Articles 25–27. For example, what Article 27 states "that national rules must be introduced stipulating that food served on board a fishing vessel must be sufficient from the perspective of nutrition as well as of quantity" is nothing more than arrant nonsense. Such regulatory zeal creates fictitious legal problems, the solution of which will in no way benefit the professional fishing sector. Problems exist and solutions should be found in the best interests of the fishing sector, but creating further problems, which will be the case if the proposed Convention text is adopted, is completely unnecessary. The professional fishing sector already suffers from a burdensome and unfortunately, in many respects, unnecessary, even contradictory, regulatory code. Nationally it seems that insight has been gained and that the mass of rules that govern the fishing sector has reached its critical point, and that what should be done from now on, instead of introducing unnecessary regulations, is to simplify, clarify and eliminate contradictory and unnecessary rules. The proposed Convention text seems, unfortunately, to be very much of this ilk. SFR hopes – after composed consideration – that the proposed Convention text will again be rejected.

*Syrian Arab Republic*. There is no reason for modifications or other changes to provisions concerning ventilation, heating, air conditioning, lighting, noise and hygiene. More flexibility should be added in respect of smaller vessels less than 16 metres in length.

*Trinidad and Tobago*. (a): Article 28(1) should be rephrased to read as follows: "The laws … in accordance with Articles 25 to 27 shall give effect to Annex III …". It was suggested that the rephrasing of the sentence would allow for flexibility for Asian countries that are unable to conform with the specific requirements. (b): No changes are suggested to paragraph 7 of Annex III. (c): Consideration has been given to the fishers' health, safety and comfort in this section and no change is suggested. Observation on Annex III, paragraph 16: rodents should be included in this section.

*Ukraine*. The length of a fishing vessel's voyage may vary from a few hours to several months. For fishers, who must eat and sleep at sea, the issue is one not only of comfort, but also of health. Despite the progress made in providing accommodation which is reasonably spacious, clean, properly ventilated, and insulated from loud noises and vibrations, there are still a huge number of vessels with uncomfortable and unhealthy working and living conditions. The Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), sets standards for planning accommodation and overseeing its construction, requirements concerning crew accommodation, and also procedures for applying these requirements to existing and new, large fishing vessels. However, national legislation and international legal and regulatory acts on crew accommodation

do not apply to small fishing vessels. On the one hand, small vessels can spend far less time at sea in comparison with large vessels, which makes requirements concerning crew accommodation less important than for large vessels; on the other hand, small vessels often need to spend more time at sea and fish at greater distances from the shore, for various economic reasons. There is therefore a need to include compulsory or recommended standards in international instruments in the form of guiding principles for these vessels. In many countries, such principles already apply to vessels of 15 metres or more in length.

*United Kingdom*. (a): It has to be recognized that the provisions of Annex III were seen as a significant obstacle to ratification for a number of member States. Accordingly, it is suggested that Article 28 be deleted and the provisions of Annex III transferred to a revised Recommendation. If this suggestion is adopted, there would be consequential amendments, for example in Article 45. (b): The problem of gt equivalency figures would be resolved if Annex III were to be made part of the Recommendation, since this would allow member States to regard the figures as a guideline only. (c): As above, the difficulty with specific dimensions of accommodation spaces and furnishings would be resolved by making Annex III part of the Recommendation.

*Uruguay*. No changes are necessary.

*Venezuela, Bolivarian Republic of*. (a): None. Paragraphs on noise and vibration should be raised to the level of an Article, given the nature of the economic activity and existing risks, and in view of the impact of noise and vibration on occupational health. (b): No, given that the above limits and equivalency figures were set with a view to improving the applicability of the Convention and covering the greatest possible number of fishing vessels. In addition, these equivalency figures were the result of considerable work on the part of the committees and the working party to obtain a majority consensus.

*Overview of the replies to Question 4*

*Part (a) of the question*

Governments replied, as concerns part (a) of the question, by a ratio of about two to one that no changes were needed either to Article 28 or to Annex III. Several replies were not categorical as to whether or not the Article or the Annex should be changed.

Of the governments that wanted no change to the text, some pointed to the importance of accommodation to fishers, bearing in mind the nature of fishing operations. One indicated that its national requirements already exceeded those in the Convention. Another said that requirements were reasonably flexible. Another pointed to the provision in Article 28 concerning substantial equivalence, which should allow the necessary flexibility. One suggested that no changes were needed owing to the provisions of paragraph 1 of Annex III. Some noted that concessions had already been made at the 93rd Session of the Conference or noted the agreement between the Employers and the Workers on the accommodation issue in the Committee on the Fishing Sector at the 93rd Session of the Conference.

A few governments wanted more stringent accommodation provisions. One noted in general the importance of relating crew accommodation to the time the vessel is at sea rather than to vessel size. Another pointed to the importance of provisions on accommodation for all sizes of vessels. One said it would have preferred the proposed provisions for vessels of 24 metres and length or more to apply to vessels of 15 metres in length, noting that this was the approach taken in some countries. One indicated that the Paragraphs on noise and vibration in the Recommendation should be raised to level of an Article.

A few governments indicated that while they did not specifically seek changes to the accommodation provisions, they were open to consideration of how those provisions could be changed to encourage wider ratification of the Convention.

Of those governments that wanted changes to the text, many noted that there was a need for more flexibility or less detail. Many pointed to the need to take into account the differences among fishing vessels in different regions and States, as well as the needs of developing countries. Some made specific suggestions for changes, such as amendment of the language in Article 28 that linked Annex III to the Convention. There were also calls to move Annex III to the Recommendation, or more generally to amend the text so that the accommodation details were left to the competent authority after tripartite consultations. There was a suggestion that the Convention should follow the approach taken in the accommodation provisions of the MLC, where certain details that had been included in earlier Conventions were found, not in the mandatory Standards, but in the non-mandatory guidelines of that instrument. There was a suggestion that, while Article 28 should not be changed, Annex III should be adapted to reflect the figures and numbers concerning accommodation found in Convention No. 126. One government also called for changes to Article 27.

The workers' representative organizations generally indicated that Article 28 already permitted flexibility through substantial equivalence and Annex III was applicable only to new, decked vessels. They pointed out that the detailed provisions were derived from an existing Convention.

Some employers replied that Annex III was too prescriptive and that it should be moved to the Recommendation. If it was to be kept in the Convention, they wanted the wording in Article 28 to be changed to provide greater flexibility regarding the implementation of the provisions in the Annex.

*Part (b) of the question*

One in three governments replied that they wanted change to the gt equivalency figures contained in paragraph 7 of Annex III. Several replies were not categorical.

Of those that did not want change, a few governments said that no changes were needed because the provisions in paragraph 7 of Annex III were based on the agreement by the Workers and the Employers which "found favour with" most governments at the previous discussions in 2005. Some governments simply agreed with the figures or said they were reasonable.

Of those that expressed the need for change, the difficulty of establishing direct equivalency figures was noted, and a few governments offered specific suggestions as to what the changes should be, including the possibility of providing a range of figures. It was noted that vessel capacity, rather than length, might better govern the size of accommodation that could be provided. Changes that were suggested were aimed to reflect regional differences in fishing vessel design and construction. The importance of regional consultations before the Conference was raised. It was suggested that paragraph 7 of Annex III might be moved to the Recommendation either on its own or with the entire Annex.

In some cases, governments did not themselves seek changes but were willing to consider making the Convention more flexible in the interest of achieving wide ratification.

The workers' organizations generally noted that the gt equivalence figures were the result of an agreement by the Employers and the Workers at the 93rd Session of the

Conference, and that these figures had found favour with a majority of governments. They said that any change should be based on the provision of detailed information showing clearly that the figure of 175 gt did not reflect the equivalency throughout the world fishing fleet and was a way for some countries to exclude the majority of their fleet from the fishing vessel accommodation provisions. Several said no changes should be made. Others felt that if changes were made, the current 175 gt should not be increased to over 200 gt.

Employers' organizations for the most part expressed general concern over the figures. It was suggested that specific length–tonnage equivalency figures should take into account regional differences.

*Part (c) of the question*

Governments replied in a ratio of about two to one that there should be no changes to the specific dimensions of accommodation spaces and their furnishings. Several replies were not categorical.

Where governments wanted no change, the reasons, where given, were often the same as those given in the replies to part (a) of the question: the importance of accommodation to fishers; national requirements already exceed those in the proposed Convention; flexibility is already provided by virtue of the substantial equivalence provision in Article 28 or through paragraph 1 of Annex III. Also, some referred to the agreement reached at one point between the Employers and the Workers at the 93rd Session of the Conference.

Of those governments that did want change, several expressed a general need for more flexibility or less detail, in some cases noting that developing countries might not be able to reach the standard envisaged. Several indicated that the provisions of Annex III should be moved to the Recommendation. Further flexibility could also be provided following tripartite consultations at the national level. Some indicated that guidance might be taken from the accommodation provisions in the Maritime Labour Convention, 2006. Some provided very specific suggestions for changes to the provisions of the annex. There were calls for more flexibility for smaller vessels (for example, less than 15 metres in length). There were suggestions that certain provisions of Annex III (those involving specific dimensions for spaces or berths or numbers of toilets, showers and tubs to be provided) should be made consistent with Convention No. 126. It was also suggested that the annex could be made consistent with the provisions of the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels.

Several workers' organizations replied that fishing vessels might, during their long period of service, fish in different countries and be crewed by different nationalities, and that any amendment to the existing figures should therefore provide a global standard and not reflect regional differences. They also recalled that the provisions in Annex III would only apply to new vessels. They indicated that changes should only be made on the basis of compelling reasons supported by the provision of comprehensive data. It was pointed out that Annex III would only apply to new, decked vessels, and that the provisions were based on those in Convention No. 126.

Employers' organizations generally indicated that the accommodation provisions should be more flexible and take into account regional differences and the level of development in certain countries. They found Annex III to be too prescriptive. Concerns were expressed over the burden such standards would impose on fishing vessel owners.

*Discussion at the tripartite Round Table*

The Round Table discussed whether changes were needed to Article 28 or Annex III, or both, of the proposed Convention, in particular the length–gt equivalency figures in paragraph 7 of Annex III. To help others to understand its position, the Government of Japan provided additional technical information, which is set out in Appendix II of the Round Table document contained in the appendix to this report. Participants discussed whether the provision on "substantial equivalence" currently included in Article 28, or perhaps other possible provisions, could be used to address this issue to the satisfaction of all parties. Informal consultations on this point were deemed to have been positive.

*Office commentary*

As concerns the issue of substantial equivalence, the Office draws attention to the statement at the Round Table by the Deputy Legal Adviser as set out in paragraphs 44 and 45 of the Summary of the discussion contained in the appendix.

The Office notes that a few replies referred to specific figures or dimensions concerning accommodation contained in Annex III and how these compare to figures and dimensions in the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels, Part B, and the Safety and Health Requirements for the Construction and Equipment of Fishing Vessels. To assist in the discussion of this matter at the Conference, the Office has provided a comparison of these figures in the table at the end of this section.

Several replies have referred to the accommodation provisions in the MLC commenting on the balance achieved between the mandatory requirements set out in the Standards of that Convention and the non-mandatory guidance set out in its guidelines.

In this regard, the Office observes that standard A3.1, Accommodation and recreational facilities, of the MLC sets out specific figures for: headroom (paragraph 6(a)); the dimensions of berths (paragraph 9(e)); floor area (paragraph 9(f)–(l)); and the number of toilets, washbasins and tubs or showers for merchant ships, although a certain degree of flexibility is provided for under certain circumstances. The proposed Convention concerning work in the fishing sector sets out such dimensions and figures in its binding provisions (Annex III). However, there are a few other provisions in the MLC that are arguably less detailed than those of Annex III of the proposed Convention. For example, in the MLC the provision concerning refrigerators, facilities for hot beverages and cold water facilities are found in a non-binding guideline, while in the proposed Convention these provisions are found in the binding Annex III, paragraph 50. The accommodation provisions both of the MLC and of the proposed Convention are subject to substantial equivalence.

Bearing in mind that the issue of the requirements for accommodation on board fishing vessels continues to be the subject of informal consultations, and that there is no clear indication of the direction to be taken in resolving this issue, the Office has elected not to propose any alternative text.

The Office also draws attention to non-substantive drafting issues related to Articles 25–28, and to Annex III, which are set out below in the section of this report entitled "Additional Office commentary".

**Comparison of selected accommodation dimensions in the: proposed Convention concerning work in the fishing sector; Accommodation of Crews (Fishermen) Convention, 1966 (No. 126); and FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels, Part B, Safety and Health Requirements for the Construction and Equipment of Fishing Vessels, 2005**

| Dimension | Proposed Convention, Annex III | Convention No. 126 | FAO/ILO/IMO Code, Part B, Chapter 11 |
|---|---|---|---|
| Headroom | **12.** For vessels of 24 m in length and over, the minimum permitted headroom in all accommodation where full and free movement is necessary shall not be less than 2 m. 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 is reasonable, and will not result in discomfort to the fishers. | **Article 10, paragraph 4:**<br>The clear head room in the crew sleeping room shall, wherever possible, be not less than 6 ft. 3 ins (1.90 m). | **From paragraph 11.3.1:**<br>The clear headroom should, wherever possible, be not less than 2 m. |
| Sleeping rooms, floor area | **33.** The number of persons per sleeping room and the floor area per person, excluding space occupied by berths and lockers, shall be such as to provide adequate space and comfort for the fishers on board, taking into account the service of the vessel.<br>**34.** For vessels of 24 m in length and over but which are less than 45 m in length, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 1.5 $m^2$.<br>**35.** For vessels of 45 m in length and over, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than 2 $m^2$. | **From Article 10.1, paragraph 3 :**<br>[ ] floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than …<br>(a) in vessels of 45 ft. (13.7 m) but below 65 ft. (19.8 m) in length: 5.4 sq. ft. (0.5 $m^2$)<br>(b) in vessels of 65 ft. (19.8 m) but below 88 ft. (26.8 m) in length: 8.1 sq. ft. (0.75 $m^2$)<br>(c) in vessels of 88 ft. (26.8 m) but below 115 ft. (35.1 m) in length: 9.7 sq. ft. (0.9 $m^2$)<br>(d) in vessels of 115 ft. (35.1 m) in length or over: 10.8 sq. ft. (1 $m^2$) | **From paragraph 11.3.2:**<br>The floor area per person of sleeping rooms, excluding space occupied by berths and lockers, should not be less than:<br>1. 1 $m^2$ in vessels of 24 m but below 45 m in length; and<br>2. 1.5 $m^2$ in vessels of 45 m in length or over. |
| Persons per sleeping room | **36.** To the extent not expressly provided otherwise, the number of persons allowed to occupy each sleeping room shall not be more than six.<br>**37.** For vessels of 24 m in length and over, the number of persons allowed to occupy each sleeping room shall not be more than four. The competent authority may permit exceptions to this requirement in particular cases if the size, type or intended service of the vessel makes the requirement unreasonable or impracticable.<br>**38.** To the extent not expressly provided otherwise, a | **From Article 10, paragraphs 6 and 7:**<br>**6.** The number of persons allowed to occupy sleeping rooms shall not exceed the following maxima:<br>(a) officers: one person per room wherever possible, and in no case more than two;<br>(b) ratings: two or three persons per room wherever possible, and in no case more than the following:<br>(i) in vessels of 250 tons and over, four persons;<br>(ii) in vessels under 250 tons, six persons.<br>**7.** [ ] the number of ratings allowed to occupy sleeping rooms shall in no case be more than the following: | **From paragraph 11.3.3:**<br>Wherever reasonable and practicable with respect to the size, type or intended service of a vessel, the number of persons allowed to occupy each sleeping room should not be more than four persons in vessels of 37 m in length and over and six persons in vessels of less than 37 m in length. Sleeping rooms for officers should be for one person wherever possible and in no case should |

| Dimension | Proposed Convention, Annex III | Convention No. 126 | FAO/ILO/IMO Code, Part B, Chapter 11 |
|---|---|---|---|
| | separate sleeping room or sleeping rooms shall be provided for officers, wherever practicable.<br>**39.** For vessels of 24 m in length and over, sleeping rooms for officers shall be for one person wherever possible and in no case shall the sleeping room contain more than two berths. The competent authority may permit exceptions to the requirements of this paragraph in particular cases if the size, type or intended service of the vessel makes the requirements unreasonable or impracticable. | (a) in vessels of 115 ft. (35.1 m) in length and over, four persons;<br>(b) in vessels under 115 ft. (35.1 m) in length, six persons.<br>**8.** The competent authority may permit exceptions to the requirements of paragraphs 6 and 7 of this Article in particular cases if the size, type or intended service of the vessel make these requirements unreasonable or impracticable. | the sleeping room contain more than two berths. |
| Sanitary accommodation | **51.** Sanitary facilities, which include toilets, washbasins, and tubs or showers, shall be provided for all persons on board, as appropriate for the service of the vessel. These facilities shall meet at least minimum standards of health and hygiene and reasonable standards of quality.<br>**56.** On vessels of 24 m in length and over, for all fishers who do not occupy rooms to which sanitary facilities are attached, there shall be provided at least one tub or shower or both, one toilet, and one washbasin for every four persons or fewer. | **Article 12**<br>**1.** Sufficient sanitary accommodation, including washbasins and tub and/or shower baths, shall be provided in all vessels.<br>**2.** Sanitary facilities for all members of the crew who do not occupy rooms to which private facilities are attached shall, wherever practicable, be provided for each department of the crew on the following scale:<br>(a) one tub and/or shower bath for every eight persons or less;<br>(b) one water closet for every eight persons or less;<br>(c) one washbasin for every six persons or less;<br>Provided that when the number of persons in a department exceeds an even multiple of the specified number by less than one-half of the specified number, this surplus may be ignored for the purpose of this paragraph. | **From paragraph 11.5.1:**<br>Sufficient sanitary facilities including washbasins and tubs and/or shower-baths and water closets should be provided on a scale approved by the competent authority. Wherever practicable, such facilities should be provided as follows:<br>1. one tub and/or shower-bath for every eight persons;<br>2. one water closet for every eight persons or less; and<br>3. one washbasin for every six persons or less.<br>Provided that when the number of persons exceeds an even multiple of the specified number by less than one half of the specified number, this surplus may be ignored for the purpose of this paragraph. |

## Question 5

**Qu. 5** *Please indicate any other issues which should be addressed in relation to this agenda item.*

*Replies*

*Argentina*. The competency and training referred to in Paragraph 11 of the proposed Recommendation should be the subject of a binding provision. This provision states that international standards concerning the training and competencies of fishers should be taken into account, but the STCW-F has been ratified by only four countries and is not in force. There should therefore be an additional provision in Paragraph 11 requiring that, if the relevant international standards have not entered into force, existing national standards should be taken into account.

Does not favour a reduction in the minimum age for work in the fishing sector. For this activity, which could be considered hazardous per se, it would be inappropriate to accept less rigorous parameters allowing the employment of persons under 18 years of age. Paragraphs 3 and 6 should be deleted from the proposed Recommendation. Favours an amendment to incorporate a comprehensive reference to the provisions of the Minimum Age Convention, 1973 (No. 138).

CATT: Given that the proposed Convention has been discussed at length at two sessions of the International Labour Conference, changes should be kept to a minimum. Nevertheless, on the whole, it is clear that the ILO should be much more active in the fishing sector and do its utmost to promote decent work for all fishers.

CAPeCA/CALaPA/CAPA: (1) The stricter requirements established in the Convention for vessels of over 45 metres in length should be removed, leaving only the vessel length of 24 metres. (2) The document attesting to compliance with the provisions of the Convention (Articles 41 and 42) concerning living and working conditions should be moved to the Recommendation, and be valid for five years. (3) The complaint procedure provided for in Article 43 could lead to serious diplomatic disputes, and also encroaches on agreements on port State control and United Nations Convention on the Law of the Sea (UNCLOS), both of which should undoubtedly take precedence over labour agreements. (4) It should be specified that this instrument is specifically for the fishing sector, so as to prevent the Conventions and Recommendations concerning seafarers being extended or indirectly implemented in this sector, given in particular the recent adoption of the Maritime Labour Convention, 2006, which contains new provisions.

*Belgium.* Following the opinion issued by the Central Economic Council (CCE) in 2004, a provision could be added to Annex III to the effect that men and women should be provided with separate sleeping rooms and sanitation facilities. Furthermore, we should aim to limit the number of persons per sleeping room to a maximum of four, rather than six.

*Brazil.* CNC and CNT: The FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels should be taken into consideration, along with the FAO/ILO/IMO Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels.

*Burkina Faso.* Consideration should be given to the specific case of continental fishing that is done under conditions quite different from those of marine fishing.

*Canada.* With respect to the minimum age of employment, ILO Convention No. 138 sets the international labour standard for the minimum age for employment. The proposed Convention should be consistent with its provisions.

CLC: As the Convention has been the subject of considerable debate at two previous sessions of the International Labour Conference, there should be as few changes as possible to the text. However, on a general point, it is clear that the ILO should be much more active in the fisheries sector and should actively strive to promote decent work for fishers.

*China.* (1) Article 1 provides that "(a) 'commercial fishing' means all fishing operations, including fishing operations on rivers, lakes and canals, with the exception of subsistence fishing and recreational fishing;". This should be modified to read: "(a) 'commercial fishing' means all fishing operations, including fishing operations on rivers, lakes and canals, with the exception of subsistence fishing, recreational fishing and fishing for the purpose of research and teaching;". Reasoning: There is some research and teaching on fishing resources conducted each year in many countries; a certain quantity of fishing operations at sea are needed; it would be inappropriate for this type of fishing to be treated as "commercial fishing" and incorporated into the binding categories of an international Convention.

(2) Article 6(1) provides that "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." This should be modified to read: "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, these types of laws and regulations are made in consideration of national conditions to facilitate implementation of the Convention. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice." Reasoning: A Convention falls under the category of an international law with general binding force and influence. However, for it to have a real effect, complementary laws or regulations have to be made in consideration of national conditions by each State to make it a reality. Stressing the point that each State makes corresponding laws and regulations in consideration of national conditions, misunderstandings and contradictions can be avoided between developed countries and developing countries in situations of disagreement regarding the enforcement of standards.

(3) Delete the last phrase of paragraph 2 of Article 43 "and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health" and the whole of paragraph 3 of this Article. Reasoning: If we add this type of compulsory provision to this international Convention, contradictions or disputes among many countries with different safety and health standards will arise, so normal production and trade activities will be affected.

(4) At this stage, the Convention should take the form of a Code. Conditions of work in the fishing sector should not to be treated as provisions with legal binding force; rather, States shall be required to take active measures in accordance with the suggestions of the Code to progressively realize conditions of labour security for fishermen. Reasoning: At present, due to the fact that there is a considerable gap between the current situation regarding conditions of work in the various aspects of the fishing sector and the achievement of all the requirements of the standards contained in

the proposed Convention, although some "specific exemptions" are provided for in the proposed Convention, many countries still need to make efforts during a very long period of time before it is possible for them to realize it. Therefore, we suggest that reference be made to the Code of Conduct for Responsible Fisheries, making appropriate adjustments to the form of realization of the content of the Convention, allowing each State to make complementary laws or regulations in consideration of national conditions, in order to promote progress regarding conditions of work in the fishing sector, and to ensure labour security for the fishermen of their own countries.

*Colombia.* Hiring of fishers should be directly linked to production during each fishing operation, and the rights and obligations under the comprehensive social security system should be maintained throughout the operation. A contract should not be of indefinite duration but should be for the duration of the fishing operation, remuneration being in proportion to the size of the catch and including social security coverage on agreed points.

*Egypt.* The Convention should take into account the following: (1) The setting of the minimum age for work at 18 years. (2) Prohibition of work on board fishing vessels for those under 18 years of age. (3) A person working on board a fishing vessel should have a written contract of employment approved by the competent authority. (4) During periods of berth in ports, exempt temporary and seasonal workers from the provisions of the Convention concerning the need for a written contract of employment or regarding the established conditions of employment. (5) The competent authority should take measures aimed at ensuring that an efficient crew is on board so as to ensure safe navigation according to international standards, with the exception of small fishing vessels operating in inland waters. (6) The need to guarantee the rights established in social security and social insurance for those working on board fishing vessels, such as sickness, old age, work injury, maternity, unemployment, family and survivors' benefits, taking into account hard working conditions. (7) The need to ensure equal rights among workers on board fishing vessels in the waters of a State other than the flag State or during fishing operations on the high seas. The need also to have life insurance for those working on board fishing vessels. (8) The need to provide that States should adopt measures with a view to verifying compliance with the provisions of the Convention, both for flag State and for port State, and to carry out inspection for verification. Port State control should be provided for, and control operations should be confined to ships belonging to countries that are parties to the Convention. (9) The inclusion of provisions on the promotion of tripartism in concluding contracts, implementation and monitoring. The Recommendation should provide for: (1) Guidelines on types of work (such as night work or work in hazardous conditions) or on types of fishing vessels that should be prohibited to persons under 18 years of age. (2) Dealing with issues concerning occupational safety and health within the framework of an integrated national policy that guarantees the determination of the rights and obligations of shipowners and workers on their ships as regards occupational safety and health, as well as the investigation of occupational and personal accidents among crew members. (3) The keeping by the competent authority of a record of persons working on board fishing vessels. (4) Guidelines concerning conditions of work of fisheries' observers on board fishing vessels and the provision of any facilities needed to perform their duties. (5) The need for compliance with the provisions of the Convention by vessels operating in the exclusive economic zone.

GTUWA: The Convention should provide and guarantee that family fishing is not subject to its provisions other than those concerning safety and prevention on fishing vessels operating in inland waters, in conformity with the reply to Question 1.

*Finland.* Many accidents on fishing vessels are related to instability due to structural alterations of the deck area made at a later stage. This might perhaps be taken into account in the proposed Convention.

SAK: Taking into account that the Convention has already been discussed at two previous sessions of the Conference, there should be as few changes as possible and the ILO should be more active in promoting decent work for fishers.

*France.* In its present form, the proposed Convention would appear to be sufficiently balanced to be an appropriate candidate for status as a comprehensive standard regarding employment and working conditions in the fishing sector. While the flexible nature of the text allows it to take into account the diverse range of national situations, the scope covers all small enterprises, be they artisanal or family, which form the majority in some countries, as well as industrial or semi-industrial fishing enterprises. For this reason, a certain number of fundamental and emblematic points within the new text should only be amended with regard to form, if at all. This is the case with regard to the following points in particular:

*Minimum age.* Article 9, minimum age, of the proposed Convention allows young people to learn about a career as a fisher. Young people aged between 15 and 16 years are permitted to perform a certain number of tasks on board fishing vessels during school holidays. The current version of Article 9 of the proposed Convention addresses France's concerns regarding the protection of young people in the workplace. From the point of view of both fisher apprenticeships and the attractiveness of the profession, it is vital to maintain the current wording of this Article. Firstly, enabling young people to learn about the occupation in a strictly regulated environment from the age of 15 can lead to their gaining experience regarding occupational safety, whereas keeping schooling and work experience separate can lead to an increase in situations of risk. Allowing young people over the age of 15 who are receiving vocational training to perform light work on board contributes to their training in the use of the fishing gear they will use and the knowledge of the fishing operations in which they will be engaged, a point underlined in Article 31, occupational safety and health and accident prevention of the proposed Convention. Moreover, the opportunity to find out about the occupation from the age of 15 helps to ensure that the occupation remains attractive, a problem experienced by many States. Finally, the opportunity to perform light work from the age of 15 is not in conflict with the provisions of the ILO Minimum Age Convention, 1973 (No. 138). For all of these reasons, it is vital to maintain the present wording of Article 9.

*Risk evaluation in fishing enterprises.* Under Article 31, each Member shall adopt laws, regulations or other measures concerning "the prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management […]". From the point of view of the promotion of the occupational safety and health of fishers, it is vital that this provision be maintained. Occupational risk prevention should be considered as an overall approach, characterized by the participation and acceptance of responsibility on the part of the actors and the sector as a whole. This approach can, as is demonstrated by the French experience and in particular the implementation of the Fishing Safety Plan, be adapted to take into account small vessel owners. In taking into account certain fundamental principles regarding occupational risk prevention, the proposed Convention addresses this issue in an appropriate manner. Examples of this approach include the introduction into the proposed Convention of the concept of risk evaluation and management, personal protective equipment, as well as the definition of the respective responsibilities of the fishing vessel owner, skipper and fisher.

*Fishers' social security.* Articles 34 to 37 of the proposed Convention constitute a significant innovation in that, for the first time, the issue of minimum standards of social security for fishers is addressed. It should be recalled that the old Conventions on fishers have not been widely ratified and contain many gaps. The objectives of coverage (equal to that afforded other workers) for all fishers, be they waged or self-employed, and of progressive cover for non-resident fishers must be maintained within the body of the Convention. With the emphasis on the principle of progressiveness, the means for achieving these objectives seem appropriate and realistic. With regard to social security, the proposed Convention fulfils its objective as a comprehensive standard which is destined to become a reference for all States, including those not in a position to ratify it.

*Germany.* There are no objections to Annex II, as long as the term "fisher's work agreement" includes collective bargaining agreements. Under German law, the social partners are allowed to agree to exemptions for fishing vessels from the German Seafarers Act.

*Ghana.* Artisanal, aquaculture and recreational fishing issues should be addressed by the proposed Convention. The Fisheries Act, 2002 (Act 625) reflects some of the provisions in the proposed Convention.

*Honduras.* COHEP. Not all countries and enterprises are the same, and standards need to be more flexible and adaptable, less general, and of greater practical value, to allow them to be adapted to the conditions of each country. Failure to do this would mean that few countries would be able to ratify the proposed Convention and Recommendation.

*India.* HMS. The ILO should be more active in the fisheries sector as the people engaged in this type of work are open to accidents and danger. Moreover, since they are working at sea, problems of violation of international law become difficult and the fishermen are subjected to ill-treatment, detention, imprisonment, etc. They are also vulnerable sections of society trained in the traditional manner and who are not familiar with modern technologies. These people need protection.

*Japan.* Requirements for entry into force (Article 48(2)) should read as follows: "Ratification of 15 or more coastal States which own a number of fishing vessels equivalent to 50 per cent of the vessels throughout the world." Reasoning: To make the proposed Convention a truly international Convention, it is necessary to encourage States owning a larger number of fishing vessels to ratify the proposed Convention. The Torremolinos International Convention for the Safety of Fishing Vessels (IMO) enters into effect when 15 States with at least 50 per cent of the world's fishing vessels of 24 metres in length and over ratify the said Convention. However, as the proposed Convention allows exemption of vessels engaged in fishing operations in rivers, lakes and canals from the requirements above, it is necessary to have ratifications of 15 and more *coastal* States for entry into force. Furthermore, to cover as many fishers, in other words, fishing vessels, as possible throughout the world, there should be a requirement for ratifications by States with at least 50 per cent of the world's fishing vessels. The following are requirements for the entry into force of other Conventions, namely:

– The Torremolinos International Convention for the Safety of Fishing Vessels (IMO): 15 States with at least 50 per cent of the world's fishing vessels of 24 metres in length and over;

– The Maritime Labour Convention, 2006 (ILO): 30 States with 33 per cent of the world's vessel tonnage;

– International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F) (pending): 15 States;

– ILO Convention No. 126: two States.

JSU: Agrees.

*Korea, Republic of.* The entry into force requirements should be at least the same as the Maritime Labour Convention, 2006, i.e. 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world fleet of commercial fishing vessels of at least 33 per cent.

*Lebanon.* With regard to Article 3 of the proposed Convention, the question arises whether there are specific rules that regulate the selection of the specific provisions from whose application the fishing vessels and categories mentioned in subparagraphs (a) and (b) of Article 3(1) can be excluded, or whether it is left to the discretion of the ratifying State. This could lead to an imbalance in the application standards of the Convention. With respect to paragraph 1(b), are there clear standards for the limited categories of fishers or fishing vessels that may be excluded from the requirements of the Convention, or are these to be left to the ratifying State? Is it possible to provide for exceptions from its provisions for small fishing boats owned by fishers and their families? In all cases, occupational safety and health standards should be applied on all fishing vessels.

With respect to Article 13 concerning manning and hours of rest, it would be preferable to define manning and hours of rest through reference to Conventions such as the STCW, because the sentence "sufficiently and safely" is not clear and will be interpreted differently by different States.

With respect to Article 15 concerning the crew list: the last part of the first sentence should be amended to read as follows: "a copy of which shall be provided to authorized persons ashore in emergency cases immediately after the departure of the vessel".

With respect to Article 20, the text of this Article should be placed before the text of Article 18 to ensure the correct sequence.

With respect to Article 21, paragraph 2, add at the end: "such that his or her fault does not allow him or her to be kept on board". Clarification is needed as to who is liable to assess the seriousness of what the fisher has done, and, in the event that it proves to be serious, where the fisher should be left and what the mechanism of repatriation should be.

With respect to Article 29, subparagraph (e), on medical care, who is responsible for paying for the medical treatment?

With respect to Article 30, the appropriate personal protective clothing and equipment should be provided on all fishing vessels regardless of voyage duration, in view of the protection they provide to fishers.

With respect to Article 31, subparagraph (a), the wording "the avoidance to the greatest extent possible" is preferable to "the prevention".

With respect to Article 32, paragraph 2(a), use the following wording: "to avoid to the greatest extent possible occupational accidents and diseases", instead of "for the prevention of ...".

Articles 38 and 39 do not contain specific provisions related to death and corresponding compensation, although the heading for these two Articles refers to work-related death.

With respect to Article 45 concerning the procedure for amending Annexes I, II and III, since Annex III deals with Articles 25 to 27 of the Convention, its amendment means the amendment of the provisions of the Convention itself. How would the Conference amend Annex III?

With respect to Paragraph 29 of the proposed Recommendation, should vessels of less than 24 metres in length have separate sleeping rooms for women and men?

With respect to Paragraph 31, it is preferable that each toilet compartment should have a closed door.

With respect to Paragraph 40, the sentence should read: "to avoid to the greatest extent possible accidents on board fishing vessels", instead of "for the prevention of accidents on board fishing vessels".

*Netherlands.* DFPB. The social partners in the Netherlands fishing industry recognize that in fact a considerable number of fishers work on board fishing vessels as posted workers while the proposed Convention denies this by prescribing that the fishing vessel owner sign the fisher's work agreement (see Article 20 of the proposed Convention). This will create unclear legal positions for the fishers, fishing vessel owners and private employment agencies concerned. On the one hand, the Convention should therefore *not* prescribe who the contracting party of the fisher must be; on the other hand, in order to protect the fishers' rights, the Convention should place clear ultimate responsibility on the fishing vessel owner (in the broad meaning of this term, given in Article 1(d) of the proposed Convention).

*New Zealand.* The New Zealand Government has been working with the fishing industry in New Zealand to address concerns with working and living conditions for crew on foreign charter vessels. The proposed Convention would be a useful instrument for providing a framework of minimum protection as regards fishing crews' employment and working conditions. However, an overly prescriptive proposed Convention, as noted above, may discourage employer support.

NZCTU: Supports ongoing tripartite work with the aim of promoting decent work standards in the fishing sector.

*Panama.* CMP. As stated in Annex III, paragraph 4, application should also be extended to or made obligatory for vessels below 24 metres in length if they spend long periods at sea and outside territorial waters.

*Papua New Guinea.* Agrees with the current proposed provisions of the Convention. However, consideration should be given to other maritime Pacific island countries, which may find the requirements to be unaffordable.

*Qatar.* The Convention should contain fisher's obligations and duties towards vessel owners in order to ensure the rights of both contracting parties and to urge vessel owners, as well as associations and organizations representing them, to respond in a spontaneous and positive manner to the provisions of this Convention.

*Sri Lanka.* UFL and NFSM. It is important for developing countries that the Convention address the conditions of work of fishermen on vessels under 24 metres in length.

CWC: As the Convention has been the subject of considerable debate at two previous sessions of the International Labour Conference, there should be as few changes as possible to the text. However, on a general point, it is clear that the ILO

should be much more active in the fisheries sector and should actively strive to promote decent work for fishers.

*Spain.* FEOPE. Reject paragraphs 2 (basically the last phrase) and 3 of Article 43 and the slightest possibility that the State in whose waters or port the vessel finds itself can carry out inspections and take measures concerning the possible lack of compliance with labour standards. Firstly, such a standard would be contrary to the principle of the nationality of vessels based on their flag State and on the principle of territoriality. Secondly, it would seem to be a violation of the principle of "good faith" that runs through international law. It would be unthinkable for a State signatory to an international instrument not to comply with that instrument and not to display the will to require of its nationals that they fulfil their obligations, thus such a standard would constitute an infringement of national sovereignty. Although it is true that, strictly in the context of fishing, under certain circumstances and with certain guarantees, some monitoring of fishing on the part of the port authorities is permitted, this is justified by certain characteristics of fishing activities: the abuse of quotas and fishing licences; the homogeneous and detailed nature of the fishing standards applicable in the fishing zone for all countries carrying out extraction activities therein; and the fact that there is no room for differing interpretations or regulation. On the other hand, it is clear that fisheries Conventions (whether multilateral or bilateral) contain an important legal bargaining element, as a result of the mutual transfer of goods, interests or financial responsibilities, these being true considerations. None of this has any bearing on the implementation of the Convention for fishers and the content of the paragraphs referred to above cannot be justified. Thus, if they were to be granted, the extraordinary powers contained in the paragraphs in question would be a powerful weapon that coastal countries could use to upset the balance of fisheries Conventions, allowing one party the means to prevent the other from enjoying the benefits corresponding to its consideration. It should be noted that, under article 8.3.2 of the Code of Conduct for Responsible Fisheries, the port State should provide assistance only when requested to do so by the flag State.

*Suriname.* People living in the interior and the districts (of developing countries) often use vessels for transportation and fishing. These people often, or in most cases, do not have a medical certificate attesting to their fitness to perform certain duties. Often, there are not even any medical centres in the vicinity. The implementation or enforcement of laws in these areas is nearly impossible. Flexibility regarding most of the provisions in the Convention is in order for developing countries.

*Syrian Arab Republic.* The issue of not employing young people in hazardous work, such as processing on board vessels and handling hazardous materials, should be taken into account.

*Thailand.* In Article 25, delete the word "potable" and insert the word "drinking" before the word "water" to make this provision consistent with the wording in the Maritime Labour Convention, 2006. Likewise, in Article 27(b), delete "potable" and insert "drinking". In Article 28(1), replace the words "shall give full effect" by the words "shall give effect, as far as possible according to the condition of the Member", as the provisions of Annex III are too prescriptive and create obstacles to ratification. Note that Convention No. 126 has few ratifications due to over-detailed and prescriptive requirements, and the provisions of Annex III of the proposed Convention would be even stricter.

*Trinidad and Tobago.* (1) The ECA pointed out the problems Japan has expressed concerning the length-gross tonnage equivalency figures, observing that this would pose

serious concerns for Asian countries. (2) In Annex II, fisher's work agreement, the particulars of items (k) to (m) might be difficult to implement given the transient nature of workers on fishing vessels less than 24 metres in overall length. In addition, given the definition of "commercial fishing", the particulars of items (k) to (m) would also apply to inshore artisanal fishing activity where the crew may change on a day-to-day basis. Notwithstanding their usefulness in terms of protecting the interest of fishers, these particulars in items (k) to (m) may be difficult to implement. (3) In Article 30(f) – which concerns medical care – the provision of free medical care to fishers who land in a foreign port may present a financial as well as a social burden to the port State. This is especially true in cases of developing countries where the port State supports transhipment operations and where large numbers of foreign fishing vessels utilize the port. It is recommended that item (f) should be amended to reflect the cost of medical services to be borne by the vessel owner. (4) Article 20: With respect to the written work agreement, it is suggested that a third party should sign as a witness to the signatures of both the fisher and fishing vessel owner. It is also suggested that the provision should include companies and transfers of crew between fleets. (5) With regard to Article 32(3)(b), it is suggested that the sentence should be rephrased to read as follows: "… ensure that every fisher on board has received basic safety training and drills for emergency response approved by the competent authority; …".

*Ukraine.* With regard to the recruitment and placement of fishers, the Recruitment and Placement of Seafarers Convention, 1996 (No. 179) and the associated Recommendation, No. 186, can both be applied to the international commercial fishing industry.

*United Kingdom.* The Convention has been the subject of considerable debate at two previous sessions of the International Labour Conference, so changes to the existing mature text should be the minimum necessary to ensure a widely ratifiable instrument.

*Commentary on replies to Question 5*

The Office notes that quite a number of issues have been addressed in the replies to this question. It will focus its comments on the issues of minimum age, use of private employment agencies, and enforcement provisions.

*Minimum age*

Some replies expressed concern that the minimum age provisions of the proposed Convention might not be consistent with the provisions of the Minimum Age Convention, 1973 (No. 138) or the Worst Forms of Child Labour Convention, 1999 (No. 182). This issue also arose at the Tripartite Round Table.

The Office has reviewed the text of the two existing instruments and the proposed Convention and has found no inconsistency. It notes that, according to Article 3 of Convention No. 138, it is for national laws or regulations or the competent authority, after consultation with the organizations of employers and workers concerned, to determine the types of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons. The Office also wishes to draw attention to paragraph 7 of Article 9 of the proposed Convention which provides that:

> None of the provisions in this Article shall affect any obligations assumed by the Member arising from the ratification of any other international labour Convention.

The Office also draws attention to its commentary on this issue in Report V(2A) of the 93rd Session of the Conference. [1]

*Use of private employment agencies*

The issue of the use of private employment agencies was raised both in the replies and at the Tripartite Round Table. Concern was expressed about how to reflect in the Convention the situation – apparently increasingly common in some countries – in which a fisher has a contract not with a fishing vessel owner but with a third party, usually a private employment agency. At the Round Table, the participants discussed the possible relevance of the Private Employment Agencies Convention, 1997 (No. 181), as to how this situation might be addressed. Clarification was sought regarding the difference between recruitment and placement services (which are addressed in Article 22 of the proposed Convention) and the kinds of service provided by private employment services as set out in Article 1, paragraph 1(b), of Convention No. 181. The participants described their national experiences with private employment services, and sought clarification on certain issues.

The Office notes that Article 1, paragraph 1 of Convention No. 181, provides that:

> 1. For the purpose of this Convention the term "private employment agency" means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:
>
> (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
>
> (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;
>
> (c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.

Article 22 of the proposed Convention addresses the types of services described in Convention No. 181, Article 1, paragraph 1(a). However, as the Employers noted at the Round Table, the proposed Convention does not reflect the services provided in Article 1, paragraph 1(b).

The Office draws attention to Article 20, concerning the fisher's work agreement, of the proposed Convention, which reads:

> It shall be the responsibility of the fishing vessel owner to ensure that each fisher has a written work agreement signed by both the fisher and the fishing vessel owner or an authorized representative of the fishing vessel owner.

One possible solution would be to amend this Article to reflect situations where the work agreement is between the fisher and either an employer or a party other than the fishing vessel owner.

A similar though perhaps not identical issue arose during the development of the Maritime Labour Convention, 2006. This was addressed, in Standard A2.1, Seafarers' employment agreements, paragraph 1(a), by means of the following text:

[1] ILO: *Work in the fishing sector*, Report V(2A), International Labour Conference, 93rd Session, Geneva, 2005, p. 81.

1. Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:

(a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner **(or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention**; [emphasis added]

However, the Office also notes that the definition of "fishing vessel owner" in the proposed Convention and that of "shipowner" in the Maritime Labour Convention, 2006, differ. In the former, the definition in Article 1(d), is:

"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;

In the Maritime Labour Convention, the definition, in Article II(j), is:

"shipowner" means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, **regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner**. [emphasis added]

The Committee may also wish to take into account the fact that the Employment Relationship Recommendation, 2006 (No. 198), provides in Paragraph 4, inter alia, that:

4. National policy should at least include measures to:

…

(c) ensure standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due;

(d) ensure that standards applicable to all forms of contractual arrangements establish who is responsible for the protection contained therein;

*Enforcement*

The Office notes that some replies have referred to port State control provisions in the FAO's non-binding Code of Conduct for Responsible Fisheries. These provisions, which appear in Article 8.3, Port State duties, of the Code, are as follows:

8.3.1 Port States should take, through procedures established in their national legislation, in accordance with international law, including applicable international agreements or arrangements, such measures as are necessary to achieve and to assist other States in achieving the objectives of this Code, and should make known to other States details of regulations and measures they have established for this purpose. When taking such measures a port State should not discriminate in form or in fact against the vessels of any other State.

8.3.2 Port States should provide such assistance to flag States as is appropriate, in accordance with the national laws of the port State and international law, when a fishing vessel is voluntarily in a port or at an offshore terminal of the port State and the flag State of the vessel requests the port State for assistance in respect of non-compliance with subregional, regional or global conservation and management measures or with internationally agreed minimum standards for the prevention of pollution and for safety, health and conditions of work on board fishing vessels.

# ADDITIONAL OFFICE COMMENTARY

In reviewing the text of the proposed Convention and Recommendation as set out in the Report IV(2B), several other drafting issues have come to light.

## Text of the proposed Convention concerning work in the fishing sector

### PREAMBLE

The Committee may wish to consider the possible relevance of Conventions and Recommendations adopted by the International Labour Conference since its 93rd Session.[1]

### PART I. DEFINITIONS AND SCOPE

#### DEFINITIONS

*Article 1(c)*

The Committee may wish to consider deleting the remaining part of the definition after "exist" (i.e. "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 as allowed under the Convention"), as the substantive provisions of proposed Convention indicate where such consultation is called for.

*Article 1(d)*

The Office draws the Committee's attention to its commentary following the replies to Question 5 under the heading "Use of private employment agencies".

*Article 1(f)*

The Office suggests that, in order to improve the clarity of the text, a comma should be included after the word "arrangements". This would resolve ambiguity in the English text resulting from an amendment adopted at the 92nd Session of the Conference in 2004.

[1] These are: the Maritime Labour Convention, 2006; the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197); and the Employment Relationship Recommendation, 2006 (No. 198).

*Article 1(h) and (i)*

The definitions of "new fishing vessel" in subparagraph (h) and of "existing vessel" in subparagraph (i) are used only in Annex III. They could be moved to Annex III.

SCOPE

*Articles 3 and 4*

The Office draws the Committee's attention to its commentary following the replies to Question 1.

MINIMUM AGE

See Office commentary following replies to Question 5, under the heading "Minimum Age".

MEDICAL EXAMINATION

The Office draws the Committee's attention to its commentary following the replies to Question 2.

Furthermore, the Office notes that the link between Articles 11 and 12 could be made more evident by adding, in Article 12, at the beginning of the first sentence, the words "In addition to the requirements set out in Article 11".

**PART IV CONDITIONS OF SERVICE**

MANNING AND HOURS OF REST

The Office draws the Committee's attention to its commentary following the replies to Question 3.

FISHER'S WORK AGREEMENT

See Office commentary following replies to question 5, under the heading "Use of private employment agencies".

REPATRIATION

The Office notes that, subject to the outcome of the discussions concerning the "Use of private employment agencies", it may be necessary to revisit the provisions concerning repatriation.

PAYMENT OF FISHERS

*Article 23*

The Committee may wish to insert the word "other" between the words "or" and "regular" so that the end of the sentence reads "are ensured a monthly or other regular payment".

**PART V. ACCOMMODATION AND FOOD**

The Office draws the Committee's attention to its commentary following the replies to Question 4.

The Office observes that, in the light of the content of Articles 26 and 27, Article 25 appears to be redundant.

The Office notes that in Article 27(c), the word "shall" may not be necessary as it is already included in the introductory phrase.

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

### MEDICAL CARE

In Article 30(c), the Committee Drafting Committee may wish to look at the proper citation of the (ILO/IMO/WHO) *International Medical Guide for Ships*.

### OCCUPATIONAL SAFETY AND HEALTH AND ACCIDENT PREVENTION

The Office notes that consideration of an alignment of the English and French texts, with use of the term "risk assessment" in English instead of "risk evaluation" could be referred to the Committee Drafting Committee.

### SOCIAL SECURITY

*Articles 35 and 36*

The Articles refer to progressive implementation of social security provisions but without setting out a time frame for achieving full implementation. The Committee may wish to revisit these Articles, should the scope provisions of the proposed Convention be amended to incorporate a "progressive implementation" approach.

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

*Article 39*

The Office notes that it might improve the clarity of the text if there were some specific text linking Article 39 to Article 38. It also notes that the words "wilful act, default or misbehaviour" might be replaced with the words "wilful misconduct" in the interest of consistency with Standard A4.2, Shipowners' liability, paragraph 5(b), of the Maritime Labour Convention. [2]

## PART VII. COMPLIANCE AND ENFORCEMENT

*Article 41*

The Office notes that the text of Article 41 is, in part, unclear and confusing. The first sentence of the proposed Article 41 currently reads as follows:

> Members shall require that fishing vessels remaining at sea for more than three days, whether 24 metres in length and over or normally on voyages 200 nautical miles beyond the coastline of the flag State or the outer edge of its continental shelf, whichever is greater, carry a valid document 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.

Bearing this in mind, the Office proposes that consideration be given to rewording the text along the following lines:

[2] For an explanation of the reasons for this change, see the clarification by the representative of the Secretary-General set out in paragraph 771 of *Provisional Record* No. 7, Part I, *Report of the Committee of the Whole*, International Labour Conference, 94th (Maritime) Session, 2006.

Members shall require that fishing vessels remaining at sea for more than three days, which are:

(a) 24 metres in length and over or

(b) normally navigating at a distance exceeding 200 nautical miles from the coastline of the flag State or navigating beyond the outer edge of its continental shelf, whichever distance from the coastline is greater

carry a valid document 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.

*Article 43*

The Committee Drafting Committee may wish to replace the word "standards" in paragraph 2 with the word "requirements". This would help to make this paragraph consistent with paragraph 1 of the same Article, and would also be consistent with the use of the word "requirements" in the Maritime Labour Convention, 2006. [3]

The Office also draws the Committee's attention to its commentary following the replies to Question 5, under the heading "Enforcement".

### PART IX. FINAL PROVISIONS

Since the text approved by the Conference Committee in 2005 ended with Article 46 (the instruments being revised), the proposed final Articles added by the Conference Drafting Committee (Articles 47–54) have not been reproduced in the proposed text appearing in Report IV(2B). At the 96th Session of the Conference, the Conference Drafting Committee would, in accordance with its mandate under article 6 of the Standing Orders of the International Labour Conference, insert the standard final provisions, taking into account any relevant decisions of the Committee at this session. If the Committee provides no such instructions, the Conference Drafting Committee could include the provisions on entry into force submitted to the Conference at its June 2005 session (i.e. 12 months after the date on which ratifications of ten Members, eight of which are coastal States, have been registered with the Director-General of the International Labour Office).

### ANNEX II. FISHER'S WORK AGREEMENT

*Clause (q)*

The Office notes that consideration of an alignment of the phrase "national law or regulation" in the English and French texts could be referred to the Committee Drafting Committee.

### ANNEX III. FISHING VESSEL ACCOMMODATION

*Paragraph 78*

The Office notes that the alignment of the English and French texts could be referred to the Committee Drafting Committee.

[3] See MLC, Regulation 5.2.1, Inspections in port, paras 1 and 2.

## Text of the proposed Recommendation concerning work in the fishing sector

### PREAMBLE

Since Paragraph 11 refers to training, the Committee may wish to include in the Preamble a reference to the Vocational Training (Fishermen) Recommendation, 1966 (No. 126), which is not referred to as one of the instruments being revised.

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

PROTECTION OF YOUNG PERSONS

MEDICAL EXAMINATION

*Paragraph 8*

Consideration might be given to whether or not Paragraph 8 is necessary, as the issue appears to be addressed in Article 11(e) of the proposed Convention.

### PART V. OTHER PROVISIONS

A new Paragraph has been added to reflect the fact that the proposed Recommendation, if adopted, would replace the Work in the Fishing Sector Recommendation, 2005.

**APPENDIX**

TRLSFS/2006/5

**Report of the Interregional Tripartite Round Table on Labour Standards for the Fishing Sector** (Geneva, 11–13 December 2006)

# Executive summary

An Interregional Tripartite Round Table on Labour Standards for the Fishing Sector was held from 11 to 13 December 2006 at ILO headquarters in Geneva. Attached is a Summary of the discussion that provides an overview of the main issues that arose during this informal tripartite consultation.

## Background

The proposed Convention concerning work in the fishing sector was not adopted at the 93rd Session of the International Labour Conference due to lack of a quorum. Following the result of the vote, the Conference adopted a motion to request the Governing Body to place on the agenda of the 96th Session of the Conference in 2007 an item concerning work in the fishing sector based on the report of the Committee on the Fishing Sector of the 93rd Session.

At its 294th Session (November 2005), the Governing Body included on the agenda of the 96th Session of the International Labour Conference, which will be held in June 2007, an item concerning work in the fishing sector, with a view to the adoption of a Convention supplemented by a Recommendation. It also decided that the Conference should use as the basis for its discussion the report of the Committee on the Fishing Sector of the 93rd Session as well as the outcome of further tripartite consultations.

In May 2006, the Office held informal consultations with the Employers, the Workers and the regional coordinators of the Government group to discuss how these consultations might be carried out in an effective and timely manner.

In keeping with the abovementioned decisions and consultations, in October 2006 the Officers of the Governing Body agreed to the convening of the Interregional Tripartite Round Table on Labour Standards for the Fishing Sector.

The purpose of the Round Table was to pursue consultations in relation to the proposed Convention and Recommendation concerning work in the fishing sector in advance of the 96th Session (June 2007) of the Conference. This meeting was composed of the following members: eight representatives of governments of ILO member States – nominated on a regional basis after

consultation with the ILO Government group regional coordinators; eight Employer representatives and eight Worker representatives – nominated by their respective groups. Regional coordinators of the Government group, or their representatives, participated as observers with the right to take the floor on behalf of any country of their respective group. An observer from the Food and Agriculture Organization of the United Nations also participated. The Chairperson, who came from outside the eight Government representatives, was Captain Nigel Campbell of South Africa.

Some of the main issues discussed are highlighted below. This text should be read together with the Summary of the discussion.

## Main issues discussed

The atmosphere of the Round Table was very positive and constructive. Participants sought to identify the way forward towards achieving the adoption of a Convention and Recommendation in 2007 that could be widely ratified and would contribute to ensuring that the rights and interests of all fishers are protected. The Office provided participants with a summary of replies received to a questionnaire on the proposed Convention that had been sent to ILO member States in June 2006. The questions had focused on issues that had presented difficulties at the Conference in 2005.

Throughout the Round Table the participants expressed the importance of continuing informal consultations and exchange of information until the Conference meets in June 2007.

### *Progressive implementation approach*

The Round Table discussed the possibility of incorporating into the proposed Convention what became known over the course of the debate as the "progressive implementation approach". The Employers stressed that this approach would allow States, under specified conditions, to implement progressively certain provisions of the Convention over a period of time, and that this would lead to more widespread ratification. The Employers' presentation on this approach is set out in Appendix I to the Summary. The participants sought clarification on various aspects of the proposal, in particular as concerns the basic level of protection provided to fishers and the possible impact on the exercise of port State control. There was a general willingness to examine further the "progressive implementation approach" and to explore the possibility of incorporating this approach in the Convention.

### *Medical examination and certification*

The Round Table discussed the conditions under which flexibility could be provided as regards the requirement for fishers to hold a medical certificate. The debate focused on the possibility of exemptions for certain fishers or fishing vessels where there was lack of infrastructure necessary for conducting medical examinations and issuing medical certificates. The discussion also led to the suggestion by the Employers' and Workers' representatives that the progressive implementation approach noted above might provide such flexibility.

### *Manning and hours of rest*

**The Round Table discussed the possibility of revising Article 14 of the proposed** Convention. This included an exploration of how to take into account the need to deviate, for certain safety and operational reasons, from strict application of the existing text. Consideration was given to drawing upon, as appropriate, certain provisions of Standard A2.3, Hours of work and rest, in particular paragraph 14, of the Maritime Labour Convention, 2006. Generally, there was a sense that progress was being made, and would continue to be made, on this issue through informal consultations.

### *Accommodation*

The Round Table discussed whether changes were needed to Article 28 or Annex III, or both, of the proposed Convention, in particular the length/gross tonnage equivalency figures in paragraph 7 of Annex III. To help others to understand its position, the Government of Japan provided additional technical information to the Round Table, which is set out in Appendix II of the Summary of the discussion. Participants discussed whether the provision on "substantial equivalence" currently included in Article 28, or perhaps other possible provisions, could be used to address this issue to the satisfaction of all parties. Informal consultations on this point were deemed positive.

### *Other issues*

The Round Table discussed how private employment agencies, which were being increasingly used in the fishing sector in some countries, might be taken into account in the Convention. The participants discussed the possible relationship of other ILO standards, such as the Private Employment Agencies Convention, 1997 (No. 181) and the proposed Convention and clarification was sought regarding the difference between recruitment and placement services and private employment services, as defined in Article 1, paragraph 1(b), of Convention No. 181. The participants described their national experiences with private employment services, and sought clarification on certain issues.

Other issues raised concerned the provisions relating to training and minimum age. These are set out in the Summary of the discussion.

### *Continued consultations*

The importance of continued informal consultations among the employers' and workers' organizations and their representatives was stressed and encouraged. It also was suggested that the Government regional coordinators could play a role in facilitating communication among governments. To facilitate the exchange of information, the Office has included the list of participants from the Round Table in an appendix to the Summary of the discussion. The importance of setting aside sufficient time at the Conference for bilateral discussions and group meetings was emphasized.

# Summary of the discussion

## Introductory remarks

**1.** The Deputy Secretary-General of the meeting welcomed participants to the Interregional Tripartite Round Table on Labour Standards for the Fishing Sector. She recalled the events that had led to the convening of the Round Table, stressing the opportunity offered by these informal consultations to reflect on what had been accomplished so far, to consider in some depth a number of points where consensus had not yet been achieved and to explore possible ways forward which would enable the tripartite constituents to meet their objectives. The aim of the meeting was to facilitate the work of the Committee in June 2007. The speaker concluded by introducing the Chairperson of the Round Table, Captain Nigel Campbell of South Africa.

**2.** The Chairperson welcomed the participants and reminded them of the need to focus on the questions relevant to each session in order to make ideal use of the short time given to the Round Table.

**3.** The Executive Secretary introduced the documents for the Round Table. These included the following: the *Report of the Committee on the Fishing Sector*, *Provisional Record* No. 19, International Labour Conference, 93rd Session, 2005; *Work in the fishing sector*, Report IV(1), International Labour Conference, 96th Session, 2007, which contained the questionnaire sent to ILO member States in 2006; and the "Advance summary of replies", which reflected the replies received by 20 October 2006 from almost 50 member States as well as 20 employers' and workers' organizations. Since then, the Office has received replies from more than a dozen other countries. These would be included in the report prepared for the Conference.

**4.** The Employers pointed out that the 2005 text had failed, because several countries, which together represented a majority of the world's fishers, could not accept the text adopted by the Committee. The Employers had abstained, since they deemed widespread ratification impossible. The objectives of the Convention were (and continued to be) to address a number of issues regarding the labour protection of fishers and to be effective for the majority of the world's fishers. The conditions of success were that the Convention: be sufficiently broad and flexible; take account of the differences in fishing fleets and types of fishing; be based on principles which could be implemented in a manner which would accommodate the diversity of the economic and social conditions of countries; and not be overly prescriptive. The 2005 draft had been overly ambitious and had not met these conditions. Therefore, a new approach was needed. The Employers made the following suggestions: that the discussions in 2007 be based on the 2005 text; that certain provisions be subject to a "development clause" (e.g. those on minimum age and on certain aspects of medical fitness, manning and hours of rest, fishers' work agreements, accommodation and food, medical care, occupational safety and health and accident prevention, social security, and work-related sickness, injury and death); that alternative wording be used to address specific national and regional requirements; that certain provisions be made more flexible (e.g. those on medical examination, manning and hours of rest and fishers' work agreements); and that Annex III be placed in whole or in part in a Recommendation. The Employers' presentation appears in Appendix I.

**5.** The Workers' group welcomed the meeting, which would look at the replies to the questionnaire, and noted that it did not have the mandate to adopt any decisions or conclusions. The Workers considered that appropriate as many of the Governments that had actively participated in the Conference were not present. They hoped that it would allow a frank exchange of views. The group noted that the current situation had arisen because the Convention had failed to meet the quorum by a single vote. Otherwise, it would have been adopted. The Workers also noted that around 50 per cent of the replies had indicated that those replying were satisfied with the text or favoured as few changes as possible. While the Workers agreed with that position, they were willing to explore ways to resolve some of the difficulties. However, that should not be done by fundamentally weakening the provisions. The speaker noted that since the last meeting, the ILO had adopted the Maritime Labour Convention, 2006,

which aimed to be the fourth pillar of the global regulatory regime for maritime transport. Fishing was a hazardous occupation and fishers were also entitled to decent work. The Workers expected the fishing Convention to reflect that situation and to provide a tool which could go some way to combat the fundamental problems in the industry. They recognized that the Convention sought to cover very different fishing operations and that small-scale fisheries were different from the larger industrial fisheries, where the fishers lived and worked on the vessel, often for considerable periods of time. Therefore, the Convention must provide the necessary protections. It was the Workers' hope that the meeting could play an important role in ensuring that the June Conference would be easier than it might otherwise be, and that it would produce a successful outcome.

**6.** A number of Government representatives made introductory statements welcoming the opportunity to discuss the issues. One Government that had great difficulties with the draft adopted by the Committee in 2005, pointed out that it would pursue a new approach and start working towards ratification, if its delegation's proposals could be incorporated in the draft. A Government that had supported the 2005 draft, pointed out that every possible effort needed to be made so that the draft instrument would constitute an acceptable working text for the Committee's negotiations and lead to the adoption of a Convention. There were differences between economic and social conditions of countries and in fishing fleets and types of fishing operations, but the products of the sector were distributed around the world. The link between working conditions and the global distribution of the fishing industry should not be overlooked. In order to safeguard fishers' rights, the delegation supported a new Convention that would be flexible in the application of its provisions, easily ratifiable, implemented in a uniform manner and enforced. For vessels subject to port State control, flag States and port States required uniform provisions that would ensure the required certainty. At the same time, the concept of "substantial equivalence" used in Convention No. 147 and flexibility clauses found in the Maritime Labour Convention, 2006, could be included to provide flexibility.

**7.** The observer from the United Nations Food and Agriculture Organization reminded participants of the joint work of FAO, ILO and IMO on the *Code of Safety for Fishermen and Fishing Vessels, 2005*, as well as the FAO/ILO/IMO *Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels, 2005*. Since certain elements found in these documents were also dealt with by the draft Convention, it was important to ensure coherence. The speaker also drew the attention of participants to a new draft safety standard, entitled "Safety recommendations for decked fishing vessels of less than 12 metres in length and undecked fishing vessels" that was currently being developed by FAO, ILO and IMO with the target completion date of 2009 (see: www.sigling.is/fvs-iscg). It might be necessary to revisit certain parts of these draft safety recommendations as a follow-up to the International Labour Conference in 2007, in order to ensure consistency with the proposed fishing Convention and Recommendation.

## Question 1: The proposed Convention concerning work in the fishing sector provides, in Part I (Definitions and scope) the possibility for the competent authority, under certain conditions, to exempt certain fishing vessels or fishers from some or all of the provisions of the Convention. Should any additional flexibility be introduced as regards scope? If so, please indicate in respect of which provisions and under which conditions

**8.** The Executive Secretary provided an overview of the replies received.

**9.** The Employers and Workers were in agreement that the question related to how to articulate the notion of a "development clause". [1]

**10.** The Employers, when asked to provide more details on the main elements of possible provisions that would introduce progressive implementation into the Convention, said that these might, for example, provide that a country could initially ratify the Convention and then, after consultation, progressively implement certain provisions in the Convention to the extent that certain factors, such as of economy, educational system, health services, technological capabilities, and administrative, educational and technical facilities were sufficiently developed or organized to enable the implementation of the provision concerned. The Convention might further provide that the first report to the ILO should list what had not been implemented and explain the reasons. Subsequent reports would list not only what had been implemented but also the steps taken to progressively implement the provisions that had not been fully implemented. The reports would also have to reflect the respective positions of representative organizations of fishers and fishing vessel owners. The Employers indicated that these provisions implied that their position as explained above was in addition to the existing Article 3.

**11.** A Government representative noted that no one at the Round Table had challenged the concept of port State control, and the "no more favourable treatment" clause, as concerned fishing vessels. There seemed to be acceptance of the principle of progressive implementation. However, it was necessary to indicate clearly which vessels would be subject to such control. Using the example of his own country's practice, he stated that all fishing vessels, no matter what flag they flew, were treated in the same manner as those flying the national flag. Any other approach would create confusion. All other Governments that spoke confirmed this principle.

**12.** The Worker spokesperson agreed with these views.

**13.** A number of Governments raised the question of the possibility of different inspection standards for national versus foreign-flagged vessels.

**14.** One Government representative observed that since 1996 the more serious accidents involving fishing vessels with lengths of over 24 metres in his country's waters involved foreign-flagged vessels. Without prejudice to the recognition that some countries would require flexibility for economic and social reasons, it was important that in the area of safety and health, equal treatment between national and foreign vessels was ensured. Another Government representative pointed to the possible complexity faced by port State inspectors if different provisions of the Convention were applicable to different fleets, i.e., should some flag States exempt their fleets from certain provisions. A Government regional coordinator emphasized the need for a fair inspection regime for both national and foreign vessels. She drew attention to the ILO inspection guidelines for Convention No. 147 as a basis for such fairness.

**15.** The Chairperson observed that the situation referred to was far from unique, but emphasized that there should not be different inspection standards. He requested the Office to clarify which provision of the draft Convention would address this issue.

**16.** The Executive Secretary noted that the applicable provision would be Article 44, which stipulated that "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 fishing vessels that fly the flag of Members that have ratified it." It was therefore clear that the draft Convention did not provide for more lenient treatment for foreign fishing vessels than national vessels of ratifying Members.

**17.** A Government representative understood the concerns raised by the previous Government speakers, but believed clarification of which vessels would be subject to port State control

[1] Henceforward, in order to avoid possible confusion, the term "progressive implementation" has replaced the term "development clause".

might be the answer. He also suggested that once the Convention and the Recommendation were adopted, a Conference resolution could call on the ILO to develop inspection guidelines.

**18.** The Employers stressed that a country with the necessary means to implement the Convention must do so in its entirety; it did not matter whether such a country was a developed or a developing country. The Employers, reacting to the previous speakers, suggested that there might not be flexibility as concerns those vessels visiting foreign ports. A question remained as to what type of inspection regime would cover foreign vessels that did not actually enter port.

**19.** Another Government regional coordinator hoped that the discussions could be extended to the diverse situations related to fishing, not only on oceans. but also on lakes, rivers and other inland waters.

**20.** The Chairperson shared his country's own approach to inspection which could be summarized as "no more favourable treatment than that applicable to national flag fishing vessels". If foreign vessels wished to fish in the waters of his country then they had to comply with his country's standards.

**21.** A Government representative clarified that his country did not apply any flexibility as regards fishing vessel inspections, noting that only national flag fishing vessels were permitted to fish in his country's waters and they were required to have a minimum percentage of nationals on board.

**22.** Another major question raised by a number of Governments involved "self-employed fishers" and whether they were covered or excluded in accordance with Article 3 of the draft Convention. This was the only area on which flexibility might be required and, in fact, two Government replies appeared to propose the exclusion, or possible exclusion, of the self-employed.

**23.** The Employer spokesperson noted that the text of the 2005 draft Convention had very clearly included the self-employed, even though it was recognized that, in some cases, they might not be able to comply with its provisions. The Worker spokesperson agreed with the Employer spokesperson that the 2005 draft Convention had included the self-employed, except those exempted under Article 19.

## Question 2: Articles 10, 11 and 12 of the proposed Convention concern the medical examination of fishers. Should additional flexibility be introduced into these Articles? If so, in respect of which specific provisions and under which conditions?

**24.** The Executive Secretary provided an overview of the replies received on Articles 10, 11 and 12.

**25.** The Employers had, when discussing the draft text, asked themselves whether it was likely that the new Convention would provide protection for more than 50 per cent of fishers. Based on this principle, they had concluded that the significant issue was the availability of the necessary infrastructure for medical examinations and the issuance of medical certificates. In its reply to the questionnaire, the Government of the United Kingdom had suggested amending paragraphs 2 and 3 of Article 10. The Employers supported amending paragraph 2, as suggested in that proposal, but did not think that the reference to boat length or the duration of the voyage in paragraph 3 was necessary. Only the existence (or non-existence) of sufficient infrastructure mattered.

**26.** The Workers believed that the draft text provided sufficient flexibility, a view supported by the majority of replies. However, they were prepared to discuss the issue in the context of possible progressive implementation as the Employers proposed.

**27.** The Employers pointed out that they had suggested progressive implementation for certain provisions, so that countries whose infrastructure and institutions were not sufficiently

developed to implement certain provisions or requirements immediately could nonetheless ratify the Convention. Such clauses would give those States the opportunity to "grow into" these provisions and requirements within a certain period of time: their progress should be monitored through social dialogue and reporting to the ILO.

**28.** In response to a request for clarification, the representative of the Legal Adviser provided an overview of the different types of flexibility clauses used in ILO standards. These were based on paragraph 3 of article 19 of the Constitution. Typical examples of flexibility provisions were exclusions in scope (either initial by declaration or after ratification). Exclusions at the time of ratification had the advantage of making public the limited scope, since exclusions would be communicated to all member States, informing them of the level of commitment of the ratifying State. Exclusions after ratification did not grant the same level of public notice, but almost always established an obligation on member States to fully inform the Office in article 22 reports, and were thus subject to examination by the ILO supervisory machinery. While there were precedents for obligations which may be implemented progressively, precedents were not explicit as regards the definition of progress or implementation stages, as envisaged by the Employers.

**29.** When asked about the proposal of the Government of the United Kingdom, the Employers affirmed that it did not simply waive the need to issue a certificate, but referred to both examination and certification. There were countries that faced difficulties in providing the required infrastructure, and too stringent a regulation could make it hard for them to ratify the Convention. In the event that no machinery existed to determine the existence of a country's medical infrastructure, the Conference might decide to create such machinery. Alternatively, grace periods of five or ten years could be considered.

**30.** The Office was asked to clarify its understanding of the proposal of the Government of the United Kingdom. A representative of the Office stated that a certificate was the outcome of an examination; the proposal to waive the certificate would thus also encompass the examination itself.

**31.** The Workers did not support the wording of the proposal of the Government of the United Kingdom. They were generally open to introducing progressive implementation, but proposed several criteria that should be met. Such a clause should refer to the country's level of development and infrastructure, be limited in time, be objectively justified, and be limited in relation to the size of the vessel and the area and type of operation. In any case, exceptions should only be granted in consultation with the social partners.

**32.** A Government representative expressed concern that any distinction between developing and developed countries would appear arbitrary in this context. In response, the Employers stated that the provision would not specifically refer to developing countries; instead it would refer to countries that did not have the appropriate infrastructure.

## Question 3: Article 14 of the proposed Convention concerns level of manning and minimum hours of rest for certain categories of vessels. Should changes be made to this Article? If so, please indicate the changes proposed and specify the reasons

**33.** The Executive Secretary provided an overview of the replies received on Article 14.

**34.** The Employers reminded the participants of the nature of fishing and concluded that the minimum hours of rest included in the draft Convention were problematic. The industry had changed dramatically in the last decade, and labour costs were of utmost importance. Fishing vessel owners could not afford to have surplus crew members on board. The provision needed to be adjusted to reflect this. The reply of the Government of the United Kingdom had underlined the importance of derogation and was clearer than the existing language, which used

the ill-defined phrase "alternative requirements". It was important that employers and workers and their representatives had the right to waive these requirements.

**35.** The Workers agreed with the Chairperson, when he reminded participants that fatigue had been identified as the main cause of maritime accidents. Since they also understood the Employers' concerns, they were open for debate and discussion. The proposal contained in the reply from the Government of China seemed interesting, as well as the suggestion contained in the reply of the Government of New Zealand that "fatigue management plans" be established. In both cases, however, additional explanations would be helpful.

**36.** In response to a request for clarification, the representative of the Legal Adviser pointed to the definition of "competent authority" under Article 1(b) of the draft Convention and stated that this definition would not conflict with the more stringent requirements made in the EU Directive concerning certain aspects of the organization of working time (2003/88/EC) as far as it required that exceptions be made by means of laws, regulations or administrative provisions.

**37.** The Employers noted that the proposal contained in the reply of the Government of the United Kingdom sought to ensure that the Convention and the Directive were compatible. That proposal was deemed to be sufficiently broad by one Government representative, while another pointed out that compatibility with the Directive was also ensured by Article 6, paragraph 2, of the draft Convention.

**38.** One Government representative supported the Employers' position and pointed out that it was difficult to determine what "alternative requirements" could be established in view of the fact that paragraph 2 set out an absolute number of hours of rest.

## Question 4: Article 28 and Annex III of the proposed Convention concern fishing vessel accommodation

### *(a) Should changes be made to these provisions? If so, in respect of which provisions and why?*

**39.** The Executive Secretary provided an overview of the replies received regarding Article 28 and Annex III.

**40.** The Employers stated that they had problems with certain aspects of the accommodation provisions. They looked to the Asian governments, especially the Government of Japan, for possible solutions in this regard.

**41.** The Workers informed the meeting that they had had discussions with the Government of Japan and were making progress in the development of an overall package.

**42.** A Government representative was encouraged by the progress of discussions between the Workers and the Government of Japan and hoped any solutions proposed would be acceptable to the Employers as well. A "substantial equivalence" provision was included in Convention No. 147 and its Protocol of 1996 and was applied to Conventions Nos. 92 and 133 on accommodation of crews, included in their appendices. He asked how the Committee of Experts applied "substantial equivalence" to the numerical values contained in these Conventions and asked why a "substantial equivalence" provision would not provide enough flexibility in the application of the accommodation requirements. He also noted that it would be preferable if fishing vessels built in one country or one region could be sold openly on the international second-hand market.

**43.** A Government representative said that the main problem with the draft instrument lay in certain specific numerical figures in the accommodation provisions. His Government would, nonetheless, prefer realistic figures which could be enforced strictly rather than the substantial equivalence provision in Article 28(2).

**44.** The Deputy Legal Adviser, in response to a question raised concerning the application of substantial equivalence as regards numerical parameters in the jurisprudence of the Committee of Experts on the Application of Conventions and Recommendations, quoted the General Survey on labour standards on merchant ships (1990). In particular, he referred to paragraph 77 of the General Survey, which says "… some standards in the Appendix Conventions have explicit quantifiable elements in respect of which it may be possible to determine that substantial equivalence involves a commitment to less than 100 per cent: this might apply as regards, for example, the length of a benefits period, or the rate of benefits, in Conventions Nos. 55, 56 and 130; or some of the details of dimensions of sleeping rooms in Article 10 of Convention No. 92; it may even apply to the periodicity of medical examinations under Convention No. 73". He added that, needless to say, the Committee of Experts would only accept possible reductions based on sound grounds.

**45.** Answering a subsequent query from the Employer members, he stressed that the jurisprudence of the Committee of Experts on substantial equivalence is in general quite strict, in the sense that the concerned State has, on the one hand, to accept appropriately the general goal of the relevant Convention and, on the other hand, ensure that in all material respects the subordinate goals of the Convention are achieved. However, this refers in particular to non-quantifiable elements, as the Committee of Experts says in the same paragraph of the General Survey: "However, in respect of non-quantifiable elements such determination would be difficult, and, especially where questions of safety are involved, it might be impossible to make. In such cases, to be faithful to the wording and spirit of Article 2(a), the Committee's view of what is required is bound to prefer more strict adherence to the provisions of the Appendix Conventions."

**46.** The Employers, referring to the planning and control paragraphs (8-10) in Annex III, remarked that there should not be any requirement for existing vessels to be retrofitted, as this would result in additional costs to a buyer of second-hand tonnage. A vessel which complied with the Convention in one country should also be deemed to comply in another at a later date.

**47.** An observer suggested that the formulation "should preferably be at least [numerical figure], but in any case not less than [numerical figure]" could be used to provide flexibility, noting this had been used in other international fishing safety instruments concerning vessel construction.

### *(b) In particular, should the gross tonnage equivalency figures contained in paragraph 7 of Annex III be changed? If so, how and why?*

**48.** The Executive Secretary provided an overview of the replies received.

**49.** The Employers announced that they were prepared to show flexibility on this issue.

**50.** The Workers felt that progress was possible and announced that, provided a package deal could be reached, they were ready to meet the key concerns of the Government of Japan.

**51.** The representative of the Government of Japan appreciated the sympathy shown for his document. He insisted that regulating two parameters (i.e. length and gross tonnage) was a difficult exercise, not supported by his country, which used gross tonnage. Conversion between gross tonnage and length would be applied to all relevant parts of Annex III. He introduced diagrams and illustrations which, with the agreement of the Round Table, are reproduced in English in Appendix II.

**52.** Several Government regional coordinators indicated that there had not been time to consult on the document provided by the Government of Japan and indicated that they would bring it to the attention of their group members.

### *(c) Should the provisions concerning specific dimensions of accommodation spaces and their furnishings be changed? If so, how and why?*

**53.** The Executive Secretary provided an overview of the replies received.

**54.** The Employers recalled their remarks concerning question (a) and looked forward to the possible solutions which would hopefully come out of the discussions between the Workers and the Government of Japan.

**55.** The Workers said that their group would study the Japanese proposal.

**56.** The representative of the Government of Japan explained that its proposals were based on Convention No. 126, but were stricter. He could agree to the earlier proposal to use the formulation "should preferably be at least [numerical figure], but in any case not less than [numerical figure]" as it involved the use of specific numerical figures which could be enforced.

## Question 5: Please indicate any other issues which should be addressed in relation to this agenda item

**57.** The Executive Secretary explained that this question offered the opportunity to comment on any other issues of concern. Topics raised by participants at the Round Table included private employment agencies, training and minimum age, and other changes.

### *Private employment agencies*

**58.** The Employers indicated that the use of private employment agencies was a growing phenomenon in the fishing sector. These agencies were private companies that hired fishers and issued contracts, or private companies that worked under contract with vessel owners. They were not simply recruiting or placement agencies, but were themselves the actual employer. The Convention should recognize the existence of these agencies. In response to an intervention by a Government representative seeking assurance that any provisions would not interfere with existing public employment agencies, the Employers noted that these agencies differed from public employment agencies in that they were employers and not merely involved in recruitment and placement. They also clarified that they were not referring to recruitment centres, jointly operated by employers and workers.

**59.** One solution proposed by the Employers was to draw on the wording of the Private Employment Agencies Convention, 1997 (No. 181), which listed ten areas as a foundation which could be built upon. The provisions set out in Article 12 addressed such issues as: collective bargaining; minimum wages; working time and other working conditions; statutory social security benefits; access to training; protection in the field of occupational safety and health; compensation in case of occupational accidents or diseases; compensation in case of insolvency and protection of workers' claims; maternity protection and benefits; and parental protection and benefits.

**60.** The Workers said that they recognized the problem had to be faced, would be prepared to consider the proposals by the Employers and would provide their own draft clause.

**61.** The Employers were also prepared to address a concern of the Workers, in that the recognition of private employment agencies would not impinge upon their capacity to place a lien on a vessel, or diminish the rights of workers.

### *Training and minimum age*

**62.** The Workers agreed with the reply submitted by the Government of Argentina, i.e. that competency and training should be the subject of a binding provision and that because work in the fishing sector was hazardous, the minimum age should be maintained.

**63.** On the subject of minimum age, one Government representative noted that the draft Convention as it now stood had been carefully worded to be consistent with the provisions of existing ILO Conventions concerning minimum age and therefore should not be altered.

**64.** The Employers, without suggesting change, felt that minimum age might be a subject for progressive implementation, without diminishing existing obligations under existing Conventions.

**65.** The Workers, however, believed that the current wording was already the result of compromise and should not be the subject of further debate.

**66.** One Government representative favoured 18 as the minimum age, another referred to "national traditions", while others referred to the need to be consistent with Convention No. 138 as well as Convention No. 182 and Recommendation No. 190. One referred to the existing text as a "delicately balanced compromise". Another said that given the compromise character of Article 9, paragraph 1, the minimum age should not be part of the progressive implementation approach. The first paragraph would allow a minimum age even lower than 16.

### *Other issues under question 5*

**67.** It was pointed out that replies to question 5 had drawn attention to a number of important matters that the Convention should address.

**68.** The Workers noted that the Canadian Labour Congress (CLC) had expressed the views shared by a number of other workers' representative organizations in stating that the ILO should be more active in the fisheries sector and should actively promote decent work for fishers.

### *Results of joint Employer-Worker meetings*

**69.** The Employer spokesperson, summarizing the substance of the meeting with the Workers, explained that the two groups had not discussed Annex III, nor looked at wording, but rather examined some of the draft non-papers prepared by the social partners. On manning and hours of rest, the Employers' non-paper was discussed. The Workers were considering making some amendments and recognized the merit of deviating from the strict application of the existing text in some instances such as for safety reasons or during stowage of the catch. As regards private employment agencies, there were two relevant non-papers, and there was an agreement in principle to incorporate recognition of such private agencies in the Convention. This raised the questions of whether there should be any link with Convention No. 181 or whether the main elements of that Convention should be set out in the fishing Convention. The third area of discussion concerned the "progressive implementation" approach. There was some degree of agreement that this could facilitate ratification. The objective was not to exempt countries from applying parts of the Convention, but to encourage them to commit themselves to its full application. By June 2007 it would be necessary to identify the provisions which would have to be applied immediately and those which could be progressively implemented. The Employers looked to the Governments to indicate which parts of the Convention were potential obstacles to immediate ratification and should therefore be subject to progressive implementation.

**70.** The Worker spokesperson generally agreed with the Employers' statement. He indicated that an agreement was within reach on manning and hours of rest. He said that certain paragraphs of Regulation 2.3 of the Maritime Labour Convention, 2006, could be drawn upon to make some adjustments to the provisions of the fishing Convention. As for employment agencies, further discussions were needed to formulate a text, taking account of Convention No. 181. As for the issue of progressive implementation, it was necessary to look at the areas and Articles to which this would apply. The social partners might need to continue discussions until the International Labour Conference in June 2007.

**71.** The Governments remarked that it was encouraging that the bilateral discussions between the Employers and Workers were progressing, but at the end of the day it was the Governments that had to ratify the Convention, enforce its provisions and report to the ILO on implementation. They had a number of specific questions, as follows: (1) To which provisions

would progressive implementation apply? Surely, fundamental rights and the core Conventions could not be the object of progressive implementation, nor could the minimum age which was already set. Certain thresholds should be established. (2) When would the further discussions take place and when would they be concluded? (3) Rather than circulate individual non-papers, could the social partners not put more concrete proposals on the table in the form of bullet points for all Governments to see? (4) It was not clear to some Governments what the Employers were seeking by including the concept of "private employment agencies" in the Convention. Some Governments wondered whether this was not a means for Employers to avoid their responsibilities. Who would be liable if wages and social security deductions were not paid? A clear delineation was needed of the responsibilities that would remain with the vessel owners. Many Governments did not yet have "private employment agencies" within their jurisdictions, so perhaps such agencies should be dealt with in the Recommendation.

**72.** When asked about the legal feasibility of the proposed "progressive implementation", the representative of the Legal Adviser observed that the proposal seemed to be in line with flexibility provisions contained in existing ILO Conventions or a combination thereof. However, some questions needed further consideration. First, flexibility provisions were exceptions to the rule established by the Convention and this was usually reflected in the drafting. One would also need to know how the proposed clause would relate to the flexible provisions that were already included in the draft Convention, for example, as contained in Article 10, and, in particular, whether it would work as a blanket clause covering all those provisions. Furthermore, given that the Convention would allow for numerous exceptions, should the Convention not provide for publicity when a Member decided to rely on those exceptions? In this connection, Article II(7) of the Maritime Labour Convention, 2006, provided an alternative to the traditional declaration at the time of ratification. Finally, for the purpose of supervision by the ILO, the justification for relying on exceptions and the criteria for measuring progressive implementation would need to be specified in the text.

**73.** A representative of the Office observed that the term "progressive implementation" which was already included in Article 3 of the draft Convention, had been used in recent instruments such as the Night Work Convention, 1990 (No. 171) or the Maternity Protection Convention, 2000 (No. 183), and had been introduced more than 50 years ago in the Social Security (Minimum Standards) Convention, 1952 (No. 102). The application of the proposed progressive implementation formula was not expected to affect in any particular manner the reporting cycle for member States ratifying the new Convention. From a substantive point of view, the real issue was the extent of the list of provisions to which progressive implementation would apply. The more extensively the concept was used, the greater the risk of reducing the normative content of the Convention, although the proposed ten-year deadline for the full application of the provisions of the Convention offered a safeguard. More generally, while the quest for flexibility was traditionally linked to ratifiability concerns, the question of the real impact of flexibility clauses in terms of the number of ratifications they ultimately generated remained open.

**74.** The Employers felt that the correct term was "progressive implementation", not flexibility, as there would be no exemptions. Within ten years, there would have to be full application of all the provisions of the Convention. The existing Conventions on fishing had an abysmal ratification record. Now was an opportunity to improve the situation. The Employers added that private employment agencies were as defined in Convention No. 181. The employment agencies, rather than the shipowners, employed the fishers directly. They were not mere recruitment or placement agencies.

## Final discussions

**75.** Following consultations, the Employers informed the other participants that the social partners had found common ground on a number of issues, including the possibility of introducing a progressive implementation clause. It was understood that such a provision should not have repercussions on member States' obligations resulting from ratifications of other Conventions: any effects should be clearly limited to the Convention itself. All provisions of the Convention

subject to progressive implementation would be mandatory; the only question was the time allowed to achieve full implementation. It was also understood that member States should only invoke the progressive implementation clause if a clear and objective justification, linked to infrastructural shortcomings, existed. The parties also recognized that this clause should not be applicable to all vessels. Common ground had not been found, however, on the vessels to which this clause could not be applied, though consideration was being given to, for example, vessels subject to port State control, those engaged in high-sea fisheries or those of a certain size. Further consultations were also needed in relation to limits on how much time could be given with regard to progressive implementation, and to which Articles the clause could be applied. However, as examples, the Employers and Workers had identified Article 23 as a provision that should not be subject to the clause and Article 10, paragraph 1, as a provision that could be subject to progressive implementation.

**76.** Turning to hours of work and rest, the Workers pointed out that a common understanding was emerging on how the issue could be resolved. The solution could draw upon relevant provisions in the Maritime Labour Convention, 2006 (in particular, paragraph 14 of Standard A2.3), adjusted as necessary, and might mirror Convention No. 180 to some extent.

**77.** The Employers explained that their group's primary concerns had been the focus of their deliberations during the Round Table. Additional Employer concerns could be addressed in discussions with the Workers prior to the Conference, and, ideally, could be the subject of jointly supported amendments.

**78.** A Government representative noted that the provisions on port State control contained in the draft were different from those found in the Maritime Labour Convention, 2006, and wondered whether additional elements would not need to be added for the sake of greater coherency.

**79.** The Executive Secretary explained that the draft provision drew upon the main elements of port State control provided for in Convention No. 147. The draft provisions were not as detailed as those included in the Maritime Labour Convention, 2006, nor were they as far-reaching.

**80.** The Government representative suggested that this issue should be further discussed at the Conference.

**81.** As regards Annex III, the Workers reported that the discussions had been encouraging. In principle, a way had been found to take into account the core issues of concern to the Government of Japan. The bilateral discussions would continue and a fair chance existed for a joint resolution to be found that could be presented to the Workers' group at the Conference for discussion and possible endorsement.

**82.** The Government representative of Japan confirmed this view and explained that possible solutions could include the setting of numerical ranges, instead of absolute figures.

**83.** In response to a request for clarification, the representative of the Legal Adviser recalled the opinion given by the Legal Adviser to the International Labour Conference in 2005 which was mentioned in the introduction of Report IV(1). It had clarified that when the Committee took up the matter in June 2007, it would need to review the Recommendation adopted in 2005 and probably adopt a new Recommendation to replace it.

## Closing comments

**84.** Employers, Workers and Governments thanked the Chairperson for his skilful chairmanship and the Office for organizing the Round Table. The informal atmosphere had fostered an open and fruitful debate that had facilitated consensus.

**85.** The Employers stressed that when determining the draft timetable for the Committee at the Conference, the Office should provide sufficient opportunities for bilateral discussions, since these were often the most productive way forward. The emerging consensus on a number of issues (e.g. employment agencies, progressive implementation and hours of rest) had led the Employers to believe that an instrument could be created that would provide protection to the majority of the world's fishers.

**86.** The Workers reminded the participants of their disappointment when the Convention was not adopted. The group continued to believe that the 2005 draft set a good minimum standard for the industry, but recognized that others had encountered problems with the text. This Round Table followed by further consultations should lead to proposals that could be agreed to by the Conference Committee and could thus ultimately contribute to a successful outcome of the 2007 Conference.

**87.** A Government representative supported the Employers' suggestion to allocate more time at the Conference to bilateral or tripartite discussions. The process leading to the adoption of the Maritime Labour Convention, 2006, had shown how extensive consultations outside of the formal standard-setting framework could be quite helpful.

**88.** In her closing remarks, a Government representative pointed out that all workers, irrespective of their home, residence or flag State vessel had the same right to protection at work and, therefore, a progressive implementation clause needed to be transitory and to safeguard fundamental rights. The principle of "no-more-favourable" treatment in the Convention and a clear set of minimum, non-alienable standards would encourage wide application and would provide a real starting point for continuing improvement and desirable tripartite dialogue.

**89.** Given the importance of the fishing industry for her nation, a Government representative pointed out that it was important to have a Convention for the sector. The 2005 text would serve as a good basis on which to work and should be modified as little as possible. With regard to flexibility, it was necessary to achieve an appropriate balance which would ensure both substantive protection and the flexibility needed for wide ratification. One way of providing flexibility was to include periods of transition, a suggestion that her delegation was willing to consider, in the context of revisiting flexibility provisions throughout the draft, in order to achieve a substantive result in June 2007.

**90.** Another Government representative recalled that large sections of the draft were mature text. While the progressive implementation approach should be explored, it was important to bear in mind its potential impact on port State control and certification provisions. He was convinced that the spirit of tripartism and consensus would prevail in the Committee and make the adoption of a Convention a reality.

**91.** A Government representative reiterated that it was important to establish a Convention that would be widely ratifiable. Good progress had been made during the Round Table and consensus on principles had been found. He was confident that in further consultations, agreement could also be found on the specific details.

**92.** Another Government representative acknowledged the tremendous work undertaken by the Office to assist the social partners in achieving a balance of interests and recalled similar ILO efforts. It was to be hoped that the outcome of the Round Table would contribute to creating an instrument that would provide the protection fishers deserved.

**93.** A Government regional coordinator reiterated her delegation's aim of an instrument with appropriate protection for fishers that was flexible, not overly prescriptive and widely ratifiable.

**94.** Another Government regional coordinator pointed out that some concerns (e.g. the application to small-scale fishing) continued to exist, but that most of the draft was mature text and no longer needed to be debated. Her group supported the creation of a Convention that would protect fishers and encourage widespread ratification.

**95.** Another Government regional coordinator deemed that the Round Table had bridged the gaps that had been apparent in June 2005. Discussions to create an instrument, which would be beneficial to all, would be ongoing. Further consideration needed to be given, inter alia, to Article 9 and its relationship to the principles of Convention No. 182 and Recommendation No. 190, monitoring arrangements similar to those included in the Declaration on Fundamental Principles and Rights at Work, 1998, and the introduction of a progressive implementation clause.

**96.** A Government regional coordinator confirmed the strong commitment to make all efforts towards a Convention at the next International Labour Conference, which would focus on the requirements of the sector and conform to core labour standards, while at the same time making use of the helpful ideas and concepts introduced in the Round Table to encourage ratifiability of the Convention and its applicability in practice.

**97.** Another Government regional coordinator reminded the participants of the importance of the sector for his region. An easily ratifiable and applicable Convention would make a great difference. In order to find consensus in June and achieve a satisfactory outcome, every effort should be made to address and resolve the concerns of the constituents. He invited the Office to contribute to informal discussions by his group during the Governing Body in March 2007.

**98.** An observer was very encouraged by the outcome and was looking forward to the Conference and the successful adoption of a Convention.

**99.** In closing the meeting, the Chairperson thanked all participants for the dignified manner in which they had undertaken their work, their expertise, and the progress they achieved, and looked forward to the further progress they would make in June 2007.

**Appendix I**

**Employers' presentation at the**

**Interregional Tripartite Round Table**
**on Labour Standards for the Fishing Sector**
(Geneva, 11–13 December 2006)

## Slide 1. Work in Fishing Convention

### *Real protection or paper tiger?*

International Organisation of Employers

## Slide 2. Work in Fishing Convention

### *The employers still aim at real protection for the majority of the world's fishers*

## Slide 3. Work in Fishing Convention

### *Why did the 2005 text fail?*

- The 2005 failure was more than just "an accident at work"
- Several countries, representing a majority of the world's fishers, could not accept the text presented by the Committee on the Fishing Sector because it had lost track of the conditions for success the Governing Body had set out
  - 71 per cent of the Asian countries did not support the text
  - Roughly 83 per cent of fishers and 85 per cent of decked vessels are from Asia

## Slide 4. Work in Fishing Convention

### *Why did the 2005 text fail?*

- The employers abstained en masse because
  - Due to its shortcomings, we feared the Convention would never be rewarded with widespread ratification
    - The group had great doubts about the effectiveness of the proposed text, especially for developing countries, and feared it would thus overreach itself just as existing Conventions on fishing had done
      - The Committee had deviated considerably from its guideline (conditions for success)
      - The past had shown that the existing instruments on fishing had only been relatively successful in Europe

## Slide 5. Work in Fishing Convention

### *Why did the 2005 text fail?*

- Past ratifications by countries present at ILC 93
  - 73 per cent ratified none of the present Conventions
  - 11 per cent ratified one
  - 7 per cent two
  - 6 per cent ratified three
  - 7 per cent ratified four
  - None ratified all five
- Significantly in Asia, where 82 percent of fishers live, only one of 120 possible ratifications has occurred

## Slide 6. Work in Fishing Convention

### *Why did the 2005 text fail?*

- The objectives were (and are) that the instrument should:
  - Address a number of issues regarding the labour protection of fishers
  - Be effective for the majority of the world's fishers

## Slide 7. Work in Fishing Convention

### *Why did the 2005 text fail?*

- The conditions for success were (and are) that the instrument should:
  - Be sufficiently broad (in the meaning of general)
    - Be sufficiently flexible
    - Take account of the differences in fishing fleets and types of fishing
  - Be based on principles which could be implemented in a manner which could accommodate the diversity of economic and social conditions of countries
  - Not be overly prescriptive

## Slide 8. Work in Fishing Convention

### *Why did the 2005 text fail?*

- High ambitions may threaten the effectiveness of the instrument
- For example, can an instrument that addresses a number of issues ever be effective for the majority of the world's fishers?
- Yes, but only if provisions or requirements for one or more issues do not hamper the application of provisions or requirements for other issues – this may require a development approach

## Slide 9. Work in Fishing Convention

### *Why did the 2005 text fail?*

- If only one provision is unacceptable for a country, it might have to refrain from ratification altogether
- This implies a high probability that none of the instrument's provisions and requirements will be implemented by that country under ILO supervision
- The fishers of that country will not have the protection we intended to give them: this hurts most where protection is most needed

## Slide 10. Work in Fishing Convention

### *Why did the 2005 text fail?*

- Was the text sufficiently broad?
  - For example, provisions on medical examination are too specific
  - For example, provisions on manning and hours of rest are too specific
  - Certain requirements of Appendix III are too specific
  - The answer is "almost yes, but significant flaws must be addressed"

## Slide 11. Work in Fishing Convention

### *Why did the 2005 text fail?*

- Was the text sufficiently flexible?
  - For example, it does not recognize the (increasing) use of private employment agencies
  - For example, the owner–operator has to make a work agreement with himself if he does not operate the vessel on his own
  - For example, the conversion ratios of Appendix III might be acceptable for Europe; they are not for Asia

## Slide 12. Work in Fishing Convention

### *Why did the 2005 text fail?*

- Was the text sufficiently flexible? (continued)
  - For example, medical examination: if a country does not have an infrastructure to facilitate medical examinations of fishers it is not exempted (and might, due to this inflexibility, have to refrain from ratification altogether)
  - The answer is "almost yes, but significant flaws must be addressed"

## Slide 13. Work in Fishing Convention

### *Why did the 2005 text fail?*

- Did the text take account of the differences in fishing fleets and types of fishing?
  - Both China and Japan have repeatedly warned that the text did not, to the extent that it would block ratification
  - Due to the great diversity of fishing operations, the manning and hours of rest provisions may not be compatible with several types of fishing

## Slide 14. Work in Fishing Convention

### *Why did the 2005 text fail?*

- Was the text based on principles which could be implemented in a manner which could accommodate the diversity of economic and social conditions of countries?
  - If the text doesn't take sufficient account of the differences in fishing fleets and types of fishing, it implies that it could not comply with this condition either, because the development is very much depending on economic and social conditions

## Slide 15. Work in Fishing Convention

### *Why did the 2005 text fail?*

- Was the text overly prescriptive?
  - For example, prescriptive hours of rest
  - For example, prescriptive period of validity of medical certificates
  - For example, prescriptive measurements regarding accommodation
  - The answer is "almost no, but significant flaws must be addressed"

## Slide 16. Work in fishing Convention

### *What is our solution?*

- If the objective is to protect the majority of fishers, would it be reasonable to establish a threshold for the Convention to come into force, e.g. ratification by member States representing more than 50 per cent of the world's fishers?
- At a minimum we should challenge ourselves to meet that target when considering the support for the provisions under examination in June 2007

## Slide 17. Work in Fishing Convention

### *What is our solution?*

- The 2007 ILC should base its discussions on the 2005 text
- Certain provisions should be subject to a development clause
- The Convention might specify alternative wording to address specific national-regional requirements
- Certain provisions should be made more flexible

- Appendix III on crew's accommodation should in whole or in part become a Recommendation

## Slide 18. Work in Fishing Convention

### *What is our solution?*

- The 2007 ILC should base it discussions on the 2005 text
  - The ILO should not propose in its report any change of text unless and to the extent there is consensus among the three constituent parties present
  - However, the three constituent parties should seek to discuss potential draft text on an informal basis between December 2006 and the ILC of June 2007, leading to commonly acceptable amendments, if possible

## Slide 19. Work in Fishing Convention

### *What is our solution?*

- Certain provisions should be subject to a development clause
- Ratifying countries, whose infrastructure and institutions are not sufficiently developed for implementation of certain provisions or requirements should get the opportunity to "grow" into these provisions and requirements within a certain period of time
- The development should be monitored through social dialogue and ILO reporting provisions

## Slide 20. Work in Fishing Convention

### *What is our solution?*

- Issues that could be subject to a development clause are
  - Issues already covered by general Conventions
    - For example, minimum age
  - Certain aspects of medical fitness
  - Certain aspects of manning and hours of rest
  - Certain aspects of the fisher's work agreement
  - Certain aspects of accommodation and food
    - For example, the entire Appendix III in so far as it has not been moved to the Recommendation

## Slide 21. Work in Fishing Convention

### *What is our solution?*

- Issues that could be subject to a development clause (continued)
  - Certain aspects of medical care
  - Certain aspects of occupational safety and health and accident prevention

- Certain aspects of social security
- Certain aspects of the protection in case of work-related sickness, injury or death

## Slide 22. Work in Fishing Convention

### *What is our solution?*

- The Convention might specify alternative wording to address specific national or regional requirements
  - There are situations where, because of important national tradition or jurisdictional processes, countries may have no alternative but to refrain from ratification entirely, simply because one or two requirements cannot be met, e.g. medical certification. Such countries should be able to negotiate an "escape"
  - The present text has a good example: The social security coordination clause of Article 37 negotiated by European Union Member States

## Slide 23. Work in Fishing Convention

### *What are our solutions?*

- Certain provisions should be made more flexible, for example
  - Medical examination
    - Competent authorities or social partners should have the right to adjust provisions to suit local circumstances
  - Manning and hours of rest
    - competent authorities or social partners should have the right to adjust provisions to suit local circumstances
  - Fishers' work agreement and related provisions
    - Recognition of the role of private employment agencies in a way that does not diminish protection of fishers

## Slide 24. Work in Fishing Convention

### *What are our solutions?*

- Appendix III on crew's accommodation should in whole or in part become a Recommendation
  - The length–gross tonnage conversion table apparently is unacceptable to many Asian governments who collectively have jurisdiction over 80 per cent of the world's fishers – a solution is required
  - Several provisions are so prescriptive that they are a barrier to widespread ratification
    - 200 cm headroom
    - 1.5 square metres floor area per person in sleeping rooms
    - 198 x 80 cm minimum inside berth dimensions
    - Maximum of four persons per shower, toilet and washbasin

## Slide 25. Work in fishing Convention

### *What are our solutions?*

- Appendix III (continued)
  - Requiring competent authorities to extend the compliance to existing vessels that change flag should be deleted because it inflates cost structure and it impairs fisheries development in developing countries – existing vessels should be recognized as such, no matter re-flagging or not

## Slide 26. Work in Fishing Convention

**There's a deal to be made here**

**Let's not blow it!**

## Appendix II

## Additional information from the Japanese Government regarding fishing vessel accommodation

DECEMBER 2006

JAPAN

1. Equivalence between length (L) and gross tonnage (gt)

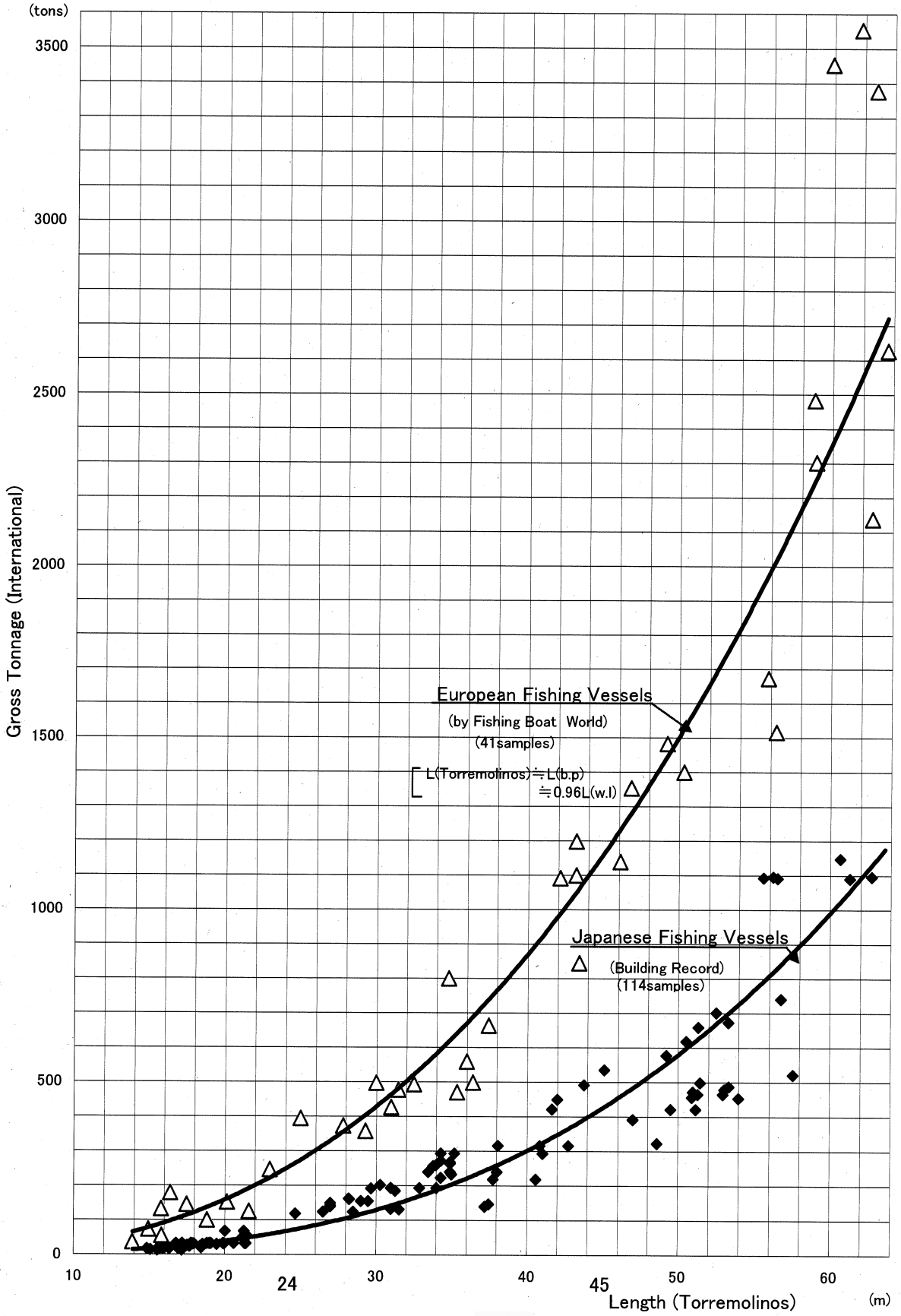
15 m 75 gt

24 m 300 gt

45 m 1,150 gt

(The above conversion is applied to entire Annex III rather than specified paragraphs.)

## Ref1 : Length and Gross Tonnage (European and Japanese Fishing Vessels)



# Ref2 : Minimum Gross Tonnage necessary to satisfy the accommodation requirement

(Based on Japan-suggested standard)

Main items

Minimum headroom: 190cm

Minimum floor area in sleeping room: 1.0m$^2$

Minimum inside dimension of berth: 190cm x 68cm

One tub or shower and one toilet for eight persons

One washbasin for six persons

Tonnage calculation

Under Upper Deck : —

| | | | |
|---|---|---|---|
| Under 2nd. Deck | 25.00 × 8.30 × 3.90 × 0.656 | = | 530.87 m$^3$ |
| 2nd. Deck ~ Upper Deck | 27.50 × 8.30 × 2.20 × 0.84 | = | 421.81 m$^3$ |
| | Total (Under Upper Deck) | = | 952.68 m$^3$ |

On Upper Deck : —

| | | | | |
|---|---|---|---|---|
| Forecastle Deck | 5.80 × 8.15 × 1.70 × 0.70 | = | | 56.25 m$^3$ |
| Deck House | 8.50 × 6.50 × 2.20 | = | 121.55 | |
| | −) 1.00 × 0.80 × 2.20 | = −) | 1.76 | |
| | −) 1.00 × 0.20 × 2.20 | = −) | 0.44 | |
| | −) 2.00 × 2.40 × 2.20 | = −) | 10.56 | |
| | | | 108.79 | 108.79 m$^3$ |
| Wheel House | 4.00 × 4.00 × 2.20 | = | 35.20 | |
| | 1/2 × 0.40 × 4.40 × 1.10 | = | 0.97 | |
| | −) 2 × 1/2 × 0.50 × 0.80 × 2.20 | = −) | 0.88 | |
| | | | 35.29 | 35.29 m$^3$ |
| | Total (On Upper Deck) | = | | 200.33 m$^3$ |
| | Total of Gross Volume | = | | 1153.01 m$^3$ |

K = 0.20 + 0.02 × log 1153.01

= 0.2612

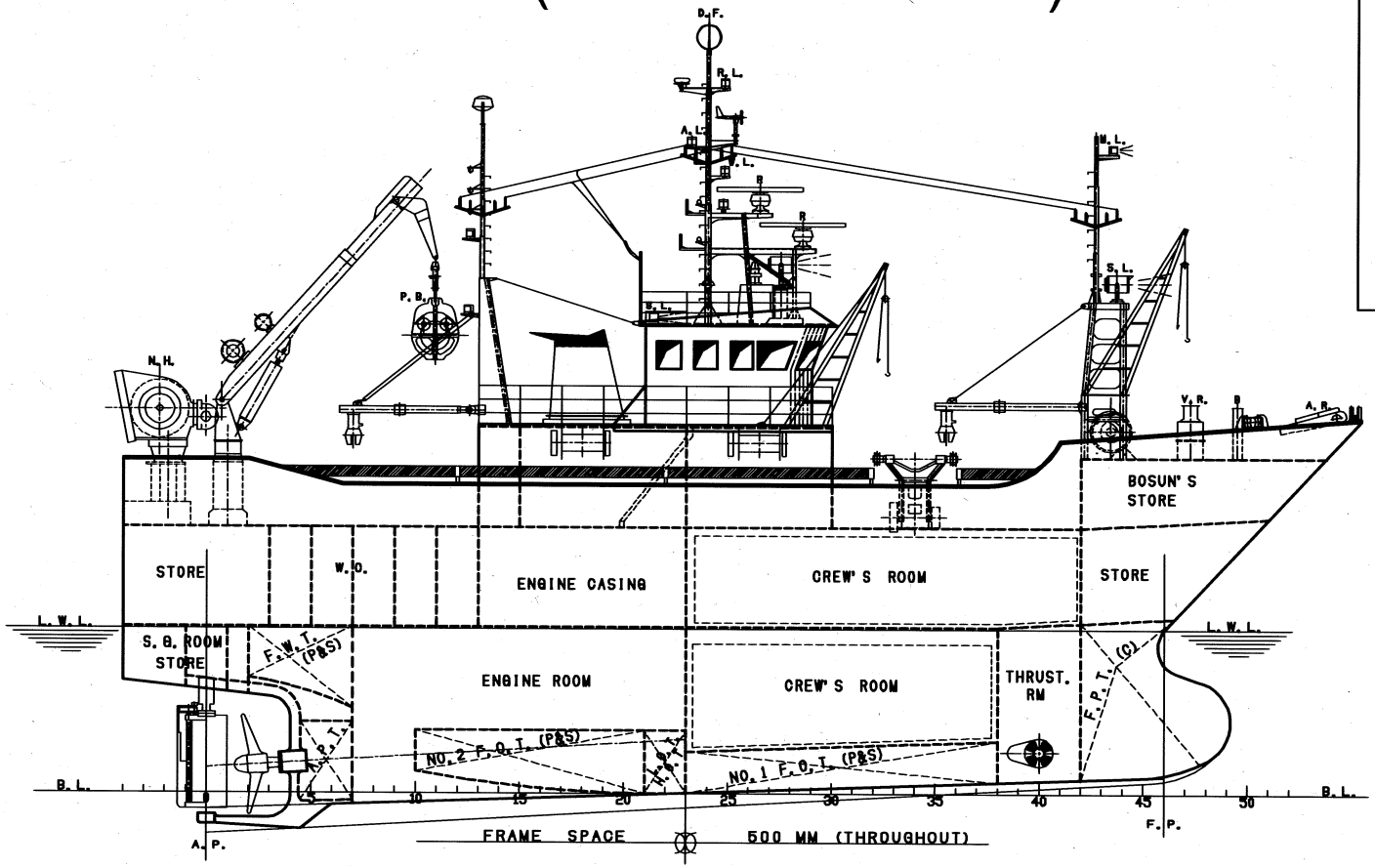
International Gross Tonnage

t = 1153.01 × 0.2612

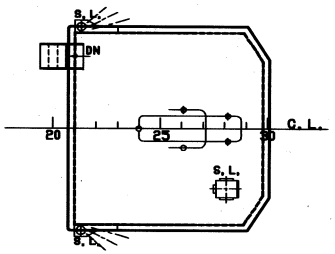
= 301 tons.

# Ref 3 : GENERAL ARRANGEMENT (PURSE SEINER)

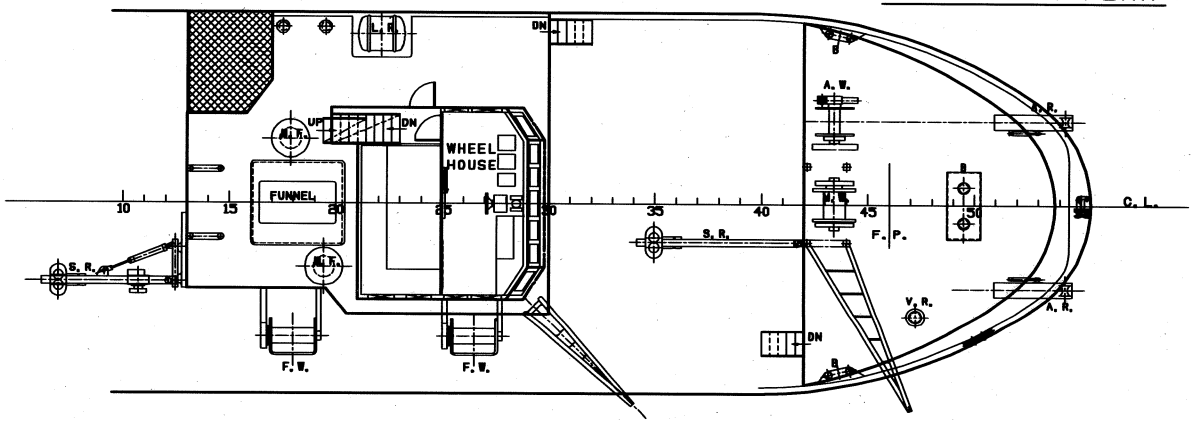
| PRINCIPAL PARTICULARS | | |
|---|---|---|
| LENGTH | (O.A.) (APPROX.) | 29.70 M |
| LENGTH | (REG.) | 24.00 M |
| LENGTH | (P.P.) | 23.00 M |
| BREADTH | (M LD) | 9.00 M |
| DEPTH | (M LD) (2ND DK) | 4.00 M |
| DEPTH | (M LD) (UPP DK) | 6.30 M |
| DRAFT | (M LD) | 3.95 M |
| GROSS TONNAGE | (ABOUT) | 301 GT (INTERNATIONAL) |
| COMPLEMENT | | 24P |




WHEEL HOUSE TOP

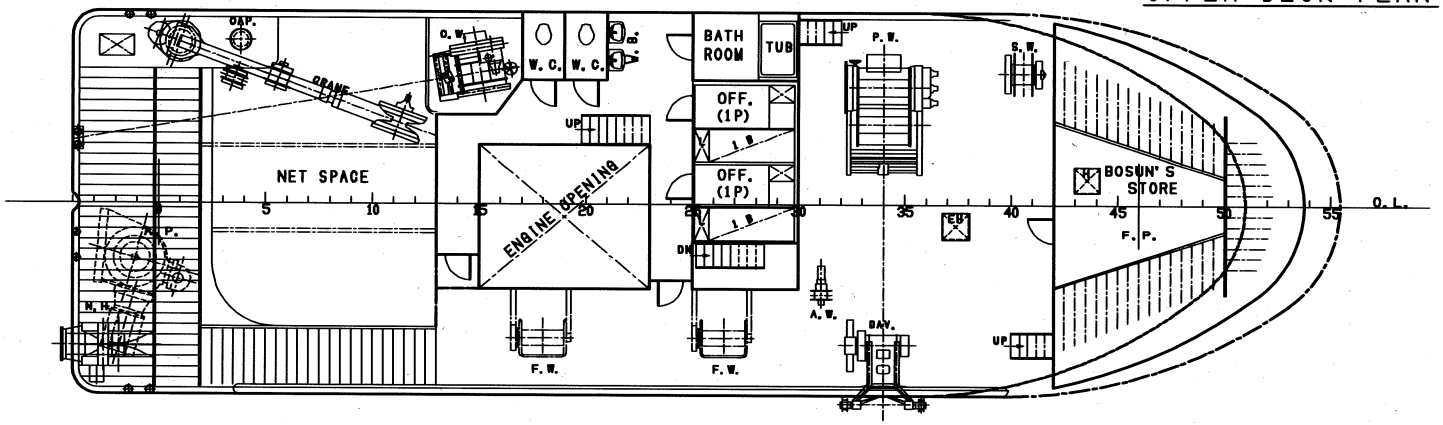



CASING TOP PLAN

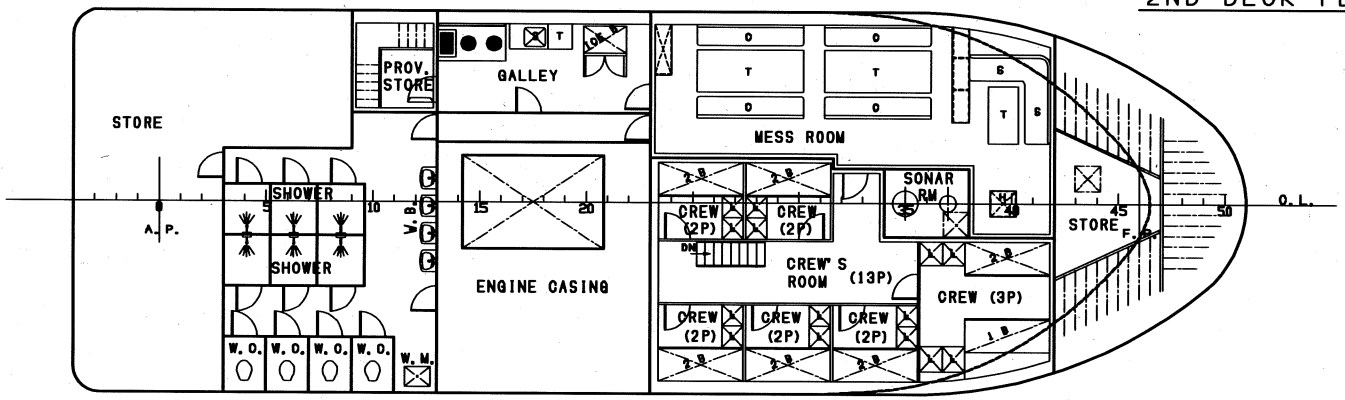



FCLE DECK PLAN

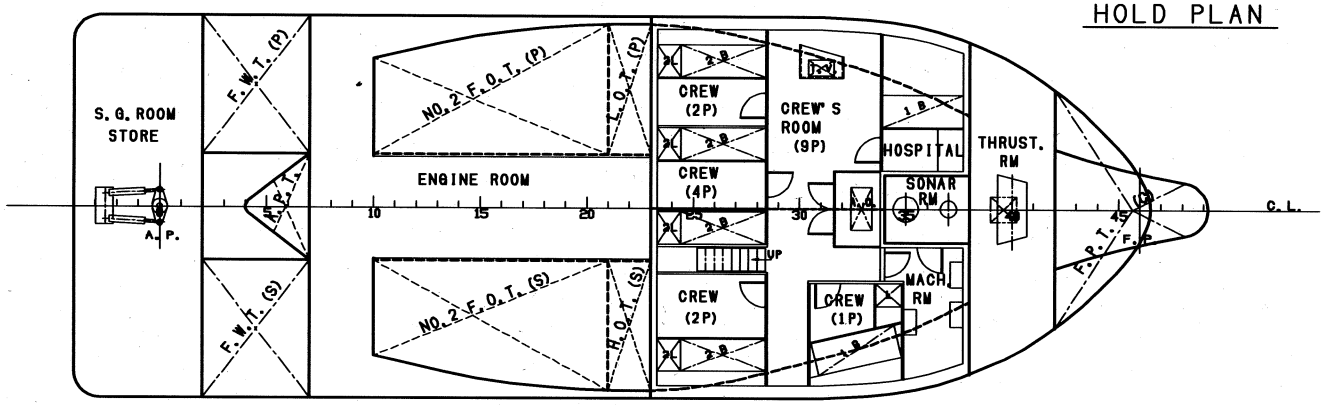
## UPPER DECK PLAN




## 2ND DECK PLAN




## HOLD PLAN



# Ref4 : Data on some European fishing vessels

(based upon preliminary research)

## 【U K】

| YEAR_BUILT | L or LOA | GT |
|---|---|---|
| 2000 | 22.27 | 218 |
| 2001 | 22.37 | 246 |
| 2001 | 22.37 | 246 |
| 2001 | 22.68 | 152 |
| 2000 | 23.40 | 311 |
| 2001 | 23.40 | 309 |
| 2000 | 23.65 | 320 |
| 2000 | 23.77 | 252 |
| 2002 | 23.93 | 279 |
| 2000 | 23.99 | 302 |
| 2001 | 23.99 | 468 |

## 【NORWAY】

| YEAR_BUILT | L or LOA | GT |
|---|---|---|
| 2000 | 24.59 | 345 |
| 2000 | 24.72 | 376 |
| 2000 | 24.96 | 397 |
| 2001 | 24.50 | 348 |
| 2006 | 25.20 | 387 |
| 2001 | 24.36 | 506 |
| 2001 | 26.65 | 363 |
| 2001 | 24.38 | 363 |

Note : It has not been confined whether figures in the column L or LOA is a length or a length overall.

## 2. Key elements of Accommodation

| | C126 Accommodation of Crews(Fishermen) Convention, 1966 | Proposed Convention (2005) | Japanese suggestion |
|---|---|---|---|
| Headroom | 1.90m (wherever possible) | 24m and over : 200 cm | 24m and over : 1.90m or Average height of each nation + 15cm, whichever higher |
| Floor area per person of sleeping rooms | 26.8 – 35.1m : 0.9㎡ | 24m – 45m : 1.5㎡ | 24m and over : 1.0㎡ |
| | 35.1m or over : 1.0㎡ | 45m and over : 2.0㎡ | 24 – 45m in length : smaller after consultation |
| Maximum number of persons per sleeping room | under 35.1m : 6 | 6 | 6 |
| | 35.1m and over : 4 | 24m and over : 4 | 24m and over : 4 |
| Berth size | 1.90m × 0.68m | 24m and over : 198cm × 80cm | 24m and over : 1.90m or Average height of each nation + 15cm, whichever higher × 0.68m |
| Tubs or showers | every 8 persons | 24m and over : every 4 persons | 24m and over : every 8 persons |
| Toilets | every 8 persons | 24m and over : every 4 persons | 24m and over : every 8 persons |
| Washbasins | every 6 persons | 24m and over : every 4 persons | 24m and over : every 6 persons |

Note : Equivalence 24m(L) = 300gt, 45mL) = 1,150gt

**Appendix III**

# List of participants
# Liste des participants
# Lista de participantes

### CHAIRPERSON PRÉSIDENT PRESIDENTE

Captain Nigel T. Campbell, Head, Occupational Health and Safety Unit, South African Maritime Safety Authority, Port Elizabeth, South Africa

## Members representing Governments
## Membres représentant les gouvernements
## Miembros representantes de los gobiernos

### ARGENTINA ARGENTINE ARGENTINA

Dra. Lilia Alonso, Secretaria de Trabajo, Ministerio de Trabajo, Empleo y Seguridad Social, Buenos Aires, Argentina

*Adviser/Conseiller technique/Consejero técnico*

Sr. Dario Celaya Alvarez, Misión Permanente de Argentina en Ginebra

### EGYPT EGYPTE EGIPTO

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*Adviser/Conseiller technique/Consejero técnico*

Ms Soheir El-Eryan, Counsellor for Labour Affairs, Permanent Mission of the Arab Republic of Egypt in Geneva

### GREECE GRECE GRECIA

M. Georgios Boumpopoulos, Commandant (garde-côte), chef des relations du travail pour le secteur maritime, ministère de la Marine marchande, Pirie, Grèce

### JAPAN JAPON JAPÓN

Mr Masaki Sakai, Director, Policy Planning Division, Fisheries Policy Planning Department, Fisheries Agency of Japan, Tokyo, Japan

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Mr Morio Kaneko, Deputy Director, Policy Planning Division, Fisheries Policy Planning Department, Fisheries Agency of Japan, Tokyo, Japan

### NAMIBIA NAMIBIE NAMIBIA

Mr Bro-Matthew Shinguadja, Labour Commissioner, Office of the Labour Commissioner, Ministry of Labour and Social Welfare, Windhoek, Namibia

### PHILIPPINES FILIPINAS

Mr Manuel G. Imson, Labour Attaché, Permanent Mission of the Philippines in Geneva

### SPAIN ESPAGNE ESPAÑA

D. Santos Orizaola Gurría, Asesor Técnico Laboral Marítimo, Instituto Social de la Marina, Ministerio de Trabajo y Asuntos Sociales, Madrid, España

### URUGUAY

D. Eduardo Bonomi Varela, Ministro de Trabajo y Seguridad Social, Montevideo, Uruguay

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Sra. Ana Inés Rocanova, Segunda Secretaria, Misión Permanente de Uruguay en Ginebra

## Members representing the Employers
## Membres représentant les employeurs
## Miembros representantes de los empleadores

Sr. Patricio Barber Soler, Asesor Legal, Cámara de Pesqueros Congeladores de Argentina, Buenos Aires, Argentina

Mr Webjørn Barstad, Norwegian Fishing Vessel Owners Association, Aalesund, Norway

Mr Bruce Chapman, Executive Director, Canadian Association of Prawn Producers, Manotick, Canada

Mr Jae Sung Lee, Korea Deep Sea Fisheries Association, Seoul, Republic of Korea

Mr Ringo Manda, Human Resources Executive, Sea Harvest Corporation Limited, Cape Town 8000, South Africa

Mr Yuji Okazaki, Fishing Boat and System Engineering Association, Tokyo, Japan

Sr. Alvaro Pizarro Maass, Confederación de la Producción del Comercio Chile, Santiago, Chile

Mr Ment Van der Zwan, AB RYSWYKZH, the Netherlands

## Members representing the Workers
## Membres représentant les travailleurs
## Miembros representantes de los trabajadores

Mr Johnny Hans, Norwegian Seafarers Union, Oslo, Norway

Mr Isaac Impraim, National Union of Seamen, Accra, Ghana

Ms Hye Kyung Kim, ITF Coordinator, Federation of Korean Seafarers' Unions, Seoul, Republic of Korea

Mr Suezo Kondo, Secretary, Bureau of Fisheries, All-Japan Seamen's Union, Tokyo, Japan

Mr Peter Sand Mortensen, Adviser, Transport Section, United Federation of Danish Workers, Copenhagen, Denmark

Sr. Mario Aníbal Morato, Secretario General Adjunto, Sindicato de Obreros Marítimos Unidos, Buenos Aires, Argentina

Mr Hee Sung Park, President, Federation of Korean Seafarers' Unions, Seoul, Repulic of Korea

M. Ivan Victor, président-secrétaire national Pêche, FGTB-UBOT, Belgische Transportarbeidersbond (BTB), Antwerp, Belgique

## Workers' advisers

## Conseillers des travailleurs

## Consejeros de los trabajadores

Mr Jon Whitlow, International Transport Workers' Federation, Secretary, Seafarers, Fisheries & Inland Navigation, ITF House, London, United Kingdom

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Mr Yuji Iijima, All-Japan Seamen's Union, ITF House, London, United Kingdom

## Observers Observateurs Observadores

## Regional coordinators Coordonnateurs régionaux Coordinadores regionales

Mr Geoffrey A.O. Omondi (Africa), Permanent Mission of the Republic of Kenya in Geneva

Ms Vera Albuquerque (Americas), Coordenadora Nacional de Inspeção do Trabalho Portuário e Aquaviário, Ministério do Trabalho e Emprego, Rio de Janeiro, Brasil

Mr Sicai Rong (Asia and Pacific), Permanent Mission of the People's Republic of China, Petit-Lancy

Mr Sergey Kurbatov (Eastern Europe), Deputy Chief of Branch, Ministry of Health and Social Development, Moscow, Russian Federation

Ms Susanne Hoffmann (Western Europe), Social Counsellor, Permanent Mission of Germany in Geneva

Ms Linda L'Heureux (IMEC), Deputy Director, International Labour Affairs, Human Resources and Social Development Canada, Ottawa, Ontario, Canada

## 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 las Naciones Unidas, de los organismos especializados y de otras organizaciones internacionales oficiales

### 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 A. Gudmundsson, Fishery Industry Officer (Vessels), Fishery Technology Service, Fishery Industries Division, Fisheries Department, Rome, Italy

## Representatives of non-governmental international organizations
## Représentants d'organisations internationales non gouvernementales
## Representantes de organizaciones internacionales no gubernamentales

**International Organisation of Employers (IOE)**

**Organisation internationale des employeurs**

**Organización Internacional de Empleadores**

M. Jean Dejardin, Conseiller, Geneve

**International Trade Union Confederation (ITUC)**

**Confédération syndicale internationale**

**Confederación Sindical Internacional**

Ms Anna Biondi, Director, Geneva Office, Geneva

Ms Raquel Gonzalez, Assistant Director, Geneva Office, Geneva