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Conditions of work in the fishing sector

A comprehensive standard (a Convention
supplemented by a Recommendation) on work
in the fishing sector

Fifth item on the agenda

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INTRODUCTION

This law and practice report has been prepared by the Office, following the decision by the Governing Body at its 283rd Session¹ (March 2002) to place on the agenda of the 92nd (June 2004) Session of the International Labour Conference an item concerning a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector.

The report examines existing legislation and practice concerning labour conditions in the fishing sector in ILO member States. The term “legislation” is used in the broad sense and includes statutes, regulations, codes of practice and other similar instruments of a legislative character. An attempt is made to analyse the application of legislation wherever possible, based on available information. The content of the report is based on information provided by member States through a survey, information available in reports made by member States on measures taken to give effect to existing relevant ILO Conventions (e.g. the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen’s Articles of Agreement Convention, 1959 (No. 114), the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)), the ILO’s legislative databases, recently completed studies on fishermen’s conditions of work in certain countries, and other sources of information available at the International Labour Office in Geneva.

In view of the limited time frame for the preparation of the report and the fact that a number of the replies to the survey from member States were late, the report was completed before some replies had been received. The report does not set out to review the relevant legislation in each member State of the ILO but rather to provide examples of national laws worldwide, in order to give the reader a representative sample of the pertinent issues in current law and practice concerning labour standards in the fishing sector.

This report is divided into eight chapters.

Chapter I provides a general overview of the world’s fishing sector, with an emphasis on issues particularly relevant to labour conditions.

Chapter II concerns, generally, the reasons for consideration of a new, comprehensive standard for the fishing sector. This work is placed in the context of the ILO’s Decent Work Agenda and the work of the Working Party on Policy regarding the Revision of Standards under the Committee on Legal Issues and International Labour Standards established by the Governing Body to examine the need for revision of all Conventions and Recommendations adopted before 1985 with a view to updating and strengthening the standards-setting system. Other relevant ILO work concerning the fishing sector is also described.

Chapter III provides information on laws and regulations related to what might be considered prerequisites for working in the fishing sector. This includes such issues as: minimum age (the issue of protection of young persons is also included in this section); medical examination; competency certificates; vocational training; recruit-

¹ Document GB.283/2/1, para 21 (b).

ment and placement (in particular as concerns work on foreign-registered vessels); and identity documents.

Chapter IV provides information on laws and regulations concerning employment on board fishing vessels. This includes such issues as articles of agreement and employment contracts (including share arrangements), minimum wages; personal injury, sickness and death insurance; hours of work; annual leave; and repatriation (including the issue of abandonment).

Chapter V provides information on occupational safety and health; provision of food and water; and accommodation and medical care on board vessels.

Chapter VI provides information on social security for fishermen and their families; shipowners' liability for sick and injured fishermen; and retraining of fishermen for other work.

Chapter VII provides information on administration and enforcement; coordination between relevant agencies; and consultations with social partners.

Chapter VIII contains a summary based on the information provided in the report, relevant to the preparation of a comprehensive new fishing standard.

A questionnaire based on the abovementioned assessment is enclosed with the report. The purpose is to request member States to provide the Office with their views concerning the scope and content of the proposed instrument, after consultation with the most representative organizations of employers and workers.

Due to the broad scope of the fishing sector, it would be advisable to consult with other relevant ministries and institutions dealing with fisheries – such as ministries of fisheries, agriculture (in some countries), health, environment and maritime safety – for the preparation of the replies.

CHAPTER I

GENERAL OVERVIEW

THE FISHERIES SECTOR

The marine fisheries sector employs a considerable workforce worldwide. Living aquatic resources, however, are not equally distributed. While some species are sedentary, such as oysters and clams, others are migratory and are found both within and outside the 200 exclusive economic zones (EEZs) set out in the United Nations Convention on the Law of the Sea (UNCLOS). As figure 1.1 indicates, the majority (roughly 83 per cent) are in Asia. Africa follows – with just over 9 per cent – and the remaining (less than 10 per cent) are in other regions. Marine fisheries do, however, have something in common; some 93 per cent of the world’s marine catch comes from within, or adjacent to, the EEZs.

WORLD FISHERMEN AND FISHING FLEET¹

In 1998, an estimated 36 million people were engaged in capture fishing and aquaculture production worldwide, comprising 15 million full-time, 13 million part-time and 8 million occasional² workers. In 2000, an estimated 27 million persons were working solely in capture fishing worldwide (including full-time, part-time and occasional fishers³).⁴

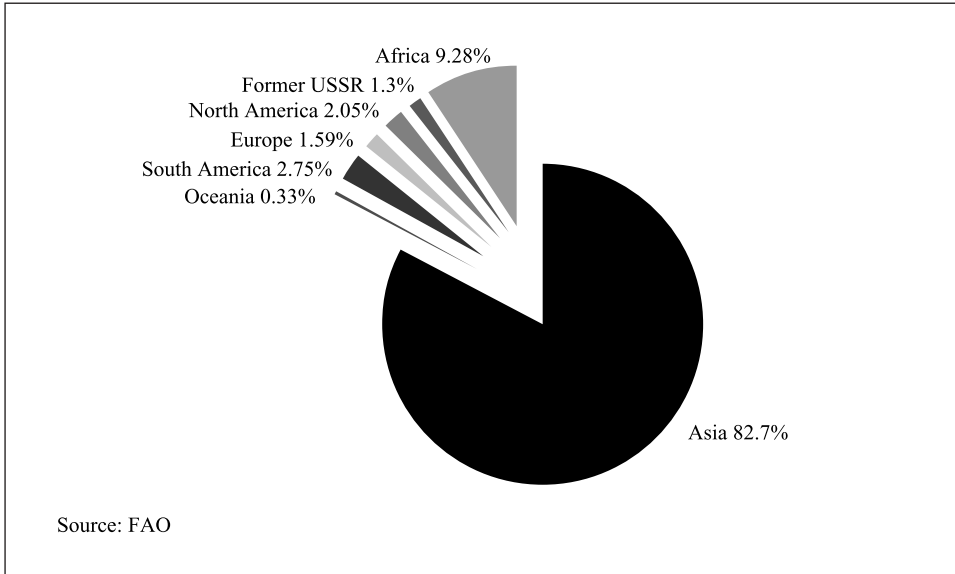
¹ The ILO has, in its standards, used such terms as “fishermen” and “sea fishermen”, the Food and Agriculture Organization (FAO) has used “fisher”, and the International Maritime Organization (IMO) uses “fishing vessel personnel”. All these terms are used in this report. However, in developing a new ILO standard(s), consideration should be given to using gender-neutral terminology.

² FAO: *The state of the world fisheries and aquaculture* (Rome, 2000), p. 3.

³ Those engaged in fishing from which they gain less than one-third of their income or spend less than one-third of their work time.

⁴ The ILO has made this estimate using FAO data. The ILO publishes a number of relevant series on workers in its *Yearbook of Labour Statistics*. These relate to total employment (paid employment plus self-employment) and persons in paid employment. All these series are classified according to economic activity, using either the International Standard Industrial Classification of all Economic Activities (ISIC) Revision 2 or ISIC Revision 3. Where ISIC Rev.3 is used, separate data may be available for fishing; otherwise, fishing is incorporated in Major Division 1 of ISIC Rev.2 along with agriculture, hunting and forestry. The data on total employment are also classified by occupation, according to the International Standard Classification of Occupations (ISCO) – either the 1968 revision (ISCO-68) or the 1988 revision (ISCO-88), at the major group level. Consequently, fishermen are not identified separately.

Figure 1.1. Distribution of fishermen in 2000
(as a percentage of world total)



At present roughly 45 per cent of the total catch is taken by the small-scale fisheries sector and the remainder, 55 per cent, is taken by industrial fisheries. As much as 90 per cent of the small-scale fisheries catch is used for human consumption; however, in the industrial fisheries sector, as much as 30 million tonnes may be converted into fishmeal and fish oil.

Labour productivity from capture fisheries varies considerably according to the type of fishing methods used. Table 1.1 gives a clear indication of this.

Although certain types of fishing are carried out manually close to shore in relatively shallow water, the bulk of the catches taken in capture fisheries are landed from vessels. However, an accurate assessment of the size and capacity of the world's fleets remains almost impossible partly due to doubtful reporting and partly due to the way in which statistical data are recorded nationally. In the case of statistical data collection, many countries maintain records by gross tonnage, but not all use the same methods of calculation. Furthermore, since the relationship between length and gross tonnage can vary greatly, the International Maritime Organization (IMO) has opted for a length measurement for the Torremolinos International Convention for the Safety of Fishing Vessels. The Food and Agriculture Organization (FAO) has also adopted the length measurement, as defined in the Torremolinos Convention, for its Compliance Agreement (see below).

In 1998 the FAO estimated that the global fishing fleet consisted of about 1.3 million decked vessels and 2.8 million undecked vessels. Of the latter, 65 per cent were not fitted with mechanical propulsion systems. Asia was credited at that time with 84.6 per cent of all decked vessels, 51 per cent of the undecked but motorized vessels and 83 per cent of the undecked vessels without engines. Out of the remaining

Table 1.1. Labour productivity using various fishing methods¹

Fishing activity/gear types	Catch in tonnes per fisher per year
Traps, hooked lines and nets from craft without motors	1
Inshore longlines, entangling nets and trawls from small vessels	10
Net and line fishing from medium-sized vessels	24
Trawls from large vessels	100
Purse seines (super seiners)	200

¹ Recently modified from a table given in a paper to Pacem in Maribus, XVI, Halifax, 22-26 Aug. 1988. J. Fitzpatrick: "Fishing technology", in *Ocean Yearbook 8* (Chicago, University of Chicago Press, 1989).

15.4 per cent of the decked vessels, Europe accounted for 8.9 per cent, countries in North and Central America 4.5 per cent, Africa 1 per cent, South America 0.6 per cent and Oceania 0.2 per cent. Of the undecked vessels with engines, North and Central America accounted for 21 per cent, Africa 16 per cent, South America 6 per cent and Oceania 3 per cent; less detailed information was available for the non-motorized vessels. The fleet structure, as shown in table 1.2, reflects the best estimates from all sources for 1998. There were also more than 120,000 vessels associated with fishing operations but not registered as a fishing vessel.⁵

As the table indicates, of the 16.6 million fishermen regularly employed on fishing vessels, 15.2 (92.5 per cent) are working on the 4 million vessels under 100 grt. In other words, roughly 90 per cent of the fishermen work on vessels less than 24 metres in length.⁶ Of these, the majority are in "small-scale" or "artisanal" fisheries.⁷ Conversely, the fleet over 100 grt is comprised of approximately 45,600 vessels and 146,000 fishermen.

⁵ This table contains estimates concerning those fishermen regularly working on fishing vessels. Those working from beaches using nets, traps, lines, etc., as well as occasional fishermen, are not included.

⁶ FAO: "Number of fishers doubled since 1970", at www.fao.org/fi/highligh/fisher/c929.asp (visited in October 2002).

⁷ There are no universally accepted definitions of "small-scale" or "artisanal" fisheries. However, in the report *Risks and dangers in small-scale fisheries: An overview*, prepared as a Sectoral Activities Programme Working Paper for the ILO by M. Ben-Yami and published in 2000, the term "small-scale fisheries" was defined in two ways: (1) by socio-economic criteria, and (2) by technical ones. According to socio-economic criteria, small-scale fishermen are people of both sexes who usually operate their own fishing craft and equipment, go to sea either alone or accompanied by a few crew members who are preferably their own friends or relatives. Technical criteria used in this report define small-scale fisheries as a sector in which fishermen fish and collect aquatic organisms from beaches and from under ice, either by swimming, diving or wading, or using small-scale fishing craft. Small-scale fishing craft are defined, for industrial countries, as boats of less than 10-12 metres in length overall, and less than 12-15 metric tonnes displacement, powered by engines not exceeding 200-300 hp (150-225 kW). For developed countries, this definition also covers canoes, pirogues and open-deck dhows up to 16 metres in length overall, powered by engines not exceeding 200 hp (150 kW).

Table 1.2. Fishing fleets of the world ¹, 1998

Vessel tonnage (grt)	Number of vessels	Estimated number of persons	Remarks
>1 000	2 500	150 000	Crews generally recruited at daily or monthly rates of pay although bonuses may be included.
500-999.9	2 800	112 000	As above.
100-499.9	40 300	1 200 000	Employment conditions vary but many are paid hands (with no bonus) while others may have a guaranteed minimum wage plus catch bonus. Time spent at sea can be from two or three days per trip up to months including trans-shipment and provisioning at sea.
<100 decked	1 212 600	5 500 000	Employment conditions include share fishermen, paid hands. Casual labour quite common.
Undecked (mechanically powered)	1 000 000	4 400 000	Mostly engaged on share of catch basis (less vessel expenses). Mostly community based and range from primitive build to highly powered fast craft. Conditions aboard, basic.
Undecked (not mechanically powered)	1 800 000	5 300 000	Craft vary from the catamaran of East India to the large Ghana canoe. Sail power is used but mostly where there has been a long tradition of sailing. A large proportion would be subsistence fishermen. Conditions aboard, often primitive.
Totals	4 058 200	16 662 000	

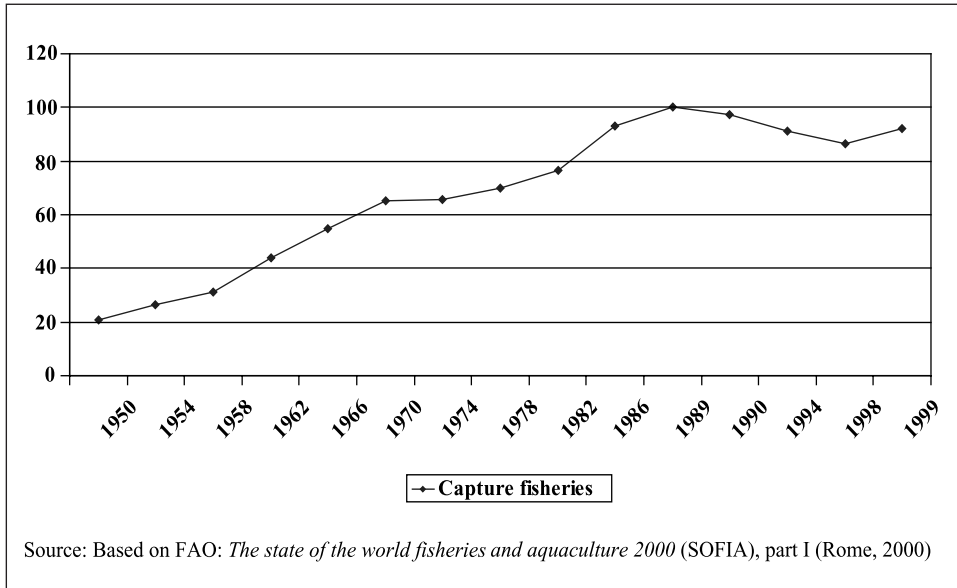
¹ Adapted and updated by J. Fitzpatrick on the basis of FAO: *Marine fisheries and law of the sea: A decade of change*, Fisheries Circular No. 853 (Rome, 1993).

WORLD'S PRODUCTION OF FISH

As a consequence of the increasing numbers of fishermen, fishing vessels, the amount of fishing gear in use and improvements in technology, the output from capture fisheries rose steadily from 1950 to 1999, as illustrated in figure 1.2. Except in a few localized instances, capture fisheries would appear to have peaked with little opportunity for expansion or the development of new fisheries.⁸

The 12 top producing countries from marine and inland capture fisheries are listed in figure 1.3, of which seven of the countries listed are Asian. China was top in 1998 with 17.2 million tonnes (and was still top producer in 2001). Peru, with 4.3 million tonnes in 1998, relied heavily on small pelagic species and since these are subject to biomass fluctuation, the anchoveta fleet is not always fully or even regularly em-

⁸ Certain mesopelagic species currently remain underutilized.

Figure 1.2. World fish production (in millions of tonnes)

ployed. In the Philippines, at the opposite end of the scale from China, the inshore fisheries suffered in isolated areas from coral reef degradation.

CONTRIBUTION OF FISHING INDUSTRIES TO THE WORLD ECONOMY

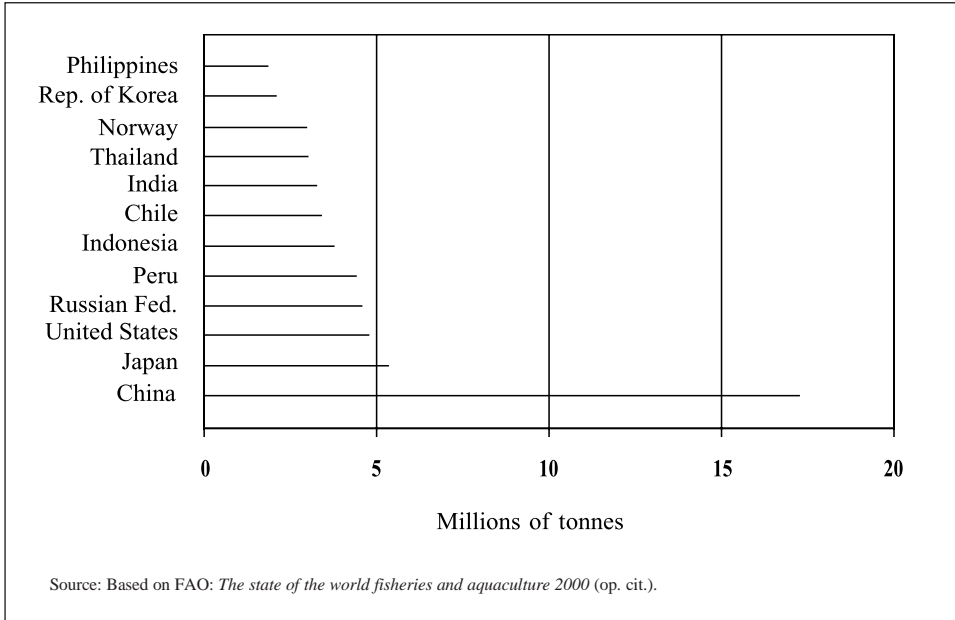
In 1992, FAO estimated that the gross revenue of the world's fleets amounted to US\$70 billion. Since then, the fleets have expanded in size, landings have increased and fish have become more expensive. In fact the global value of aquaculture production alone in 1999 was in the order of US\$56 billion per annum. Although lower than in 1996 and 1997, marine capture fisheries had an estimated first sale value of US\$76 billion by 1999. The value of inland water fisheries should be added to these amounts; however, this was difficult to estimate in view of the nature of these fisheries and given that landings were only accurately recorded in specific areas.

The volume of the international fish trade has also grown substantially over the last two decades reaching a peak in 1997 of US\$53.5 billion; it declined slightly in the following year to US\$53 billion. The share of this trade by developing countries also rose, accounting for 50 per cent of the total value.

The most recent data published by FAO for the year 2000 shows that the value of international trade in fish and fish products again increased that year as may be seen from a summary given in table 1.3.

Globalization and the interests of transnational corporations have greatly influenced international trade in products from capture fisheries as well as fish farming, including the promotion of "eco-labelling" fisheries products. Although there is general acceptance of product labelling, the matter has caused controversy in several international forums. General concerns about eco-labelling fishery products include its

Figure 1.3. Marine and inland capture fisheries production – top 12 producer countries in 1998



potential to act as a barrier to trade and its compliance – or lack of it – with rules of international trade. Other more specific concerns arise from the application of eco-labelling to products from marine capture fisheries since these have special characteristics. In particular, small-scale fisheries in developing countries also expressed concern that future employment might well be affected since there could be prohibitive costs in a qualifying process.

FISHERIES MANAGEMENT ISSUES

In the 1980s, there was a period of adjustment following the adoption, in 1982, of the United Nations Convention on the Law of the Sea (UNCLOS). Fishing capacity continued to increase and environmental issues gained prominence. This posed difficult challenges, particularly for small-scale fishing communities in the coastal zones. These issues were stressed at the FAO World Conference on Fisheries Management and Development in 1984, where the need to control high-seas fishing was also highlighted.

In the 1990s, coastal States with resources of interest to foreign countries generally made considerable gains in managing their resources and extracting benefits from foreign users.⁹ They also succeeded in promoting the training of their own nationals by insisting on their participation in fishing operations aboard foreign vessels. There

⁹ This has included increased use of fisheries observers, a growing new category of workers in the fishing sector. The conditions of work of such observers are often set out in the fisheries agreement.

Table 1.3. Top12 importers and top 12 exporters for the year 2000

Importing country	Value (US\$1 000)	Exporting country	Value (US\$1 000)
Japan	15 513 059	Thailand	4 367 332
United States	10 453 251	China	3 605 838
Spain	3 351 670	Norway	3 532 841
France	2 983 618	United States	3 044 261
Italy	2 535 269	Canada	2 818 433
Germany	2 262 018	Denmark	2 755 676
United Kingdom	2 183 811	Chile	1 784 560
Hong Kong, China	2 048 824	Taiwan, China	1 756 133
Denmark	1 806 365	Spain	1 599 631
China	1 795 953	Indonesia	1 584 454
Canada	1 388 621	Viet Nam	1 480 110
Republic of Korea	1 371 830	India	1 405 196
World total	60 008 337	World total	55 197 323

Source: FAO

were significant changes in the form of access agreements ensuring that the coastal State could obtain, for example, an acceptable proportion of the catch and, in some cases, compensation packages for affected artisanal and/or small-scale fishermen.

In general, the developments since UNCLOS and the FAO World Conference on Fisheries began to have an impact internationally in the early 1990s; pressure was building up with further reports of overexploitation and there were few opportunities left to expand the marine capture fisheries. In addition, some fisheries experienced serious collapses that led to job losses, and the very existence of whole fishing communities was threatened. The first reaction was to seek ways and means to manage fisheries and fishing activities in a more responsible manner and in 1992 the Government of Mexico hosted the International Conference on Responsible Fishing in Cancún. The Conference discussed, inter alia, action to deter reflagging vessels as a means of avoiding compliance with internationally agreed conservation and management rules for fishing activities on the high seas.

The main issues discussed in Cancún were again addressed at the United Nations Conference on Environment and Development held in Rio de Janeiro (often referred to as the Rio Summit) in the same year. Chapter 17 of Agenda 21¹⁰ set out a programme of action that included the need for the United Nations to address the issues of straddling fish stocks and highly migratory fish stocks. It further stressed the need to improve and strengthen fisheries management and protection; however, it recognized that workers in the fishing industry should be protected. Chapter 17 also targeted human resource development at the national level concerning both the development and management of high-seas fishing techniques. States were called upon to provide support to local communities, in particular, those relying on fishing for subsistence, indigenous people and women. The support was to include, as appropriate, the techni-

¹⁰ *Agenda 21: Programme of action for sustainable development*, adopted by the United Nations Conference on Environment and Development, Rio de Janeiro, June 1992.

cal and financial assistance to organize, maintain, exchange and improve traditional knowledge of marine living resources and fishing techniques and upgrade knowledge of marine ecosystems.

As a consequence of these deliberations, three major initiatives were taken:

- FAO embarked on the development of an instrument to deter reflagging;
- the United Nations set in place a conference to tackle the issues related to straddling fish stocks and highly migratory fish stocks; and
- FAO set out to develop a code of conduct for responsible fisheries.

In November 1993 the FAO Conference approved the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. The Agreement, commonly referred to as the “Compliance Agreement”, will enter into force when the 26th ratification is received by the Director-General of FAO.¹¹

The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, commonly known as the “Fish Stocks Agreement” was adopted on 4 August 1995.¹² This was followed by the adoption of the Code of Conduct for Responsible Fisheries by the FAO Conference in November of the same year.

Unlike the United Nations Fish Stocks Agreement, which is a legal binding instrument, the Code of Conduct is voluntary. However, certain parts of it are based on relevant rules of international law, including those reflected in the UNCLOS. The Code contains provisions that may be or have already been given binding effect by means of other binding instruments amongst the parties, such as the Compliance Agreement which, according to FAO Conference resolution 15/93, paragraph 3, forms an integral part of the Code.

Many countries have been quick to implement, wholly or in part, the principles of the Code and are making use of a series of technical guidelines prepared by FAO for each of the thematic chapters. Countries report on progress being made to FAO’s Committee on Fisheries (COFI) at its biennial sessions. This process facilitates consultation and effective participation of industry, fishworkers, and environmental and other interested organizations in decision-making with respect to the development of laws and policies related to fisheries management and development.

The Committee on Fisheries of the FAO has adopted a series of international plans of action for: reducing the incidental catch of seabirds in long-line fisheries; conservation and management of sharks; and management of fishing capacity. Furthermore, it has developed a comprehensive plan of action to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing. Both the plan of action on capacity and the plan of action on IUU fishing can be expected to have an impact on job opportunities aboard fishing vessels as and when greater control is exercised by flag States, port States and regional fisheries bodies.

¹¹ Ratified by 23 countries as of August 2002.

¹² Entered into force 11 December 2001.

The World Summit on Sustainable Development (Johannesburg, 26 August-4 September 2002) generally called, *inter alia*, for the implementation of these agreements, codes and plans, and agreed to aim to restore fish stocks, on an urgent basis and where possible, not later than 2015.

FACTORS AFFECTING LEVELS OF EMPLOYMENT OPPORTUNITIES

Since fish is a finite resource, every effort must be made by all stakeholders to adopt a responsible approach to fisheries management and harvesting. Despite the promotion of the Code of Conduct for Responsible Fisheries, illegal fishing continues to be a serious problem affecting the health of inshore and offshore resources. For example, under-reporting and so-called “black landings”¹³ frustrate scientific staff with a duty to provide the best scientific advice to decision-makers.

Environmental factors, such as El Niño, have often led to significant reductions in fishing effort and loss of work opportunities – or at best to part-time engagements until stocks recover. Peru periodically suffers from the effects of El Niño and efforts to diversify the local fishing economy have only been partially effective.

The problems of employment are particularly acute in seasonal fisheries where vessels and gear have to be set aside for part of the year; in some cases, the lay-up time may be as much as six months. Fishermen in some countries have the protection of strong social services that help to offset loss of earnings, but others do not have such protection for themselves and their families

Following the Rio Summit, fisheries managers in general reassessed their approach to fisheries management and many of them now view the “open access” phenomena in a new light. Moreover, more attention has been directed at capacity in the capture sector and ways to align it with available living aquatic resources. Changes in management strategies are already under way through the adoption of a precautionary approach to fisheries management. These changes will have an effect on the structure of the fish capture industry in years to come since objectives will also have to be amended to include a change from maximum employment to sustainable employment.

TECHNOLOGY

Technological developments have had a significant impact on catch rates as well as revenues. With each new generation of fishing vessels, the fishing capacity tends to increase. Many crew members and processing workers are being displaced since the new, more efficient vessels can be safely operated by less crew and/or a reduced number of on-board processing workers. The effect of technological development is widespread. Even very small fishing craft have benefited from the point of view of safety and efficiency.

¹³ Fish landing usually during darkness and when fisheries officers may be off duty, or at secluded spots along the coast.

FACTORS CONCERNING VESSEL CONSTRUCTION
WHICH INFLUENCE CONDITIONS OF WORK

Vessel construction has an important impact on the on-board living and working conditions of fishermen. Many countries (see later in report) have legislation in place regulating construction and accommodation, at least for larger vessels. However, it would appear that poor conditions persist, at least as concerns decked vessels; this may be partly attributed to ineffective flag state implementation of the provisions of pertinent international – and even national – laws and regulations. In the case of the 2.8 million undecked vessels, it may be difficult to provide permanent sanitary facilities or rest areas. Even small decked vessels have limitations in design which make it difficult to improve accommodation. However, over time, particularly in developed countries, efforts are being made to improve conditions on board even these small craft.

VESSEL REGISTRATION AND OWNERSHIP

Although article 91 of Part VII, High Seas, of UNCLOS sets out a requirement in relation to the nationality of ships, it also allows a flag State to exclude ships because of their small size from the register of ships. Several ILO fishing standards provide, inter alia, that they apply to vessels “registered in a territory for which the Convention is in force”, or similar language.¹⁴ However, if vessels are not registered they may fall outside the protection provided by the Conventions. In the case of small fishing vessels, details of the vessel and its ownership may simply be entered in a record of fishing vessels (although they are normally issued with a fishing licence which also contains details of the vessel and its ownership). In such cases, the authority for the maintenance of the record and issuing the licence is delegated to a fisheries administration in the flag State. Larger vessels, however, usually fall under a section of the national Merchant Shipping Act and they are required to be registered in accordance with maritime practice and to carry a certificate of registry.

CONDITIONS OF EMPLOYMENT

*The employment relationship*¹⁵

The employment relationship for most fishermen and fishing vessel owners differs from that of shoreside workers – and often from that of other maritime workers.

While there has been some success in shifting fishermen to stable and formal contractual arrangements approaching those of workers ashore, many do not have this

¹⁴ The ILO Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), provides, in Article 1, that it “applies to all sea-going mechanically propelled ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters and are **registered** in a territory for which this Convention is in force” [emphasis added]. In Article 5, it calls for inspection of vessels, inter alia, “On every occasion when ... a vessel is **registered or re-registered**” [emphasis added].

¹⁵ Taken, with updates, from ILO: *Safety and health in the fishing industry*, Report for discussion at the Tripartite Meeting on Safety and Health in the Fishing Industry (Geneva, 1999).

privilege. These include self-employed fishermen; the employees of very small fishing enterprises employing one or two fishermen on either a regular or casual basis; and fishermen who have no formal employment relationship¹⁶ with their employer. Many fishermen are engaged only partly in fishing and derive the rest of their income from agricultural or other occupations.

Although there are substantial industrialized fishing activities in the coastal zones of developing countries, most fishermen work in the artisanal small-scale sector. A fisherman may be the owner of the vessel or a member of the same household as the owner; may have some other long-term traditional arrangement with the owner; or may be a casual labourer without any particularly strong links to the owner.

In developed countries, many fishermen are also employed in the small-scale fishing sector and may work under informal or casual employment arrangements. In countries where employer-worker relationships are normally recognized by legislation, fishermen may be excluded from such provisions because of the sharing arrangements peculiar to the fishing industry (see below). This exclusion can lead to difficulties in obtaining unemployment insurance, health care and other benefits enjoyed by many shoreside workers (see Chapter VI). Oral contracts may make it difficult to seek redress for pay-related problems.

In large-scale fishing enterprises, there are generally more formal employment relationships. Fishermen are still usually – or at least partly – paid according to the share system. However, the fishermen may be unionized and the arrangements may be within the context of collective agreements.

The share system

The traditional system of remuneration in the fishing industry is the sharing of the catch. Crew and owner must together cover certain operating expenses which are deducted from the gross proceeds obtained from the sale of the catch. The net proceeds are then divided among the boat owner and the members of the crew according to an agreed formula. The risk is shared by the fishing vessel owners and the members of the crew.

Fishermen sometimes have a share of the catch but are also guaranteed a minimum wage. The fishermen's income continues to depend on the size of the catch and the proceeds from its sale, but the sharing is usually done before, rather than after, the deduction of operating costs.

In other operations, fishermen receive both a regular salary and a share of the catch. The members of the crew receive a fixed salary which is stipulated in the charter party, in the contract of engagement or in the relevant legislation or collective agreement. They also receive a share of the catch calculated on the basis of the gross proceeds from its sale.¹⁷

¹⁶ At its 280th Session (March 2001), the Governing Body decided to place on the agenda of the 91st Session (2003) of the International Labour Conference an item concerning “the employment relationship (scope) (general discussion)” (GB.280/2, para. 11(12)). The outcome of this discussion may be relevant to the discussion of the employment relationship in the fishing sector, and thus relevant to the development of new standards for the sector.

¹⁷ Based, with updates, on ILO: *Fishermen's conditions of work and life*, Committee on Conditions of Work in the Fishing Industry, Sectoral Activities Department (Geneva, 1988, doc. CFI/4/1988/1).

Living and working conditions at sea

Fishing brings with it a risk that does not normally exist in shore-based jobs – and that is that the working platform rarely stays still. The same type of activity ashore, such as hand gutting or filleting fish, can be dangerous if the operator loses control of the knife. At sea, it is doubly dangerous, more so under bad weather conditions. Furthermore, fishermen usually have no regular hours of work and once a vessel starts to fish, rest periods are infrequent until the skipper is satisfied that enough fish has been caught and stored. On the way back to harbour the same crew members have to clean the decks and stand watches. Once in the harbour, the catch has to be unloaded and the vessel made ready for the next trip; there may therefore be little time left for rest and recuperation.

Fishermen may stay at sea for extended periods; not only a few days but many months (particularly those working in distant-water fleets). The vessel, for that period, is not only their workplace but also their home. Accommodation on fishing vessels covers the full range of conditions, from staterooms, mess-rooms and recreational spaces that are modern, well-equipped and comfortable to those that are extremely cramped and unhealthy. Quality of food and water are important. The ability to communicate with home may be important on longer voyages.

Obviously the life of a fisherman working on a very basic craft is different from that of those who go to sea in large fishing vessels – or even of small-scale fishermen using decked vessels. Each sector has its special problems. The life of a fisherman also varies from that of the average merchant seaman; not only do they perform different duties but fishermen are more exposed physically to the sea itself – and, of course, to the hazards associated with working directly with marine life.

SMALL-SCALE AND ARTISANAL FISHING

As noted earlier, a majority of the world's fishermen (perhaps 15-20 million of the total 27 million, and perhaps 10-12 million working on vessels) may be considered as artisanal and small-scale fishermen. Artisanal fishermen and their communities have traditionally depended on fishing for their existence and survival in a way somewhat similar to agriculture. In most developing countries, they live close to or below the subsistence level. Their problems may include poor handling of the catch (leading to wastage or poor price), as well as fluctuating catches and prices. In some places, there are conflicts with fishermen on large vessels and even vessels from developed countries. These fishermen are likely to identify more with community organizations and cooperatives rather than with trade unions. Basic health and stability of income may be priority issues.

The particular problems of small-scale fishermen and rural fishing communities were discussed by the ILO's Committee on Conditions of Work in the Fishing Industry in May 1988. This led to the adoption of conclusions relevant to the fishermen in this sector. The following are examples of special needs and problems cited in the conclusions.¹⁸

¹⁸ ILO: *Committee on Conditions of Work in the Fishing Industry*, Report (Geneva, 1988, doc. CFI/4/12).

Needs:

- adequate communication between governments, fishermen and their communities to improve working and living conditions;
- collection and interpretation of statistics on social and economic conditions;
- national development strategy for the fishing industry as a whole, taking into account the expressed socio-economic conditions of fishermen and their communities;
- improvement of basic education and literacy and provision of training through fisheries extension services;
- setting of long-term training objectives in order to achieve national self-reliance through the development of all skills needed for the fisheries sector;
- rational exploitation and utilization of fishery resources and control measures to ensure sustained production from small-scale fisheries;
- measures to provide equipment to fishermen at reasonable cost;
- a lowering of the cost of ice and improvement of preservation of fish;
- facilitation of boat ownership by boatless fishermen and establishment of fishermen's organizations.

Problems:

- lack of credit and high interest rates in the fisheries of developing countries;
- exploitation by middlemen in the market chain between small-scale fishermen and consumers of fish.

All this does not imply that many of these fishermen do not share the concerns of fishermen on larger vessels (e.g. the need for proper agreements, safety and health measures, medical care at sea, social security); but they may have additional special concerns – and perhaps different priorities.

MIGRANT FISHERMEN AND THOSE ON FOREIGN-FLAG VESSELS

This category of fishermen is generally employed on distant-water fishing vessels and comprises a portion of the 262,000 fishermen working on vessels over 500 grt. Fishermen working on these vessels may have problems similar to seafarers on foreign merchant vessels (or at least some foreign vessels) – and many may also be working on vessels engaged in IUU fishing.

IMPORTANT LABOUR ISSUES IN THE FISHING SECTOR

The following are some of the important labour issues in the fishing sector:

- the vast majority of fishermen are engaged in small-scale and artisanal fishing;
- many fishermen work on vessels registered in States other than the fishermen's State of nationality or domicile;

- fishing is a hazardous occupation (see also later in this report);
- fishermen working in small-scale and artisanal fisheries have special problems which may require special measures;
- many fishermen live on board their vessels for extended periods of time (this obviously varies with the size of the vessel, the nature of the fishing operation concerned and the location of the fisheries);
- fishermen often work under an employment relationship involving many people (the system of payment based on the share of the catch); this may lead to exclusions from laws protecting most workers (see further in this report);
- many fishermen have only seasonable and occasional employment, at least in the fishing sector;
- efforts to reduce fishing effort capacity may lead to insufficient income or unemployment for many fishermen;
- the low rates of trade union membership or lack of fishermen's organizations may affect social protection and social dialogue in this sector.

CHAPTER II

WHY A NEW ILO INSTRUMENT FOR THE FISHING SECTOR?

The special nature of work in the fishing sector, as described in the previous chapter, calls for the adoption of more up-to-date provisions in international labour standards to address effectively the decent work deficit in this sector. The seven existing standards (five Conventions and two Recommendations), adopted in 1920, 1959 and 1966, require updating in order to: reflect changes in the sector which have occurred over the last 40 years; achieve more widespread ratification; and reach, where possible, a greater portion of the world's fishermen, particularly those on smaller vessels. Furthermore, these existing instruments do not address all issues that might be effectively dealt with in an international standard. The consideration of the revision of these existing standards and the possible extension of a new instrument to new issues and to greater numbers of fishermen should be seen in the context of the general mandate of the ILO, as set forth in its Constitution; it should also be seen in the light of the extension of fundamental principles and rights at work to all workers, as laid down in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. More recently, the Decent Work Agenda has provided that:

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.¹

This overall goal was endorsed by the International Labour Conference in 1999. In his Report to that session of the Conference, the Director-General, *inter alia*, called for “engaging in deeper analysis of existing standards, their synergy, lacunae, and impact on various groups” and “accelerating the revision of outdated instruments to build on progress already made and promoting priority standards as problem-solving tools”.² He also stressed the need for: reasserting the usefulness of international standards; reinvigorating efforts and experimenting with new approaches; encouraging closer consultation with constituents; analysing proposed standards in terms of their potential impact on economic and social policy and their complementarity with other international instruments; and reinvigorating promotional efforts to see that standards are ratified and applied.³

More recently, the ILO has moved towards an integrated approach towards standards-related activities, which provides an opportunity to take into account the different economic, social and political dimensions of public policy; indeed, the traditional compartmentalized approach, which deals with each of these dimensions separately

¹ ILO: *Decent work*, Report of the Director-General, International Labour Conference, 87th Session (Geneva, 1999), p. 3.

² *ibid.*, p. 17.

³ *ibid.*, pp. 17-20.

and overlooks the strong interdependencies between them, has proved to be ineffective, especially in the current era of globalization.

CONSIDERATION OF ILO FISHING STANDARDS BY THE WORKING PARTY ON POLICY
REGARDING THE REVISION OF STANDARDS

Following the discussion on standard-setting policy at the 81st Session of the International Labour Conference in 1994, the Governing Body, at its 262nd Session (March-April 1995), decided to set up a Working Party on Policy regarding the Revision of Standards (the Working Party) under the Committee on Legal Issues and International Labour Standards (LILS).⁴ It was decided that the Working Party would examine the need for revision of all Conventions and Recommendations adopted before 1985 with a view to rejuvenating and strengthening the standard-setting system. Proposals were not to have the effect of reducing the protection already afforded to workers by ratified Conventions. The Working Party examined all of the Conventions and Recommendations falling under its remit and conducted a case-by-case examination of each of the instruments. The Governing Body approved the Working Party's proposals to: revise outdated instruments; promote ratification of up-to-date Conventions; invite member States to give up-to-date Recommendations due effect; and propose the shelving, abrogation or withdrawal of obsolete instruments as appropriate.

The Working Party examined the ILO's seven standards (five Conventions and two Recommendations) for the fishing sector, all of which were adopted before 1985. The Governing Body invited the Tripartite Meeting on Safety and Health in the Fishing Industry (Geneva, 13-17 December 1999) to examine these instruments.

The Tripartite Meeting set up its own working party on standards⁵ for the purpose of making proposals, inter alia, as to which standards concerning fishermen should be proposed for revision or promotion of ratification (or, in the case of Recommendations, be given due effect); or as to which standards should be considered out of date. The proposals were subsequently submitted to and considered by the LILS Working Party; they were brought to the attention of the LILS and the Governing Body itself. The decisions by the Governing Body on the relevant instruments are detailed in table 2.1.

As may be seen from table 2.1, the Governing Body concluded that: three of the five Conventions (Nos. 113, 114 and 125) and one Recommendation (No. 126) were in need of revision or partial revision; further information was needed on one Convention (No. 126) to determine whether it might need to be revised; studies should be undertaken on the issues addressed by another Recommendation (No. 7); and consideration should be given to denunciation of another Convention (No. 112) following ratification of a more modern instrument. Furthermore, the ratification levels of these Conventions are very low.

⁴ For the terms of reference of the Working Party, see GB.262/9/2, para. 52.

⁵ *Safety and health in the fishing industry*, op. cit., included a chapter entitled "Review of certain ILO Conventions and Recommendations relevant to the fishing industry" and contained "points for discussion" on this and other issues. This served as a basis for discussion.

Table 2.1. Status of instruments concerning fishermen

Instruments	Number of ratifications (as at 20.01.02)	Status
<i>Instruments to be revised (this category comprises instruments which are no longer fully up to date but remain relevant in certain aspects and those that need to be revised)</i>		
Medical Examination (Fishermen) Convention, 1959 (No. 113)	29	The Governing Body has recommended that this instrument be revised to adapt to the existing needs of the fishing sector
Fishermen's Articles of Agreement Convention, 1959 (No. 114)	22	The Governing Body has recommended the partial revision of this instrument
Fishermen's Competency Certificates Convention, 1966 (No. 125)	10	The Governing Body has recommended the revision of this instrument in the light of the IMO International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F)
Vocational Training (Fishermen) Recommendation, 1966 (No. 126)	–	The Governing Body has recommended that this instrument be revised in the light of advances in science and technology
<i>Requests for information</i>		
Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)	22	The Governing Body has invited member States to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of this Convention or point to the need to revise it
<i>Other instruments (this category comprises instruments which are no longer fully up to date but remain relevant in certain aspects)</i>		
Hours of Work (Fishing) Recommendation, 1920 (No. 7)	–	The Governing Body has recommended that the status quo be maintained and that the Office undertake studies into the working-time arrangements and rest periods in the fishing industry
<i>Outdated instruments (instruments which are no longer up to date; this category includes the Conventions that member States are no longer invited to ratify and the Recommendations whose implementation is no longer encouraged)</i>		
Minimum Age (Fishermen) Convention, 1959 (No. 112)	29 (of which 20 have been denounced)	The Governing Body has invited States parties to this Convention to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which would, <i>ipso jure</i> , involve the immediate denunciation of Convention No. 112 on the conditions stated in Article 10(4)(b) of Convention No. 138 and to possibly abrogate Convention No. 112 when the number of ratifications has substantially decreased

GOVERNING BODY DECISION TO PLACE ON THE AGENDA OF THE 92ND SESSION
OF THE INTERNATIONAL LABOUR CONFERENCE AN ITEM
CONCERNING A COMPREHENSIVE STANDARD (A CONVENTION SUPPLEMENTED
BY A RECOMMENDATION) ON WORK IN THE FISHING SECTOR

At its 283rd Session, the Governing Body decided to place on the agenda of the 92nd Session (2004) of the International Labour Conference⁶ an item concerning a comprehensive Convention supplemented by a Recommendation on work in the fishing sector. The document submitted by the Office to the Governing Body noted that a new standard would provide added value by:

- providing for a comprehensive revision of the seven existing fishing labour standards;
- addressing new issues where serious decent work deficits can be addressed with a normative response;
- providing for a comprehensive set of standards for the sector, covering all relevant issues; and
- complementing the work undertaken in other international organizations.

It proposed that “such new standards should be sufficiently broad and flexible to address a number of issues and to be effective for the majority of the world’s fishermen (both those on deep-sea vessels and those engaged in artisanal fishing). It should be based on principles which could be implemented in a manner which would accommodate the diversity of economic and social conditions of countries, and it could take account of the differences in fishing fleets and types of fishing”. It noted that the proposed Convention should not be “overly prescriptive”.

THE REVISION OF MARITIME LABOUR STANDARDS FOR SEAFARERS

Following decisions taken by the Governing Body at its 280th Session,⁷ the ILO is undertaking the preparation of a single, coherent international maritime labour standard for seafarers. It has been proposed that the new instrument will incorporate, as far as possible, the substance of all the various international maritime labour standards that are sufficiently up to date. The existing “maritime labour standards” are primarily aimed at seafarers on seagoing ships engaged in transport. However, some include in their scope persons “employed as a master or member of the crew or otherwise in the service of a ship, on board any vessel, other than a ship of war, registered in a territory for which this Convention is in force and engaged in maritime navigation or sea-fishing”.⁸ Another provides for exceptions for “coastwise fishing vessels” and “boats of less than twenty-five tons gross tonnage”, but does not exclude other large fishing vessels.⁹ Those adopted in 1987 and 1996 generally provide that “[t]o the extent it

⁶ See GB.283/2/1, paras. 37-75.

⁷ For a more detailed discussion of this work, see ILO: *High-Level Tripartite Working Group on Maritime Labour Standards* (first meeting), doc. TWGMLS/2001/1 (Geneva, 2001).

⁸ The Sickness Insurance (Sea) Convention, 1936 (No. 56).

⁹ The Shipowners’ Liability (Sick and Injured Seamen) Convention, 1936 (No. 55).

deems practicable, after consultation with the representative organizations of fishing vessel owners and fishermen, the competent authority shall apply the provisions of this Convention to commercial maritime fishing”¹⁰

It is envisaged, however, that fishermen will be excluded from the scope of application of the new comprehensive Convention for seafarers (unless, of course, the member State ratifying it decides to apply it to some or all fishermen). It may therefore be necessary for the new ILO fishing instrument to provide fishermen – particularly those working on vessels engaged in international voyages – with the protection previously afforded by the ILO’s standards for seafarers. These older instruments for seafarers (those adopted before 1985) have also been considered by the Governing Body as being no longer up to date.¹¹

OTHER ILO WORK CONCERNING THE FISHING SECTOR CONSIDERED IN THIS REPORT

The ILO’s Committee on Conditions of Work in the Fishing Industry has traditionally been the forum for the ILO’s first discussion of issues concerning this sector. The Committee met in 1954, 1962, 1978 and 1988. Where relevant and useful, information concerning its meetings has been reflected in this report.

The Tripartite Meeting on Safety and Health in the Fishing Industry (December 1999) was the most recent, major ILO meeting focusing on fishing issues. As its name indicates, the primary focus of its discussion was on safety and health issues. It adopted a number of conclusions on safety and health in the industry, as well as a resolution concerning future ILO activities in the fisheries sector and social dialogue.¹² The Office has attempted to reflect these conclusions and the resolution in this report, where appropriate. The Meeting also examined the seven existing fishing standards.

COVERAGE OF FISHERMEN IN NATIONAL LAWS AND REGULATIONS

There are a variety of ways in which labour conditions of fishermen are addressed in the laws and regulations of ILO member States.

The coverage of fishermen may vary depending on the issue. For example, in some countries laws and regulations concerning occupational safety and health apply to all workers, including fishermen, but the laws and regulations concerning employment contracts often do not apply to fishermen because they work under the share system and are not considered “employees”.

As will be shown later in this report, fishermen (generally those working on larger vessels or vessels serving overseas) are often covered by legislation concerning merchant shipping, while others (generally those on smaller vessels working close to the

¹⁰ For example, the Repatriation of Seafarers Convention (Revised), 1987 (No. 166).

¹¹ For more information on the status of these standards, see D. Pentsov: “Seafarers”, in *International labour standards: A global approach* (Geneva, ILO, 2001), pp. 533-604.

¹² See ILO: *Safety and health in the fishing industry*, op. cit., and ILO: *Note on the Proceedings, Tripartite Meeting on Safety and Health in the Fishing Industry* (ILO, Geneva, 2000).

coast or in harbours or estuaries) may be covered, if at all, by general labour law – or, in some cases, by specific legislation for fishermen.

Where there are provisions relating to fishing, there are often different requirements or exclusions based on: vessel size (either by length or tonnage); type of vessels (e.g. recreational fishing vessels, fishery research or protection vessels, vessels engaged in whaling, etc.); operating area (e.g. vessels fishing in harbours or rivers, coastal or inshore fishing vessels, vessels operating outside prescribed limits, vessels fishing overseas); or time at sea (fishing vessels never at sea for more than, e.g. 36 hours). These distinctions vary with the issue being regulated.

The States frequently define the term “fishing vessel” with regard to their mode of utilization, i.e. as vessels used wholly or principally for fishing operations, such as catching, processing, storing or transporting fish. Some countries only include catching vessels and exclude vessels involved in processing or other operations; others include them.

In some countries, notably for the issue of articles of agreement, the term “fishermen” is mostly defined as workers on fishing vessels. Sometimes, specific categories are excluded from this term (e.g. masters, pilots, apprentices). There are also definitions of specific categories of fishermen (e.g. “skipper”, “officer”, “engineer”) for competency certificates or accommodation requirements.

The Office has not seen many examples of distinctions in legislation based on “small-scale” or “artisanal” fishing. However, it has observed that in some countries, for example India, the term “artisanal” is used in legislation. Generally, as noted above, distinctions are based on specific criteria – such as vessel size, operating area or time at sea – and not on general categories such as “small-scale” or “artisanal”.

THE WAY FORWARD

As indicated above, there is scope for the development of new standards in the fishing sector. Reasons for this include:

- a number of existing ILO standards aimed at fishermen require revision because their provisions are deemed, in most part, to be outdated;
- existing ILO standards for fishermen are poorly ratified and exclude large numbers of fishermen (particularly those in the small-scale and artisanal sector, i.e. those on smaller vessels) from their scope;
- only in very few countries do fishermen enjoy the protection of existing maritime labour standards for seafarers;
- fishermen may lose some of the protection provided by the existing maritime labour standards for seafarers (where they include fishermen in their scope or provide a mechanism for extending protection to fishermen), as the new framework Convention would exclude them from its scope;
- fishermen are – or may be – excluded from many laws and regulations, on a variety of issues, providing protection for workers in general;
- specific action is needed to improve the safety and health of all fishermen.

CHAPTER III

PREREQUISITES FOR GOING TO WORK ON FISHING VESSELS

MINIMUM AGE AND PROTECTION OF YOUNG PERSONS

Minimum age

Bearing in mind the hazardous nature of many fishing operations, the issue of the minimum age for work on board fishing vessels is particularly important. It can also be a difficult issue – not only in developing countries but also developed countries – as many fishermen have traditionally learned their profession by working alongside a parent at sea. Some worst forms of child labour have been observed in the fishing sector – a case in point being children working on fishing platforms in South-East Asia. The ILO has programmes in place, in cooperation with the countries concerned, to address this situation.

International standards

In 1959, the ILO adopted the Minimum Age (Fishermen) Convention, (No. 112), which stipulates that children under the age of 15 years shall not be employed or work on fishing vessels. The substantive provisions of the Convention are provided in Annex I to this report.

In 1973, the ILO adopted the Minimum Age Convention, (No. 138). This instrument sets the minimum age for all economic sectors at not less than the age of completion of compulsory schooling and, in any case, not less than 15 years.

ILO efforts to abolish child labour include the promotion of Convention No. 138 which, as at 15 October 2002, has been ratified by 120 member States.¹ The adoption of a modern, comprehensive standard in terms of a general minimum age led to the automatic denunciation of the more specific Convention No. 112 in accordance with the relevant provision of Convention No. 138. This instrument on a minimum age

¹ Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chile, China, Colombia, Congo, Democratic Republic of the Congo, Costa Rica, Croatia, Cuba, Cyprus, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Finland, France, Gambia, Georgia, Germany, Greece, Guatemala, Guyana, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Republic of Korea, Kuwait, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Republic of Moldova, Morocco, Namibia, Nepal, Netherlands, Nicaragua, Niger, Nigeria, Norway, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, San Marino, Senegal, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, The former Yugoslav Republic of Macedonia, United Republic of Tanzania, Togo, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia, Zimbabwe.

solely for fishermen had been ratified by 29 member States,² and, as at 15 October 2002, has been denounced by 20 States.³ Consequently, all the countries that have denounced Convention No. 112 have ratified Convention No. 138;⁴ however, three countries that have ratified the Minimum Age Convention, 1973 (No. 138), have remained bound by the Minimum Age (Fishermen) Convention, 1959 (No. 112),⁵ as the latter's minimum age was higher than that accepted by them under Convention No. 138.

As noted above, the Governing Body, at its 279th Session, decided to invite the States parties to the Minimum Age (Fishermen) Convention, 1959 (No. 112), to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), and to take into consideration the conclusions of the Tripartite Meeting,⁶ in consultation with the organizations of employers and workers concerned.

In another development relevant to the issue of minimum age in this sector, the International Labour Conference adopted in 1999 the Worst Forms of Child Labour Convention (No. 182), which has been ratified by 132 countries;⁷ it is supplemented by Recommendation No. 190. These instruments apply the term "child" to all persons under the age of 18 and aim at the prohibition and elimination of the worst forms of child labour.

Furthermore, in addition to the conclusions concerning Convention No. 112 noted above, the ILO's Tripartite Meeting on Safety and Health in the Fishing Industry concluded, *inter alia*, that:

² Albania, Australia, Belgium, Bulgaria, Costa Rica, Cuba, Denmark, Ecuador, France, Germany, Guatemala, Guinea, Israel, Italy, Kenya, Liberia, Mauritania, Mexico, Netherlands, Norway, Panama, Peru, Poland, Russian Federation, Spain, Suriname, Tunisia, Ukraine, Uruguay.

³ Albania, Belgium, Bulgaria, Costa Rica, Cuba, Denmark, France, Germany, Israel, Italy, Kenya, Netherlands, Norway, Panama, Poland, Russian Federation, Spain, Tunisia, Ukraine, Uruguay. Australia, Ecuador, Guatemala, Guinea, Liberia, Mauritania, Mexico, Peru and Suriname have ratified it but have not denounced it.

⁴ Albania, Belgium, Bulgaria, Costa Rica, Cuba, Denmark, France, Germany, Israel, Italy, Kenya, Netherlands, Norway, Panama, Poland, Russian Federation, Spain, Tunisia, Ukraine, Uruguay.

⁵ Ecuador, Guatemala, Mauritania.

⁶ According to these conclusions, the minimum age for admission to employment and work in the maritime fishing industry should in no case be lower than 16 years, and this activity should be considered a hazardous occupation within the meaning of Article 3 of Convention No. 138.

⁷ Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Congo, Democratic Republic of the Congo, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guyana, Honduras, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Lebanon, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Republic of Moldova, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, United Republic of Tanzania, Thailand, The former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Viet Nam, Yemen, Zambia, Zimbabwe.

Governments should take urgent steps to ratify and implement the Worst Forms of Child Labour Convention, 1999 (No. 182). Implementation should include removing children from all hazardous work in the fishing industry. National action programmes to eradicate the worst forms of child labour should include schemes to assist fishing communities.

National law and practice

This section reflects information obtained by the Office concerning the law and practice of States as regards the minimum age applicable to work in the fishing sector. As with other aspects of fishermen's work, the provisions may be found in general labour legislation, or the Seamen's or Shipping Acts, which do not exclude the fishermen or fishing vessels; in rare instances, there may be specific requirements for the fishing sector which contain a reference to minimum age.

In a few countries, the minimum age applicable to work on fishing vessels is 18 years⁸ or, respectively, 17 years.⁹ A number of laws and regulations effectively prohibit employment in the fishing sector of a young person under the age of 16.¹⁰ Even more member States set the minimum age applicable to the fishing sector at 15 years;¹¹ most notably, in Japan, no distinction is made between workers on vessels covered by the Mariners' Law (generally, seagoing fishing vessels of 30 gt and greater) and those covered by general labour standards (generally, on fishing vessels under 30 gt and not seagoing), as in both cases the minimum age is 15 years. Certain laws and regulations specify that the minimum working age applicable to the fishing sector shall be above the compulsory school age.¹²

Several countries provide for exclusions from the stipulated minimum age under certain conditions. In some member States children between 14 and 15 years of age may occasionally take part in activities on board fishing vessels during school holidays, provided that the activities in which they are engaged are not: harmful to their health or normal development; liable to prejudice their attendance at school; intended for commercial profit.¹³ Other countries lay down that persons under the stipulated minimum age may be employed if members of a family are employed on board.¹⁴ Beyond this, the national laws and regulations often exempt persons from the prescribed minimum age in the event of an authorization of the competent authority and/or the consent of the legal guardian.¹⁵

⁸ Chile, Indonesia (ratified C. 138); Estonia.

⁹ Norway – for foreign trade, Panama (ratified C. 138); Peru (ratified C. 112).

¹⁰ Denmark, Germany, Republic of Korea, Lithuania, Norway – for domestic trade, Poland, Portugal, Romania, Spain (ratified C. 138); Canada (Newfoundland), Thailand, United States.

¹¹ Japan, Mauritius, Netherlands, Nigeria, Philippines, Tunisia (ratified C. 138); Ecuador, Mauritania (ratified C. 138 and C. 112); Guinea, Mexico, Liberia (ratified C. 112); India.

¹² Norway, United Kingdom (ratified C. 138); New Zealand.

¹³ Tunisia (ratified C. 138); Ecuador – excluding artisanal fishing (ratified C. 138 and C. 112); Liberia (ratified C. 112).

¹⁴ Republic of Korea (ratified C. 138); Liberia (ratified C. 112); Thailand.

¹⁵ Chile, Romania, Tunisia (ratified C. 138); Peru (ratified C. 112); Thailand.

Protection of young persons

The hazardous nature of fishing activities imposes special protective measures for those young fishermen employed in accordance with the stipulated minimum age who are under 18 years of age. As the issue of protection of working minors has in the past been construed as a higher minimum age for hazardous work, it has often been regarded as being part of the issue of minimum age. However, structurally it seems more appropriate to separate these two issues.

International standards

Many ILO instruments have an impact on the safety and health protection of young workers on fishing vessels against hazardous work or tasks. These include: the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), and its accompanying Recommendation (No. 190).

Convention No. 112 expressly refers to this specific issue by stipulating that young persons under the age of 18 years shall not be employed or work on coal-burning fishing vessels as trimmers or stokers.

Furthermore, Convention No. 138 provides that the minimum age for admission to any type 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, shall not be less than 18 years.

The issue of protection of young fishermen is also covered by the Worst Forms of Child Labour Convention, 1999 (No. 182), and its accompanying Recommendation (No. 190), which determines the types of work that can be construed as “worst forms of child labour”. The following may be of relevance to the fishing sector (Recommendation No. 190, Paragraph 3(a)-(e):

- (a) work which exposes children to physical abuse ...;
- (b) work ... in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to ... temperatures, noise levels, or vibrations damaging to their health;
- (e) work under particularly difficult conditions such as work for long hours or during the night ...

National law and practice

The laws and regulations of a number of member States provide that young persons under 18 years of age are not to be engaged as trimmers or stokers¹⁶ (perhaps no longer relevant as coal-burning vessels have almost entirely disappeared); some exempt school or training ships from the prohibition.¹⁷

¹⁶ Germany (ratified C. 138); Ecuador (ratified C. 138 and C. 112); Liberia (ratified C. 112); India.

¹⁷ For example India.

Many countries stipulate that no person shall engage minors (under 18 years of age) in activities involving a risk to their life, health or moral integrity.¹⁸ However, national laws and regulations often contain exclusions to this principle. For instance some countries indicate that hazardous employment or work as from the age of 16 years may be authorized on condition that special obligations are taken to ensure the safety and well-being of the young person.¹⁹ Moreover, several countries exempt young persons between 16 and 18 years of age from the prohibition of hazardous work in the context of vocational training;²⁰ whereby a few European Union (EU) States additionally require, in accordance with Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, that the work be indispensable for vocational training and performed under the supervision of a competent person, and that the health and safety of the young person when performing that activity be ensured so far as is reasonably practicable.²¹

Some EU States, such as the United Kingdom, lay down, in accordance with Council Directive 94/33/EC, that no young person shall be permitted to begin work in a ship, unless an assessment has first been made of the risks to the health and safety of young persons, taking into account their inexperience, lack of risk awareness and immaturity, and paying particular attention to: the fitting out and layout of working areas; the form, range and use of work equipment and the way in which it is handled; the organization of processes and activities; and the extent of the health and safety training provided or to be provided to the young persons concerned.

The majority of the countries enumerate the hazardous activities, from which young workers under the age of 18 should be protected.²² For the purpose of illustrating the provisions relevant to the fishing sector, some countries prohibit the engagement of minors in activities objectively beyond their physical capacity,²³ whereby others provide for a specific prohibition of work involving heavy weights (e.g. loading or unloading of vessels).²⁴ Minors are sometimes forbidden from carrying out activities involving the handling of dangerous mechanisms, or from working in the machine room.²⁵ A few EU States further stipulate, in accordance with Council Directive 94/33/EC, that minors shall not be engaged in work involving: the risk of accidents which it may be assumed cannot be recognized or avoided by young persons owing to their insufficient attention to safety or lack of experience or training; a risk to health from extreme cold or heat; and exposure to the harmful effects of noise, vibrations or radiations.²⁶ Moreover, certain member States

¹⁸ Chile, Denmark, Germany, Japan, Republic of Korea, Lithuania, Norway, Philippines, Romania, United Kingdom (ratified C. 138); Ecuador (ratified C. 138 and C. 112); Australia (Northern Territory), Guinea, Mexico, Peru (ratified C. 112); United States.

¹⁹ For example Norway (ratified C. 138).

²⁰ Denmark, Germany, Norway, Poland, United Kingdom (ratified C. 138); Mauritania (ratified C. 138 and C. 112).

²¹ For example Germany, United Kingdom (ratified C. 138).

²² Chile, Germany, Republic of Korea, Netherlands, Philippines, Romania, United Kingdom (ratified C. 138); Ecuador (ratified C. 138 and C. 112); Guinea, Peru (ratified C. 112).

²³ Chile, Germany, United Kingdom (ratified C. 138).

²⁴ Ecuador (ratified C. 138 and C. 112); Peru (ratified C. 112).

²⁵ Germany (ratified C. 138); Ecuador (ratified C. 138 and C. 112).

²⁶ Germany, United Kingdom (ratified C. 138).

prescribe a working time for minors of not more than seven hours per day, i.e. 35 hours per week.²⁷ As to weekly and daily rest periods, the United Kingdom (ratified Convention No. 138) provides, for instance, that a young person engaged as a worker on a fishing vessel shall be provided with compensatory rest periods of at least two days, which shall be consecutive if possible, in every week, and that there shall be compensatory rest periods of at least 12 consecutive hours in every 24-hour period. Several countries forbid the assignment of minors to work during the night.²⁸

Conclusions

From the above information, it would appear that a substantial number of countries (at least 36) have laws and regulations in place which set a minimum age for fishermen, usually 15 or 16 years of age. However, this minimum age requirement generally applies to all workers. At least eight countries have some form of exclusion, e.g. for persons working on family-owned or operated vessels or for persons below the required minimum age in case of the consent of a legal guardian.

As concerns the protection of young persons, consideration should be given to the hazardous nature of fishing operations. The ILO's main instrument on minimum age for all workers, Convention No. 138, provides for the protection of young workers under the age of 18 from hazardous occupations. However, it is not clear to what extent States which have ratified that Convention have considered work involving certain types of fishing operations or certain jobs on fishing vessels as a "hazardous occupation". There may therefore be grounds for a mandatory – or perhaps recommendatory – text in the new fishing standard providing that fishing (or work involving certain fishing operations or certain jobs on fishing vessels) shall or should be considered hazardous and be limited to persons of 18 years of age or older.

MEDICAL EXAMINATION/FITNESS STANDARDS

Most fishing vessels operate with only the minimum number of persons required. Thus, the incapacitation of even one fisherman may place a substantial additional burden on the rest of the crew. Skippers and officers generally receive basic first-aid and other medical training, and fishing vessels are usually equipped with basic medical supplies. However, it is difficult to transport sick or injured fishermen ashore where they can be treated by certified physicians.

Fishermen often work in extreme conditions. They live close to each other at sea, often for long periods. Contagious diseases may therefore be a serious threat, endangering not only the health of other fishermen, but also the safety of the ship and, where carried, passengers. It is particularly important that fishermen concerned with the preparation of food do not suffer from conditions which may be transmitted to others through their work.

²⁷ Ecuador (ratified C. 138 and C. 112); Guinea, Peru (ratified C. 112).

²⁸ Republic of Korea, Romania (ratified C. 138); Ecuador (ratified C. 138 and C. 112); Guinea (ratified C. 112).

Fishermen must be able to adjust to the often violent motions of the ship and to live and work in sometimes cramped spaces. They generally must be able to climb ladders; lift heavy weights; and be able to withstand exposure to the frequently harsh weather conditions on deck. Obviously, these conditions vary according to the type and location of fishing operations.

For these and other reasons, the medical fitness of fishermen is an important consideration, and one that the ILO has addressed in its standards.

International standards

ILO standards

In 1959, the ILO adopted the Medical Examination (Fishermen) Convention (No. 113).²⁹ This instrument provides that no person shall be engaged for employment in any capacity on a fishing vessel unless he produces a certificate attesting to his fitness for the work for which he is to be employed at sea. The certificate is to be signed by a medical practitioner who shall be approved by the competent authority. The competent authority has to prescribe the nature of the medical examination and the particulars to be included in the medical certificate. There are special validity requirements for persons less than 21 years of age and provision for further examination by a medical referee in the event that a certificate is refused to a fisherman. As at 15 September 2002, Convention No. 113 had been ratified by 29 member States.³⁰ The substantive text of the Convention is provided in Annex I.

At the Tripartite Meeting on Safety and Health in the Fishing Industry, the Working Party on Policy regarding the Revision of Standards considered that the Medical Examination (Fishermen) Convention, 1959 (No. 113), was not adapted to the existing needs in the fishing sector and that it should therefore be revised.³¹ It further indicated that one of the elements to be taken into account in the revision would be the ILO/WHO Guidelines for conducting pre-sea and periodic medical fitness examinations for seafarers.³²

²⁹ Two similar Conventions cover seafarers – the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16), and the Medical Examination (Seafarers) Convention, 1946 (No. 73). Though these have been widely ratified, they have been found not to address the problem of widely varying fitness standards for seafarers. In order to remedy this situation, an ILO/WHO Consultation was held in 1997 that subsequently resulted in the ILO/WHO Guidelines for conducting pre-sea and periodic medical fitness examinations for seafarers.

³⁰ Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Costa Rica, Croatia, Cuba, Ecuador, France, Germany, Guatemala, Guinea, Kyrgyzstan, Liberia, Netherlands, Norway, Panama, Peru, Poland, Russian Federation, Slovenia, Spain, Tajikistan, The former Yugoslav Republic of Macedonia, Tunisia, Ukraine, Uruguay, Yugoslavia.

³¹ ILO: *Note on the Proceedings*, Tripartite Meeting on Safety and Health in the Fishing Industry (Geneva, 2000), p. 39.

³² The ILO and WHO subsequently authorized their publication. They have since been included by reference in the International Convention on Standards of Training, Certification and Watchkeeping (STCW Convention), 1978, as amended in 1995, in the STCW Code, Part B, under Guidance regarding medical standards – Issues and registration of certificates. The Guidelines are intended for use by competent authorities, medical examiners, shipowners, seafarers' representatives and others concerned

IMO standards

As to other international instruments, the IMO's International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F), includes requirements concerning medical fitness for fishing vessel personnel. These provisions are linked to minimum requirements for certifications of skippers, officers, engineer officers and radio operators on vessels 24 metres in length or over (in both unlimited and limited waters) or, in the case of engineers, on vessels powered by main propulsion machinery of 750 kW propulsion power or more. Candidates for certification are required to satisfy the party (to the Convention) as to "medical fitness, particularly regarding eyesight and hearing". There are also provisions that skippers and officers (including engineer officers) be required, at regular intervals not exceeding five years, to satisfy the Administration as to medical fitness, particularly regarding eyesight and hearing. There are similar provisions for Global Maritime Distress and Safety System (GMDSS) radio personnel. There are apparently no requirements for the certification of the medical fitness of other members of the crew.³³

National law and practice

The following draws from reports submitted, in accordance with article 22 of the ILO Constitution, by member States that have ratified Convention No. 113 and other information provided to or obtained by the Office from both States which have ratified Convention No. 113 and other States.

Scope of application

Certain countries have national laws and regulations concerning medical examinations, which apply exclusively to fishing vessels.³⁴ However, the pertinent provisions usually cover all merchant vessels or all seafarers, and do not exclude fishing vessels or, respectively, fishermen.³⁵ A few countries have issued general laws and regulations concerning every workplace, including fishing vessels.³⁶

The fact remains that national laws and regulations on medical examinations frequently contain exclusions from the application:

(continued from p. 29)

with the conduct of medical fitness examinations of seafarer candidates and serving seafarers. They were developed to reduce wide differences in medical requirements and examination procedures and to ensure that medical certificates which are issued to seafarers are a valid indicator of their medical fitness for the work they will perform. The Guidelines are available on the Internet at: www.ilo.org/public/english/dialogue/sector/techmeet/ilowho97/index.htm

³³ IMO, STCW-F, Annex, Chapter I, Regulation 3, para. 1; Chapter II, Regulation 1, para. 2.1; Regulation 2, para. 2.2; Regulation 3, para. 2.1; Regulation 4, para. 2.2; Regulation 5, para. 2.2; Regulation 6, para. 3.2; Regulation 7, para. 1.1; Regulation 8, para. 1.1.

³⁴ Azerbaijan, Costa Rica, Ecuador, Guatemala, Guinea, Panama, Russian Federation, Tunisia, Ukraine (ratified C. 113).

³⁵ Azerbaijan, Belgium, Bulgaria, Germany, Liberia, Netherlands, Norway, Panama, Peru, Poland, Russian Federation, Spain, Uruguay (ratified C. 113); Australia, Chile, Denmark, Estonia, Greece, India, Indonesia, Japan, Republic of Korea, Lithuania, Mexico, New Zealand, Nigeria, United Kingdom.

³⁶ Brazil, Cuba (ratified C. 113); Indonesia, Romania.

- For instance, national laws and regulations sometimes do not apply to fishing vessels below a certain size: e.g. artisanal and mechanized fishing vessels as well as those other than deep-sea fishing vessels above 20 metres in length remaining at sea for 45 to 50 days;³⁷ fishing vessels of less than 100 grt;³⁸ fishing vessels under 30 grt;³⁹ or fishing vessels with a length of less than 12 metres.⁴⁰ Nonetheless, there are some examples of national laws and regulations that do not contain any exclusions.⁴¹ Most notably, the legislation of Uruguay includes all maritime personnel on board private merchant or fishing vessels, including fishermen on board small vessels; it also covers the personnel of the National Merchant Marine, including the crews of the fishing vessels.
- In addition, some countries have excluded certain types of fishing vessels, e.g. vessels fishing for sport or recreation.⁴²
- Other countries provide that certain navigation areas are outside the scope of laws and regulations on medical examinations, e.g. vessels fishing in ports and harbours or in estuaries of rivers;⁴³ fishing vessels not proceeding on an overseas voyage; or vessels not operating outside of restricted limits.⁴⁴
- Sometimes vessels, which do not normally remain at sea for periods of more than three days, are exempted from the application of the pertinent laws and regulations.⁴⁵ The vast majority of countries, however, has not granted any exemption in respect of vessels being at sea for short periods.⁴⁶

Requirement for fishermen to produce a medical certificate

In general, the national laws and regulations prescribe that any person accepted for service on fishing vessels shall, after a prior medical examination, produce a certificate of health issued by an approved doctor or medical office.⁴⁷ A few countries

³⁷ India.

³⁸ Norway (ratified C. 113).

³⁹ Japan, Republic of Korea.

⁴⁰ Azerbaijan, Russian Federation (ratified C. 113).

⁴¹ Belgium, Bulgaria, Cuba, Ecuador, Germany, Spain, Uruguay (ratified C. 113); Denmark, United Kingdom.

⁴² Azerbaijan, Brazil, Costa Rica, Guatemala, Guinea, Netherlands, Panama, Poland, Russian Federation, Tunisia (ratified C. 113); Australia, India.

⁴³ Brazil, Costa Rica, Guatemala, Guinea, Panama, Poland, Tunisia (ratified C. 113); Australia, Japan.

⁴⁴ Australia, New Zealand, Nigeria.

⁴⁵ Costa Rica, Guatemala, Norway, Tunisia (ratified C. 113); Australia, New Zealand, Nigeria.

⁴⁶ Azerbaijan, Belgium, Brazil, Bulgaria, Cuba, Ecuador, Germany, Guinea, Netherlands, Panama, Poland, Russian Federation, Spain, Uruguay (ratified C. 113); Denmark, United Kingdom.

⁴⁷ Belgium, Brazil, Bulgaria, Costa Rica, Cuba, Ecuador, Germany, Guatemala, Guinea, Liberia, Netherlands, Norway, Panama, Peru, Poland, Spain, Tunisia, Ukraine, Uruguay (ratified C. 113); Australia, Chile, Denmark, Estonia, Greece, India, Indonesia, Japan, Republic of Korea, Lithuania, Mauritius, Mexico, Romania.

require a medical certificate for the employment of all persons under 18 years of age, whereas this provision does not apply to fishermen above this age.⁴⁸

The majority of countries has prescribed the nature of the medical examination applicable to the fishing sector.⁴⁹ Most notably, Poland indicates that since 1 January 2001 physicians authorized to conduct preventive examinations of fishermen apply the Guidelines for conducting pre-sea and periodic medical fitness examinations for seafarers. Certain member States set out that the medical examination shall be free of charge for the applicant.⁵⁰ The national laws and regulations dealing with the nature of the medical examination frequently take into account the age⁵¹ or the duties of the applicant, respectively.⁵² For example in Spain the examination is carried out by means of specific protocols relating to the psychological and physical requirements; the general hazards of work on board; and the fishing area to be visited. The medical examination often includes tests of eyesight and hearing.⁵³

The particulars to be included in the certificate are prescribed in the vast majority of countries in model forms.⁵⁴ Most notably, Poland indicates that since 1 January 2001, the health certificates issued to fishermen have to be in accordance with the model presented in Annex E to the Guidelines for conducting pre-sea and periodic medical fitness examination for seafarers. In general, the medical certificate must attest that the person is not suffering from any illness or disease, which tends to aggravate or constitutes a risk for the other fishermen on board.⁵⁵ In addition, certain countries provide for a list of medical counter indications, which may prevent admission to work.⁵⁶

Validity and appeal

The vast majority of countries determine the period of validity of medical certificates applicable to the fishing sector for persons over 21 years of age, which usually

⁴⁸ New Zealand, United Kingdom.

⁴⁹ Azerbaijan, Belgium, Brazil, Bulgaria, Costa Rica, Cuba, Ecuador, Germany, Guatemala, Guinea, Liberia, Netherlands, Norway, Panama, Poland, Russian Federation, Spain, Tunisia, Uruguay (ratified C. 113); Australia, Chile, Denmark, Estonia, Greece, Indonesia, Japan, Republic of Korea, Lithuania, Mexico, New Zealand, United Kingdom.

⁵⁰ Belgium, Costa Rica, Ecuador, Guatemala, Poland, Spain, Tunisia (ratified C. 113); Australia, Denmark.

⁵¹ Belgium, Costa Rica, Cuba, Germany, Guinea, Norway, Peru, Poland, Spain, Tunisia, Uruguay (ratified C. 113); Romania.

⁵² Azerbaijan, Belgium, Brazil, Costa Rica, Cuba, Germany, Guatemala, Guinea, Norway, Peru, Poland, Russian Federation, Spain, Tunisia, Uruguay (ratified C. 113); Denmark, New Zealand, Romania.

⁵³ Costa Rica, Ecuador, Germany, Guinea, Liberia, Norway, Panama, Peru, Poland, Spain, Tunisia, Uruguay (ratified C. 113); Denmark, Republic of Korea, New Zealand.

⁵⁴ Azerbaijan, Belgium, Brazil, Bulgaria, Costa Rica, Cuba, Ecuador, Germany, Guatemala, Guinea, Liberia, Netherlands, Norway, Panama, Peru, Poland, Russian Federation, Spain, Tunisia, Uruguay (ratified C. 113); Australia, Chile, Denmark, Estonia, Greece, Japan, Republic of Korea, Lithuania, Mexico, New Zealand, Romania, United Kingdom.

⁵⁵ Azerbaijan, Belgium, Brazil, Costa Rica, Ecuador, Germany, Guatemala, Guinea, Liberia, Netherlands, Norway, Panama, Peru, Poland, Russian Federation, Spain, Tunisia, Uruguay (ratified C. 113); Denmark, Japan, Republic of Korea, New Zealand, Romania.

⁵⁶ Azerbaijan, Germany, Norway, Panama, Poland, Russian Federation (ratified C. 113); Denmark.

amounts to two years;⁵⁷ frequently, the medical certificate already expires after one year.⁵⁸ Most of the countries provide that the medical certificate has to be renewed at least annually in the case of persons of less than 21 years of age,⁵⁹ whereas a few countries prescribe that solely the medical certificates of persons under 18 years of age expire after up to one year.⁶⁰ Some member States lay down that, if a certificate expires during a trip, it remains valid until the return of the vessel.⁶¹

Most of the ratifying countries set out that a person who has been refused a medical certificate can contest the result of the examination by having recourse to the competent authority and requesting another medical examination. This is carried out by a special independent medical commission or an approved independent physician.⁶²

Conclusions

Information obtained by the Office indicates that the 29 countries that have ratified Convention No. 113 are not alone in having national laws and regulations on medical examinations for fishermen – or for seafarers in general, without excluding fishermen; a substantial number (at least 16) have legislation in this area. It would appear that some countries may not have ratified the Convention due to the requirement that examinations for persons under 21 years of age should take place annually (apparently, they consider a person as an adult at 18 years and not 21 years of age, and therefore do not require more frequent examinations unless the person is less than 18 years of age). While several States provide that medical examination should be free of charge, this is apparently not a widespread requirement.

The Office is also examining how the ILO/WHO Guidelines for conducting pre-sea and periodic medical fitness examinations for seafarers could be reflected in the new standard.

Though many countries require medical examinations – and medical certificates – for fishermen, it would appear that this requirement is more likely to be applied to those considered “employees” of a vessel owner; it is less likely to apply to those owning their own vessels, working as “co-adventurers”, or those engaged outside formal employment relationships. This category would include most small-scale and artisanal fishermen (groups which, it would appear, have at least as high rates of fatality, injury and illnesses as those working on larger vessels). Thus, it is not clear whether Convention No. 113 is contributing meaningfully to the improvement of the

⁵⁷ Belgium, Costa Rica, Cuba, Ecuador, Germany, Liberia, Norway, Poland, Spain, Tunisia, Uruguay (ratified C. 113); Denmark.

⁵⁸ Azerbaijan, Guatemala, Netherlands, Panama, Russian Federation, Ukraine (ratified C. 113); Chile, Republic of Korea.

⁵⁹ Azerbaijan, Belgium, Costa Rica, Ecuador, Germany, Guatemala, Guinea, Netherlands, Norway, Panama, Russian Federation, Spain, Tunisia, Ukraine (ratified C. 113); Chile, Republic of Korea, Lithuania.

⁶⁰ Brazil, Cuba (ratified C. 113); Denmark, New Zealand, United Kingdom.

⁶¹ Azerbaijan, Ecuador, Germany, Guatemala, Guinea, Norway, Peru, Poland, Russian Federation, Tunisia, Uruguay (ratified C. 113); New Zealand, United Kingdom.

⁶² Azerbaijan, Belgium, Brazil, Costa Rica, Cuba, Germany, Guatemala, Guinea, Liberia, Netherlands, Norway, Panama, Poland, Russian Federation, Tunisia, Uruguay (ratified C. 113).

health and safety of the majority of the world's fishermen. A new standard, therefore, might seek to provide mandatory or recommendatory provisions aimed at reaching this currently unprotected group. There may also be grounds for linking the issue of medical examination to disability, unemployment and retraining benefits.

COMPETENCY CERTIFICATES AND VOCATIONAL TRAINING

As indicated elsewhere in the report, fishing can be a hazardous profession. It is also an increasingly technologically sophisticated profession, at least in many fisheries. Training is important to ensure that fishermen can perform their duties safely and efficiently. It also provides the necessary skills needed to improve income security and professional advancement. Training in responsible fishing may also contribute to the preservation of fish stocks and protection of the marine environment.

The ILO's Tripartite Meeting on Safety and Health in the Fishing Industry concluded, *inter alia*, that:

Training is an essential means of addressing occupational safety and health issues ... , and occupational safety and health issues should be an integral part of all training programmes for fishermen. Training, including refresher courses, should address different types of fishing gear, fishing operations and disaster preparedness, and should reflect the provisions of the STCW-F Convention, ILO's Vocational Training (Fishermen) Recommendation, 1966 (No. 126), and other relevant international codes and guidance.

Generally speaking, the smaller the vessel, the less likely it is that the skipper and other officers will be required to hold a competency certificate. However, partly because of the high accident rate in fishing – involving, for example, capsizing due to loss of stability – some countries are moving towards requiring competency certificates for key positions on smaller vessels. The same tendency applies to basic training of fishermen, with greater attempts to provide such training to all members of the crew.

International standards on competency certificates

ILO standards

The Fishermen's Competency Certificates Convention, 1966 (No. 125), provides for ratifying States to establish standards of qualification for certificates of competency entitling a person to perform the duties of a skipper, mate or engineer on board fishing vessels within the scope (above 25 grt). It also prescribes the minimum age for the issue of a certificate, minimum years of sea service and the subjects on which candidates are to be examined. It provides that an efficient system of inspection is to be ensured. Some of the principles contained in this Convention have also been included in the STCW-F Convention (see below). As at 15 September 2002, Convention No. 125 had been ratified by ten member States.⁶³ The substantive text of the Convention is provided in Annex I.

⁶³ Belgium, Brazil, Djibouti, France, Germany, Panama, Senegal, Sierra Leone, Syrian Arab Republic, Trinidad and Tobago.

The Governing Body requested the Tripartite Meeting on Safety and Health in the Fishing Industry (Geneva, December 1999) to provide views on this Convention. The Tripartite Meeting took the view that Convention No. 125 should be revised to take into account developments in the fishing industry, inter alia, to bring it up to date with the level of technology on present-day fishing vessels. With reference to the existing IMO STCW-F Convention, the question was raised as to whether one international instrument on issues of competency was not sufficient. The Tripartite Meeting agreed that, in the light of the different supervisory mechanisms applicable to IMO and ILO Conventions, the method of adoption of ILO instruments and the need for comprehensive coverage, a revision of Convention No. 125 was appropriate. Against this background, the Tripartite Meeting recommended to the LILS Committee's Working Party the revision of Convention No. 125⁶⁴ and the inclusion of this item in the portfolio of proposals for the agenda of the International Labour Conference.⁶⁵ These proposals were agreed by the LILS Committee and the Governing Body.⁶⁶

IMO standards

The STCW-F Convention was adopted in 1995 by an IMO Conference which included 74 representatives from governments, the ILO, the FAO, other United Nations system specialized agencies and a number of intergovernmental and non-governmental organizations. The Convention includes articles covering general obligations; definitions; application; communication of information; other treaties and interpretation; certification; national provisions; control (including port state control); and promotion of technical cooperation. The detailed requirements of the Convention are set out in an annex. Requirements concern skippers and watchkeepers on vessels of 24 metres in length and over, chief engineers and engineering officers on vessels of 750 kW propulsion power or more, and personnel in charge of radio communications. Chapter III of the Annex to the Convention includes requirements for basic safety training for all fishing vessel personnel. As at 30 September 2002, the STCW-F Convention had been ratified by four countries.⁶⁷

Comparison of Convention No. 125 and STCW-F Convention

Thus, there are now two international Conventions addressing competency certificates; an ILO Convention adopted in 1966 and an IMO instrument adopted in 1995.⁶⁸ In comparing these instruments (see table 3.1), the Office notes two particularly important differences (in addition to the greater level of detail found in the STCW-F Convention):

⁶⁴ ILO: *Note on the Proceedings*, op. cit., p. 40.

⁶⁵ GB.277/LILS/4.

⁶⁶ GB.277/11/2, para. 8; GB.277/205.

⁶⁷ Denmark, Iceland, Russian Federation, Ukraine.

⁶⁸ Another ILO instrument, the Officers' Competency Certificates Convention, 1936 (No. 53), which applies to vessels above 200 grt, does not exclude fishing vessels.

- the STCW-F Convention includes, through the provisions of Chapter III of its Annex, requirements for safety training of all fishing vessel personnel, while Convention No. 125 does not;
- the STCW-F Convention includes “port state control” provisions, while Convention No. 125 does not.

Table 3.1. A comparison of provisions in Convention No. 125 and in the STCW-F Convention

Issue	ILO Convention No. 125	STCW-F Convention
Scope and definitions	<p>“Fishing vessel” includes all ships or boats, of any nature whatsoever, whether publicly or privately owned, engaged in maritime fishing in salt waters and registered, <i>except</i>:</p> <ul style="list-style-type: none"> – under 25 gt; – engaged in whaling or similar pursuits; – engaged in fishing for sport or recreation; – fishery research or protection vessels. <p>The competent authority may, after consultation with fishing vessel owners’ and fishermen’s organizations, where such exist, exempt fishing vessels engaged in inshore fishing, as defined by national laws and regulations.</p> <p>The terms “skipper”, “mate” and “engineer” are defined.</p>	<p>“Fishing vessel” or “vessel” means any vessel used commercially for catching fish or other living resources of the sea. “Seagoing fishing vessel” means a fishing vessel other than those which navigate exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.</p> <p>The Annex, Regulation I/2, provides, inter alia, that “[t]he Administration of a Party, if it considers it unreasonable and practicable to apply the full requirements of certain Regulations in Chapter II (see below) to personnel on board a fishing vessel less than 45 metres in length operating exclusively from its ports and fishing within its limited waters, may determine which of these regulations should not apply, wholly or in part, to such personnel, without derogation from the principles of safety in the Convention”.</p> <p>The Convention “shall apply to personnel serving on board seagoing fishing vessels entitled to fly the flag of a Party”.</p> <p>Under the Annex, Regulation 1, Definitions, there are also definitions of “limited waters” and “unlimited waters”, as well as definitions of “skipper”, “officer”, “officer in charge of a navigational watch”, “engineer officer”, “chief engineer officer”, “second engineer officer”, and “radio operator”.</p>

Issue	ILO Convention No. 125	STCW-F Convention
Certification	<p>States shall establish standards of qualification for certificates for skippers, mates, engineers.</p> <p>All fishing vessels to which the Convention applies to carry a certified skipper.</p> <p>All fishing vessels over 100 grt engaged in operations and areas defined by national laws and regulations to carry a certified mate.</p> <p>All fishing vessels with an engine power above a level to be determined by the competent authority, after consultation with fishing vessel owners' and fishermen's organizations where they exist, shall be required to carry an engineer (some exceptions provided). Exceptions for individual cases.</p> <p>Certificates of skippers, mates or engineers may be full or limited, according to size, type and nature of area of operations of the fishing vessel, as determined by national laws and regulations.</p>	<p>Chapter II of the Convention sets out, in Regulations, mandatory minimum requirements for certification of:</p> <ul style="list-style-type: none"> – skippers (Reg. 1) and officers (Reg. 2) in charge of a navigational watch, on fishing vessels of 24 metres in length and over operating in unlimited waters; – skippers (Reg. 3) and officers (Reg. 4) on fishing vessels 24 metres in length and over operating in limited waters; – chief engineers (Reg. 5) and second engineer officers (Reg. 5) of fishing vessels powered by main propulsion machinery of 750 kW propulsion or more; – personnel in charge of or performing radio-communication duties (Reg. 6) on board fishing vessels. <p>It also sets out requirements to ensure continued proficiency of skippers, officers and engineer officers (Reg. 7) and GMDSS personnel (Reg. 8).</p>
Basic safety training	Requirements concern only skippers, mates and engineers.	Chapter III requires basic safety training (survival techniques; fire prevention and fire-fighting; emergency procedures; elementary first aid; prevention of marine pollution; prevention of ship-board accidents) for all fishing vessel personnel (the administration shall determine whether and, if so to what extent, these provisions shall apply to personnel of small fishing vessels or personnel already employed on fishing vessels).
Watchkeeping	Skippers and mates must show knowledge of collision regulations, navigation and related subjects.	Chapter IV sets out basic principles to be observed in keeping a navigational watch on board fishing vessels.

Issue	ILO Convention No. 125	STCW-F Convention
Minimum age and minimum professional experience for issue of certificates of competency	<p>Minimum age for certificates shall not be less than:</p> <ul style="list-style-type: none"> – 20 years in the case of a skipper; – 19 years in the case of a mate; – 20 years in the case of an engineer. <p>For skippers engaged in inshore fishing, and for engineers on vessels with engine power below a certain level, after consultation with vessel owners' and fishermen's organizations, minimum age may be fixed at 18.</p> <p>Minimum professional experience for issue of a mate's certificate of competency shall not be less than three years' sea service engaged in deck duties.</p> <p>Minimum professional experience for issue of a skipper's certificate of competency shall not be less than four years' sea service engaged in deck duties (some exceptions possible).</p> <p>Minimum professional experience for issue of an engineer's certificate of competency shall not be less than three years' sea service in the engine-room (exceptions possible).</p> <p>Reduced requirement for sea service possible if person has completed an approved training course – but in no case less than 12 months.</p>	<p>Candidates for certification of officers in charge of a navigational watch on fishing vessels of 24 metres in length and over operating in unlimited waters and in limited waters, and chief engineers and second engineer officers of fishing vessels powered by main propulsion machinery of 750 kW propulsion power or more, must be not less than 18 years of age.</p> <p>There are sea service requirements. It is also possible to substitute a part of seagoing service on fishing vessels with approved seagoing service as an officer in charge of a navigational watch on seagoing ships covered by the STCW Convention or by a period of special training.</p>
Examinations	<p>Candidates for certificates shall be required to show knowledge of a range of subjects listed (in Articles 11 and 12).</p>	<p>Candidates for certification shall "have passed an appropriate examination or examinations for assessment of competence to the satisfaction of the Party". The material to be covered is set out in detail in Chapter II. A candidate who holds a valid certificate for competency issued in accordance with the STCW Convention need not be re-examined in certain subjects.</p>

Issue	ILO Convention No. 125	STCW-F Convention
Enforcement measures	<p>States shall ensure enforcement of national laws or regulations by an efficient system of inspection.</p> <p>National laws or regulations giving effect to the provisions of the Convention shall provide for cases in which the State may detain vessels registered in its territory on account of a breach of laws or regulations.</p> <p>National laws and regulations shall prescribe penalties or disciplinary measures in cases where laws and regulations are not respected, including when a fishing vessel owner has engaged a person not certificated as required and when a person has obtained by fraud or forged documents an engagement to perform duties requiring certification without holding the requisite certificate.</p>	<p>Each Party shall establish processes and procedures for impartial investigation of any reported incompetency, act or omission, that may pose a direct threat to safety of life or property at sea or to the marine environment, by the holders of certificates.</p> <p>Each Party shall prescribe penalties or disciplinary measures.</p> <p>In particular, such penalties or disciplinary measures shall be prescribed and enforced in cases in which:</p> <ul style="list-style-type: none"> – an owner, owner’s agent or skipper has engaged a person not holding a certificate; – a skipper has allowed any function or service in any capacity by a person not holding a certificate or dispensation; – a person has obtained by fraud or forged documents an engagement to perform any function. <p>A Party within whose jurisdiction there is based an owner or owner’s agent or any person who is believed to have clear grounds to have been responsible for, or to have knowledge of, any apparent non-compliance shall extend all cooperation possible to any Party which advises it to initiate proceedings under its jurisdiction.</p>

International standards on vocational training

Recommendation No. 126

The Vocational Training (Fishermen) Recommendation, 1966 (No. 126), as its name indicates, sets out guidance concerning the training of fishermen. It is divided into five main parts: Scope and definitions; National planning and administration; Training programmes; Methods of training; and International co-operation. As a Recommendation, the instrument is not subject to ratification and there are therefore no article 22 reports submitted by member States on its application. The Recommendation differs from Convention No. 125 and the STCW-F Convention in that it provides substantial guidance on – as the titles of its parts indicate – such matters as planning, coordination, financing and methods of training. The substantive text of the Recommendation is provided in Annex I of this report.

FAO/ILO/IMO Document for Guidance on Training and Certification of Fishing Vessel Personnel

The FAO/ILO/IMO Document for Guidance on Training and Certification of Fishing Vessel Personnel contains very detailed guidance on the training and certification of fishing vessel personnel on small and large fishing vessels and fishing on an industrial scale. It is intended to provide guidance for those developing, establishing or reviewing national training schemes for training and certification programmes for fishing vessel personnel.

The original “Document for Guidance on Fishermen’s Training and Certification” was prepared by a joint FAO/ILO/IMO Working Group in the early 1980s and published in 1985. It drew to a great degree upon Convention No. 125 and Recommendation No. 126. At that time, the IMO did not have a Convention concerning the training of fishermen. In 1997 the Maritime Safety Committee proposed the revision of the Document for Guidance – primarily to bring it into line with the provisions of the STCW-F Convention and the FAO Code of Conduct for Responsible Fisheries. This was agreed by the ILO Governing Body and the FAO. A Joint FAO/ILO/IMO Working Group was established and met twice, in 1998 and 1999, to carry out this work. Following consideration by the Governing Body,⁶⁹ the Maritime Safety Committee and the FAO, the revised version was published by the IMO in 2001.

The major proposed revisions to the now 312-page publication included: bringing it into line with the provisions of the STCW-F Convention, including a new chapter concerning the “functional skill training option”;⁷⁰ adding a new chapter and appendix concerning the FAO Code of Conduct for Responsible Fisheries; adding an appendix concerning fatigue; and adding an appendix concerning the principles to be observed in keeping an engineering watch. The revised Document for Guidance contains guidance on most of the issues covered by ILO Recommendation No. 126. It is also much more detailed than the Recommendation.

*Regional standards**European Union*

Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work sets out general requirements on training of workers in all sectors. Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for

⁶⁹ See GB.277/14, para. 71.

⁷⁰ The “functional skill training option” provides guidance to national administrations on the use of skills-based training and assessment arrangements in conjunction with the established systems for determining the competence of fishing vessel personnel. The skills-based training system involves different approaches to curricula, methods of teaching, assessment and certification to those traditionally used. It focuses on the ability of a person to perform skilled tasks and the practical application of knowledge in a range of variable operational situations. Competency is determined when the fisherman can prove his ability to perform a predetermined range of skills or functions to an agreed standard.

work on board fishing vessels includes provisions on training workers. Article 9 generally concerns training applicable to all workers on fishing vessels; article 10 concerns training of persons likely to command a vessel. Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels provides, inter alia, that each Member State shall take measures to ensure that “all persons receiving professional maritime training and intending to work on board ship have been given basic training in the medical and emergency measures to be taken immediately in the event of an accident or serious medical emergency” and that “the captain and any worker or workers to whom he delegates the use of the medical supplies ... have received special training updated periodically, at least every five years, taking into account the specific risks and needs connected with the different categories of vessel and in accordance with the general guidelines set out in Annex V” (which provides further detail on the medical training of the captain and designated workers).

Southern Africa

In Southern Africa, the Southern African Development Community Protocol on Fisheries provides, in article 15, that “State Parties [to the Protocol] shall comply with the International Maritime Organization standards for certification of seamen, marine engineers, masters of vessels, and other seagoing personnel”.⁷¹

National law and practice concerning competency certificates

This section is based on reports concerning the application of Convention No. 125, submitted to the ILO by ratifying States in accordance with article 22 of the ILO Constitution, and information on other countries provided to or obtained by the Office.

Scope of application

Certain countries have national laws and regulations concerning competency certificates which exclusively apply to fishing vessels.⁷² In other countries, the pertinent provisions usually cover all merchant vessels or all seafarers, without the exclusion of fishing vessels or fishermen, respectively.⁷³

The national laws and regulations on articles of agreement very often contain exclusions from the application:

⁷¹ Reported by J. Dahl and A. Masarakufa in: *Conditions of work in the fisheries sector – An overview of SADC member States*, an unpublished paper, commissioned by the ILO and prepared by the Namibian Economic Policy Research Unit (Aug. 2002).

⁷² Belgium (ratified C. 125); Denmark, Lithuania, Netherlands, Norway, Spain, Tunisia, United Kingdom.

⁷³ Germany, Panama, Senegal, Syrian Arab Republic, Trinidad and Tobago (ratified C. 125); Australia, Denmark, Estonia, Greece, India, Indonesia, Japan, Republic of Korea, Lithuania, Mexico, Netherlands, New Zealand, Norway, Peru, Poland, Romania, Spain, United Kingdom, United States.

- National laws and regulations do not sometimes apply to fishing vessels below a certain size: e.g. less than 25 tonnes;⁷⁴ less than 30 grt;⁷⁵ less than 16.5 metres;⁷⁶ less than 200 gt.⁷⁷ Nonetheless, a few examples may be cited, where the national laws and regulations do not contain any exclusions.⁷⁸
- In addition, some countries have excluded certain types of fishing vessels, e.g. vessels fishing for sport or recreation⁷⁹ and fishery research and protection vessels.⁸⁰
- Other countries exclude certain navigation areas, e.g. fishing vessels not operating outside the prescribed limits;⁸¹ fishing vessels proceeding on a voyage other than an overseas voyage;⁸² fishing vessels not operating on the high seas;⁸³ and fishing vessels engaged in inshore fishing.⁸⁴

Finally, national laws and regulations often provide that the competent authority may in individual cases permit a fishing vessel to put to sea without the full complement of certificated personnel,⁸⁵ e.g. if no suitable substitutes are available and it is safe to allow the vessel to put to sea, in cases of *force majeure*, etc.

Requirements on competency certificates

Table 3.2 summarizes the information from a number of member States – ratifying and non-ratifying – concerning the requirements on competency certificates as covered by Convention No. 125.

National laws and regulations concerning vocational training programmes

In Denmark, an Order provides that no person may perform work on board a fishing vessel, irrespective of its tonnage, without having completed the basic course for ship's assistants or a safety course for fishermen of three weeks' duration approved by the Danish Maritime Authority (DMA) and having obtained a certificate proving it. Older fishermen, having served on board fishing vessels during their lifetime, may continue their job at sea if they pass a special course of one weeks' duration. The DMA introduced in 1994 – in cooperation with the Danish Fishermen's

⁷⁴ Sierra Leone, Syrian Arab Republic (ratified C. 125); Norway.

⁷⁵ Japan.

⁷⁶ United Kingdom.

⁷⁷ United States.

⁷⁸ Germany, Senegal (ratified C. 125); Denmark.

⁷⁹ Trinidad and Tobago (ratified C. 125); Australia, India, Norway, Peru.

⁸⁰ Belgium, Trinidad and Tobago (ratified C. 125).

⁸¹ New Zealand.

⁸² Australia.

⁸³ United States.

⁸⁴ Belgium, Syrian Arab Republic, Trinidad and Tobago (ratified C. 125).

⁸⁵ Belgium, Germany, Senegal, Syrian Arab Republic, Trinidad and Tobago (ratified C. 125); Norway, Poland.

Article	Provision	Australia	Belgium	Brazil	Chile	Canada	Denmark	Djibouti	Estonia	France	Germany	Greece	India	Indonesia	Italy	Japan	Rep. of Korea	Lithuania	Malaysia	Mauritius	Mexico	Netherlands	New Zealand	Nigeria	Norway	Panama	Peru	Philippines	Poland	Portugal	Romania	Russian Federation	Senegal	Sierra Leone	Spain	Syrian Arab Republic	Thailand	Trinidad and Tobago	Tunisia	United Kingdom	
7 10	Minimum professional experience for mates prescribed		•				•		•	•	•	•										•		•		•							•								
8 10	Minimum professional experience for skippers prescribed		•				•		•	•	•	•										•		•		•							•			•					
9 10	Minimum professional experience for engineers prescribed		•				•		•	•	•	•										•		•		•						•			•						
11	Requirements of knowledge in the exams prescribed		•	•		•	•	•	•	•	•	•	•	•		•	•	•			•	•	•	•	•			•						•	•	•	•	•			
12	Supplementary requirements of knowledge in the exams prescribed		•			•		•	•	•	•	•																							•						

Organization (shipowners) and the General Workers' Union in Denmark – a programme for training commercial fishermen. The training consists of a safety course for fishermen of three weeks' duration, followed by six months' sea service, 22 weeks' shore-based training and 12 months' sea service. The training is voluntary for young fishermen, but allows young people to start their training at the age of 16 years if there is an agreement, covering the complete education period, between the young fishermen and the Danish Fishermen's Organization. The training for commercial fishermen enjoys the same status as the basic course for ships' assistants, which gives the possibility to sign as Ordinary Ship's Assistant on board merchant vessels. Persons having passed the skipper examination also have the opportunity to pass similar examinations for merchant vessels below 3,000 tonnes. Persons leaving the industry have the possibility, through a general system for all industries, to receive necessary additional training to obtain competence ashore.

The traditional route to certificates of competency for fishermen in the United Kingdom has been by written examination and a final oral examination. The National Vocational Qualification (NVQ) operates in tandem with the written examination route. The NVQ route allows candidates to demonstrate their competency in tasks rather than by sitting a traditional examination. The candidates' underpinning knowledge is also tested by various means before they are found to be competent.

In Spain, the Marine Social Institute (ISM) has seven schools for specific nautical and fishing professional training; this training is divided into five cycles of medium and superior grade of the professional maritime fishing family. Training plans are developed in consultation with the fishing sector.

In Mauritius, the Ministry of Fisheries, with the collaboration of the Sea Training School, carries out a training course for banks fishermen. Each training session lasts for two weeks; after successful completion of the course, a Bank Fisherman Proficiency Certificate is awarded.

The Education Act in Norway regulates all education at primary and secondary level. The main model for vocational training involves two years of theoretical education in the upper secondary school (one-school-year foundation course and one-school-year advanced course I) and one year's apprenticeship training. For fishermen the relevant courses are: foundation course agriculture; fishing and forestry; advanced course I; and fishing and catching. After two years of apprenticeship training the apprentice can be examined for a certificate of apprenticeship as a fisherman. The necessary safety training is given during the apprenticeship.

In Namibia a training institution established at Walvis Bay provides training to the standards set out in the STCW-F Convention. It also trains fisheries inspectors and observers as well as technical assistants for fisheries inspectors.⁸⁶

In Tunisia, a decree establishes the vocational training system for the specialized labour force working on board fishing vessels.

In other countries (e.g., Poland, Romania), training for the fishing sector appears to be conducted by nautical colleges or academies. A special act for the promotion of employment of seafarers applies to fishermen working on vessels covered by the Mariners' Law. In Panama, there is no special training centre for fishermen; however, the nautical school (for merchant seafarers) has established a special training programme with the assistance of Japan.

⁸⁶ Reported by J. Dahl and A. Masarakufa, *op. cit.*

Conclusions

The hazardous nature of the fishing occupation (see later in this report), the increased technical sophistication of fishing, and the need to ensure that fishermen are trained or otherwise made aware of responsible fisheries issues, would seem to indicate that it is desirable to promote training in an international standard.

Of the two international Conventions concerning this subject – ILO Convention No. 125 and the STCW-F Convention – the latter appears to be the more modern and comprehensive instrument. As noted above, it goes beyond Convention No. 125 by requiring the safety training of *all* fishing vessel personnel and “port state control” (though such provisions would only be applicable to a relatively small percentage of the world fishing fleet). On the other hand, the STCW-F, despite having been adopted in 1995, has been ratified by fewer States than Convention No. 125. Furthermore, many provisions of Recommendation No. 126 continue to be relevant to many aspects of the vocational training of fishermen.

With this in mind, it would appear that the new ILO standard for the fishing sector might include mandatory – but general – provisions concerning training and perhaps recommendatory provisions providing greater detail, with links to the STCW-F Convention and to the FAO/ILO/IMO Document for Guidance on Training and Certification of Fishing Vessel Personnel.

IDENTITY DOCUMENTS FOR FISHERMEN

Many fishermen, like other seafarers, enter into the territory of a State other than their State of nationality when: they are on shore leave; they are joining or transferring to another ship; or they are in transit to join a ship in another country or for repatriation. The value of providing certain fishermen with a document to facilitate shore leave or travel has therefore been raised at recent ILO meetings, particularly by representatives of fishermen’s organizations.

International standards

The Seafarers’ Identity Documents Convention, 1958 (No. 108), establishes international standards concerning the form and content of national identity cards for seafarers, and provides for their reciprocal recognition in order to alleviate the difficulties and inconveniences which may arise when seafarers take leave in foreign ports, travel in transit or are in the course of repatriation.⁸⁷ The Convention provides, in Article 1(1) that it “applies to every seafarer who is engaged in any capacity on board a vessel, other than a ship of war, registered in a territory for which the Convention is in force and ordinarily engaged in maritime navigation”. Article 1(2) further provides that “[i]n the event of any doubt whether any categories of persons are to be regarded as seafarers for the purposes of this Convention, the question shall be determined by the competent authority in each country after consultation with the shipowners’ and seafarers’ organizations concerned”. As at 15 September 2002, the Convention has been ratified by 61 member States.

⁸⁷ D. Pentsov, *op. cit.*, pp. 533-603.

The Working Party on Standards of the ILO's Tripartite Meeting on Safety and Health in the Fishing Industry, did not specifically discuss Convention No. 108; however, it raised the issue of identity documents for fishermen during its discussion of the Fishermen's Articles of Agreement Convention, 1959 (No. 114). Inter alia, the Working Party:

... considered that this Convention [No. 114] was in need of partial revision in order to include new provisions for an identification document for fishermen based on that applicable to seafarers. It was felt that developments in the fishing industry which had now become globalized necessitated that fishermen be provided with such documents to facilitate matters like visas, shore and port leave as well as repatriation.

The Governing Body, when it considered the proposals concerning the revision of Convention No. 114, agreed with the recommendation for the partial revision of Convention No. 114 but did not specifically comment on the issue of an identity document for fishermen.⁸⁸

In March 2002, the Governing Body at its 283rd Session placed an urgent item on the agenda of the 91st Session (June 2003) of the International Labour Conference, concerning improved security of seafarers' identity with a view to the adoption of a Protocol to Convention No. 108. The question will be examined according to the single-discussion procedure established under article 38 of the Standing Orders of the Conference, and the new instrument will be considered with a view to adoption by the Conference at its 91st Session in June 2003.⁸⁹ At the time this law and practice report was prepared, there had been no discussion of whether or not the Protocol to Convention No. 108 should apply to or exclude fishermen.

Regional requirements

The Schengen Agreement and Council Regulation (EC) No. 539/2001 of 15 March 2001 is the framework setting uniform immigration regulations for 15 European States. It is a text of general application and does not contain special provisions concerning seafarers or fishermen.⁹⁰

National laws and practice

On the whole, information available to the Office indicates that fishermen working abroad are able to obtain a seafarers' identity document or seafarers' book. This appears to be the situation in several countries.⁹¹ In the Netherlands, seamen's books are provided. All seafarers, including fishing vessel personnel, must be in possession of a passport. In Spain, workers at sea who are not Spanish must embark with a maritime identity document referred to under Convention No. 108, delivered by

⁸⁸ GB.277/11/2, para. 8, GB.277/LILS/4, para. 50, GB.277/LILS/WP/PRS/2, para. I.3.

⁸⁹ For a full discussion of this issue, see ILO: *Improved security of seafarers' identification*, Report VII(1), International Labour Conference, 91st Session (Geneva, 2003).

⁹⁰ A discussion of the Agreement and its impact on the movement of seafarers may be found in Report VII(1), *ibid*.

⁹¹ Denmark, Japan (for those covered by the Mariners' Law, i.e. seagoing fishing vessels of 30 gt and greater), Mauritania, Mexico, Panama, Poland, Romania, Spain, Tunisia.

another country in accordance with the provisions of article 32 of the Order of 18 January 2000 – which approves the Regulation on the Despatch of Vessels.

In some countries – for example, the United States – fishermen are apparently not provided with such documents. Norway also does not issue identity documents to fishing vessel personnel, irrespective of trading area (the relevant regulations for seafarers, Regulations concerning Supervision of Maritime Service of 25 November 1988 (No. 940) section 5, exclude personnel on fishing or catching vessels if these vessels are employed for fishing or catching). In the United Kingdom, the Merchant Shipping (Seamen's Documents) Regulations, 1987, currently preclude the issue of United Kingdom seafarer identity documents (British Seamen's Cards) to United Kingdom seafarers employed on fishing vessels, though new regulations are being developed to resolve this.

In Canada, in British Columbia, the fishing industry is limited to Canadian west coast waters and identity documents are not necessary. However, in Newfoundland all commercial fishers are required to have registration cards showing they are registered with the Professional Fish Harvesters Certification Board (PFHCB) and authorized to fish in the Province. Identity documents for offshore trawlermen are matters covered by collective agreement. In India, there is no specific identity document for fishing vessel personnel working abroad except the passport and competency certificates (for those certified). State governments provide identity cards to fishermen.

In Malaysia, the Department of Fisheries Malaysia has issued identity cards to fishermen to ease their identification and control. Foreign fishermen must have special permission from the Director-General of Fisheries (Malaysia) to work on board a Malaysian fishing vessel. In Mauritius, fishermen are issued a Banks Fishermen Continuous Record Book.

Conclusions

From the information obtained by the Office, it appears that access to identity documents is most important to fishermen working on foreign vessels or vessels on international foreign voyages. This issue could be dealt with by a mandatory or recommendatory provision in the new fishing standard calling for ratifying States to issue identity cards for fishermen employed on foreign vessels or vessels on international voyages.

RECRUITMENT AND PLACEMENT/CONTINUITY OF EMPLOYMENT

There are a variety of ways in which fishermen obtain employment on fishing vessels. Some are recruited directly by the captain of the vessel; some by the owner; others find jobs through trade unions. Many fishermen start work in the industry by working for or alongside a parent on a family-owned vessel. In a number of countries or regions within countries, there have been attempts to "professionalize" fishing, linking together the issues of employment, training (particularly safety training) and registration. This may involve trying to increase safety, stabilize income and decrease fishing effort in order to prevent over fishing.

Some migrant fishermen may find employment through recruitment and placement agencies. In recent years, the ILO has received or become aware of reports of abusive practices among a number of these agencies. Problems include: payment for

jobs; false contracts; and the berthing of fishermen in floating hotels and barracks with very poor accommodation. While the governments of the countries concerned seem to have taken action to address these problems, the situation appears to be persistent. At one point, China went as far as to ban its nationals from working on Taiwan (China) vessels until conditions were improved.⁹²

The issue of recruitment and placement may only be appropriate for some segments of the fishing sector, notably as concerns the employment of fishermen on foreign-flag vessels. These instruments, or at least the principles they reflect, may be particularly relevant to countries which supply large numbers of fishermen to foreign fleets.

Recruitment and placement

International standards

There is no specific instrument on this subject specifically addressing fishermen. However, there are two applicable to seafarers: the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), and its accompanying Recommendation (No. 186), which could be applied to international commercial fishing. Convention No. 179 revised an early ILO instrument, the Placing of Seamen Convention, 1920 (No. 9), which provided, *inter alia*, that “the business of finding employment for seamen shall not be carried on by any person, company, or other agency, as a commercial enterprise for pecuniary gain ...”. Convention No. 179 provides the possibility of private recruitment and placement agencies, but requires that these shall be operated in conformity with a system of licensing or certification or other form of regulation. It includes a number of provisions aimed at ensuring that seafarers: are properly qualified; have contracts which are in accordance with applicable laws, regulations and collective agreements; are informed about their rights and duties under their contracts prior to or in the process of engagement; and are able to examine contracts before they are signed and receive copies after they are signed. There are also provisions for complaint procedures. Convention No. 179 provides in particular that “member States shall ... ensure that no fees or other charges for recruitment or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer”. Article 3 provides that “[n]othing in this Convention shall in any manner prejudice the ability of a seafarer to exercise basic human rights, including trade union rights”. As at 15 September 2002, the Convention had been ratified by six States. As with the other Conventions adopted in 1996, Convention No. 179 provides, in Article 1(2) that “[t]o the extent it deems practicable, after consultation with the representative organizations of fishing-vessel owners and fishermen ... the competent authority may apply the Convention to fishermen ...”.

Continuity of employment

International standards

At its November 1978 meeting, the ILO’s Committee on Conditions of Work in the Fishing Industry adopted, *inter alia*, a resolution on stabilization of employment

⁹² Reported in: “China through a lens”, www.china.org.cn/features/photos/index.htm (July 2002) (site visited 26 November 2002).

and earnings. Among other things, the resolution “urged [the Office] to carry out a study to determine to what extent the provisions of [the Continuity of Employment (Seafarers) Convention, 1976 (No. 145), and the Continuity of Employment (Seafarers) Recommendation, 1976 (No. 154)] might be applied to fishermen ...”. These standards specifically do not apply to crew members on board a seagoing ship “engaged in fishing ...”. They therefore will not be discussed at length here. However, the Office does recognize the need to obtain information on laws and regulations concerning continuity of employment and registration of fishermen. The Office has not been able to collect extensive information on this subject. However, it has obtained information concerning a few member States – or at least on a few regions within member States.

National law and practice

The Office did not, in preparing this report, specifically request member States to provide information concerning the registration of fishermen. It has, however, observed that access to work as a commercial fisherman is often related to such issues as competency and training. For instance, in some countries fishermen cannot be employed on vessels, or at least vessels of a certain size, unless they hold certificates (for some positions) or have at least received basic safety training; this is also a requirement of the IMO’s STCW-F Convention (see section on competency certificates and vocational training). In many countries, access to the fisheries may be related to licences to fish. In turn, these licences may be linked to the vessel or to the individual.

In Canada, in Newfoundland, there has been an effort for several years now to “professionalize” commercial fishing. This has been done for several reasons, as set out in the Professional Harvesters Act. The Act establishes the Professional Fish Harvesters’ Certification Board (PFHCB), the objectives of which include “to operate and maintain a fish harvester registration system”.⁹³

More information concerning the Board is found in Chapter VII.

Conclusions

The issue of recruitment and placement of fishermen is most relevant to fishermen serving on foreign vessels. This issue might be dealt with in the new fishing standard by a mandatory or recommendatory provision calling upon “labour-supplying” States to apply the same regulations concerning recruitment and placement of fishermen that they apply to seafarers.

The issue of continuity of employment in the fishing sector appears to be vital to a very wide group of fishermen, in particular due to expected cutbacks in fishing fleets, and thus fishing jobs, to reduce fishing effort and the pressure on fish stocks. For these reasons, consideration might be given to including provisions on this issue in the new fishing standard.

⁹³ <http://www.pfhcb.com> (20 September 2002) (site visited on 26 November 2002).

CHAPTER IV

CONDITIONS OF EMPLOYMENT, MANNING AND WORKING TIME

ARTICLES OF AGREEMENT

Multinational companies operating with large factory trawlers and numerous other vessels, and employing thousands of workers on several oceans, usually have a formal employment relationship with the fisherman. Small wooden canoes and other small craft may not. Most fishing operations fall somewhere between these two extremes. A large number, perhaps most, work under the share system and are considered “self-employed”. Many countries require “articles of agreement”, i.e. a special maritime contract between the crew and the shipowner or ship captain. These “articles of agreement” involve mutual obligations and, as they are binding, enable the fishermen to enforce their rights by law.

International standards

In 1959, the ILO adopted the Fishermen’s Articles of Agreement Convention, 1959 (No. 114), which had been ratified, as at 30 September 2002, by 22 countries.¹ This instrument governs the procedure for determining conditions of work. It stipulates that the persons employed or engaged on board a fishing vessel must sign articles of agreement with the owner of the fishing vessel or his authorized representative. The agreement may be made for a definite period, or for a voyage or, if permitted by national law, for an indefinite period. It must state the respective rights and obligations of each of the parties and contain the prescribed particulars, such as: the voyage or voyages to be undertaken; the scale of provisions to be supplied to the fisherman; the amount of his wages or his share and the method of calculating such share; as well as the termination of the agreement and the conditions thereof. The substantive provisions of the Convention are provided in Annex I of this report.

National law and practice

This section is based on reports concerning the application of Convention No. 114, submitted to the ILO by ratifying States in accordance with article 22 of the ILO Constitution, and on information on other countries provided to or obtained by the Office.

¹ Belgium, Bosnia and Herzegovina, Costa Rica, Cyprus, Ecuador, France, Germany, Guatemala, Guinea, Italy, Liberia, Mauritania, Netherlands, Panama, Peru, Slovenia, Spain, The former Yugoslav Republic of Macedonia, Tunisia, United Kingdom, Uruguay, Yugoslavia.

Scope of application

Certain countries have national laws and regulations concerning articles of agreement, which exclusively apply to fishing vessels or, respectively, fishermen.² However, the pertinent laws and regulations usually cover all merchant vessels or, respectively, all seafarers, without excluding fishing vessels or fishermen.³ A few countries have issued general labour legislation on contracts of employment, wages, etc., which applies to every workplace, including fishing vessels.⁴

The national laws and regulations on articles of agreement very often contain exclusions from the application:

- National laws and regulations sometimes do not apply to fishing vessels below a certain size: e.g., less than 5 tonnes;⁵ less than 20 tonnes;⁶ less than 75 tonnes;⁷ less than 20 cubic metres,⁸ less than 20 metres⁹ and less than 80 feet in length¹⁰ and vessels with less than 20 crew members.¹¹ In Norway fishing vessels of less than 100 grt are only partly covered; and in Japan vessels less than 30 grt are only marginally covered by labour law. Nonetheless, several examples may be cited, where the national laws and regulations do not contain any exclusions.¹²
- In addition, some countries have excluded certain types of fishing vessels: e.g. vessels fishing for sport or recreation;¹³ fishery research and protection vessels;¹⁴ training ships¹⁵ and vessels fishing certain species of fish.¹⁶
- Other member States exclude certain navigation areas: e.g., vessels fishing in ports and harbours or in estuaries of rivers;¹⁷ fishing vessels proceeding on a voyage other than an overseas voyage;¹⁸ and vessels operating “outside the Kingdom” continuously from one year upwards.¹⁹

² Costa Rica, Ecuador, Germany, Guatemala, Guinea, Netherlands, Peru, Tunisia, United Kingdom (ratified C. 114); Chile, Mauritius, Thailand.

³ Belgium, Costa Rica, Cyprus, France, Germany, Italy, Liberia, Mauritania, Panama, Tunisia, United Kingdom, Uruguay (ratified C. 114); Australia, Chile, Denmark, Estonia, India, Indonesia, Japan, Republic of Korea, New Zealand, Norway, Poland, Romania.

⁴ Ecuador, France, Netherlands, Spain, Uruguay (ratified C. 114); Japan, Lithuania, Mauritius, Mexico, Nigeria, Philippines, Romania, Thailand.

⁵ Cyprus (ratified C. 114).

⁶ United States.

⁷ Liberia (ratified C. 114).

⁸ Netherlands (ratified C. 114).

⁹ India.

¹⁰ United Kingdom (ratified C. 114).

¹¹ Thailand.

¹² Belgium, Costa Rica, Ecuador, France, Germany, Italy, Mauritania, Uruguay (ratified C. 114); Chile.

¹³ Guinea, Tunisia (ratified C. 114); India, New Zealand.

¹⁴ Tunisia (ratified C. 114).

¹⁵ Tunisia (ratified C. 114).

¹⁶ Peru, Tunisia (ratified C. 114).

¹⁷ Guinea (ratified C. 114).

¹⁸ Australia.

¹⁹ Thailand.

A few countries exempt the owners and fishermen covered by collective agreements concluded between fishing boat owners' and fishermen's organizations on certain issues – such as working hours, holiday with pay, sick leave, wages and share of the catch – from the laws and regulations on articles of agreement.²⁰ The majority of the countries, however, do not provide that the competent authority may grant exemptions from the pertinent provisions concerning individual agreements in the event of a collective agreement being applicable in this area.²¹ Even if there are many collective agreements, they rather seem to complete the national legislation on individual agreements and to be consistent with it – sometimes even permitting the reference to or incorporation of a collective agreement in the crew agreement.

Conclusion of agreement

The member States usually provide that a written agreement between the employer (owner) or his representative (e.g. master) and the fisherman²² has to be concluded and signed by both.²³ A number of countries require an agreement to be drawn up in a format approved by the competent authority.²⁴ The contracts in a few countries, however, may be in writing or oral.²⁵

In a number of cases, the fisherman has to examine further the content of the agreement at the moment of its signature before the competent maritime authority;²⁶ in others, when the agreement is included in or appended to the crew list, at the time of his registration in the crew list at the maritime authority.²⁷ Frequently the agreements must be endorsed by the maritime authority who is not involved in the conclusion of these agreements and cannot change their provisions; however, the authority can refuse to endorse the contract in the case of violations of national law.²⁸ Similarly, certain countries stipulate that for the purpose of supervision, the agreements shall be delivered to the competent authority after their conclusion.²⁹

²⁰ For example Germany (ratified C. 114).

²¹ Belgium, Costa Rica, Cyprus, Ecuador, France, Guatemala, Guinea, Italy, Liberia, Mauritania, Netherlands, Peru, Tunisia, United Kingdom, Uruguay (ratified C. 114); Denmark, Estonia, Lithuania, Norway, Philippines, Romania.

²² The Office has construed in respect of Convention No. 114 that the members of fishermen's cooperatives fall within its scope if they are entered on ship's articles. The master is only covered and thus required to enter into articles of agreement if he does not act as the representative of the owner in signing articles of agreement with the crew. See D. Pentsov, *op. cit.*, p. 612.

²³ Belgium, Costa Rica, Cyprus, Ecuador, France, Germany, Guatemala, Guinea, Italy, Liberia, Mauritania, Netherlands, Panama, Tunisia, United Kingdom, Uruguay (ratified C. 114); Australia, Denmark, Estonia, India, Indonesia, Japan, Republic of Korea, Lithuania, Mauritius, Mexico, New Zealand, Norway, Poland, Romania, United States.

²⁴ Costa Rica, Liberia, United Kingdom (ratified C. 114); Australia, Denmark, Estonia, New Zealand.

²⁵ Peru, Spain (ratified C. 114); Chile.

²⁶ Costa Rica, Guatemala, Italy, Tunisia, Uruguay (ratified C. 114); India.

²⁷ Belgium, France, Germany, Guinea, Mauritania (ratified C. 114).

²⁸ Belgium, France, Guinea, Mauritania, Tunisia, Uruguay (ratified C. 114); Australia, Indonesia, Japan.

²⁹ Netherlands, Spain, United Kingdom (ratified C. 114); Chile, Republic of Korea, Romania.

One of the major issues raised by the Committee of Experts concerning the application of Convention No. 114 deals with the understanding of the agreement. The Committee has stressed that, in the light of the employment of a large number of non-national fishermen, it becomes increasingly important to include adequate provisions to ensure that they have understood the agreement. In the event that they do not understand the language of the employer, it is necessary to have contracts written in a language they understand – and, if need be, for the representative of the competent authority or the master, in the presence of witnesses, to explain the contents of the contract.³⁰ In some member States the maritime authority ensures that the fisherman reads the conditions before the enrolment.³¹ In other countries the competent authority even has to satisfy itself that the fisherman has understood the content of the agreement,³² mostly by reading and explaining it to the fisherman. The legislation frequently lays down that the agreement has to be drafted in simple, clear and self-explanatory terms.³³ Most notably, the legislation in Estonia sets out that the copies of the agreement form and of the pertinent laws and regulations on the notice board shall be in Estonian and English.

Content of agreement

Most member States ensure that the agreement does not contain anything contrary to the provisions of national law. For instance, they require that agreements be submitted to the supervising maritime authority for approval;³⁴ stipulate that clauses contrary to the national law are null and void;³⁵ or merely forbid such provisions.³⁶ Similarly, certain countries take measures to preclude stipulations purporting to oust the competent jurisdiction, again by insisting that the agreements be submitted to the supervising maritime authority for approval; stipulating that clauses derogating the prescribed national jurisdiction rules are null and void;³⁷ or forbidding such provisions.³⁸

The vast majority of the countries provide that the agreement may be made either for an indefinite or definite period or for a voyage;³⁹ but in some cases, the agreement may only be made for a definite period or a voyage – in other words, agreements for an indefinite period are not authorized.⁴⁰

³⁰ D. Pentsov: *International labour standards – A global approach*, op. cit., pp. 577 and 613.

³¹ Belgium, France, Guinea, Mauritania, Tunisia (ratified C. 114); India.

³² Costa Rica, Guatemala, Netherlands, Uruguay (ratified C. 114); India, Japan.

³³ Belgium, France, Germany, Guinea, Mauritania, Tunisia, United Kingdom (ratified C. 114); Republic of Korea.

³⁴ Belgium, France, Germany, Guinea, Mauritania, Tunisia, United Kingdom, Uruguay (ratified C. 114); Australia, Chile, Indonesia, Japan, Romania.

³⁵ Belgium, Costa Rica, Cyprus, Ecuador, France, Germany, Italy, Netherlands, Peru, Spain (ratified C. 114); Japan, Republic of Korea, Lithuania, Romania.

³⁶ Guatemala, Liberia (ratified C. 114); India.

³⁷ Costa Rica, Ecuador, France, Guatemala, Netherlands (ratified C. 114).

³⁸ Belgium, Italy, Netherlands, Peru.

³⁹ Belgium, Costa Rica, Cyprus, Ecuador, France, Germany, Guinea, Italy, Liberia, Mauritania, Netherlands, Panama, Peru, Spain, Tunisia (ratified C. 114); Estonia, Lithuania, Mexico, Norway, Poland, Romania.

⁴⁰ Guatemala, United Kingdom, Uruguay (ratified C. 114); Australia, India.

The rights and obligations of each of the parties are usually prescribed in the national laws and regulations⁴¹ or have to be stated in the agreement.⁴²

The majority of member States require that the agreement contain all the particulars stipulated in Convention No. 114 (Article 6).⁴³ In addition, many countries require supplementary particulars to be included in the agreement, such as: holiday and holiday pay;⁴⁴ working hours;⁴⁵ the place of discharge;⁴⁶ the identity of the owner;⁴⁷ overtime payment;⁴⁸ compensation for personal injury or death caused by accident arising out of and in the course of employment;⁴⁹ end-of-year bonus and fringe benefits granted by the employer;⁵⁰ probation period;⁵¹ and allowance for expenses in case of international voyages.⁵²

Methods of calculating wages

The national laws and regulations on the methods of calculation of wages and/or of the share in the catch vary from country to country. For example, Germany which has ratified Convention No. 114 provides in a general collective agreement that wages are composed of various money allowances (trip forfeit, holiday pay, pay for supplementary hours) and of a percentage of the money received after selling the catch (depending on the grade: 0.1-1 per cent); furthermore, there is a guaranteed allowance, which must correspond to 1/30th of the monthly sum stipulated in the specific collective agreements multiplied by the days a fisherman has been on board. In the Republic of Korea, if the fisherman is paid wages in the form of a monthly fixed pay plus the share of the catch, the ordinary wages (daily/weekly/monthly wages) shall be 120-130 per cent of the monthly fixed pay; and on board ship average wages (amount calculated by dividing the total amount of wages paid to a seaman by the number of days on board) shall be 150-160 per cent. Malaysia indicates that fishermen are paid on a catch-sharing basis – i.e. the total value of the catch per trip is divided into two portions: one goes to the vessel owner, and the other is subdivided among the number of fishermen working on board the vessel, whereby the key personnel (skipper, engin-

⁴¹ Belgium, Germany, Italy, Liberia, Netherlands, Peru, Tunisia, United Kingdom (ratified C. 114); Denmark, Estonia, Republic of Korea, Romania.

⁴² Cyprus, France, Guatemala, Guinea, Liberia, Mauritania, Spain, Tunisia, Uruguay (ratified C. 114); Indonesia, Lithuania, Mexico, Romania.

⁴³ Belgium, Ecuador, France, Germany, Guatemala, Guinea, Italy, Mauritania, Netherlands, Panama, Peru, Spain, Tunisia, United Kingdom, Uruguay (ratified C. 114); Chile, Denmark, Estonia, India, Republic of Korea, Lithuania, Mauritius, Norway, Philippines, Poland, Romania.

⁴⁴ Germany, Panama, Spain, Tunisia (ratified C. 114); Denmark, Estonia, Mauritius, Mexico, Poland, Romania.

⁴⁵ Panama, Spain (ratified C. 114); Chile, Denmark, Estonia, Mauritius, Mexico, Philippines, Romania.

⁴⁶ Costa Rica (ratified C. 114); Australia, Chile, Denmark, Estonia, India, New Zealand.

⁴⁷ Denmark, Estonia, Poland.

⁴⁸ Spain (ratified C. 114); Norway, Poland.

⁴⁹ Panama (ratified C. 114); India, Poland.

⁵⁰ Mauritius, Romania.

⁵¹ Spain (ratified C. 114); Norway.

⁵² Poland, Romania.

eer) receives additional income from the owner as an incentive. In Mauritius, legislation provides that a dory of three fishermen shall be paid a certain price per kg for a catch, whereby the bigger the catch the higher the price per kg; furthermore, an employer must pay to a fisherman a certain daily sum while the fishing vessel travels from its port of departure to the banks and vice-versa, as well as for each day a vessel cannot go to sea on account of weather conditions – determined by the master. If the voyage is late or prolonged, the workers in a few countries have the right to a proportional increase in their salaries; in the opposite case, if the voyage is shortened, the salary may not be reduced.⁵³

Termination of agreement

Most countries provide for the due termination of the agreement in the event of mutual consent of the parties⁵⁴ or death of the fisherman.⁵⁵ The vast majority of States also mention the loss or total unseaworthiness of the fishing vessel as a reason for due termination of agreement.⁵⁶ Several countries stipulate that a contract of an indefinite period may be duly terminated if timely written notice is given.⁵⁷ In addition, provision is sometimes made for the due termination of a fixed-term agreement when the time period expires.⁵⁸ A few States set out that, unless otherwise agreed, the place of discharge shall be a national port of call.⁵⁹

Member States often enumerate the following as grounds for dismissal: the quality of work in general, such as failure to muster on time;⁶⁰ unauthorized absence;⁶¹ inaptitude, because of reasons existing before the employment – such as false testimonials;⁶² state of health;⁶³ loss of qualification;⁶⁴ or lack of competence.⁶⁵ Many coun-

⁵³ Panama (ratified C. 114); Mexico.

⁵⁴ Belgium, Cyprus, Ecuador, France, Germany, Guatemala, Guinea, Italy, Liberia, Mauritania, Netherlands, Panama, Spain, Tunisia, United Kingdom, Uruguay (ratified C. 114); India, Lithuania, New Zealand, Poland, Romania.

⁵⁵ Belgium, Costa Rica, Cyprus, Ecuador, France, Germany, Guatemala, Guinea, Italy, Liberia, Mauritania, Netherlands, Peru, Spain, Tunisia, United Kingdom, Uruguay (ratified C. 114); New Zealand.

⁵⁶ Belgium, Costa Rica, Cyprus, Ecuador, France, Germany, Guatemala, Guinea, Italy, Liberia, Mauritania, Netherlands, Panama, Peru, Tunisia, United Kingdom, Uruguay (ratified C. 114); Denmark, Estonia, India, Japan, New Zealand, Norway.

⁵⁷ Costa Rica, Italy, Mauritania, Panama, Spain, Tunisia (ratified C. 114); Australia, Denmark, Republic of Korea, Japan, Lithuania, New Zealand, Norway, Philippines, Romania, Thailand.

⁵⁸ Belgium, Italy, Panama, Spain, Tunisia (ratified C. 114); Lithuania, Poland, Romania, Thailand.

⁵⁹ Denmark, Poland.

⁶⁰ Ecuador, Netherlands, Panama, Tunisia (ratified C. 114); Denmark, Estonia, India, Japan, Republic of Korea, Norway.

⁶¹ Costa Rica, Ecuador, Panama, Spain (ratified C. 114); India, Poland.

⁶² Costa Rica, Germany, Guinea, Netherlands, Panama, Spain, United Kingdom, Uruguay (ratified C. 114); Estonia.

⁶³ Belgium, Ecuador, Germany, Guinea, Italy, Tunisia, United Kingdom (ratified C. 114); Denmark, Japan, Republic of Korea, Lithuania.

⁶⁴ Guinea, Italy, Netherlands, Peru, Spain, United Kingdom, Uruguay (ratified C. 114); Lithuania.

⁶⁵ Costa Rica, Ecuador, Germany, Netherlands, Panama, Uruguay (ratified C. 114); Denmark, Japan, Republic of Korea, Lithuania, Norway, Romania.

tries further cite the failure of fishermen to comply with their obligations as a reason for immediate discharge. They may be dismissed for: neglect/breach of duties;⁶⁶ drunkenness;⁶⁷ disobedience;⁶⁸ maltreatment/insult;⁶⁹ or crime (e.g. theft, contraband).⁷⁰ National laws and regulations often allow dismissal if there is a serious reason concerning the safety of the ship or the good order and discipline on board.⁷¹ In some cases, however, the fisherman may only be discharged with the authorization of the maritime authority.⁷²

The fisherman is usually authorized to demand his immediate discharge in dangerous or unexpected circumstances, for instance in the case of: war or disease at the destination harbour;⁷³ the loss or change of flag;⁷⁴ a change in the fixed destination;⁷⁵ a ship being taken over by another shipowner.⁷⁶ The majority of States authorize the fisherman to demand his discharge for the purpose of the protection of his own rights, for example in the event of: non-observance of the employer's obligations;⁷⁷ non-payment;⁷⁸ maltreatment or insult;⁷⁹ lack of provisions;⁸⁰ contraband and incitement to crime;⁸¹ bankruptcy;⁸² or possibility to obtain a post carrying a higher rank, on condition that he makes arrangements to be replaced.⁸³ National laws and regulations sometimes even allow the fisherman to demand his discharge for any reason whatsoever, if he is authorized by the maritime authority.⁸⁴ In a few countries the fisherman has the right to demand his discharge, on condition that he submits timely notice.⁸⁵

⁶⁶ Belgium, Costa Rica, Ecuador, Italy, Netherlands, Panama, Peru, Spain (ratified C. 114); Denmark, Estonia, Japan, Republic of Korea, Lithuania, Norway, Romania.

⁶⁷ Netherlands, Spain, Uruguay (ratified C. 114); Denmark, Estonia, Norway.

⁶⁸ Costa Rica, Ecuador, Guinea, Panama, Spain, Uruguay (ratified C. 114); Denmark, Estonia, Lithuania, Norway, Romania.

⁶⁹ Costa Rica, Ecuador, Netherlands, Panama, Spain (ratified C. 114); Denmark, Norway.

⁷⁰ Costa Rica, Germany, Netherlands, Panama, Uruguay (ratified C. 114); Denmark, Estonia, Lithuania, Norway, Romania.

⁷¹ Belgium, Costa Rica, Germany, Guatemala, Guinea, Tunisia, United Kingdom (ratified C. 114); Estonia, Japan, Republic of Korea.

⁷² Belgium, France (for any reason whatsoever), Guatemala, Mauritania (for any reason whatsoever), Tunisia (ratified C. 114); India.

⁷³ Costa Rica, Germany, Netherlands, Uruguay (ratified C. 114); Denmark, Estonia, Republic of Korea, Norway, Poland.

⁷⁴ Costa Rica, Ecuador, Germany, Italy, Netherlands (ratified C. 114); Denmark, Estonia, Japan, Norway.

⁷⁵ Costa Rica, Mauritania, Uruguay (ratified C. 114); Denmark, Estonia, Norway.

⁷⁶ Costa Rica, Panama (ratified C. 114); Denmark, India, Republic of Korea.

⁷⁷ Belgium, Costa Rica, Ecuador, France, Germany, Guatemala, Mauritania, Netherlands, Panama, Peru, Spain, Tunisia (ratified C. 114); Republic of Korea, Lithuania, Poland.

⁷⁸ Costa Rica, Ecuador, Netherlands, Panama, Peru, Spain (ratified C. 114).

⁷⁹ Costa Rica, Germany, Italy, Netherlands, Panama, Peru (ratified C. 114); Denmark, Estonia, Norway.

⁸⁰ Costa Rica, Germany, Netherlands, Panama (ratified C. 114); Denmark, Estonia, Poland.

⁸¹ Netherlands, Panama (ratified C. 114).

⁸² Netherlands, Panama (ratified C. 114); Lithuania.

⁸³ Tunisia (ratified C. 114); Denmark.

⁸⁴ Belgium, France, Guatemala, Mauritania (ratified C. 114).

⁸⁵ Guinea, United Kingdom (ratified C. 114).

Information process

The vast majority of countries stipulate that each crew member shall have/receive a record of employment at/from the maritime authority containing a minimum of details: the name of the fisherman; his capacity; the date of employment; and the date of discharge.⁸⁶ In addition, certain countries provide for a service book on board.⁸⁷

Many member States set out that the agreement shall either be recorded in or appended to the crew list.⁸⁸ In a few countries there seems to be no provision requiring a crew list on board.⁸⁹

To ensure that fishermen have access to information on employment conditions, national legislation frequently requires that a copy of the agreement⁹⁰ or copies of the pertinent laws and regulations, collective agreements or the ship's regulations⁹¹ be available on board. A number of countries specify that these documents must be displayed in a conspicuous place accessible to the crew. In other member States copies of the agreement are supplied to the fisherman.⁹²

Conclusions

The information available to the Office indicates that a substantial number of member States (at least 39) have laws and regulations in place concerning articles of agreement applicable to work on fishing vessels (in some countries, legislation concerning all seafarers applies to, or at least does not exclude, workers on fishing vessels). This list includes not only the 22 member States which have ratified Convention No. 114 but also at least 17 others. Most require that agreements be signed by both the fisherman and the owner of the fishing vessel or his representative and contain provisions concerning termination of agreements. The majority also demand that agreements include the particulars provided for in the Convention. It would appear that a smaller number of member States require that an agreement: be signed in front of or be endorsed by the competent authority; contain provisions concerning the duration of the agreement; and require a record of employment. Surprisingly, only a few of the non-ratifying States have provisions requiring that the agreement be understood by the fisherman.

The Office notes that when this Convention was examined by the Tripartite Meeting on Safety and Health in the Fishing Industry, the need for partial revision was primarily due to an expressed need to provide fishermen with identity documents (see elsewhere in this report). Furthermore, the Office, noting the continued importance of the share system, believes that it may be useful to consider provisions, whether

⁸⁶ Belgium, Costa Rica, Cyprus, Ecuador, France, Germany, Guatemala, Italy, Liberia, Mauritania, Netherlands, Peru, Tunisia, United Kingdom, Uruguay (ratified C. 114); Estonia, India, Indonesia, Mauritius, Poland, Thailand.

⁸⁷ Cyprus, Guatemala, Mauritania, Netherlands, Uruguay (ratified C. 114).

⁸⁸ Belgium, Cyprus, France, Germany, Guinea, Italy, Mauritania, Netherlands, Tunisia, United Kingdom, Uruguay (ratified C. 114); Japan.

⁸⁹ Guatemala, Liberia (ratified C. 114).

⁹⁰ Belgium, Cyprus, France, Guatemala, Guinea, Mauritania, Netherlands, Tunisia, United Kingdom (ratified C. 114); Australia, Chile, Estonia, India, New Zealand.

⁹¹ France, Germany, Italy, Mauritania, Netherlands, Tunisia (ratified C. 114); Estonia.

⁹² Germany (ratified C. 114); Denmark, Lithuania, Mauritius, Norway.

mandatory or recommendatory, calling for greater transparency in pay based on this system in order to protect fishermen from being underpaid. Finally, the Office feels that the vast majority of the world's small-scale and artisanal fishermen may not be enjoying the benefits of Convention No. 114. This matter might be addressed by providing, to the extent possible,⁹³ that all fishermen (except those who own the vessel) should have the protection of an agreement or contract.

MINIMUM WAGES/INCOME STABILITY

The nature of the share system, as described earlier in this chapter, often complicates the issue of ensuring that fishermen receive a minimum wage – or at least a minimum level of income over a period of time. This section places the issue of the minimum wage of fishermen in the context of the ILO's general standards concerning minimum wages of workers and its standards concerning minimum wages for seafarers. It then provides information on ways in which a number of member States have dealt with this issue.

ILO standards

The most modern ILO instrument concerning minimum wages of workers in general is the Minimum Wage Fixing Convention, 1970 (No. 131). The Convention lays down the obligation for ratifying States to establish a system of wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate. Though the Convention allows ratifying States to determine the groups of wage earners to be covered, which implies that one or more categories of wage earners may be excluded from the protection of a minimum wage, this right is conditional upon the consent of or full consultation with the representative organizations of employers and workers concerned. Each ratifying State is under the obligation, *inter alia*, to list in its first report on the application of the Convention submitted under article 22 of the ILO Constitution any groups of wage earners which may not have been covered, giving their reasons for exclusion.⁹⁴ While the term “minimum wage” is not defined, the Committee of Experts noted in its 1992 General Survey that:

... ‘minimum wage’ may be understood to mean the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national economic and social conditions.⁹⁵

⁹³ The Office is aware that illiteracy is still a problem for many poor fishermen, and that in many communities strong traditions offer *de facto* protection that extends beyond that of a written contract. The principle that all fishermen should have an agreement will therefore require careful consideration and some adjustment.

⁹⁴ For example, Sri Lanka has excluded fishermen from the coverage of Convention No. 131.

⁹⁵ ILO: *Minimum wages*, Report III (Part 4B) (General Survey), International Labour Conference, 79th Session, Geneva, 1992, para. 42, p. 13, as cited by G.P. Politakis: “Wages” in *International labour standards*, *op. cit.*, p. 275.

The Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187), applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of the Member and is ordinarily engaged in commercial maritime operations. As concerns fishermen, it provides, that "[t]o the extent it deems practicable, after consulting the representative organizations of fishing-vessel owners and fishermen, the competent authority should apply the provisions of this Recommendation to commercial maritime fishing". Part III, Minimum wages, provides, *inter alia*, that member States should, after consulting representative organizations of shipowners and seafarers, establish procedures for determining minimum wages for seafarers. It also provides guidance on the principles which should be considered in establishing such minimum wages. In Part IV, Minimum monthly basic pay or wage figure for able seamen, the instrument sets out a specific figure for the basic pay or wages for a calendar month of service for an able seaman, as well as a means of revising the figure.

National law and practice

In Canada and in the United States fishermen are excluded from the minimum wage provisions for workers in general. In the United Kingdom, share fishermen are excluded from the minimum wage. However, several countries⁹⁶ seem to apply this principle to the fishing sector.

In New Zealand there is a statutory minimum wage for all employees, which also applies to fishermen. Fishing crews working on foreign vessels, for which an application to be registered to fish in New Zealand's fisheries waters was made on or after 3 May 2001, and holding a work permit issued by the Immigration Service, are entitled to receive the equivalent of New Zealand's minimum wage. Nigeria indicates that a minimum wage must be paid. Panama provides for a minimum wage only in the case of fishing vessels at the national level: either a guaranteed salary of 1.03 balboa per hour plus 3 per cent of the fish catch from the voyage; or a percentage of the total fish catch, which is distributed to the crew, provided that its value is not inferior to the abovementioned guaranteed wage.

The Philippines has stipulated a minimum wage for all employees, the rates of which must be adjusted in a fair and equitable manner. As to Romania, the national basic gross minimum wage figure applies. In Spain, the established minimum wage generally prevails for the fishing sector.

On account of the decline in the catch-sharing wage system in France as a result of several crises (low fish resources, lack of labour force, etc.), a law was adopted in 1997 to modernize the social rules in the fishing sector. The impetus to improve the fishermen's wage was provided by the French High Court of Appeal in 1992, when it declared that the minimum wage (SMIC) was to be applied to all maritime sectors. Because the catch-sharing wage system is disconnected from the quantity of hours worked, the minimum-wage-per-hour system had to be adapted. France has dealt with this issue through a national collective agreement adopted on 28 March 2001. The collective agreement provides that the minimum wage should be based on an annual number of days at sea rather than hours of work (as total hours spent on the vessel are

⁹⁶ Australia (Queensland), Ecuador, Indonesia, Japan, Republic of Korea, Lithuania, Netherlands, New Zealand, Nigeria, Peru, Philippines, Romania, Spain, Tunisia.

not considered effective hours of work). A fisherman paid on the basis of the catch-sharing system has to receive a minimum wage in the year equivalent to the minimum wage received by shore workers (i.e. the SMIC) for 250 days at sea – a period for which an annual gross wage is set. Beyond the 250-per-year day limit, the days spent at sea are subjected to a pay increase: a 25 per cent increase from the first to the tenth day; a 50 per cent increase from the 11th to the 20th day; and a 100 per cent increase for work after the 20th day, with a limit of 275 days at sea per year. If the fisherman earns less than this minimum wage, the employer has to pay him a wage supplement so that the annual wage is equivalent to the minimum wage. The articles of agreement must define the wage of the fisherman as a part of the profit made on the catch and note the common charges to be deducted from the gross product to form the net product to be shared. The net product is then shared out among the crew and the shipowner according to a procedure provided by the articles of agreement. Common charges are taken into account in the calculation of the share wage. The following charges should not be included in the common charges: the contributions, subscription charges and taxes on the fisherman's wage; insurance premiums to cover the wage; fishing instruments, tools and machines; and the charges for the renting or the purchase of material. However, common charges can include food, fuel, national or regional fishing taxes.⁹⁷

Conclusions

The Office has obtained only limited information on this issue. However, it would appear that, at least in some member States, there are requirements concerning minimum wages that are applicable to fishermen. A few also have requirements specifically for the fishing sector. More information is needed to determine whether a mandatory or recommendatory provision would be desirable in the new fishing standard. In particular, more must be known about the relationship between share fishing and minimum wage requirements.

PROTECTION OF WAGES

Fishermen, like any other workers, suffer when, for one reason or another, they are not paid, or not paid on time. They may, however, face particular problems due to the unique method of remuneration of many fishermen – the share system.

International standards

The Protection of Wages Convention, 1949 (No. 95), was the first international labour instrument which dealt in a comprehensive manner with all practical aspects of labour remuneration and sought to grant the fullest possible protection to workers' earnings. The Convention applies to all persons to whom wages are paid or payable. However, the competent authority may, after consultation with the organizations of employers and employed persons directly concerned, if such exist, exclude from the

⁹⁷ P. Chaumette: *Une grande première à la pêche artisanale. L'accord collectif national du 6 juillet 2000 relatif à la rémunération minimale garantie, aux frais communs et à la réduction du temps de travail* (DMF, 2000), pp. 1093-1101.

application of all or any part of the provisions of the Convention categories of persons whose circumstances and conditions of employment are such that the application to them of all or any of the said provisions would be inappropriate and who are not employed in manual labour or are employed in domestic service or work similar thereto. In this regard, the Convention provides that each member State shall indicate in its first annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organization any categories of persons which it proposes to exclude from the application of any of the provisions of the Convention. The Convention addresses such issues as: wage payment in legal tender; payment in kind; freedom of the worker to dispose of wages; wage deductions; attachment or assignment of wages; wage guarantees in the event of bankruptcy; periodicity, time and place of wage payments; notification of wage conditions; statement of earnings; and implementation. The Governing Body, when reviewing this Convention, found it to be up to date. It invited member States to contemplate ratifying it and drew their attention to Convention No. 173 (see below) which revised Article 11 (dealing with the protection of workers' claims in the event of the bankruptcy or judicial liquidation of an undertaking) of the Convention.⁹⁸

The Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), which had been ratified, as at 15 September 2002, by 15 member States, provides two approaches to the protection of workers: one provides for the protection of workers' claims by a privilege; the other for protection by wage guarantee institutions. The Convention applies in principle to all employees and to all branches of economic activity. However, it recognizes that the competent authority may, after consulting the social partners, exclude specific categories of workers from the application of the Convention.^{99, 100}

The Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187), applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of the Member and is ordinarily engaged in commercial maritime operations. As concerns fishermen, it provides, that "[t]o the extent it deems practicable, after consulting the representative organizations of fishing-vessel owners and fishermen, the competent authority should apply the provisions of this Recommendation to commercial maritime fishing". As concerns the protection of wages, the Recommendation provides, in Paragraph 6, that "National laws and regulations adopted after consulting the representative organizations of seafarers and shipowners or, as appropriate, collective agreements should take into account the following principles: ... (k) to the extent that the seafarers' claims for wages and other sums due in respect of their employment are not secured in accordance with the provisions of the International Convention on Maritime Liens and Mortgages, 1993, such claims should be protected in accordance with [Convention No. 173]".

⁹⁸ G.P. Politakis: "Wages" in *International labour standards*, op. cit.

⁹⁹ *ibid.*, p. 267.

¹⁰⁰ In Europe, Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer provides in article 1, paragraph 3, that "Where such provision already applies in their national legislation, Member States may continue to exclude from the scope of this Directive: (a) domestic servants employed by a natural person; (b) **share-fishermen**" [emphasis added].

The International Convention on Maritime Liens and Mortgages, 1993 (MLM), provides, in Article 13(1), that: “Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is not a State Party, provided that the latter’s vessels are subject to the jurisdiction of the State Party.” It would seem therefore to apply to fishing vessels, at least seagoing vessels.

The Office has not, in the limited time available to prepare this report, been able to determine the extent to which fishermen are protected by the maritime lien in the law of member States. However, it has observed, for example, that the Merchant Marine Code of 30 April 1999 of the Russian Federation does appear to provide that its Chapter XXII (Maritime lien on a vessel, mortgage on a vessel or a vessel under construction) does apply to fishing vessels. To grasp the extent to which this is the case in other States, and the extent to which laws and regulations concerning the maritime lien apply to coastal fishing vessels or small fishing vessels in other States, the Office will require additional information. This will include information on whether States consider whether the fishermen’s “share of the catch” constitutes wages as set out in the Convention.

Furthermore, a Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers has met four times to discuss the issue of abandonment, including the issue of non-payment of remuneration. This has resulted, *inter alia*, in the adoption of IMO Assembly Resolution A.930(22) concerning guidelines on provision of financial security in cases of abandonment of seafarers, which may also be relevant to fishermen.

Conclusions

The Office has only a limited amount of information on this issue. In particular, it needs more information on whether fishermen who are owed remuneration under share-fishing arrangements are generally protected by the maritime lien, by other means or by both.

WORKING TIME

The very nature of fishing operations make it difficult to control working time in the fishing sector. For instance, fishermen 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. This is coupled with the share system, which encourages minimal numbers of crew members so that they obtain maximum pay. Other factors also add to the complexity.

There are several aspects to working time. The first has to do with how many hours per day or week a person must work to obtain a basic wage, after which additional work is compensated by extra pay (perhaps at a higher rate) or compensatory leave. Another is whether a person can be required to work beyond a certain number of hours, even if extra pay is required. Finally, there is the issue, particularly relevant to fishing, of how long (hours per day, hours or days per week, days per year) a person can work before being entitled or required to rest. Thus, the first issue

concerns remuneration; the second a mixture of wages and the prevention of excessive work (perhaps also with a view to distributing work or balancing workload); the last is a matter of preventing fatigue, a condition which may undermine health and which has been clearly identified as a contributing factor to fishing sector accidents.

ILO standards

The issue of fishermen's working hours was first addressed by the ILO over 80 years ago in the Hours of Work (Fishing) Recommendation, 1920 (No. 7). The Recommendation, inter alia, referred to the declaration in the Constitution of the International Labour Organization that all industrial committees should endeavour to adopt, so far as their special circumstances will permit, "an eight hours' day or a forty-eight hours' week as the standard to be aimed at where it has not already been attained". The Recommendation then provided that "each Member of the International Labour Organization enact legislation limiting in this direction the hours of work of all workers employed in the fishing industry, with such special provisions as may be necessary to meet the conditions peculiar to the fishing industry in each country; and that in framing such legislation each Government consult with the organizations of employers and the organizations of workers concerned".

Since that Conference, the issue has been raised periodically by the ILO's Committee on Conditions of Work in the Fishing Industry. Most recently, the 1978 session of the Committee adopted conclusions requesting the Office to conduct studies relating to hours of work and manning for the fishing industry and to include fishermen's hours of work and manning in the possible items for future sessions of the International Labour Conference.¹⁰¹ However, as there have been no Conferences dealing with the fishing industry since that time, a specific standard concerning hours of work (or rest) in the fishing sector has not been discussed.

However, in 1996, the 84th (Maritime) Session of the International Labour Conference adopted the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), aimed at limiting hours of work or providing minimum rest periods, and the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187). Both standards provided the possibility of extending their coverage to fishermen.

Convention No. 180, which entered into force on 8 August 2002,¹⁰² aims to limit the maximum hours of work or to provide minimum rest periods for seafarers. States are to fix maximum limits for hours of work or minimum rest periods on ships flying their flags. Schedules of service at sea and in port (including maximum hours of work or minimum periods of rest per day and per week) are to be posted on board where all seafarers may see them. Records of hours of work or rest periods are to be maintained. The flag State is to examine these records. If the records or other evidence indicate infringement of provisions governing hours of work or rest, the competent authority is to require that measures, including if necessary the revision of the manning of the ship, are taken so as to avoid future infringement. Convention No. 180 has been

¹⁰¹ ILO: Report of the Committee on Conditions of Work in the Fishing Industry (Geneva, doc. CCF/3/6, Nov. 1978), Annex II.

¹⁰² As at 30 September 2002, it has been ratified by Finland, Greece, Ireland, Malta, Morocco, Romania, Saint Vincent and the Grenadines, Sweden and the United Kingdom.

included in Part A of the Supplementary Appendix of the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the provisions of Convention No. 180 are subject to “port state control”.¹⁰³ As with several other maritime Conventions adopted in 1987 and 1996, the Shipowner’ delegates at the Conference, who generally were representative of companies engaged in maritime transport, did not feel they could speak for owners of fishing vessels. Thus, the Convention provides, in Article 1(2), that “[t]o the extent it deems practicable, after consulting the representative organizations of fishing-vessel owners and fishermen, the competent authority shall apply the provisions of this Convention to commercial maritime fishing”.

As mentioned above, the Conference also adopted the Seafarers’ Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187). As concerns hours of work, the Recommendation provides, inter alia, that “for the purpose of calculating wages, the normal hours of work at sea and in port should not exceed eight hours per day” and that “for the purpose of calculating overtime, the number of normal hours per week covered by the basic pay or wages should be prescribed by national laws or regulations, if not determined by collective agreements, but should not exceed 48 hours per week; collective agreements may provide for a different but not less favourable treatment”. There are also other provisions concerning rates of overtime pay, records of hours of work, consolidated wages, principles to be taken into account as concerns remuneration, and minimum wages (see also the section of this report concerning minimum wages). It, too, provides that “[t]o the extent it deems practicable, after consulting the representative organizations of fishing-vessel owners and fishermen, the competent authority shall apply the provisions of this Recommendation to commercial maritime fishing”.

*Discussions by the Tripartite Meeting on Safety and Health in the Fishing Industry and Governing Body*¹⁰⁴ concerning Recommendation No. 7

In the discussion on the Hours of Work (Fishing) Recommendation, 1920 (No. 7), at the ILO’s Tripartite Meeting on Safety and Health in the Fishing Industry in 2000, some members of the Working Party on Standards considered that the Recommendation should be revised taking into account the provisions of Convention No. 180. It was also noted that working hours and rest periods were directly linked to the question of fatigue which was one of the topical issues under discussion at this Tripartite Meeting. Other members underscored that such an extension might not be appropriate as Convention No. 180 had not been drafted to take into account the specific conditions in the fishing industry and consequently did not have the required flexibility regarding hours of work. It was also proposed to consider this Recommendation obsolete and to recommend its withdrawal. Following an exchange of views, a proposal was made to request the Office to undertake an examination of the question of working-time arrangements in the fishing sector. It was proposed that such a study

¹⁰³ The Protocol of 1996 to Convention No. 147 entered into force on 10 January 2003. As at 15 September 2002, it has been ratified by Finland, Greece, Ireland, Malta, Romania, Sweden and the United Kingdom.

¹⁰⁴ ILO: *Note on the Proceedings*, Tripartite Meeting on Safety and Health in the Fishing Industry (Geneva, 2000), p. 40, paras. 14-15.

could examine, inter alia, the applicability of Convention No. 180 to the fishing sector, taking into account the specific nature of working-time arrangements in this sector, including an examination of issues such as effective hours of work as against total hours; the relevance of the provision for an eight-hour working day; the question of manning of fishing vessels; the implications of the diversity of the fishing fleet; the ratification prospects of Convention No. 180; and the relevance of European Community developments in this context. The Working Party agreed that such a study of working-time arrangements in the fishing sector should be proposed, that pending the outcome of this study the status quo should be maintained with respect to this Recommendation and that it be re-examined at a later stage in the light of this study.

Regional standards

In Europe, Directive 93/104/EC concerning certain aspects of the organization of working time, adopted on 23 November 1993, while addressing workers in general, contains many exclusions and derogations relating to specific sectors and activities, including: air, rail, road, sea, inland waterway and lake transport; sea fishing; other work at sea; and the activities of doctors in training. Two Directives concerning the working time of seafarers have been adopted in Europe: Council Directive 1999/63/EC implementing the maritime sector social partner agreement; and Directive 1999/95/EC of the European Parliament and of the Council concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports. Both these Directives were based, to a large extent, on ILO Convention No. 180 and, in the case of Directive 1999/95/EC, also on the Protocol of 1996 to Convention No. 147.¹⁰⁵

The fishing sector, notably fishing vessel owners, did not, however, find the abovementioned Directives appropriate for the fishing sector. This led to the inclusion of sea fishing in the scope of Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 amending Council Directive 93/104/EC concerning certain aspects of the organization of working time to cover sectors and activities excluded from that Directive. The Directive provides, inter alia, that workers on board seagoing fishing vessels are not covered by the Directive's provisions on daily rest, rest breaks, weekly rest, maximum weekly working time and length of night work. However, Member States must take the necessary measures to ensure that these workers are entitled to "adequate rest" and that their working time is limited to an average of 48 hours a week calculated over a period not exceeding 12 months. In order to achieve this, Member States must choose one of two options:

- limiting working time to a maximum number of hours in a given period. This must not exceed 14 hours in any 24-hour period and 72 hours in any seven-day period; or
- providing a minimum number of hours of rest within a given period of time. These must be not less than ten hours in any 24-hour period and 77 hours in any

¹⁰⁵ *Extension of working time Directive agreed*, in European Industrial Relations Observatory online, www.eiro.eurofound.ie/2000/05/Feature/EU0005249F.html (28.05.2000) (visited 27 November 2002).

seven-day period. This rest may be divided into no more than two periods, one of which must be at least six hours. Further, the interval between consecutive periods of rest must not exceed 14 hours.

However, Member States may, for objective or technical reasons or reasons concerning the organization of work, and as long as general health and safety principles are adhered to, allow exceptions, including the establishment of reference periods, to the 48-hour week over a 12-month period, the limits on hours of work and rest breaks.¹⁰⁶

National law and practice

When the Office collected information concerning hours of work in the fishing sector, it attempted to organize this information into two general categories. The first category concerned general requirements on working hours – sometimes drawn from national requirements for all workers – setting out the length of the normal working day or week. The second concerned provisions, sometimes aimed at seagoing workers as a whole and sometimes specifically at fishermen, which attempt to limit excessive work, or at least to provide minimum rest to avoid fatigue. The Office has not been able to conduct a full study of working-time arrangements in the fishing industry. However, in this report it has attempted to provide information on relevant law and practice in a number of member States.

Laws, regulations and collective agreements concerning working time in general or normal working hours

In some countries, both the general labour laws and specific requirements apply to fishing. This is the case in Lithuania and the Philippines, where the normal hours of work are set at eight hours per day. Extra hours are possible for operational reasons. In Panama, agreement must be reached on the working day on board in the employment contract. Working hours that exceed the daily limits prescribed in the contract must be considered extraordinary hours and the worker is entitled to compensation that is fixed by collective or individual contracts; in no case must it be inferior to the hourly pay of the basic salary increased by 25 per cent.

In Japan, a distinction is made between workers on vessels covered by the Mariners' Law (generally, seagoing fishing vessels of 30 gt and more) and those covered by general labour standards (generally, fishing vessels under 30 gt and not seagoing). Though the Mariners' Law generally covers all seafarers and fishermen, there are specific regulations¹⁰⁷ for workers on fishing vessels, as concerns working hours, holidays and leave. These provide for an eight-hour day and a 40-hour week. Those not covered by the Mariners' Law (those on vessels under 30 gt or non-seagoing vessels), and thus generally covered by the general law – the Labour Standards Law – are not covered by the provisions of the Mariners' Law concerning working hours, rest

¹⁰⁶ *ibid.*

¹⁰⁷ The Regulation concerning working hours and holidays of seamen who join a designated fishing vessel, No. 4, 1995, and the Regulation concerning leave with pay of the mariner who joins a designated fishing vessel, No. 49, 1968. Both are regulations of the Ministry of Transport.

periods and rest days. There are, however, provisions for increased wages for night work at a rate not less than 125 per cent of normal pay.

In Mauritius, the Banks Fisherman and Frigo-workers (Remuneration Order) Regulations provide that the contract of employment shall contain, inter alia, the hours of work to be mutually agreed by the employer and worker.

In Canada, in British Columbia, the Canadian Fishing Company-United Fishermen and Allied Workers' Union (CFC-UFAWU) collective agreement sets out: an eight-hour day; 1.5 times the regular wage rate for overtime for certain conditions and twice the rate for others; flexible start times; and ten consecutive hours of rest between shifts in every 24-hour period. Workers not covered by collective agreement are normally covered by the Employment Standards Act; however fishers are generally excluded from that part of the Act which governs hours of work and overtime.

Maximum hours of work, minimum rest and manning (crewing)

The Office has obtained information on a variety of laws, regulations and provisions in collective agreements aimed at limiting working hours or providing minimum periods of rest. Generally, EU Member States are implementing, or planning to implement, Directive 2000/34/EC. Portugal requires that fishermen receive not less than eight hours per day of rest during fishing periods. This may be divided into two periods (one of which must be at least eight hours in length). When at sea and not fishing, 12 hours of rest are generally provided for. There are special requirements for fishermen under 18 years of age. There are also provisions governing leave, with compensatory leave when work has been performed on the weekly day of rest or on holidays. Collective agreements also provide for higher standards. In Spain, an Order in Council for the fishing industry establishes a maximum day of 12 hours, including extraordinary hours, except in the case of *force majeure* or an emergency; in any event, it excludes any working time of 14 hours in a given 24-hour period, or a period of 72 hours for over seven days. The Order also establishes a minimum rest period of six hours between working days, permitting the regulation by collective agreement of the distribution of rest periods – as long as the interval between them does not exceed 14 hours. It further regulates weekly rest that is generally one day and a half, although there are particularities concerning accumulation and compensation. The United Kingdom has adopted regulations which include general requirements to ensure the health and safety of all workers, including a requirement for the adoption of working patterns which take account of the capacity of the individual and other factors. In France, a collective agreement deals with the related issues of hours of work and minimum wage (see box 4.1).

In Norway, there are currently (as at July 2002) no official requirements as regards hours of work and/or rest for fishing and catching vessels. In practice, these matters have been left to the social partners. The deep-sea fleet (larger vessels) has entered into agreements, setting normal working hours at 12 hours per day during fishing operations. The shipowner and the master are responsible for attending to the proper organization of the work on board and ensuring that the employees' life, health and safety are well and adequately taken care of. To avoid fatigue becoming a threat to health, environment and safety on board, employees have to be guaranteed adequate rest. In Iceland, on the other hand, the issues of working time in the fishing sector have been regulated for 80 years. In 1921, a law on the working time of crews

Box 4.1
Hours of work: The French approach

A collective agreement in France regulates the working relation between employers and wage-earning fishermen working in an artisanal enterprise or a cooperative using the catch-sharing wage system on board a vessel registered in metropolitan France. This agreement can also apply to artisanal fishing enterprises registered in overseas departments and territories which opt for this scheme. It can also apply to non-artisanal fishing enterprises which choose to be regulated by this system, unless they are already regulated by a more favourable agreement.

The collective agreement provides that the working time for fishermen working on a catch-share basis should be based on a statutory one-year period and be counted in terms of “days at sea”. Working time expressed in “days at sea” should be equivalent to the legal working time onshore, that is to say 35 hours per week. For companies with fewer than 20 employees, the minimum of days at sea has been set at 225 days since 1 January 2002, with a ceiling at 250 days at sea – which represents the maximum legal time of work per year per fisherman.

In order to prevent fishermen from working too long in one day, the agreement provides a minimum period of rest: each 24 hours spent at sea must include a minimum period of rest of ten hours, of which six hours must be consecutive. Working hours are limited either to 14 hours in a 24-hour period and to 72 hours in a seven-day period, or the resting time is of at least ten hours in a 24-hour period and 77 hours in a seven-day period. The resting time cannot be split into more than two periods, one of which should last at least six hours. The interval between these two periods must not exceed 14 hours. This national agreement stresses the requirement of a minimum rather than a restriction on daily hours of work. Young people under the age of 18 must have a minimum of 12 hours of rest per 24 hours and this rest must not be interrupted. They have a weekly period of rest of at least 36 hours (Maritime Labour Code, section 114).

The collective agreement has taken Directive 2000/34/EC into account. The law specifies weekly rest conditions: a 24-hour rest period is granted to fishermen when their voyage exceeds six days. Sunday is reserved for weekly rest. The method of application of this provision is determined by the State Council (Conseil d’Etat) so that it might take the constraints of each maritime activity into account. It amends the Maritime Labour Code by providing that the payment of overtime may be substituted by a compensatory rest period as long as this overtime was not necessary in the case of an emergency.

Source: P. Chaumette, *op. cit.*, pp. 1093-1101.

on board trawlers, which is still in force, provided for rest and dining periods in every 24-hour period. There are no records of working time aboard Icelandic fishing vessels, since there is no connection between the time actually worked on board and the fishermen’s income. Pay is based on a share of the catch. According to collective

agreements between the fishermen and fishing vessel owners, the daily period of rest is at least six to eight hours, depending on the type of fishing vessel, the duration of the fishing trip and the type of fishing gear used.

In Estonia, the Seafarers' Act, which applies to fishermen, generally establishes that the working time of a crew member shall not exceed 12 hours in any 24-hour period and 60 hours in any period of seven days. For vessels where the working cycle of the seafarer does not exceed two weeks, working hours shall not exceed 14 hours in any 24-hour period and 72 hours in any period of seven days. Generally, rest periods can be divided into two parts, with one not being less than six hours in length, and the time between rest periods not exceeding 14 hours. In emergencies, these limits may be waived – but compensatory rest must be provided. In neighbouring Lithuania, there are limitations on the length of time a vessel can stay at sea. In the case of factory ships this is 175 days; large trawlers, 150 days; and small and medium vessels, 135 days. During a season, vessels can stay in certain regions for up to 200 days, including 60 days to travel to and from the fishing grounds. There are also minimum times for port visits.

In Poland, there are different standards for seagoing fishing vessels and for vessels operating only in the Baltic Sea. For seagoing fishing vessels, working time may not exceed 56 hours in a seven-day working week and 46 hours in a six-day working week, with separate requirements when the vessel is in port. For vessels which change crew every six weeks (or, if the seafarers agree, up to every three months), the seafarers can work up to 12 hours per day and 84 hours a week. In a period of fishing, the working time may be prolonged to 12 hours per day or 84 hours per week, with additional hours permitted only under certain circumstances (emergencies, drills – but not fishing and fish processing). For Baltic sea fishing, hours of work may depend on fishing conditions, but fishermen must receive at least one six-hour uninterrupted rest period each day.

There are no specific requirements concerning hours of work in the fishing sector in Romania. The provisions of the Labour Code concerning working hours and rest time would normally apply. For vessels in general, a decree regulates working time, including rest periods.

In Chile, there is a special scheme applying to working hours and hours of rest for fishermen. A decree adopted in 1995 stipulates that there must be an obligatory system of control of working hours within every period of 24 hours or every calendar day. The system operates on the basis of a planning document which must be filled out every day and contains, *inter alia*, information identifying the company, workers, vessel and working time. It must be signed by both the worker and the legal representative of the employer.

The Mexican Constitution provides that a worker is entitled to a day of rest for every six days worked. The Federal Labour Act which applies to fishing, provides that when a vessel is at sea and the nature of the work does not allow for a weekly period of rest, the employer must pay the worker double the salary for the service undertaken – irrespective of his wage corresponding to that period of time.

In Panama, a decree provides that for every day of weekly rest and national holiday during the voyage, the worker has the right, as compensation, to one day of rest on land. Furthermore, each member of the crew must be granted an additional day on land for every eight days spent on board to compensate for the total of extraordinary hours of service performed during the voyage.

Employees in British Columbia, Canada, are covered by the Employment Standards Act. However, fishers are excluded from the part of the Act which concerns hours of work and overtime, except for section 39, which provides that “[d]espite any provision of this Part, an employer must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee’s health or safety”. The CFC-UFAWU collective agreement sets out ten consecutive hours of rest between shifts in every 24-hour period for those fishers covered by the agreement. In Newfoundland, most fishermen are paid by a share of the catch. Fishermen and fishing vessel owners do not come under the definition of employer and employee in the Labour Standards Act and therefore are not covered by the provisions in the Act concerning hours of work, rest, etc. For trawlermen, these matters are dealt with in their collective agreement. The agreement provides for watches of six hours on and six hours off, and stipulates that no crew member shall be required to remain on deck for more than his watch except during emergencies.

In Japan, a distinction is made between workers on vessels covered by the Mariners’ Law (generally, seagoing fishing vessels of 30 gt and greater) and those covered by general labour standards (usually, on fishing vessels under 30 gt and not seagoing). On the whole, the Mariners’ Law covers all seafarers and fishermen; but there are specific regulations¹⁰⁸ as concerns working hours, holidays and leave for workers on fishing vessels. Those working on ocean-going trawlers of not less than 1,000 gt that are also used as factory vessels are entitled to at least ten hours of rest per day – of which, at least six hours must be a continuous period of time. However, a master may, under extraordinary circumstances, temporarily require a seaman to work 18 hours over a two-day period, with two rest periods of four hours continuous rest – as long as additional compensatory rest is later provided. On other vessels, rest must amount to at least eight hours per day. Under certain circumstances, the master may provide for a 16-hour rest period over two days. For fishermen not covered by the Mariners’ Law, there are no maximum limits on working hours or required minimum rest periods.

India and Malaysia apparently do not have laws and regulations concerning working time in the fishing sector. New Zealand has no regulations limiting working hours of fishermen, although there are requirements for limiting the working hours of watchkeepers.

In Tunisia, the Fishermen’s Code stipulates that the skipper shall provide a minimum of ten hours of rest in a 24-hour period. This resting time can be granted for a shift or fragmented so that the work on board is not interrupted.

Conclusions

Laws and regulations – and even collective agreements – concerning, for example, the eight-hour day or 40-hour week – do not appear to address the issue of excessive working hours (and therefore fatigue); but they draw a line between hours worked for regular pay and for overtime pay.¹⁰⁹ Such legislation would seem to be

¹⁰⁸ See note 107.

¹⁰⁹ It may be argued, however, that the increased cost of paying overtime rates might discourage excessive working hours.

effective only for fishing vessels that employ fishermen on an hourly wage basis – or partially on an hourly wage basis – and not to provide much protection for share fishermen.

Laws and regulations setting minimum hours, or perhaps minimum days of rest, appear to be utilized in several countries, despite the challenges presented by fishing operations. There may be grounds here for an international standard.

ANNUAL LEAVE, LEAVE WITH PAY

Many fisheries are seasonal, with fishermen working intensely for extended periods and then remaining ashore for periods. Others are year-round. Fishermen may pursue some species at one time of year and other species at another time; this is dependent upon nature or upon fisheries management regulations. For some fishermen, particularly those working on distant-water vessels operating under articles of agreement, annual leave may be provided for in a contract. In some countries, leave may be mandated in the general labour legislation. Share fishermen, however, may be excluded from some of these laws.

ILO standards

There are no ILO Conventions dealing specifically with the question of annual leave for fishermen. The Fishermen's Articles of Agreement Convention, 1959 (No. 114), makes no reference to this issue.

The Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91), provides, in Article 1(3)(b) that the Convention “does not apply to ... (b) vessels engaged in fishing or in operations directly connected therewith or in sealing or similar pursuits”. The Seafarers' Annual Leave with Pay Convention, 1976 (No. 146), “applies to all persons who are employed as seafarers” and defines seafarer as “a person who is employed in any capacity on board a sea-going ship registered in a territory for which the Convention is in force, other than ... (b) a ship engaged in fishing or in operations directly connected therewith or in whaling or similar pursuits”.

Convention No. 146, the more modern standard, generally provides that every seafarer to whom the Convention applies shall be entitled to annual leave with pay of a specified minimum length. The length shall be prescribed by each Member which ratifies the Convention in a declaration appended to its ratification. A seafarer whose length of service in any year is less than that required for the full entitlement shall be entitled in respect of that year to annual leave with pay proportionate to his length of service during that year. There are specific provisions concerning calculating length of service and when leave is to be taken. Under Article 7, the Convention provides, *inter alia*, that the seafarer shall receive in respect of the full period of that leave at least his normal remuneration and that this shall be paid in advance. The Convention has been ratified by 13 member States. The Governing Body, when recently reviewing this standard, considered it up to date and invited member States to contemplate ratifying it and to inform the Office of any obstacles or difficulties encountered that might prevent or delay ratification.¹¹⁰

¹¹⁰ Pentsov, *op. cit.*, pp. 572, 580 and 581.

At its 1978 meeting, the Committee on Conditions of Work in the Fishing Industry adopted a resolution on holidays with pay for fishermen which, inter alia, “strongly [urged] the Governing Body of the International Labour Office to appeal to governments – (a) to ratify the Seafarers’ Annual Leave with Pay Convention, 1976 (No. 146); and (b) to extend the provisions of this Convention, in accordance with Article 2, paragraph 4, to persons employed on board ships engaged in fishing or in operations directly connected therewith”.

The Seafarers’ Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187), which may apply to commercial maritime fishing, provides, as concerns annual leave with pay, that “[n]ational laws or regulations or collective agreements may provide for compensation for overtime or for work performed on the weekly day of rest and on public holidays by at least equivalent time off duty and off the ship or additional leave in lieu of remuneration or any other compensation so provided”.

National law and practice

In Canada, in British Columbia, fishers are excluded from the provisions on annual vacation of the Employment Standards Act. However, those covered by the Canadian Fishing Company-United Fishermen and Allied Workers’ Union (CFC-UFAWU) collective agreement are provided with annual vacation allotments which vary with seniority.

In Japan, a distinction is made between workers on vessels covered by the Mariners’ Law (generally, seagoing fishing vessels of 30 gt and greater) and those covered by general labour standards (generally, on fishing vessels under 30 gt and not seagoing). For the former, the number of days of leave with pay which must be granted to a mariner who has been continuously engaged on a vessel belonging to the same enterprise is covered by a special regulation which provides that it shall be 15 days per one year of continuous service and that three days shall be added for every additional three months of service. For those not covered by the Mariners Law (generally, vessels under 30 gt or non-seagoing vessels), and thus covered by the general law – the Labour Standards Law – there is a fixed number of working days per year depending on length of service.

In some countries, for example, the Netherlands and New Zealand, the laws on minimum holiday allowances applies to all employees, including employees in the fishing sector.

In Norway, personnel on board fishing and catching vessels are entitled under a special Act for fishermen to 25 working days of holiday each year. They also have the right to a minimum of 12 continuous days of holiday during the period of 16 May-30 September, unless particular operational reasons make it necessary to place the holiday outside this period. According to a decree in Panama, annual vacation periods must be provided to the crew.

In Poland, fishermen on seagoing vessels operating outside the Baltic Sea are entitled to paid holiday of 21 working days after two years of work and 30 days after three years. On Baltic Sea vessels, fishermen on vessels employed under a contract for a fishing season have the right to two working days’ leave for each month of work, as well as one working day off for each Sunday and holiday spent at sea.

Conclusion

The Office has obtained only limited information on this issue. However, it would appear that the laws and regulations which do exist are usually derived from national standards covering all workers or from those applying generally to maritime workers.

REPATRIATION

The issue of repatriation is most relevant to fishermen working on vessels which do not frequently return to their home port. It is also very relevant to migrant fishermen working on vessels which, though they may return to the home port, do not return to the country of the fishermen's residence. Repatriation may take place for several reasons: upon completion of a contract; periodic leave; medical or other emergencies; or, in some cases, when a vessel has been arrested or abandoned in a foreign port.

The responsibility of the vessel owner to repatriate the fishermen can be set out in national laws or regulations or collective agreement. These may set the conditions under which a fisherman is to be repatriated, as seen in the relevant ILO Convention for seafarers.

A serious problem for many fishermen has been repatriation following the arrest of a vessel or its abandonment by the owner. This often arises when a vessel is caught fishing illegally, and the vessel and crew are arrested. Some fishermen have remained imprisoned for many months, with the owner of the vessel unable or unwilling to pay the cost of their return home. The issue of financial responsibility in the case of abandonment of seafarers was discussed recently by the Joint ILO/IMO Ad Hoc Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers (see below). The outcome may be relevant to the development of the ILO's proposed standard concerning work in the fishing sector.

International standards

The Repatriation of Seafarers Convention (Revised), 1987 (No. 166), applies to every seagoing ship whether publicly or privately owned which is registered in the territory of any Member for which the Convention is in force and which is ordinarily engaged in commercial maritime navigation and to the owners and seafarers of such ships. To the extent it deems practicable, after consultation with the representative organizations of fishing vessel owners and fishermen, the competent authority shall apply the provisions of this Convention to commercial fishing. The Convention provides the conditions under which a seafarer (defined as any person who is employed in any capacity on board a seagoing ship to which the Convention applies) is entitled to repatriation. It addresses such issues as: maximum duration of service periods giving entitlement to repatriation; repatriation destinations; the shipowner's responsibility to arrange repatriation; the responsibility of the flag State to arrange and meet the cost of repatriation should the shipowner fail to do so – and the flag State's right to recover from the shipowner such costs. It generally provides that unless the seafarer has been

found to be in serious default of his or her employment obligations as provided in national laws or regulations or collective agreement, the expenses of repatriation shall not be charged to the seafarer. As at 15 September 2002, the Convention has been ratified by eight States. It revises the earlier Repatriation of Seamen Convention, 1926 (No. 23), which had been ratified by 45 States. Convention No. 23, however, specifically provided that it did not apply to fishing vessels.

FAO

The FAO Code of Conduct for Responsible Fisheries provides, in paragraph 8.2.9, that: “Flag States should ensure that crew members are entitled to repatriation, taking into account the principles laid down in the ‘Repatriation of Seafarers Convention (Revised), 1987 (No. 166)’.”

Joint IMO/ILO work on the issue of abandonment of seafarers

Recently, a Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers discussed, inter alia, the issue of abandonment and produced a draft resolution concerning the provision of financial security in case of abandonment of seafarers (it also applies to fishermen on vessels engaged in international voyages) that was approved by the IMO Assembly and the ILO Governing Body. The Working Group also approved guidelines recommending measures to be implemented by ship-owners to ensure the provision of an adequate financial security system for seafarers in case of abandonment. The guidelines set out the main features and scope of coverage of the financial security system and also contain recommendations for certification of the financial security system.

National law and practice

In Canada, in Newfoundland, there are no formal arrangements in place for the repatriation of fishing vessel personnel. Responsibility usually lies with the owner. Concerned citizens and service groups often help with the basic needs of abandoned crew members. For offshore trawlermen, the issue is dealt with in collective agreements.

The regulations on repatriation in the Seamen’s Act of Denmark also cover fishermen – but are not used on account of the special structure of the Danish fishing fleet. Danish fishing vessels operate in limited sea areas and return to the same port from which they first started. The costs connected with a trip from a foreign port to the fisherman’s domicile (for a weekend or after ending the agreement with the ship-owner) are covered by individual agreements. In the case of abandoned fishermen the Danish Employers Guarantee Fund (Lønmodtagernes Garantifond) covers outstanding questions concerning salary and transport to a fisherman’s domicile.

In Japan, a distinction is drawn between workers on vessels covered by the Mariners’ Law (generally, seagoing fishing vessels of 30 gt and greater) and those covered by general labour standards (generally, on fishing vessels under 30 gt and not seagoing). Those covered by the Mariners’ Law must be repatriated by the shipowner. There are penalties for masters who desert fishermen in foreign ports.

In Mauritius, the Banks Fisherman and Frigo-workers (Remuneration Order) Regulations, 1997, provide that “Where repatriation becomes necessary due to illness or injury of the worker, the employer shall bear the costs of the repatriation, cause the worker to be transported to a hospital or clinic, and advise his family of the date of his arrival in Mauritius”. Similarly, in Mauritania, repatriation is at the expense of the shipowner.

The Seamen’s Act in Norway contains sections on repatriation of seafarers which also apply to fishermen working on vessels of 100 grt and over. There are also implementing regulations.

In the Netherlands, coastal fishing vessel crews live and work in the Netherlands, so there is no need for repatriation. On deep-sea trawlers, all companies have a repatriation scheme on a voluntary basis (insurance).

In some countries,¹¹⁰ the laws concerning the repatriation of seafarers also apply to fishermen. The United Kingdom has informed the Office that, although the repatriation regulations include fishing vessels, the obligation to repatriate lies with the employer. If the crew member is not technically employed, then it could be argued that there is no obligation to repatriate. Thus the issue of the status of “share fishermen” is relevant to the issue of repatriation.

Conclusion

The Office has obtained only limited information on this issue. It would appear that this is an issue of concern primarily to fishermen working on board vessels engaged in overseas fishing. However several States apparently deal with the matter by applying the laws and regulations concerning repatriation applicable to seafarers to fishermen.

¹¹¹ Panama, Poland, Romania, Spain, Tunisia, United Kingdom.

CHAPTER V

WORKING AND LIVING CONDITIONS ON BOARD FISHING VESSELS

OCCUPATIONAL SAFETY AND HEALTH

The ILO's Tripartite Meeting on Safety and Health in the Fishing Industry (December 1999), concluded, *inter alia*, that:

Fishing is a hazardous occupation when compared to other occupations. Sustained efforts are needed at all levels and by all parties to improve the safety and health of fishermen. The issue of safety and health must be considered broadly in order to identify and mitigate – if not eliminate – the underlying causes of accidents and diseases in this sector. Consideration also needs to be given to the great diversity within the industry based on the size of the vessel, type of fishing and gear, area of operation, etc.

In Japan in 2000, of the 88 fatal injuries for all workers covered by the Mariners' Law, 55 concerned fishermen. According to a study by researchers at Oxford University, fishermen have by far the most dangerous jobs in the United Kingdom.¹ In the United States, the fatality rate in the fishing industry was 160 deaths per 100,000 workers in 1995; 181 per 100,000 in 1996; 134 per 100,000 in 1997; and 179 per 100,000 in 1998. In 1996 this rate was 16 times higher for fishermen than for other occupations such as fire-fighters, police and detectives and eight times higher than persons operating motor vehicles for a living.² In Nordic countries, fatality rates are reported at 150 per 100,000. In Guinea from 1991-94, the rate was estimated at 500 per 100,000. Recently in South Africa, an estimated rate of 585 per 100,000 was reported.³ Injury rates are also high due to the nature of the marine working environment and the exposure by fishermen to weather and to equipment used to catch and process fish. In April 2001 the European Parliament adopted a resolution concerning safety and causes of accidents in fisheries which set out not only the high death and injury rate in this sector but also called for a number of specific actions, including regulatory action, to improve this record at both the European and the international level.⁴ (Other

¹ S.E. Roberts: "Hazardous occupations in Great Britain", in *The Lancet*, Vol. 360, No. 9332, 17 Aug. 2002 at www.thelancet.com (visited on 20 August 2002).

² *Dying to fish: Living to fish*, Report of the Fishing Vessel Casualty Task Force, United States Coast Guard (Washington, DC, 1999).

³ FAO: *Safety at sea as an integral part of fisheries management*, FAO Fisheries Circular No. 966 (Rome, 2001).

⁴ *European Parliament resolution on fisheries: Safety and causes of accidents (2000/2028(INI))* (*Official Journal of the European Communities*, 24 Jan. 2002). The resolution specifically urged the IMO and the ILO to "adopt a general regulatory framework on vessels flying flags of convenience to combat non-compliance with safety at work requirements, *inter alia*".

chapters and sections of this report relevant to occupational safety and health include: medical examination, working time, accommodation, social security.)

International standards

ILO occupational safety and health Conventions and Recommendations

The ILO has adopted about 70 Conventions and Recommendations which concern occupational safety and health.⁵

The Occupational Safety and Health Convention, 1981 (No. 155),⁶ and its supplementary Recommendation (No. 164), prescribes the adoption of a coherent national policy on occupational safety, occupational health and the working environment. The Convention calls for measures to be taken to ensure tripartite participation in the formulation, implementation and review of policies and practical measures; it establishes the basic principles governing employers' responsibilities at the level of the undertaking (such as the provision of a safer workplace, adequate protective clothing and equipment, and measures to deal with emergencies and accidents, including adequate first-aid arrangements); and it provides that arrangements made at the level of the undertaking should ensure that workers take certain actions (such as reasonable care, compliance with instructions, use of safety devices and protective equipment, reporting hazards to supervisors and reporting accidents and injuries). Although Convention No. 155 applies to all branches of economic activity, member States may, after due consultation, exclude particular branches of activity, including fishing, from its application.⁷ The ILO's Tripartite Meeting on Safety and Health in the Fishing Industry (December 1999) concluded, *inter alia*, that "Governments should ratify the ILO's Occupational Safety and Health Convention, 1981 (No. 155), and apply its provisions to the fishing industry".

Another group of standards highlights measures of protection, such as the guarding of machinery, medical examination, maximum weight of loads to be transported by a single worker; a case in point is the Guarding of Machinery Convention, 1963 (No. 119). There are also standards concerning: protection against specific risks, such as ionizing radiation, benzene, asbestos; prevention of occupational cancer; prevention of air pollution, noise and vibration in the working environment; and safety in the use of chemicals, including the prevention of major industrial accidents. The Asbestos Convention, 1986 (No. 162), is an example of this group of standards.

⁵ At its 279th Session, the Governing Body decided to place on the agenda of the 91st Session (June 2003) of the International Labour Conference an agenda item concerning "ILO standards-related activities in the area of occupational safety and health: An in-depth study for discussion with a view to the adoption of a plan of action for such activities (general discussion)". See GB.280/2, para. 11.

⁶ Ratified (as at 1 September 2002) by 38 States: Antigua and Barbuda, Belarus, Belize, Bosnia and Herzegovina, Brazil, Cape Verde, Croatia, Cuba, Cyprus, Czech Republic, Denmark, El Salvador, Ethiopia, Finland, Hungary, Iceland, Ireland, Kazakhstan, Latvia, Lesotho, Luxembourg, Mexico, Republic of Moldova, Mongolia, Netherlands, Nigeria, Norway, Portugal, Russian Federation, Slovakia, Slovenia, Spain, Sweden, The former Yugoslav Republic of Macedonia, Uruguay, Venezuela, Viet Nam, Yugoslavia.

⁷ The member State has to justify this exclusion and report on progress towards the wider application of the Convention. Exclusions are rare. However, the United Republic of Tanzania, for example, has excluded fishing from the scope of application.

A number of ILO standards provide for protection in certain branches of economic activity (e.g. agriculture, mining, shipping, ports). These standards focus on the specific issues in those sectors, but they also draw upon, or repeat, general principles contained in standards applying to all workers. The most recent sectoral standard adopted concerning occupational safety and health is the Safety and Health in Agriculture Convention, 2001 (No. 184).⁸

The ILO does *not* have an occupational safety and health standard specific to fishing. However, the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), sets out requirements concerning *seafarers*. The Convention calls for the:

- reporting of and investigation into all occupational accidents;
- keeping and analysis of comprehensive statistics concerning numbers, nature, causes and effects of occupational accidents, and research into general trends and into such hazards as are brought out by statistics;
- laying down by laws, regulations, codes of practice or other appropriate means of provisions covering, inter alia, structural features of the ship; machinery; special safety measures on and below deck; loading and unloading equipment; fire prevention and fire-fighting; anchors, chains and lines; dangerous cargo and ballast; and personal protective equipment for seafarers;
- enforcement of provisions by means of adequate inspection or otherwise;
- appointment, from amongst the crew of a ship, of a suitable person or suitable persons or of a suitable committee responsible, under the master, for accident prevention;
- establishment of programmes for the prevention of occupational accidents, in cooperation with shipowners' and seafarers' organizations;
- training of seafarers in occupational safety and health matters;
- international cooperation on the prevention of occupational accidents.

As at 20 September 2002, the Convention had been ratified by 27 States.⁹ It provides, in Article 1(1) that: the term "seafarer" covers "all persons who are employed in any capacity on board a ship, other than a ship of war, registered in the territory for which the Convention is in force and ordinarily engaged in maritime navigation". It further provides, in Article 1(2) that: "[i]n the event of any doubt whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the competent authority in each country after consultation with the shipowners' and seafarers' organizations concerned". The Convention

⁸ At its 271st Session (March 1998), the ILO Governing Body decided to include an item on safety and health in agriculture on the agenda of the 88th Session (2000) of the International Labour Conference because: it is one of the most hazardous sectors worldwide; it is very complex and heterogeneous; it tends to be omitted from the occupational safety and health regulations of many countries, apart from a few which have a set of special provisions on occupational safety and health relating to agriculture; comprehensive legislation on occupational safety and health specific to this sector is almost non-existent; and agricultural workers are excluded from social security benefits.

⁹ Azerbaijan, Brazil, Costa Rica, Denmark, Egypt, Finland, France, Germany, Greece, Guinea, Israel, Italy, Japan, Kenya, Kyrgyzstan, Mexico, New Zealand, Nigeria, Norway, Poland, Romania, Russian Federation, Spain, Sweden, Tajikistan, United Republic of Tanzania, Uruguay.

stresses the prevention of “occupational accidents”, defined as “accidents to seafarers arising out of or in the course of their employment”. The Office is not clear on the degree to which this Convention is being applied to the fishing sector, particularly to small-scale and artisanal vessels.

The Prevention of Accidents (Seafarers) Recommendation, 1970 (No. 142), which accompanies Convention No. 134, provides guidance on the implementation of the Convention.

ILO codes of practice

The ILO has also published a number of codes of practice concerning certain economic sectors and concerning certain types of equipment or agents. The following are examples of codes which may be relevant to the discussion of occupational safety and health in the fishing sector:

- guidelines on occupational safety and health management systems;
- recording and notification of occupational accidents and diseases;
- safety in the use of chemicals at work;
- management of alcohol- and drug-related issues in the workplace;
- accident prevention on board ship at sea and in port.¹⁰

Other international instruments addressing the safety and health of fishermen

Among the United Nations system specialized agencies, the IMO has the primary responsibility for maritime safety and marine pollution prevention. The following describes the main Conventions and other instruments which may be of direct concern to the safety of fishing vessels and fishermen.

The most important IMO instrument concerning safety at sea, the International Convention on the Safety of Life at Sea (SOLAS) 1974, provides general safety requirements for all vessels in Chapter V.

The Torremolinos International Convention for the Safety of Fishing Vessels (Torremolinos Convention), adopted in 1977, establishes a safety regime for fishing vessels of 24 metres in length and over. The Convention did not receive sufficient ratifications to enter into force, as many States claimed it was too stringent. Subsequently a Protocol to the 1977 Torremolinos Convention was adopted in 1993. The Torremolinos Protocol includes provisions concerning construction, watertight integrity and equipment; stability and associated seaworthiness; machinery and electrical installations and periodically unattended machinery spaces; fire protection, fire detection, fire extinction and fire-fighting; protection of the crew; life-saving appliances and arrangements; emergency procedures, musters and drills; radio communications; and shipborne navigational equipment and arrangements. The requirements for protection of the crew concern certain aspects of vessel construction which influence

¹⁰ Recommendation No. 142 provides, inter alia, that “... Members should have due regard to relevant Model Codes of Safety Regulations or Codes of Practice published by the International Labour Office and the appropriate standards of international organizations for standardization”. In 1978, the ILO published a code of practice on accident prevention on board ship at sea and in port. A revised edition was published in 1996.

safety – lifelines, deck openings, bulwarks, rails, guards, stairways and ladders. The Protocol restricts the obligatory provisions of the Convention to vessels of 45 metres and above. For vessels of between 24 and 45 metres in length, the application of the safety requirements is left to regional decisions. It will enter into force one year after 15 States with at least an aggregate fleet of 14,000 vessels (roughly 50 per cent of the world fishing fleet of vessels 24 metres in length and over) have ratified it.¹¹

A number of other IMO standards are also relevant, for example: Assembly resolution A.484(XII) entitled “Basic principles to be observed in keeping a navigational watch on board fishing vessels”; and Assembly resolution A.884(21) entitled “Amendments to the code for the investigation of marine casualties and incidents (including injuries sustained by a person in a casualty resulting in incapacitation for more than 72 hours commencing within seven days from the date of injury). There are several other IMO Conventions which are relevant to safety and health at sea in general. These include: the International Convention on Maritime Search and Rescue (SAR), 1979; the 1988 (GMDSS) amendments to SOLAS; and the Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972 (as amended). The International Aeronautical and Maritime Search and Rescue Manual, the purpose of which is to assist States in meeting search and rescue needs, contributes significantly to improving the rescue of fishermen.

The United Nations Food and Agriculture Organization (FAO) works to improve safety in the fishing industry through the adoption of its own codes, through joint preparation with the ILO and the IMO of safety and health codes and guidelines and through its own technical cooperation programme. The Code of Conduct for Responsible Fisheries (see Chapter I), which is not binding, includes provisions which clearly link responsible fishing to the safety and health of fishermen.¹²

Joint FAO/ILO/IMO codes relevant to safety and health in the fishing sector

The FAO, ILO and IMO have jointly produced four publications relevant to the safety and health of fishermen (i.e. fishing vessel personnel) and fishing vessels:

¹¹ As training is an essential element of safety, the STCW-F Convention is also relevant. For a discussion of this Convention, see the section of this report concerning competency certificates and vocational training.

¹² Article 6, General Principles, paragraph 6.17, provides that: “States should ensure that fishing facilities and equipment as well as all fisheries activities allow for safe, healthy and fair working and living conditions and meet internationally agreed standards adopted by relevant international organizations”; article 8, Fishing Operations, paragraph 8.1, Duties of all States, provides in subparagraph 8.1.5 that: “States should ensure that health and safety standards are adopted for everyone employed in fishing operations. Such standards should be not less than the minimum requirements of relevant international agreements on conditions of work and service”; article 8.2, Flag State Duties, subparagraph 8.2.5, provides that: “Flag States should ensure compliance with appropriate safety requirements for fishing vessels and fishers in accordance with international conventions, internationally agreed codes of practice and voluntary guidelines. States should adopt appropriate safety requirements for all small vessels not covered by such international conventions, codes of practice or voluntary guidelines”; and subparagraph 8.2.10 provides that: “In the event of an accident to a fishing vessel or persons on board a fishing vessel, the flag State of the fishing vessel concerned should provide details of the accident to the State of any foreign national on board the vessel involved in the accident. Such information should also, where practicable, be communicated to the International Maritime Organization”. For a full discussion of the FAO’s substantial work concerning the safety of fishing vessels and “fishers”, see: FAO: *Safety at sea as an integral part of fisheries management*, FAO Fisheries Circular No. 966 (Rome, 2001) at www.fao.org/DOCREP/003/X9656E/X9656E00.htm (visited on 28 November 2002).

- *The FAO/ILO/IMO Document for Guidance on Training and Certification of Fishing Vessel Personnel*, as its name indicates, concerns training and certification and is discussed in the section of this report concerning that subject.
- *The 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), and the *FAO/ILO/IMO Voluntary guidelines for the design, construction and equipment of small fishing vessels*, both concern the construction of vessels and the equipment they carry. These are undergoing revision and will be finalized and published by 2005.
- *The FAO/ILO/IMO Code of safety for fishermen and fishing vessels* (Part B, Safety and health practice for skippers and crews) is also being revised. The subject matter of this code is most relevant to occupational safety and health issues on board fishing vessels.

Regional standards

Safety of fishing vessels (construction and equipment)

It is impossible to consider the occupational safety and health of fishermen without also considering the safety of the fishing vessel and its equipment. The following regional standards concern these issues.

In Asia, there are the “East and South-East Asia – Guidelines for the safety of fishing vessels of 24 metres and over but less than 45 metres in length operating in the East and South-East Asia region”.¹³

In Europe, Council Directive 97/70/EC of 11 December 1997 setting up a harmonized safety regime for fishing vessels of 24 metres in length and over,¹⁴ which applies to fishing vessels flying the flag of an EU Member State or operating in the internal waters or territorial sea of a Member State or landing their catch in a port of a Member State, generally provides that fishing vessels should comply with the relevant provisions of the annex to the Torremolinos Protocol and that Member States should ensure that the requirements in certain chapters of the annex – which apply to vessels of 45 metres and over – are also applied to new fishing vessels of 24 metres in length and over, flying their flag, unless otherwise provided in Annex II of the directive. Annex IV specifically concerns safety requirements. As of early 2002, the European Commission was also considering action to improve safety and health on fishing vessels less than 24 metres in length.¹⁵

¹³ Information in this section is based on IMO: *The report of the Conference on the Safety of Fishing Vessels Operating in the East and South-East Asia Region*, 68th Session of the Maritime Safety Committee (London, doc. MSC 68/INF.10, 28 Feb. 1997).

¹⁴ In its report to the European Parliament, *Fisheries: Safety and causes of accidents*, of 12 March 2001, the Committee on Fisheries observed that this Directive affected only 3 per cent of vessels in the European fleet.

¹⁵ *ibid.*

Though they may not fall exactly into the category of standards, arrangements have been made in other regions to improve safety at sea. These often focus on smaller vessels, and may include not only construction and equipment issues but other issues relevant to occupational safety and health. For example, the workplans of such regional bodies or organizations as the Organization of East Caribbean States (OECS), the Sub-Regional Fisheries Commission of North-West African States, the South Pacific Commission (SPC) and the Bay of Bengal Programme (BOBP) have undertaken considerable work in this area.¹⁶

Occupational safety and health in the fishing sector

Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels applies to all existing fishing vessels of 18 metres in length and over, to new fishing vessels of 15 metres in length and over and to all persons working on board these vessels, including trainees and apprentices. New fishing vessels were to comply by 23 November 1995, and existing fishing vessels by 23 November 2002. Fishing vessels which underwent extensive repairs, conversions and alterations on or after 23 November 1995 were also to comply.¹⁷

Under the Directive, EU Member States are to take measures to see that owners ensure that their vessels are used “without endangering the safety and health of workers”. Occurrences at sea which affect or could affect the safety and health of the workers on board are to be described in a detailed report and be forwarded to the relevant competent authorities and recorded carefully and in detail in the ship’s log. Such a log, or other documentation, is to be required by national legislation or regulations. States are also to take the measures necessary to ensure that, as regards compliance with the Directive, vessels are subject to regular checks by authorities specifically empowered to carry out such checks.

EU Member States are to make sure that owners:

- ensure that vessels and their fittings and equipment are technically maintained and that defects found which are likely to affect the safety and health of workers are rectified as quickly as possible;
- take measures to ensure that all vessels and equipment are cleaned regularly in order to maintain an appropriate standard of hygiene;
- keep on board an adequate quantity of suitable emergency and survival equipment in good working order;
- take account of certain minimum safety and health requirements (listed in an annex to the Directive);
- take account of personal protective equipment specifications (listed in an annex to the Directive); and
- supply skippers with the means to fulfil the obligations imposed in the Directive.

¹⁶ See FAO Fisheries Circular No. 966, op. cit., p. 12.

¹⁷ In its report *Fisheries: Safety and causes of accidents*, of 12 March 2001 (op. cit.), the Committee of Fisheries pointed out that this Directive affected only 8 per cent of the European fishing fleet.

Workers and their representatives are to be informed of all measures taken regarding safety and health on board vessels, and the information provided is to be comprehensible to the workers concerned.

Workers are to be given suitable training, in particular in the form of precise, comprehensible instructions, on safety and health on board vessels and on accident prevention in particular. Training shall cover in particular fire-fighting, the use of life-saving and survival equipment, the use of fishing gear and hauling equipment and the use of various types of signs, including hand signals. Training is to be updated, where this is required, by changes in the activities on board. Persons likely to be in command of a vessel are to be given detailed training on: the prevention of occupational illness and accidents on board and the steps to be taken in the event of an accident; stability and maintenance of the vessel under all foreseeable conditions of loading and during fishing operations; and radio navigation and communication, including procedures.

The Directive calls for the consultation of workers and/or their representatives and their participation in discussions on the matters in the Directive in accordance with article 11 of Directive 89/391/EEC.¹⁸

Article 12 of the Directive, Adaptation of the Annexes,¹⁹ provides for “purely technical” adaptations of the annexes to the Directive to take account of: the adoption of directives in the field of technical harmonization and standardization concerning certain aspects of safety and health on board vessels; and technical progress, changes in the international regulations or specifications and new findings in the field of safety and health on board vessels.

National law and practice

In the remaining sections of this chapter, the Office has attempted to provide a general description of the main laws and regulations, and in some cases practices, concerning occupational safety and health of fishermen from several member States. This is followed by more detailed discussion on some of the major elements of legislation and practice.

¹⁸ Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work is a “framework” Directive which serves as a basis for individual directives. It aims to ensure a higher degree of protection of workers at work through the implementation of preventive measures to guard against accidents at work and occupational diseases, and through the informing, consultation, balanced participation and training of workers and their representatives. The following are examples of other Directives on specific issues: Council Directive 94/33/EEC on the protection of young people at work; Council Directive 90/269/EEC on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers; Council Directive 89/656/EEC on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace, and others.

¹⁹ Annex I includes requirements covering seaworthiness and stability; mechanical and electrical installations; radio installation; emergency routes and exits; fire detection and fire-fighting; ventilation of enclosed workplaces; temperature of working areas; natural and artificial lighting of workplaces; decks, bulkheads and deckheads; doors; traffic routes – danger areas; layout of workstations; living quarters; sanitary facilities; first aid; accommodation ladders and gangways; and noise; Annex II includes requirements concerning the same subject areas (except for “noise”), though of a generally less rigorous standard; Annex III includes, inter alia, requirements covering equipment to be carried, how frequently it must be inspected and the frequency and nature of emergency drills; Annex IV requires workers to be provided with personal protective equipment and for it to be brightly coloured and to contrast with the marine environment.

General

There are various ways in which ILO member States address the issue of safety and health of fishermen through national laws and regulations.

In several countries,²⁰ the general labour law (for all workers) concerning occupational safety and health is applied to the fishing sector. In some of these there are no specific requirements concerning fishing in the legislation, while in others there may be a few specific provisions concerning fishermen. In certain countries,²¹ it appears that the Seafarers' Act or Mariners' Act applies to the fishing sector. Provisions concerning occupational safety and health of fishermen are sometimes found in the Fisheries Act²² or in a specific "fishermen's code" (e.g. Tunisia).

In Japan, workers on seagoing fishing vessels of 30 gt and greater are covered by the Mariners' Law while those on vessels under 30 gt and not seagoing are covered by the general occupational safety and health laws and regulations. In Australia, workers on fishing vessels on overseas voyages are generally covered by the Navigation Act – which also applies to seafarers. Other vessels fall under the regulations of individual states. For example, in Queensland, workplace health and safety is regulated under the Workplace Health and Safety Act and associated regulations. In India, fishing vessels of 24 metres in length and over are regulated by the Merchant Shipping Act. However, occupational safety and health matters for vessels under 24 metres in length are dealt with by special programmes established by privately owned fishing cooperatives.

In Europe, there is a trend towards adopting specific laws and regulations concerning the occupational safety and health of fishermen. This is largely due to the adoption of Council Directive 93/103/EC (described above). EFTA States and potential EU Member States are also generally aligning themselves to the EU legislation. Other European Directives of a more general nature (also mentioned above) are also influencing national laws and regulations. Denmark, as part of its implementation of this Directive, has established the Fisheries Occupational Health Council (see Chapter VII). The United Kingdom has recently updated a number of its regulations to bring them in line with these Directives, including amending its Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations to reflect provisions of EC Directive 89/391/EEC and Directives 91/383/EEC²³ and 92/85/EC.²⁴ As noted earlier, while Directive 93/103/EC is specifically concerned with the fishing sector, other Directives, often apply to all workplaces. The result has been that, while vessels under 15 metres may not be obliged to implement all of the requirements of the specific fishing sector Directive, they must meet, for example, the requirements to carry out a risk assessment as set out in Directive 89/391/EEC. While efforts have been made in many European States to meet their obligations, it is not clear whether such risk assessments are in fact being carried out.

²⁰ Indonesia, Mauritius, Mozambique, Nigeria, Philippines, Thailand and most of the Southern African Development Community (SADC) States.

²¹ Estonia, Denmark, Norway, South Africa (an exception to the other SADC States) and Spain.

²² Malaysia and Viet Nam.

²³ Concerning safety and health at work of workers with fixed-duration or temporary employment.

²⁴ Concerning safety and health at work of pregnant workers.

In Canada, in British Columbia, the Occupational Safety and Health Regulations, adopted under the authority of the Workers' Compensation Act, covers special fishing requirements, including requirements for specific fishing operations (e.g., gill-netting, longlining, seining, trawling, trolling).

Promotional programmes and means of communicating with fishermen

The high record of fatalities and injuries in the fishing sector have spurred the development of safety and health programmes in many countries. These programmes may aim to improve implementation of laws and regulations or seek to improve safety and health without resorting to legal requirements. Fishing industry organizations, including employers' organizations, frequently establish programmes on safety and health either to assist their members to implement requirements, because they feel that no action on their part will result in legal requirements – or simply because they find it to be economical or ethical to do so.

In Canada, in British Columbia, for example, promotion of safety is carried out by the Workers' Compensation Board. All laws and regulations are available on the Internet. In addition, there is a specific publication, *Gearing up for safety: Safe work practices for commercial fishing in British Columbia*, and hazard alerts and "Fatal" posters aimed at vessel owners and crews. In Newfoundland, the Professional Fish Harvesters' Certification Board plays a major role in communicating safety and health information to fishing vessel owners and fishermen. More recently, in the Atlantic region of Canada, a research programme called SafetyNet, funded by the Canadian Institutes of Health Research, has brought together the Canadian Coast Guard, trade unions, Canadian universities, the Workplace, Health, Safety and Compensation Commission, and other groups, in an effort to identify factors that have an influence on occupational safety and health. The study is drawing on several databases in both governmental and non-governmental organizations.²⁵

The Danish Maritime Authority has published an action plan²⁶ which sets a new direction for health and safety in the Danish merchant fleet and on Danish fishing vessels. This plan was developed after many years of effort to improve occupational safety and health at sea, including: improvement of occupational health services; development of special safety education programmes aimed at the safety organizations of the fishing and shipping industries, respectively; new occupational health rules and regulations; treatment of illnesses on board; surveys of conditions related to occupational health, etc.

In Honduras, a programme for fishing is supported by an institute catering for fishermen's issues, which is funded by the Government. The programme focuses on occupational safety and health, with emphasis on preventive action. Several government agencies cooperate in its implementation.

The National Institute of Occupational Safety and Prevention (ISPESL) in Italy has launched an initiative to carry out internal research and a statistical study of injuries in the merchant shipping and fishing sectors through analysis of Radio Medical

²⁵ For details, see <http://www.safetynet.mun.ca/content/ProjectProfiles.htm> (visited 27 November 2002).

²⁶ Available at http://soefart.inforce.dk/graphics/Synkron-Library/DMA/UK_PDF/Publications/PDF/AP2005.pdf (visited 27 November 2002).

Centre (CIRM) databases and other available information from the Social Security Institute for the Shipping Sector (IPSEMA), the Maritime Health Offices, the local health agencies, shipping and fishing companies, and to create information and training tools for seamen. Information is also provided by the National Institute of Insurance against Accidents at Work (INAIL). A series of comprehensive, well-illustrated publications on law and practice concerning occupational safety and health in the fishing sector has also been produced by the *Associazione Amatori da Pesca* (Association of Fishing Vessel Owners) in cooperation with the national and regional ministries of agriculture and fishing, and the European Commission. A series of publications has also been produced by the Molgetta Fishing Vessel Owners' Association in collaboration with the EU, the Ministry for Agricultural Policies, the General Directorate for Fishing and Aquaculture, and the Department of Aquaculture and Fishing in the Puglia Region. These publications cover: models for drafting safety programmes; safe work practices on board fishing vessels; a practical guide for medical assistance on board fishing vessels, and other issues.

In Chile, the *Asociación Chilena de Seguridad* (ACHS) has been implementing a safety programme in the industrial fleet for many years. Over the period 1992-98, there was a steady decline in accidents; this was attributed to training in such areas as risk prevention and an exchange of experiences at national level. The ACHS assists companies in a number of ways, arranging both general training courses (including first aid) and courses specifically aimed at fishing operations. It has also prepared a series of manuals, videos and posters covering such issues as maritime safety; trawling safety; survival at sea; safe navigation; safety in preparing and repairing nets; and other topics.

In New Zealand, an industry-led, Fishing Industry Safety and Health Advisory Group (coordinated by the Maritime Safety Authority of New Zealand) was established in 2001 to review safety and health in the commercial fishing industry. This group has an ongoing role in developing, implementing and promoting injury prevention programmes across the industry.

In the United States, the North Pacific Fishing Vessel Owners' Association (NPFVOA) operates a safety education and training programme. Funding is provided primarily through member contributions and also through tuition fees and sales of materials. Members are primarily fishing vessel owners and fishing-related companies, ranging from small salmon boats with single operators to large processing ships with crews of 150 and more. The Association also works together with insurance underwriters and brokers, maritime attorneys and fishing industry support businesses. It works closely with the United States Coast Guard, the Occupational Safety and Health Administration of the United States Department of Labor, and many state agencies. There are three primary components of the NPFVOA vessel safety programme – a comprehensive safety manual, a series of safety and survival at sea videotapes, and a crew training programme. The NPFVOA also publishes a quarterly newsletter covering its safety programme, other relevant safety information and reports of serious fishing vessel accidents.

Duties of employers/fishing vessel owners, and rights and duties of fishermen

Many countries specify duties of employers in their national and regional (i.e. provincial) labour legislation covering all workers (often reflecting the principles con-

tained in Convention No. 155 and other ILO standards). Generally, fishing vessel owners seem to be held to these requirements. In a number of countries,²⁷ such provisions are also contained in the Seamen's Act or Shipping Act. In a few countries these issues are addressed in regulations specific to the fishing sector.

For example, in New Zealand, the Maritime Transport Act, which covers fishing, provides that employers are to ensure the safety of seafarers. They shall take all practicable steps to: provide and maintain for seafarers a safe and seaworthy ship and a safe working environment on the ship; provide and maintain for seafarers on the ship facilities for their safety and health; ensure that while on the ship, the seafarers are not exposed to hazards arising out of the arrangement, disposal, manipulation, storage or use of things on the ship or near the ship; develop procedures for dealing with emergencies that may arise while seafarers are on the ship. The employers have moreover the duty to give information to the seafarers. Similarly, regulations in Norway provide that, unless otherwise specifically provided, the shipping company and the shipmaster are responsible for ensuring that work on board is planned, organized and carried out in accordance with the relevant regulations. The safety and health of workers shall be ensured in all matters associated with work or off-duty time on board. Workers shall under no circumstances incur expenses as a result of safety and health arrangements on board. Furthermore, the responsibility of the shipping company under the regulations is not affected by the duties and obligations incurred on workers and their representatives. In Canada, in British Columbia, the duties of employers are set out generally in the Workers' Compensation Act; however, the general responsibilities of fishing vessel owners and masters are laid down under the Occupational Safety and Health Regulations, under "Fishing operations: General requirements".

The same situation applies to laws and regulations concerning the rights of fishermen. These are set out in the general labour legislation or in the Seafarers' Act or Shipping Act. For example, in Canada, the rights and duties of workers are generally established in provincial law. For trawlermen in Newfoundland, these issues are set out in collective agreements. In Estonia, if more than one half of the crew members request the master to verify the seaworthiness of the ship or if the chief mate or chief mechanic makes such a request with regard to the part of the ship or the equipment for which they are responsible, the master must contact the agency exercising state supervision over ships registered in Estonia to verify the seaworthiness of the ship. In New Zealand, every employer of seafarers on New Zealand vessels (including fishing vessels) has to ensure that every seafarer is given all results of monitoring of the seafarer in relation to health or safety; and all seafarers who ask for them are given the results of monitoring of conditions in the seafarer's ship.

There also appears to be a trend towards extending, to the extent possible, provisions concerning safety and health committees to the fishing sector. Norway, for example, has extensive regulations concerning safety committees and safety advisers (election, protection, right to stop work, recording of meetings, etc). These appear to be largely taken from general labour law. In Spain, safety and health committees are compulsory if there are 50 or more workers in an enterprise. In Canada, in British Columbia, guidelines concerning the occupational safety and health regulations specific to the fishing sector provide for flexibility in the establishment of a formal safety

²⁷ Estonia, Mexico, New Zealand, Norway, Spain.

and health programme if the vessel is unlikely to have sufficient employees for such a programme.

Some countries set out not only the responsibilities of fishing vessel owners and/or masters but also of fishermen themselves. In Canada, in British Columbia: “[c]rew members must take all reasonable precautions necessary to ensure the health and safety of themselves and other persons on board the fishing vessel”. In Norway, regulations provide that every worker has a duty to comply with orders and instructions, including to accept assignments, show caution and otherwise in every way cooperate to safeguard life, health and welfare in accordance with regulations. Workers must also use the required protective equipment and cooperate to prevent accidents and health injuries. They are to notify the person responsible or protection supervisor of defects or deficiencies which may involve risks to life or health.

Actions at the workplace/enterprise level

One of the major developments in the shipping sector in recent years has been the development of the International Safety Management (ISM) Code. This Code, which initially was voluntary and now is mandatory for many ships through inclusion in Chapter V of the SOLAS Convention (see above), requires vessels to have a safety management system on board.²⁸ In New Zealand, for example, the Maritime Rules concerning safe ship management systems apply to the fishing sector. The ILO has recently prepared Guidelines on occupational safety and health management systems, which may be more relevant to occupational safety and health matters on fishing vessels.²⁹

Risk assessments are being carried out by many EU Member States (as well as EFTA States and prospective EU Members) due to the requirements of Directive 89/391/EEC (see above). Though the requirement for safety assessments applies to all vessels, it would appear that owners of small vessels may not abide by these. Interestingly, it appears that in some countries vessels are too small to come under the requirements of Directive 93/103/EC, which is specific to fishing, but must comply with Directive 89/391/EEC. In the United Kingdom, a risk assessment methodology is promoted by the Sea Fish Industry Authority (see box 5.1). In Italy, a decree obliges the shipowner and captain to carry out risk assessments for safety and health on board (modelled on the United Kingdom system). Norway and Spain also have such systems in place.

A regulation on prevention services in Spain provides for evaluation procedures for health risks for workers and the organization, functioning and control of prevention services. This order implements Directive 89/391/EC.

²⁸ The ILO’s Tripartite Meeting on Safety and Health in the Fishing Industry (December 1999) concluded, inter alia, that: “Safety and health improvements cannot be achieved solely through legislation. A safety culture should be promoted in the fishing industry, including the use of safety management systems appropriate to the enterprise and the dissemination of safety information. Governments, employers and workers’ organizations should be involved in the development and implementation of such systems.”

²⁹ The Guidelines provide a model, compatible with other management system standards and guides. They are not legally binding and are not intended to replace national laws, regulations and accepted standards. They reflect ILO values such as tripartism and relevant standards, for example Conventions Nos. 155 and 161. See ILO: *Guidelines on occupational safety and health management systems, ILO-OSH 2001* (Geneva, 2001).

Box 5.1

Risk assessment in the United Kingdom

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, which came into force in 1998, require vessel operators to prepare a written statement of their general policy with respect to health and safety and to revise this as often as may be appropriate, and also to carry out risk assessments to identify health and safety risks for workers in the normal course of their activities or duties.

The Sea Fish Industry Authority, together with United Kingdom fishing federations and the Maritime and Coastguard Agency (MCA), has developed a Fishing Vessel Safety Folder for use by fishing vessel owners. The folder includes a series of forms to be used to prepare the policy statement and risk assessments required by the regulations. The Fishing Vessel Safety Policy Statement Form provides spaces for information on the vessel, number of crew, names of the owner, skipper and the person responsible for health and safety, and various emergency procedures. In the form, the owner sets out how he intends to operate the vessel in compliance with the 1997 regulations and other health and safety regulations, to minimize the risk of accidents and ill health. The form covers safety equipment, emergency measures and risk assessments for activities and areas of the vessel which are to be reviewed every 12 months or sooner if significant changes have been made. Personal and protective equipment, information, training and the operating procedures necessary for the safety of the vessel and crew are to be provided as required by the regulations. The form also includes a section entitled "Crew list and statement" in which members of the crew must state that they possess current MCA-recognized certificates in sea survival, fire-fighting and first aid; that they have been given safety induction for working aboard the vessel; that the safety equipment and procedures have been explained; that they have been informed of the risk assessments which have been made; and that they will comply fully with all requirements for health and safety in connection with the vessel. A comprehensive safety equipment checklist is included. Advice and examples on how to perform the assessment are provided.

Source: *Fishing Vessel Safety Folder*, Sea Fish Industry Authority, United Kingdom.

On-board safety training

In a number of countries, national laws or regulations provide that employers have a duty to ensure that fishermen receive on-board safety training (for information on competency certificates and vocational training, see the section of this report concerning those topics). A few countries indicated specific requirements for seafarers; only a few appeared to have special requirements for fishermen. Such training may be particularly important to ensure that the crew is familiar with the specific vessel and its equipment, including the location of lifesaving and fire-fighting equipment.

In Canada, in British Columbia, under the Occupational Safety and Health Regulations, in the sections concerning "Fishing vessels: General requirements", the master

must ensure, before the start of each season, that each crew member is instructed in the operational characteristics of the vessel (specific areas are listed). New crew members joining the vessels are also to receive such training. The master must also establish procedures and assign responsibilities for emergency situations, and ensure that drills are conducted at the start of the fishing season and at periodic intervals. Employers of seafarers (including fishermen) in New Zealand must take all practicable steps to ensure that every seafarer who does work of any kind, or uses plant of any kind, or deals with a substance of any kind, on the ship: either has or is supervised by a person who has such a knowledge and experience of maritime matters that he is not likely to cause harm to the seafarer or to any other person; is adequately trained in the safe use of all plant, objects, substances, and protective clothing and equipment that the seafarer is or may be required to use or handle.

The EU, EFTA and prospective EU Member States are generally implementing the relevant requirements of Directive 93/103/EC on this subject. In Italy, a decree provides that shipowners are to ensure that every maritime worker receives sufficient and adequate training as regards health and safety, with particular reference to the type of ship involved and the duties performed on board. Training is to take place on embarkation, and when new working equipment, technologies, dangerous materials or substances are introduced. Norway requires that each individual is to receive the necessary training: to be able to carry out work in a safe and proper manner; before being given access to areas involving a serious or special risk; and when new technology is introduced. Furthermore, training must be repeated regularly and documented. In Romania, the ship's captain must be carefully instructed on: occupational accidents and disease; measures to be taken in the event of an accident; and measures to ensure the ship's stability in all circumstances. In Spain, the shipowner must guarantee that the workers and workers' representatives receive adequate training and information on safety and health matters on board. Specific measures for fishing are set out in a special order. Estonia requires that the training of crew members regarding occupational safety and health shall be organized by the shipowner (a general requirement for all vessels, not specific to fishing).

Personal protective equipment, equipment safety and ergonomics, manual lifting

In some member States, the provision of personal protective equipment is covered in the national law concerning all workers. For example, in Mexico, this is dealt with under the Federal Labour Act. In others, there are laws and/or regulations concerning personal protective equipment for seafarers generally. In a few countries there are specific requirements for fishing vessels. As in other areas, EU, EFTA and prospective EU Member States are implementing Directive 93/103/EC and other European requirements.

In Canada, in British Columbia, there is a requirement that fishing vessels must carry an immersion suit – essential in the cold waters of British Columbia – for each member of the crew under the Occupational Safety and Health Regulations, in the sections concerning “Fishing vessels: General requirements”. However, it is not stipulated who will provide the suits. Nevertheless, the master is held responsible for non-compliance. In Newfoundland, requirements concerning protective equipment are generally set out in the Occupational Health and Safety Act and its implementing Regulations. In Estonia, the Seafarers' Act requires that the shipowner shall, at the

shipowner's expense, provide crew members with working clothes and special clothing and protective equipment necessary for the performance of their work.

Norway's regulations provide that personal protective equipment shall be used when a risk cannot be eliminated or sufficiently limited by means of common protective measures of a technical nature or by means of measures, methods or procedures relating to the organization of work. There are specific requirements concerning personal protective equipment. There are also regulations concerning the use, procurement and training in the use of personal protective equipment. In Romania, the shipowner must ensure that the ship is properly equipped with the technical material necessary to: guarantee the safety of work on board; ensure that the crew is equipped with individual working and protective equipment (protection tools, materials and safety devices); and guarantee the working and living conditions on board. In the Republic of Korea, shipowners must comply with the provisions of a decree of the Ministry of Maritime Affairs and Fisheries stipulating that they: maintain working tools; provide medicines; dispense training on safety and health; and take all necessary steps to prevent danger on the job and ensure healthy conditions on board.

Equipment safety and ergonomics

Safety can of course be improved by ensuring that the vessel and its equipment are designed and built to a minimum standard. A considerable number of countries have carried out research to improve vessel design, to ensure that equipment is properly shielded and equipped with appropriate safety stops, and to improve the placing of equipment on board (e.g., to provide adequate room for the crew to work safely) and in other areas. Several countries have laws and regulations in place which place a responsibility on the vessel owners to ensure that the vessel and its equipment are safe (to the extent this is possible).

For example, in Canada, in British Columbia, the owner must ensure that all machinery and equipment on board the vessel is capable of safely performing the functions for which it is used. The owner also must ensure that the moving parts of power-operated machinery are, where practicable, fitted with effective guards if such parts constitute a danger to crew members. There are also requirements concerning slipping and tripping hazards; preparation of the vessel for the voyage (by the master); access and ingress; protection from falling; deck openings; equipment control devices; illumination and other equipment-related matters.

Norway has a number of requirements concerning the way in which the equipment is designed and arranged on board ship, the manner in which this equipment is used and inspected, and equipment for special hazards. Workers must also receive appropriate training, practice and instruction in the use of this equipment. In New Zealand, the law requires that every employer of seafarers shall take all practicable measures to ensure that plant (equipment, fittings, furniture, implements, machines, machinery, tools and vehicles) used by any seafarer on the ship is so arranged, designed, made and maintained that it is safe for the seafarer to use. In Romania, there is a specific law for shipping which provides that the shipowner must: ensure the technical maintenance of ships and repair, as soon as possible, all deteriorations likely to affect safety and health on board; take measures to ensure good standards of hygiene on ships and maintain the plant on board; and guarantee that the ship is equipped with the necessary rescue means. In Spain, an Order in Council implements the European Directives 89/655/EC

and 95/63 EC on minimum requirements on safety and health for all workers. Fishing vessels in Malaysia must be equipped with basic safety equipment, such as life-jackets and fire extinguishers.

In EU Member States, Council Directive 90/269/EEC on the minimum health and safety requirements for the manual handling of loads, where there is a risk particularly of back injury to workers, applies to fishing. In Canada, in British Columbia, the master must ensure that crew members are instructed in and use proper lifting techniques. In Newfoundland, these matters are generally covered in the Occupational Health and Safety Regulations. In Norway, the regulations concerning work on ship (including fishing vessels) also include a special section on the manual handling of objects (apparently drawing on such regulations for all workers). These requirements cover the organization of work and information for and training of workers.

Recording and reporting of fatalities, injuries, diseases

The Tripartite Meeting on Safety and Health in the Fishing Industry concluded that:

Reliable data and statistics are needed to identify fishermen's safety and health problems and to focus response and resources effectively. Under-reporting of occupational accidents and diseases of fishermen is a very serious problem. Governments, employers' and workers' organizations should assist in developing or improving reporting systems. Governments should approach insurance providers to exchange information, where appropriate, on accidents, injuries and diseases.

Harmonization of data is important. The collection of data on occupational accidents and diseases in the fishing industry can be improved by the use of standardized forms. Statistics and lessons learned should be widely disseminated, especially to employers and fishermen. In order to prevent statistics on fishing from being lost in the general category of 'agriculture, hunting, forestry and fishing', governments should adopt classification schemes which are convertible to the International Standard Industrial Classification of all Economic Activities (ISIC), Revision 3, as recommended by the ILO.

There appears to be a serious problem in the under-reporting of fatalities, injuries and diseases of fishermen in many – but not all – countries. The Office has therefore sought to identify any laws and regulations requiring the recording and notification of this information. These requirements are often found in laws and regulations for all workers.³⁰ In many countries,³¹ the requirements concerning the reporting and notification of accidents of fishermen are found in the legislation governing all seafarers. Canada has – at least in some provinces – specific laws or regulations for the fishing sector. In other countries (e.g., Malaysia) reporting of accidents appears to be encouraged but not necessarily required.

Many countries appear to require that the master or skipper keep a log of accidents and illnesses on board. In other cases, or in addition, it is a general requirement of the employer or fishing vessel owner. Although the criteria for reporting vary, they all require that fatalities be reported. In some countries,³² not only accidents but also illnesses must be reported. In Italy, injuries must be reported. Some countries addition-

³⁰ Australia (Queensland), Romania.

³¹ Italy, Mexico, New Zealand, Norway, Spain.

³² Australia (Queensland), Spain.

ally require reports of “dangerous events” (New Zealand) or “incidents” (New Zealand). In the United Kingdom, an accident (to be reported) includes any contingency whereby a major injury or loss of life is suffered by any person on board.

An example of specific fishing regulations is found in Canada (British Columbia), where crew members are required to report all injuries to the master without delay. The master must then report to the owner injuries that require medical aid and record all injuries in the vessel logbook. In accordance with the Occupational Safety and Health Regulations, the employer must maintain a record of all injuries and diseases reported. These records must be kept for at least ten years. The record of an injured worker must be made available to that worker on request. In Newfoundland, it is the employer’s responsibility to report accidents to the Workplace Health, Safety and Compensation Commission of New Brunswick (WHSCC), to the provincial Department of Labour and to the Workplace Occupational Safety and Health Committee or the worker safety representative. The Occupational Health and Safety Act also requires physicians to notify the WHSCC and the Department of Labour of the diagnosis of occupational diseases. Throughout Canada, the National Work Injury Statistics Coding Manual is used to gather statistics on occupational accidents and diseases. A fine may be imposed if injuries are not reported within a set time period.

In Japan, for those workers on vessels covered by the Mariners’ Law, the shipowner is required to file a report on accidents and illnesses to the Ministry of Land, Infrastructure and Transport. The Minister prepares an annual report on occupational injuries and fatalities in the sector. For those workers on vessels not covered by the Mariners’ Law (generally smaller vessels), the employer is required to submit a report on accidents or workers’ death, injuries and sickness in compliance with an ordinance on industrial safety and health based on the Industrial Safety and Health Law.

Fishermen in Malaysia are encouraged to notify any accident involving fishermen and fishing vessels at sea or at a fishing port to the authority, i.e., the police and/or the Department of Fisheries. In other countries the requirements may be to report to the maritime authority, labour authority, workers’ compensation board or other authority.

In Mauritania, accidents at work (but not occupational illnesses) are registered at the inter-enterprise medical service. In Mexico, the Federal Labour Act includes specific provisions for recording and notification of accidents on board vessels. The employer must inform the corresponding port captain within 24 hours, of all work accidents that have occurred in a foreign port; the report is then given to the Mexican consul, or, failing this, to the captain of the first national port that the vessel enters. Accidents at work are to be communicated to the labour authority so that it can maintain and update the register of national statistics on work-related accidents and sicknesses.

The crew of a fishing vessel in the United States is required to report an injury, illness or other disability to the master of the vessel. The posting of a notice on fishing vessels of this requirement is mandated by statute. The United States Coast Guard keeps statistics for fishing vessel accidents, deaths and losses, in order to track the progress of the agency, vessel owners and fishermen in improving safety.

EU Member States, EFTA States and prospective EU Member States are implementing requirements set out in Directive 93/103/EC. In Spain, a general law on the prevention of labour hazards provides that the employer must keep information relevant to (among other areas) any work accidents or occupational illnesses that have caused a worker to become incapacitated for more than one day. Furthermore, Direc-

tive 93/103/EC requires the vessel owner to keep a detailed account (in the logbook or in a special document for this purpose) of occurrences at sea that have some effect on the health of workers on board. The account must be transmitted to the labour authority. In the United Kingdom, regulations require skippers to report accidents to the United Kingdom's Marine Accident Investigation Branch (MAIB).

Norway provides an example of a rather complete system of recording fatalities, injuries and diseases, compiling statistics, and providing information to regulators and to the fishermen themselves to help prevent further accidents or health problems. Employees covered by the Norwegian National Insurance Scheme report occupational injuries on a specific form. For employees not covered by the Norwegian National Insurance Scheme, occupational injuries are reported using the Norwegian Maritime Directorate's form. The Maritime Directorate uses the information reported: in its general preventive work; as a basis for safety reports; for statistical purposes; and as a basis for further investigation of serious accidents. This and other information are used to decide upon information "campaigns" directed at shipowners, seafarers and fishermen, and for articles in the Directorate's quarterly magazine, etc. Occupational illnesses are not reported to the Norwegian Maritime Directorate. Statistics are published in the Norwegian Maritime Directorate's magazine.

Investigation of accidents

ILO's Tripartite Meeting on Safety and Health in the Fishing Industry concluded, inter alia, that: "All maritime casualties involving fishing vessels should be investigated and subject to inquiries in accordance with international Conventions."

Apparently, many States carry out investigations of accidents (or at least serious accidents) occurring on fishing vessels. The following are examples of systems in place regarding the investigation of occupational accidents leading to injuries. The Danish example is described at length because it provides an overview of the entire system.

In Denmark, investigation of accidents at sea and serious accidents at work are carried out by the Division for Investigation of Maritime Accidents – an independent division within the Danish Maritime Authority, whose investigations are separated from other activities of the Authority. The investigations are carried out in accordance with an order concerning investigation of accidents at sea. The Division can participate in – or be in charge of – investigations of accidents at sea on foreign ships when Danish interests are involved. If an accident on a Danish ship has taken place outside Danish territorial waters, a ship surveyor from the Division will travel to the place of the incident. According to Danish legislation the Division must be informed immediately when a Danish merchant or fishing vessel is involved in a collision, grounding, fire, explosion, leakage, list, capsizing, or when somebody dies or is seriously injured. The obligation to report the accident lies with the master of the ship. If the master is unable to do so, the obligation lies with the shipowner. When the Division has completed its investigations, a report on the accident is drawn up. The report must include a summary of the events leading to the accident and, to the extent possible, a conclusion. Furthermore, the report may include recommendations concerning initiatives which may prevent such – or similar – accidents from happening in the future. The report is sent to the persons directly involved and is then made public on the Internet. The report is also sent to different organizations, including Danish trade unions. The report does not estab-

lish legal or economic liabilities. It is sent to the Centre for Shipping Policy and Legal Services for the purpose of investigating whether maritime legislation has been violated. Finally the general Danish authorities under the Ministry of Justice responsible for the legal criminal proceedings look into the possibilities of imposing sanctions.

In the United Kingdom, the Marine Accident Investigation Branch (MAIB) may decide to investigate any accident. MAIB's investigation reports are published and widely circulated. Accident data arising from the initial reports and investigations are collated and occasionally examined by the MAIB to discover accident trends.

Conclusions

The following general conclusions may be drawn from the above:

- in a number of countries, the general occupational safety and health laws and regulations are considered applicable to the fishing sector; however, it is not certain whether these provisions are, in all cases, appropriate to the sector or whether they are actually applied. This is particularly true with regard to small fishing vessels, as larger vessels may be covered by the laws and regulations for merchant ships;
- recording, reporting and notification of fatalities, injuries and diseases – and using this information to produce information (e.g. statistics, guidance, etc.) for use by fishermen and fishing vessel owners – is an important component in efforts to improve the safety and health record;
- regulation is an important means of improving conditions; often the threat of regulation may also be an effective means of improving safety and health;
- the smaller the vessel, the less likelihood that safety and health conditions will be regulated, particularly for vessels below 15 metres in length, even in developed countries;
- regulations, where they exist, may solely or primarily focus on the vessel and its lifesaving and fire-fighting equipment and not on other safety and health aspects;
- safety and health programmes are likely to be more effective if there is more discussion with and involvement of working fishermen; regulations may be more effective if adapted to the local fishery;
- raising awareness of risks is an important aspect of safety and health.

ACCOMMODATION ON BOARD FISHING VESSELS

The amount of time a fishing vessel may remain at sea can vary from a few hours to many months at a time. For fishermen who must eat and sleep at sea, accommodation is an important issue. This is not only a matter of comfort but also a matter of health. While progress has been made in providing accommodation which is reasonably spacious, clean, properly ventilated, insulated from excessive noise or vibration, etc., there are a great many vessels operating with uncomfortable and unhealthy living quarters. Lack of comfort can be a significant contributor to fatigue. Though vessels usually operate in what may be considered by some to be wide open spaces, the *internal* space on board a fishing vessel can be extremely limited due to pressures to utilize

any available space for catching, processing and storing fish and other marine products. Without proper restrictions, this can lead to cramped and unhealthy living quarters which are breeding grounds for the spread of disease.

The issue of accommodation becomes even more important for vessels operating at sea for extended periods; however, it is also relevant to those vessels which frequently come in and out of port but which serve as the temporary home of the crew, in particular when the crew consists or includes migrant fishermen without a local home ashore. The ILO's existing instrument concerning accommodation touches on the issues of medical equipment and facilities on board, issues which are obviously of extreme importance due to the well-documented high levels of accident and injury rates.

International standards

ILO standards

The Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), sets out standards for the planning and control of crew accommodation (including plan approval, complaint procedures concerning non-compliance and inspections) and crew accommodation requirements; it also specifies how these requirements apply to existing ships and new fishing vessels. The requirements concerning crew accommodation are very detailed, covering, among other things: location; construction materials; drainage; ventilation; heating; lighting; sleeping room size; mess rooms; sanitary accommodation; sick bay; medicine chests; and galley.

The Convention does not apply to vessels of less than 75 grt unless the competent authority, after agreement with the representatives of fishing vessel owners and fishermen's organizations, agrees that it is reasonable and practicable to apply the provisions to vessels of between 25 and 75 grt. There are also provisions for stipulating that length instead of tonnage may be used as a parameter for the Convention, in which event the Convention does not apply to ships and boats of less than 80 feet (24.4 metres); however, they may after consultation and if reasonable and practicable, be applied to vessels between 45 and 80 feet (13.7 and 24.4 metres). Exceptions may be permitted, under certain conditions, for vessels which normally remain away from their home ports for periods of less than 36 hours and in which the crew does not live permanently.

As at 30 September 2002, the Convention had been ratified by 22 member States.³³

IMO standards

As noted earlier in this chapter, the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, and the Torremolinos Protocol of 1993 include some requirements concerning accommodation on vessels. However, the emphasis in these

³³ Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Denmark, Djibouti, France, Germany, Greece, Kyrgyzstan, Netherlands, Norway, Panama, Russian Federation, Sierra Leone, Slovenia, Spain, Tajikistan, The former Yugoslav Republic of Macedonia, Ukraine, United Kingdom, Yugoslavia.

instruments is on such issues as vessel stability and fire-fighting, as opposed to the issue of comfort and health.

Regional instruments

The EU has also dealt with the issue of crew accommodation in Directive 93/103/EC concerning the minimum safety and health requirements for work on board fishing vessels (see the section of this chapter concerning occupational safety and health issues). Articles 4 and 5 refer, respectively, to annexes setting out requirements for “new fishing vessels” (generally, 15 metres and over) and “existing fishing vessels” (generally, 18 metres or over and not a new fishing vessel). The standards for new vessels are somewhat higher than those for existing vessels. As concerns accommodation, the annexes contain provisions on ventilation, temperature, living quarters, mess rooms, galleys and sanitary accommodation – with somewhat higher standards for new fishing vessels. While the provisions in the Directive are not as detailed as those in Convention No. 126, they do cover a few areas not covered by the Convention. For instance, they require adequate protection against vibration and odours, and protection of non-smokers from the discomfort caused by tobacco smoke. They also stipulate that general lighting must be reduced in order to avoid disturbing workers who are resting. As concerns medical equipment and facilities, reference is made to Directive 92/29/EEC.

National law and practice

This section is based on reports concerning the application of Convention No. 126, submitted to the ILO by ratifying States in accordance with article 22 of the ILO Constitution, and information on other countries provided to or obtained by the Office.

Scope of application

Several countries have national laws and regulations concerning accommodation, which exclusively apply to fishing vessels or fishermen, respectively.³⁴ However, the pertinent laws and regulations usually cover all merchant vessels or all seafarers, respectively, without excluding fishing vessels or fishermen.³⁵ A few countries have issued general laws and regulations on the workplace which apply to fishing vessels.³⁶

The national laws and regulations on accommodation often contain exclusions from the application:

- For instance, the national laws and regulations often do not apply to fishing vessels below a certain size: e.g. less than 12 metres;³⁷ less than 25 tonnes or

³⁴ Azerbaijan, Belgium, Denmark, Norway, Russian Federation, Sierra Leone, Slovenia, Spain, Ukraine, United Kingdom (ratified C. 126); Canada (British Columbia), Lithuania, New Zealand, Romania, Tunisia.

³⁵ Azerbaijan, Belgium, Brazil, France, Germany, Greece, Netherlands, Norway, Panama, Russian Federation, Slovenia, Spain, Ukraine, United Kingdom (ratified C. 126); Australia, Estonia, India, Indonesia, Japan, Republic of Korea, Lithuania, Mexico, Poland, Romania, Tunisia, United States.

³⁶ Netherlands (ratified C. 126); Australia, Canada (Newfoundland and Labrador), Indonesia, Mexico.

³⁷ Azerbaijan, France, Russian Federation, Ukraine (ratified C. 126).

13.7 metres;³⁸ new fishing vessels of less than 15 metres or existing fishing vessels of less than 18 metres (see EU Directive),³⁹ whereby fishing vessels less than 24.4 metres are sometimes excluded from the provisions going beyond the EU Directive;⁴⁰ less than 15 metres (see EU Directive), whereby for vessels less than 24 metres, deviations may be granted and less severe provisions are stipulated;⁴¹ less than 30 grt;⁴² less than 37 tonnes;⁴³ less than 45 metres in respect of the Torremolinos Protocol of 1993, and less than 24 metres in respect of the Protocol regarding the construction, stability and crew protection requirements;⁴⁴ less than 24.4 metres or 75 tonnes;⁴⁵ and less than 100 tonnes.⁴⁶ One example may be cited, where the national provisions do not contain any exclusions regarding length.⁴⁷

- In addition, many countries have excluded certain types of fishing vessels: e.g. vessels fishing for sport or recreation;⁴⁸ fishery research and protection vessels;⁴⁹ vessels primarily propelled by sail but having auxiliary engines;⁵⁰ ships and boats engaged in whaling;⁵¹ eel fishing boats;⁵² and any vessel which embodies features of a novel kind, if the application of the legislation might seriously impede research into the development of such features and their incorporation in vessels.⁵³
- Other member States provide that certain navigation areas are out of scope: e.g. fishing vessels proceeding on a voyage other than an overseas voyage;⁵⁴ or vessels engaged in coastal fishing, if application is unreasonable and impracticable in view of the operation area, the type of vessel and the absence of general navigational hazards.⁵⁵
- Finally, countries often exclude vessels with short periods at sea: e.g. vessels never at sea for more than 36 hours with crew not living on board;⁵⁶ vessels never

³⁷ Azerbaijan, France, Russian Federation, Ukraine (ratified C. 126).

³⁸ Sierra Leone (ratified C. 126).

³⁹ Belgium, Spain, United Kingdom (ratified C. 126); Portugal.

⁴⁰ Spain, United Kingdom (ratified C. 126).

⁴¹ Denmark, Norway (ratified C. 126).

⁴² Japan.

⁴³ Germany (ratified C. 126).

⁴⁴ New Zealand.

⁴⁵ Panama (ratified C. 126); India.

⁴⁶ Greece (ratified C. 126); United States.

⁴⁷ Netherlands (ratified C. 126).

⁴⁸ Azerbaijan, Belgium, Netherlands, Norway, Panama, Russian Federation, Sierra Leone, Spain, Ukraine, United Kingdom (ratified C. 126); Australia, India, Portugal.

⁴⁹ Belgium, Norway, Panama, Sierra Leone, Spain (ratified C. 126); India, Portugal.

⁵⁰ Belgium, Sierra Leone, Spain, United Kingdom (ratified C. 126); India.

⁵¹ Sierra Leone, Spain, United Kingdom (ratified C. 126).

⁵² New Zealand.

⁵³ Norway (ratified C. 126).

⁵⁴ Panama (ratified C. 126); Australia.

⁵⁵ Norway (ratified C. 126).

⁵⁶ Spain, United Kingdom (ratified C. 126).

at sea for more than 24 hours;⁵⁷ and vessels with crew not living on board.⁵⁸ Moreover, vessels under 500 tonnes engaged on trips of three days or less with a crew inferior to 15 members are excluded from the sick bay requirement.⁵⁹

Crew accommodation requirements

Table 5.1 summarizes the information from a number of countries, ratifying and non-ratifying, concerning standards of accommodation as covered by Convention No. 126. The Office has not been able to examine the information on every member State which has ratified the Convention; neither has it received information from all member States likely to have some laws and regulations on these issues. Nevertheless, the table does give a preliminary idea of the extent of laws and regulations of accommodation (for vessels within the scope of Convention No. 126) in several member States. As can be seen from the table, and as would be expected, nearly all the member States which have ratified Convention No. 126 (shown in bold) and from whom information has been received, have in place laws and regulations covering each of its provisions. As to the other member States listed (member States which have not ratified the Convention but have either provided the Office with information or for which the Office has been able to find information), many of the major areas – but perhaps not the details – are covered. For example, 19 States (14 having ratified the Convention; five having not) have requirements concerning protection against weather, noise, etc.; 22 States (14 having ratified the Convention; eight having not) have at least basic requirements concerning ventilation; 20 States (14 having ratified; six having not) have a requirement for a separate galley.

Conclusions

The information available to the Office indicates that a substantial number (at least 38) member States have laws and regulations concerning accommodation on fishing vessels (though in some States these are laws and regulations for vessels in general which do not exclude fishing vessels), including the 22 States which have ratified Convention No. 126 and at least 16 other States. It appears that several of the States which have not ratified the Convention have requirements which are not as detailed as those in the Convention. In some States, whether or not they have ratified the Convention, there are requirements not found in the Convention (e.g. protection against noise and vibration).

Smaller vessels are often excluded from national laws and regulations concerning accommodation. On the one hand, such small vessels may spend less time at sea, making accommodation requirements less important than on vessels which remain at sea for weeks or months at a time; on the other hand, smaller vessels must now often stay at sea longer and fish at greater distances from shore for a variety of economic, fisheries management and operational reasons. It therefore appears both desirable and possible to provide either mandatory or recommendatory standards, at least in the form of promotional principles, for such vessels in an international instrument (in

⁵⁷ Greece (ratified C. 126).

⁵⁸ Greece (ratified C. 126).

⁵⁹ Romania.

Table 5.1 National laws and regulations concerning accommodation on fishing vessels

Article	Provision	Australia	Azerbaijan	Belgium	Bosnia and Herzegovina	Brazil	Canada	Denmark	Djibouti	Estonia	France	Germany	Greece	Honduras	India	Indonesia	Italy	Japan	Rep. of Korea	Kyrgyzstan	Lithuania	Malaysia	Mauritius	Mexico	Netherlands	New Zealand	Nigeria	Norway	Panama	Peru	Philippines	Poland	Portugal	Romania	Russian Federation	Sierra Leone	Slovenia	Spain	Tajikistan	Thailand	FYR of Macedonia	Tunisia	Ukraine	United Kingdom	Yugoslavia
6.1	Location/structure protects against weather, noise, etc.		•	•				•			•	•	•					•					•	•	•		•	•														•	•		
6.2	Emergency escapes			•				•			•	•											•	•	•		•	•															•	•	
6.3	Separation of certain places from sleeping rooms		•	•				•			•	•						•					•	•	•		•	•															•	•	
6.4	Insulation of external bulkheads and of heat-exposed places			•				•			•	•	•										•	•	•		•	•															•	•	
6.5	Approved hygienic material of internal bulkheads		•	•							•	•	•											•			•	•															•	•	
6.6	Insulation of all crew accommodation spaces		•	•				•			•	•	•											•	•		•	•															•	•	

Article	Provision	Australia	Azerbaijan	Belgium	Bosnia and Herzegovina	Brazil	Canada	Denmark	Djibouti	Estonia	France	Germany	Greece	Honduras	India	Indonesia	Italy	Japan	Rep. of Korea	Kyrgyzstan	Lithuania	Malaysia	Mauritius	Mexico	Netherlands	New Zealand	Nigeria	Norway	Panama	Peru	Philippines	Poland	Portugal	Romania	Russian Federation	Sierra Leone	Slovenia	Spain	Tajikistan	Thailand	FYR of Macedonia	Tunisia	Ukraine	United Kingdom	Yugoslavia						
6.14	Joinings of floorings round		•					•			•	•	•												•																										
6.15	Sufficient drainage		•	•				•			•	•													•			•																•	•						
6.16	Protection against insects		•	•				•			•	•	•												•			•																	•	•					
7.1	Ventilation – adequate	•	•				•	•			•	•	•						•					•	•	•		•																	•	•	•				
7.2	Performance standard	•	•					•			•	•	•												•		•	•																	•	•					
7.3	Mechanical and electric in the tropics			•				•			•	•	•												•		•	•																		•					
7.4	Alternative means otherwise	•	•					•			•	•	•						•						•		•	•																	•	•					
7.5	Power available at all times			•				•			•	•	•												•																						•	•			
8.1	Heating – adequate	•	•					•			•	•	•												•	•	•																			•	•				
8.2	Operation at all times			•				•			•	•													•																						•				

Article	Provision	Australia	Azerbaijan	Belgium	Bosnia and Herzegovina	Brazil	Canada	Denmark	Djibouti	Estonia	France	Germany	Greece	Honduras	India	Indonesia	Italy	Japan	Rep. of Korea	Kyrgyzstan	Lithuania	Malaysia	Mauritius	Mexico	Netherlands	New Zealand	Nigeria	Norway	Panama	Peru	Philippines	Poland	Portugal	Romania	Russian Federation	Sierra Leone	Slovenia	Spain	Tajikistan	Thailand	FYR of Macedonia	Tunisia	Ukraine	United Kingdom	Yugoslavia					
8.3	Open fires prohibited							•			•	•	•												•																									
8.4	Performance standard		•					•			•	•													•		•	•																						
8.5	Secure radiators		•					•			•	•	•												•		•	•																						
9.1	Lighting – minimum standard of natural lighting		•	•			•	•			•	•	•			•								•	•		•	•																						
9.2	Electric lights; 2 sources		•	•				•			•	•													•		•																							
9.3	Disposal of artificial light		•									•													•			•																						
9.4	Reading light at berth		•	•				•			•	•	•												•			•																						
9.5	Permanent blue light			•								•													•																									
10.1	Sleeping rooms – situation			•				•			•	•	•												•		•	•																						
10.2	Floor area/person		•	•				•			•	•	•											•	•		•	•																						
10.3																																																		

Article	Provision	Australia	Azerbaijan	Belgium	Bosnia and Herzegovina	Brazil	Canada	Denmark	Djibouti	Estonia	France	Germany	Greece	Honduras	India	Indonesia	Italy	Japan	Rep. of Korea	Kyrgyzstan	Lithuania	Malaysia	Mauritius	Mexico	Netherlands	New Zealand	Nigeria	Norway	Panama	Peru	Philippines	Poland	Portugal	Romania	Russian Federation	Sierra Leone	Slovenia	Spain	Tajikistan	Thailand	FYR of Macedonia	Tunisia	Ukraine	United Kingdom	Yugoslavia									
10.4	Clear headroom		•	•				•			•	•	•												•																													
10.5	Separate room(s) for each department			•							•		•												•																													
10.6	Number of officers/ room		•	•				•			•	•	•														•	•																										
10.6 10.7	Number of ratings/ room		•	•				•			•	•	•												•		•	•																										
10.8	Authorized exceptions													•											•																													
10.9	Indication of the max. no. of persons for each room		•	•							•	•	•												•			•																										
10.10	Individual berths		•	•				•			•	•	•												•		•	•																										
10.11	Placing ensures easy access		•	•				•			•	•	•												•		•	•																										
10.12	No tiers of more than 2; single tier if sidelight above a berth		•	•				•			•	•												•				•																										

Article	Provision	Australia	Azerbaijan	Belgium	Bosnia and Herzegovina	Brazil	Canada	Denmark	Djibouti	Estonia	France	Germany	Greece	Honduras	India	Indonesia	Italy	Japan	Rep. of Korea	Kyrgyzstan	Lithuania	Malaysia	Mauritius	Mexico	Netherlands	New Zealand	Nigeria	Norway	Panama	Peru	Philippines	Poland	Portugal	Romania	Russian Federation	Sierra Leone	Slovenia	Spain	Tajikistan	Thailand	FYR of Macedonia	Tunisia	Ukraine	United Kingdom	Yugoslavia					
11.1	Mess room – separate in all vessels with more than 10		•	•				•			•	•	•												•	•																								
11.2	Separate mess room for officers in vessels with more than 20		•	•									•												•			•																•						
11.3	Dimensions and equipment sufficient for no. of users		•	•				•			•	•	•			•									•		•	•																	•	•				
11.4	Tables and seats sufficient for no. of users		•	•				•			•	•	•												•		•	•																	•	•				
11.5	Close to gallery		•	•				•			•	•	•												•	•		•																•	•					
11.6	Lockers for mess utensils and facilities for washing them		•	•				•			•	•	•												•	•		•																•	•					
11.7	Tops of seats and tables of hygienic material			•				•			•	•	•												•	•		•																	•					

Europe, such requirements have been extended to vessels of 15 metres or more in length). Furthermore, a link could be made to the non-binding provisions of the FAO/ILO/IMO Voluntary guidelines for the design, construction and equipment of small fishing vessels.

PROVISION OF FOOD AND WATER

As indicated in the previous section, Article 16 of Convention No. 126 sets out requirements concerning galley equipment and storage spaces for food. It does not, however, set out requirements concerning the quality and sufficiency of the food itself.

The Food and Catering (Ships' Crews) Convention, 1946 (No. 68), addresses these issues. Article 1 provides that:

1. Every Member of the International Labour Organization for which this Convention is in force is responsible for the promotion of a proper standard of food supply and catering service for the crews of its sea-going vessels, whether publicly or privately owned, which are engaged in the transport of cargo or passengers for the purpose of trade and registered in a territory for which this Convention is in force.
2. National laws or regulations or, in the absence of such laws or regulations, collective agreements between employers and workers, shall determine the vessels or classes of vessels which are to be regarded as sea-going vessels for the purpose of this Convention.

Convention No. 68 includes provisions concerning food supply and catering arrangements, inspection of supplies of food and water, spaces used for the storage and handling of food and water, galley equipment, qualifications of members of the catering department and other related issues. It is accompanied by the Bedding, Mess Utensils and Miscellaneous Provisions (Ships' Crews) Recommendation, 1946 (No. 78).

Another relevant Convention is the Certification of Ships' Cooks Convention, 1946 (No. 69), which has exactly the same scope as that provided under Article 1 of Convention No. 68.⁶⁰

The Office has not been able to determine whether member States have enacted laws and regulations which cover not only seagoing vessels "engaged in the transport of cargo or passengers" but also fishing vessels.

However, the provision of at least adequate food and water to fishing vessel personnel is an obviously essential element in their living conditions at sea. The Office, though well aware that many fishing vessels are quite small compared to "vessels engaged in transport", and that the requirements for such vessels may vary considerably compared to larger vessels on long voyages, has endeavoured to collect at least some information on national law and practice in this area.

National laws and regulations

The following are examples of ways in which the issue of provision of adequate food and water on board has been dealt with in the legislation of certain countries.

⁶⁰ The Governing Body has decided that these two Conventions should be revised. Their revision is being taken up in the preparation of the consolidated framework instrument for seafarers.

Mauritius requires that employers of banks fishermen provide workers daily, and free of charge, with breakfast and a midday and evening meal – and at least three bottles of water. In Malaysia the vessels are normally equipped with cooking utensils and enough food for the whole duration of a fishing trip; in Canada (Newfoundland and Labrador) and Nigeria, when the crew is on board, free feeding facilities are provided, but it is not clear whether or not a galley is supplied. Mexico obliges the employers to provide the workers with food and water when boats navigate for six hours or more; they must also provide food for vessels navigating for less than six hours in uninhabited areas where it would be impossible for the workers to acquire any food. In Panama, food must be free of charge, varied, healthy and sufficient – and appropriate to the navigation or the route that the ship takes. In Peru, a decree sets out standards for food and drinking water, providing that each fisherman must receive equal to at least 3,600 calories per day. In Japan and Tunisia, fishermen on board are entitled to be fed for the whole duration of the journey, and the food must be healthy, of good quality, sufficient for the whole crew and subject to control by the competent authority. Norway even stipulates that: the diet should comply with the health and dietary standards issued by the National Nutrition Council; appropriate manuals, brochures, wall charts etc. regarding nutrition and the purchase, storage, preparation and serving of food should be available on board; and the preparation of the food should be carried out in hygienic conditions. In Australia, Indonesia and the United Kingdom, it is the duty of the employer and the master to ensure that there are provisions and water on board. These must comply with health standards, be of nutritive value, varied and adequate. In the United Kingdom and Romania, the master must inspect the provisions and water, to ensure that they fulfil these requirements (United Kingdom regulations are based on Convention No. 68 but only cover vessels 24 metres in length and over; the regulations of Romania are also based on Convention No. 68 and apparently concern oceanic fishing vessels). The Seafarers' Act of Estonia, which applies to fishermen, provides – in addition to other requirements concerning the provision of food and water on board – that crew members are to be compensated for any shortage of food and water if, for any reason, the master has to reduce food rations during the voyage.

Conclusions

To date, the Office has only obtained limited information on laws and regulations concerning food and water on board fishing vessels. However, it appears that several countries, both developed and developing, have such requirements. Often it would seem that they are inspired by the provisions of ILO Convention No. 68. Bearing in mind the vital nature of food and drinking water, such requirements would seem appropriate for inclusion in the new ILO fishing standard.

MEDICAL CARE AT SEA

As described in a previous section, fatality and injury rates are high in the fishing sector compared to other sectors. Furthermore, the fishing vessel, compared to other workplaces, is distant from hospital facilities ashore. First aid, and sometimes even more sophisticated medical care, must therefore be provided on the vessel, usually by the crew themselves. As will be noted below, the use of radio medical services, heli-

copter evacuation and hospital ships have improved the health care provided to many – but not all – fishermen.

International standards

The Accommodation of Crews (Fishermen) Convention, 1966 (No. 126) (described in more detail in an earlier chapter) includes provisions concerning the sick bay and medicine chests. As at 30 September 2002, Convention No. 126 had been ratified by 22 countries.⁶¹

The Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), provides somewhat higher standards concerning medical equipment and medical facilities on board. It also includes provisions concerning the provision of and availability of medical advice at sea and standard medical report forms for seafarers. The Convention, which, as at 30 September 2002, has been ratified by 11 countries,⁶² provides, as with most of the other maritime standards adopted in 1987 and 1996, that “[t]o the extent it deems practicable, after consultation with the representative organizations of fishing-vessel owners and fishermen, the competent authority shall apply the provisions of this Convention to commercial maritime fishing”.

Finally, two Recommendations are relevant to medical care at sea. The Ships’ Medicine Chests Recommendation, 1958 (No. 105) (which includes long lists of medicaments and medical supplies and equipment), and the Medical Advice at Sea Recommendation, 1958 (No. 106), which has generally been overtaken by the provisions of Convention No. 164.

Regional requirements

Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels, applies to seagoing or estuary fishing vessels, and covers all workers on board a vessel. The Directive sets out requirements concerning medicines and medical equipment (including sick bay and doctor); antidotes for dangerous substances; allocation of responsibilities for the provision, replenishment and management of medical supplies; information and training in medical and emergency measures; medical consultations by radio; inspection of medical supplies; and other issues. It distinguishes between three categories of vessels: (a) seagoing or sea fishing vessels with no limitation on length of trips; (b) seagoing or sea fishing vessels making trips of less than 150 nautical miles from the nearest port with adequate medical equipment; and (c) harbour vessels, boats and craft staying very close to shore or with no cabin accommodation other than a wheelhouse. Annexes provide a long but non-exhaustive list of medical supplies, equipment and antidotes to be carried; a framework of their inspection; and specific guidance on medical training of captains and designated workers.

⁶¹ Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Denmark, Djibouti, France, Germany, Greece, Kyrgyzstan, Netherlands, Norway, Panama, Russian Federation, Sierra Leone, Slovenia, Spain, Tajikistan, The former Yugoslav Republic of Macedonia, Ukraine, United Kingdom, Yugoslavia.

⁶² Brazil, Czech Republic, Finland, Germany, Hungary, Italy, Mexico, Norway, Slovakia, Spain, Sweden.

National laws and regulations

Table 5.1 on national laws and regulations concerning accommodation (rows concerning Article 13.1 (sick bay) and 13.2 (medicine chest with instructions)) indicates that the majority of States for which information has been available require a medicine chest with instructions but that less than one-half require a sick bay. The latter may be attributed to the fact that some fleets operate close to home ports or are small vessels.

Several countries have laws or regulations which specifically require the provision of medical care for a crew member who becomes sick or is injured during a journey at sea and the treatment of a crew member on the ship or on shore. In Estonia, the Seafarers' Act provides that if the illness or injury of a crew member cannot be treated on the ship or if the illness of a crew member is putting his or her life or the life or health of other persons on the ship in danger or if it is not possible to take measures to prevent the disease from spreading, the master must send the crew member to a health-care institution. Under the Occupational Safety and Health Regulations in Canada (British Columbia), a fishing boat must return to shore when the injury of a fisherman cannot be effectively treated by the person on board responsible for first aid.

In some countries (e.g. Italy, Spain) radio medical services are available, but it is not clear to the Office whether national laws or regulations require the use of such services when a fisherman has been injured or becomes ill. In Spain, an Order in Council concerns radio medical advice from ashore; article 16 establishes the Central Medical Radio of Spain. This service is funded by the Social Marine Institute and is free. The Institute guarantees that doctors working for the Radio Centre receive continued and specific training on the particular conditions that exist on board vessels. Advice provided is confidential. The Institute also operates a hospital ship, the *Esperanza Del Mar*, which provides medical care to the Spanish fishing fleet operating in distant waters. In Estonia, the Seafarers' Act provides that seafarers may receive 24-hour medical consultation by radio with a health-care institution. It is not specified which type of ship benefits from this opportunity.

Conclusions

The following conclusions may be drawn from the above information and other information:

- the requirement for fishing vessels to be equipped with a medicine chest, with clear instructions, is widespread, even among countries which have not ratified the relevant ILO Conventions;
- the use of radio medical assistance is becoming more widely available due to improvements in technology and improved equipment on fishing vessels;
- evacuation by helicopter is an important means of providing medical assistance in some countries.

CHAPTER VI

SOCIAL SECURITY, INCLUDING FISHING VESSEL OWNERS' LIABILITY FOR SICK AND INJURED FISHERMEN

The Declaration of Philadelphia, which is contained in the Annex to the ILO Constitution, recognizes the ILO's obligation as regards "the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care". However, many fishermen – perhaps most – have no social security protection, which may be attributed to several factors. Firstly, the majority of fishermen resemble the majority of the world population: they lack social security protection. Any attempts to provide social security in this sector must therefore be seen in the context of the general lack of protection for most workers. Second, fishermen may be considered self-employed under national laws and regulations, and, as with many self-employed workers, they may be excluded from certain forms of protection. Third, fishermen included in contributory social security systems may face problems making their contributions due to the irregular nature of their employment and income. Finally, migrant fishermen, including those working on foreign-registered vessels, may have special problems as they are earning their living outside their country of nationality or domicile.

However, there are several reasons why fishermen are particularly in need of social protection.

As noted earlier in this report, fishing is a particularly hazardous occupation, with a relatively high rate of injury and death. Fishermen and their dependants therefore need some form of protection in the event of injury, illness and death.

Furthermore, in recent years, there has been growing pressure to reduce fishing in order to preserve fish stocks. This has led to pressures in many regions to reduce the number of fishermen. Such efforts may not be successful – or may be extremely painful for fishermen, their families and their communities – unless the affected fishermen are protected by unemployment benefits and have access to retraining for other work. The importance of this issue has been recognized by the Organisation for Economic Cooperation and Development (OECD), which has studied the social implications of responsible fisheries, and the EU, which is seeking to better address social issues in the reform of the Common Fisheries Policy.¹ In 1999, the Tripartite Meeting on Safety and Health in the Fishing Industry adopted a resolution which called upon the International Labour Office, inter alia, to: "... examine how appropriate social adjustment strategies (such as retraining, job creation, early retirement and income support) can lead to the creation of alternative employment opportunities for those persons who have to leave the industry."

A future ILO standard aimed at improving the living and working conditions of workers in this sector may very well need to address such issues as manpower planning and retraining of fishermen for other work.

¹ F. Fischler: "The much-needed reform of the Common Fisheries Policy", in *Fishing in Europe*, Nos. 12-13 (Brussels, July 2002).

General description of social security standards

Since its founding, the ILO has adopted 31 Conventions and 16 Recommendations in the field of social security. In many of these instruments, fishermen may not be covered because: they are specifically excluded; they are excluded because they are not considered “employees”; or the State is not required to cover 100 per cent of all workers. The Social Security (Minimum Standards) Convention (No. 102), adopted in 1952, addresses and defines in a single instrument the nine principal branches of social security: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors’ benefit.² However, the Convention provides that it does not apply to seamen or sea fishermen, as provision is made for the protection of seamen and sea fishermen under the Social Security (Seafarers) Convention, 1946 (No. 70),³ and the Seafarers’ Pensions Convention, 1946 (No. 71).⁴

Standards relevant to social security for seafarers (and sometimes sea fishermen)

The Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8), provides, inter alia, that: “In every case of loss or foundering of any vessel, the owner or person with whom the seaman has contracted for service on board the vessel shall pay to each seaman employed thereon an indemnity against unemployment resulting from such loss or foundering”. “Seaman” is defined to include “all persons employed on any vessel engaged in maritime navigation”. A “vessel” is defined to include “all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned” (it excludes ships of war). Bearing in mind the nature of many fishing employment arrangements (i.e., payment based on the share of the catch and not on a wage basis) this may, in fact, mean that this Convention does exclude some fishermen from its scope.

The Shipowners’ Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), provides, inter alia, that, in the event of sickness or injury, the shipowner has to provide the seafarer with medical care, board and lodging until the sick or injured person is cured, or until the sickness or incapacity has been declared of a permanent character. The Convention applies “to all persons employed on board any vessel, other than a ship of war, registered in a territory for which [the] Convention is in force and ordinarily engaged in maritime navigation” (Article 1(1)). However, it also provides that “any Member of the International Labour Organisation may in its national laws or regulations make such exceptions as it deems necessary in respect of: (a) persons employed on board ... (ii) coastwise fishing boats ...” (Article 1(2)(a)(ii)). As at 20 Sep-

² Since 1952, the ILO has adopted several other instruments which set forth a higher level of protection than that envisaged in Convention No. 102. These include the Employment Injury Benefits Convention, 1964 (No. 121); the Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128); and the Medical Care and Sickness Benefits Convention, 1969 (No. 130).

³ This Convention has been revised by Convention No. 165 (see below).

⁴ However, this Convention, which provides that States shall establish or secure the establishment of a scheme for the payment of pensions to seafarers on retirement from sea service, also provides that the scheme may embody such exceptions as the Member deems necessary in respect of, inter alia, a person employed on board or in the service of fishing vessels.

tember 2002, the Convention had been ratified by 16 countries.⁵ It has been revised by Convention No. 165 (see below).

The Sickness Insurance (Sea) Convention, 1936 (No. 56), provides, inter alia, that every person employed as a master or member of the crew or otherwise in the service of the ship, on board any vessel, other than a ship of war, registered in a territory for which the Convention is in force and engaged in maritime navigation or sea fishing, shall be insured under a compulsory sickness insurance scheme. As at 20 September 2002, this Convention has been ratified by 19 countries.⁶

*Discussion of social security for fishermen by the Committee on Conditions of Work in the Fishing Industry (November 1978)*⁷

The issue of social security for fishermen was discussed by the ILO in 1978 by the Committee on Conditions of Work in the Fishing Industry, which had on its agenda, inter alia, the item "Pensions and sickness insurance". The Committee used as the basis for its discussion a report analysing law and practice on this issue in member States.

The Committee noted that two social security Conventions – Nos. 128 and 130 – permitted governments to exclude their application to seafarers, including sea fishermen, only when such workers were covered by special schemes providing an equivalent level of protection. It observed that the existing ILO instruments concerning social security protection for seafarers contained provisions permitting the exclusion of fishermen without any specified condition. As regards the rather limited social security coverage of fishermen in general, it noted the technical, administrative and financial difficulties involved in the extension of the scope of protection in the case of sickness, invalidity, old age and death, and emphasized that the ultimate goal was the full coverage of all categories of persons working in the fishing industry.

After further discussion, the Committee adopted conclusions on social security protection of fishermen in the case of sickness, invalidity, old age and death which provided, inter alia, that:

In regard to national law and practice concerning social security protection of fishermen and their dependants in the case of sickness, invalidity, old age and death:

- (a) it is necessary to extend as far as possible the range of persons protected by the national social security scheme so as to cover all fishermen, including self-employed and their dependants, with a view to ensuring greater social justice which should be expressed in the form of equal conditions for all;
- (b) continuous efforts should be made to improve both quantity and quality of benefits to be provided to workers in the fishing industry, which should be supported by sound financial arrangements relative to the level of development of each country;
- (c) where employment of fishermen is intermittent, or seasonal, and where entitlement to social security benefits is related to the length of employment, it is advisable to adapt the qualifying conditions to the particular circumstances in which fishermen are employed;

⁵ Belgium, Bulgaria, Djibouti, Egypt, France, Greece, Italy, Liberia, Luxembourg, Mexico, Morocco, Panama, Peru, Spain, Tunisia, United States.

⁶ Algeria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Djibouti, Egypt, France, Germany, Luxembourg, Mexico, Norway, Panama, Peru, Slovenia, Spain, The former Yugoslav Republic of Macedonia, United Kingdom, Yugoslavia.

⁷ ILO: Report of the Committee on Conditions of Work in the Fishing Industry, 1978, op. cit.

(d) where fishermen are remunerated by a share of profit or are self-employed, due account should be taken of the fluctuation in the levels and regularity of their income in the computation of contributions and the calculation of benefits under contributory social security schemes;

(e) for self-employed fishermen operating as a family unit or on an extremely small scale, efforts should be made to improve the existing benefit structures so as to ensure comprehensive medical care, to provide suitable compensation in the case of incapacity for work due to sickness, involving suspension or substantial reduction in income, to guarantee adequate level of invalidity, old-age and survivors' pensions under conditions for entitlement which are compatible with those required for fishermen working for an employer, and to extend effective protection against invalidity through the provision of rehabilitation measures;

(f) in view of the hazardous nature of work and exceptional stress involved in the fishing industry, due consideration should be given to the possibility of lowering the age at which fishermen who have been engaged in the industry for a considerable number of years are entitled to old-age retirement pensions.

Discussion in the late 1980s of social security for fishermen in the context of the preparation of the Social Security (Seafarers) Convention (Revised), 1987 (No. 165)

The issue of social security standards for fishermen was again raised in the late 1980s in the context of a discussion of a new social security standard for seafarers. In 1987, during the 74th (Maritime) Session of the Conference, an amendment, which was accepted, called for the addition to the draft instrument of a paragraph stipulating that "to the extent it deems practicable, after consultation with representative organizations of fishing vessel owners and fishermen, the competent authority shall apply the provisions of this Convention to commercial maritime fishing". The resulting Convention, the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), groups together in a single instrument all the contingencies to which seafarers may be exposed in relation to social security. States which ratify the Convention therefore undertake to comply with the obligations for at least three of the nine branches of social security set out in Article 3 (these nine branches correspond to the nine branches covered by the Social Security (Minimum Standards) Convention, 1952 (No. 102), namely: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit). Convention No. 165 came into force on 2 July 1992 and has only been ratified by two countries.⁸

Committee on Conditions of Work in the Fishing Industry (1988)

At its 1988 meeting, the Committee on Conditions of Work in the Fishing Industry did not discuss the social security issue in any depth. However, it did adopt a resolution on working and living conditions in the fishing industry which stated, inter alia, that "[c]onsidering that fishermen should not be excluded from provisions regarding social security ... the [Committee] requests the Governing Body of the International Labour Office to urge the governments and employers' and workers' organizations concerned to establish appropriate machinery at the national level to study the provisions of the

⁸ Hungary, Spain.

aforesaid Conventions [which included Convention No. 165] with a view to applying them where possible to the fishing industry”.⁹

Tripartite Meeting on Safety and Health in the Fishing Industry (1999)

The Tripartite Meeting did not deal with the issue of social security of fishermen in detail. However, one of its conclusions¹⁰ was:

Like workers in other sectors, fishermen should have access to social security protection; this should cover issues such as sickness, disability, occupational injuries, illness compensation, loss of life and pension schemes.

When flag-state legislation does not provide for insurance, fishing vessel owners, regardless of the size of the vessels, should carry insurance or other appropriate social security coverage for occupational injuries to fishermen. Insurance should cover medical treatment and compensation as well as survivor benefits.

The Tripartite Meeting also adopted a resolution concerning future ILO activities in the fisheries sector and social dialogue (noted at the beginning of this chapter).

General discussion on social security – issues, challenges and prospects – at the 89th Session (2001) of the International Labour Conference

The issue of social security for fishermen should be considered in the context of the broader issue of social security coverage for all people. There have been very recent developments in this regard in the ILO which are particularly relevant to the provision of social security to artisanal or small-scale fishermen.

At the 89th Session of the International Labour Conference, a general discussion was held on social security.¹¹ Furthermore, the Conference adopted a resolution and conclusions concerning social security. The conclusions stated that:

Of highest priority are policies and initiatives which can bring social security to those who are not covered by existing systems. In many countries, these include employees in small workplaces, the self-employed, migrant workers, and people – many of them women – active in the informal economy. When coverage cannot be immediately provided to these groups, insurance – where appropriate on a voluntary basis – or other measures such as social assistance could be introduced and extended and integrated into the social security system at a later stage when the value of the benefits has been demonstrated and it is economically sustainable to do so. Certain groups have different needs and some have very low contributory capacity. The successful extension of social security requires that these differences be taken into account. The potential of microinsurance should also be rigorously explored; even if it cannot be the basis of a comprehensive social security system, it could be a useful first step, particularly responding to people’s urgent need for improved access to health care. Policies and initiatives on the extension of coverage should be taken within the context of an integrated national social security strategy.

⁹ ILO: Report of the Committee on Conditions of Work in the Fishing Industry, 1988, op. cit.

¹⁰ ILO: *Note on the Proceedings*, Tripartite Meeting on Safety and Health in the Fishing Industry, Geneva, 13-17 December 1999 (Geneva, 1999), p. 33.

¹¹ ILO: *Social security: Issues, challenges and prospects*, Report VI, International Labour Conference, 89th Session, Geneva, 2001.

The conclusions further provided that:

Social security covers health care and family benefits and provides income security in the event of such contingencies as sickness, unemployment, old age, invalidity, employment injury, maternity or loss of a breadwinner. It is not always necessary, nor even in some cases feasible, to have the same range of social security provisions for all categories of people. However, social security systems evolve over time and can become more comprehensive in regard to certain categories of people and range of provisions if national circumstances permit. While there is limited capacity to finance social security, either from general tax revenues or contributions – and particularly where there is no employer to pay a share of the contribution – priority should be given in the first instance to needs which are most pressing in the view of the groups concerned.

National law and practice

This section has been drawn up on the basis of information provided to or obtained by the Office concerning social security and certain related insurance requirements. While the information is rather limited, it does give a sense of how these issues are being dealt with in the various member States.

General

In some member States,¹² fishermen as a whole are covered by the national social security system. Benefits apparently include all the categories covered by Convention No. 165 (see below for more specific information on some of these countries). In Nigeria, social security benefits include “gratuity, workmen’s compensation, group insurance, free medical treatments, maternity leave for women six weeks after delivery”. In the United Kingdom, persons working in the fishing sector are entitled to the same social security benefits as others providing that, where appropriate, they have met the necessary contribution requirements. Indonesia has no specific laws and regulations on social security benefits for fishermen. However, fishermen are encouraged to take group insurance or join the Social Security Organization (SOCSO). In South Africa, the Compensation for Occupational Injuries and Diseases Act, 1993, as amended, applies to fishermen.¹³

Australian fishermen on overseas voyages are apparently covered by the Navigation Act which deals with such issues as shipowners’ liability for sickness and injury. Those on other fishing vessels appear to be covered by the laws and regulations of individual Australian states. Similarly, Japan makes a distinction between workers on vessels covered by the Mariners’ Law (generally, seagoing fishing vessels of 30 gt and above) and those covered by general labour standards (generally, on fishing vessels under 30 gt and not seagoing). Those working on vessels covered by the Mariners’ Law are protected with respect to medical service benefits, sickness and injury benefits, unemployment benefits, maternity benefits, invalidity benefits and survivors’ benefits. Those not covered by the Mariners’ Law are generally protected by the system for all workers.

¹² Denmark, Lithuania, Mauritania, Mexico, Netherlands, New Zealand.

¹³ J. Dahl and A. Masarakufa, *op. cit.*

In Canada, in British Columbia, employment insurance benefits are available to eligible fishers under the Human Resources Development Canada (HRDC) Employment Insurance (Fishing) Regulations.¹⁴ Unionized fishers receive pensions, medical benefits and death benefits as provided for under collective agreements. In Newfoundland and Labrador, fishers (and fish-processing workers) are covered for work-related injury by the Workplace Health, Safety and Compensation Act.¹⁵ Under that Act, all workers are covered for loss of wages and provided with medical care in the event of injuries. Survivors' benefits are also payable in the case of fatal injuries.

In India, social security benefits for fishermen are addressed by the Government of India National Scheme of Welfare of Fishermen. This scheme covers aspects related to the development of model fishing villages and "savings-cum-relief" schemes (programmes where both fishermen and governments contribute to a fund which is then used to aid fishermen during lean periods). Information on social security programmes in the fisheries sector in Kerala State is provided in box 6.1.

Fishing personnel in Norway are insured under the Norwegian National Insurance Scheme. As fishermen's wages are based totally or partly on the share of the catch, they are considered "self-employed" – both for tax and social security purposes – even if they are a part of a crew and are regarded as employees in other circumstances. A person whose main occupation is fishing and who is registered in a special part of the fishermen's register is entitled to the same benefits as other workers. The source of the fishermen's contribution is "product fees". Through the National Insurance Scheme, fishermen have the right to receive payment during illness and absence from work caused by occupational illness or unemployment.

Spain has a special social security law covering all seafarers and fishermen. One of the advantages of such a system is that all, even artisanal, fishermen are registered in the social security system, and this makes it easier to target occupational safety and health programmes for the fishing sector.

Recently, the International Labour Office undertook a study to assess, *inter alia*, the extension of social security to fishermen in Tunisia, following a programme drawn up in agreement with the Tunisian Agriculture and Fisheries Union. As a result of this study, two approaches to social security for fishermen were considered. In one, a lump sum could be applied per boat on a model based on what is applicable in the case of insurance against industrial injury and occupational diseases. In the other, employers' contributions could be deducted – when seafood products were sold in the wholesale

¹⁴ In the Regulations, "fisher" means a self-employed person engaged in fishing and includes a person engaged, other than under a contract of service or for their own or another person's sport: (a) in making a catch; (b) in any work incidental to making or handling a catch, whether the work consists of loading, unloading, transporting or curing the catch made by the crew of which the person is a member, or of preparing, repairing, dismantling or laying-up the fishing vessel or fishing gear used by that crew in making or handling the catch, where the person engaged in any such incidental work is also engaged in making the catch; or (c) in the construction of a fishing vessel for their own use or for the use of a crew of which the person is a member in making a catch.

¹⁵ The Act provides, however, that "... by regulations in relation to: ... fishers working in or out of the province, or on or about the waters of the province, or living within the province ... the provisions of this Act may apply and to the extent that the regulations may provide", and that "[w]here it appears ... that this Act or a regulation is inappropriate or unworkable in relation to fishers, the fishing industry or commercial buyers or other commercial recipients of fish, the commission may, by regulation or otherwise, make rules and give decisions that it considers fair and appropriate having regard to the intent that fishers shall where possible receive the benefit of and be subject to this Act".

Box 6.1
Social security programmes in the fisheries sector
of Kerala State, India

The various schemes of the Kerala State Co-operative Federation for Fisheries Development (Matsyaboard) include insurance benefits, sickness insurance benefits, maternity benefits, health benefits, old-age benefits, etc., and they are of great relevance and significance for fisherfolk. The Group Insurance Scheme is a case in point. Fishing is one of the most risky occupations and personnel and equipment insurance is essential. Between 1986 and 1998, compensation was paid for 1,096 deaths. This implies that, in Kerala, one fisherman dies at sea every four days. No other occupation is as risky. Yet surprisingly, such a risky occupation received insurance coverage very late – and only after repeated demands by fisherfolk. The old-age pension is the most popular of the schemes of Matsyaboard, attracting the largest number of beneficiaries. Fishermen aged 60 and above can avail themselves of the pension under this scheme, on certain conditions. The schemes of Matsyaboard cover the various phases of a fisherman's life. Funding for the programmes is provided by the state government, fishermen, dealers, exporters and boat owners, though there have been difficulties collecting funds from exporters.

Source: Extract from J. Kurien and A. Paul: *Nets for social safety: An analysis of the growth and changing composition of social security programmes in the fisheries sector of Kerala State, India* (International Collective in Support of Fishworkers, Chennai, India, 2000).

markets – by means of a tax on the value of sales. The money collected would then be transferred to the National Social Security Fund. In both cases, the workers' contributions would be paid by the fishermen according to a simplified procedure (sticking stamps in a booklet, for example). The information collected at this level would be used to determine the fishermen's entitlement to benefits.¹⁶

Non-domiciled or foreign fishermen

In Denmark, non-Danish fishermen signed on board a Danish fishing vessel are considered to have domicile in Denmark and are generally covered by social security benefits. In New Zealand, however, access to social security benefits depends on a seafarer's residency status. Under New Zealand legislation, social security benefits are only available to people who are ordinarily resident in New Zealand. Migrant workers who are in New Zealand on a temporary basis are not eligible for social security benefits.

¹⁶ ILO: M. Chaabane, *Towards the universalization of social security: The experience of Tunisia*, ESS (Extension of Social Security) Paper No. 4, Social Security Policy and Development Branch (Geneva, 2002), pp. 21-22.

*Examples of specific benefits for fishermen**Medical care benefits, sickness and injury benefits, invalidity benefits*

In Japan, workers covered by the Mariners' Law are covered by the Seaman's Health Insurance System provided under the Seamen's Health Insurance Law. Those not covered by the Mariners' Law are covered by the general law, the Health Insurance Law or, if self-employed, by the National Health Insurance Law. Under these two latter laws, benefits to workers include medical examinations, medicines and medical-care supplies, emergency treatment and medical care at home. Although the Workers' Compensation Insurance System generally covers all workers (excluding, inter alia, seamen – who are covered by the Mariners' Law), in fishing establishments under one owner hiring five workers on a vessel of less than 5 tonnes and in designated areas where there are low accident rates, the employer or majority of the workers can decide whether they should participate in the insurance scheme.

The Banks Fisherman and Frigo-workers (Remuneration Order) Regulations (1997) of Mauritius provide that “an employer shall subscribe to a non-contributory insurance policy in the sum of not less than Rs.50,000 for the benefit of a worker to cover death or injury by accident arising out of and in the course of employment”. It also provides that “where a worker is unable to work and has been certified to be sick by a medical officer who is on board or in his absence by the Shipmaster, the employer shall pay to the worker, in addition to his remuneration, an allowance of Rs.70 in respect of public holidays”.

In Norway, through the National Insurance Scheme, fishermen registered in the fishermen's register accordingly have the right to receive payment from the Insurance Scheme during illness, and absence from work caused by occupational illness or unemployment.

The Republic of Korea provides compensation for medical treatment for an occupational or non-occupational disease and for disability resulting from an occupational injury or disease. All fishing vessel personnel are provided with health insurance benefits including: medical care, sickness and injury benefits, preventive care, rehabilitation, health education and health promotion.

Old-age benefits/pension benefits

Fishermen in Norway also have a special retirement pension system outside the National Insurance Scheme. In order to be entitled to the “fishermen's pension”, there is a minimum work requirement of 750 weeks related to social security premiums; this pension is administered by the Guarantee Institute for Fishermen under the Ministry of Fisheries. Between 60 and 67 years of age, a fisherman's regular income is supplemented until the age of 67 when he enters the regular pension scheme for all employees. The fisherman must have paid a premium for at least 750 weeks (about 15 years). Maximum pension rights are achieved after 1,560 weeks (30 years). The size of the payment depends on the length of service.

Peru has a special Fishermen's Retirement Fund which allows fishermen to retire as early as 55 years of age if they have worked in the sector for 25 years and have made a minimum number of contributions. A lower benefit is provided if the conditions have not been fulfilled. Widows receive 50 per cent and children under 18 years are entitled

to 20 per cent of the pension if the conditions have been met. Other benefits are provided for up to three years for widows and children of deceased fishermen who have not met the conditions for a full pension but have made some contributions to the fund.

In Portugal, the minimum qualifying age for retirement benefits under the general scheme is 65 years. A decree provides special schemes for invalidity and old-age pensions, which may be granted to licensed professional fishers who meet certain eligibility requirements. Fisheries workers may exercise their rights to an old-age pension, beginning at the age of 55 years, if they have accrued 30 years of work (as opposed to 30 calendar years of registered contributions for workers covered under the general scheme) – at least 15 of which must have been on fishing vessels. A pension for physical disability related to fishing is also available to fisheries workers who attain the age of 50, as long as they have accrued 40 years of service. This legislation applies equally to wage earners, share workers, and those who are considered self-employed. Another decree allows retirement at the age of 50 if a worker has accrued 40 years of service.¹⁷

Fishing vessel personnel employed on vessels registered in the Republic of Korea are insured by their companies. Koreans employed on foreign-flag vessels are insured through their domicile province office. Thus, all fishing vessel personnel are entitled to receive pension benefits such as an old-age pension, a disability pension, a survivors' pension, etc., under the relevant provisions of the National Pension Act.

The artisanal fishing communities in some developing countries have special traditions for taking into account the needs of older fishermen. For example, in some communities special fishing grounds, closer to shore and less exposed to weather, have been set aside for older fishermen.

Unemployment benefits

In Canada, federal laws provide unemployment insurance and old-age security programmes for fishermen. Provincial benefits for seniors are also available in some provinces. To qualify for benefits, a self-employed fisher would need minimum earnings from his fishing as opposed to the minimum hours requirement for regular workers. There are different benefit periods to accommodate the summer and winter fisheries, respectively.¹⁸

Fishermen in Ireland have the same access to insurance-related benefits as any other contributor when there is both an employer and an employee contribution to the social insurance scheme. However, share fishermen may contribute to a special scheme which entitles them to unemployment benefit payments. An Act adopted in 1999 provides a special scheme of unemployment assistance for low-income fishermen.¹⁹

In Norway, the *Garantikassen* pays out unemployment benefits for fishermen. A fisherman has a right to unemployment benefit from the fourth day of unemployment. Payment per day for 2002 is NOK315 if the fisherman is connected to a vessel. The shipowner or the skipper are responsible for applying for unemployment benefit when the vessel is not operating for the following reasons: breakdown of machinery; ship-

¹⁷ OECD: *Transition to responsible fisheries: Economic and policy implications* (Paris, 2000), Annex 1, p. 71.

¹⁸ *ibid.*, p. 73.

¹⁹ *ibid.*, p. 70.

wreck; illness of the crew; extraordinary ice obstruction; lack of crew; when catches cannot be delivered shoreside because of strike or lockout; if repairs to the vessel take longer than foreseen; or if the Norwegian Maritime Directorate or the Fisheries Directorate unexpectedly prohibits the vessel from operating. For fishermen not connected to a vessel, the fisherman applies for unemployment benefit after: handing in his notice; his employment has been terminated because fishing has been stopped on account of regulations, the end of the season, delivery problems or if fishing is not profitable; unemployment after military service; unemployment after illness; or unemployment because of sale/condemnation of vessel.

Other forms of protection

In some countries, protection against death, injury or illness is provided through a requirement that the vessel owner carry certain types of insurance; it can also be available under workers' compensation programmes or broader schemes.²⁰ Fishing vessel owners frequently establish marine mutual societies. These societies operate on the basis of cooperation between members in order to provide coverage at a reasonable cost. Contributions are initially assessed according to experience – but further assessments may be made later in the year to cover unanticipated costs (i.e. higher than expected claims). Such mutual societies tend to improve the safety performance of members (or to limit membership) in order to hold down costs.

Retraining of fishermen for other professions

A number of countries have also established programmes to retrain fishermen for other work. In Japan, a special law for the fishing sector provides assistance to fishing vessel workers who have lost their jobs due to the conclusion of international agreements. The programme provides a training allowance to help transition to new employment. In Spain, an Order in Council has established specific programmes to retrain workers for other occupations. The Social Marine Institute, following job losses caused by the failure of the EU and Morocco to reach an agreement on fishing, conducted individual interviews with fishermen with the view to elaborating a training plan for the reinsertion of these workers into other areas of activity.

Fishermen often have skills (navigation, engineering, etc.) which may be adapted to employment in the merchant shipping or offshore support vessel sectors. In the United Kingdom, comparisons between the fishing and merchant navy training syllabuses have been undertaken – and routes mapped – so that a fisherman should not have to repeat training that is common to both industries. New “modular” approaches to training and certification may make it easier to transfer certification not only to the merchant navy but to other sectors.

²⁰ The FAO Code of Conduct for Responsible Fisheries provides, under article 8, para. 8.2.8, that “Flag States should promote access to insurance coverage by owners and charterers of fishing vessels. Owners or charterers of fishing vessels should carry sufficient insurance cover to protect the crew of such vessels and their interests, to indemnify third parties against loss or damage and to protect their own interests.”

Conclusions

From the information available to the Office, it would appear that:

- The majority of small-scale and artisanal fishermen may lack social protection because they are operating in countries which lack social protection for most workers.
- Fishermen, particularly share fishermen, may not, at least in many countries, have the same level of social protection provided to workers in general due to the nature of their employment relationship (“self-employed”).
- The hazardous nature of fishing means that death, sickness and injury benefits are particularly important for fishermen and their dependants.
- Projected reductions in fishing capacity may create a need for improved unemployment insurance and retraining programmes for fishermen.
- There are examples in several member States of social protection programmes designed specifically for the fishing sector, but these may not be widespread.

CHAPTER VII

ADMINISTRATION, ENFORCEMENT, CONSULTATION AND COORDINATION

FLAG STATE CONTROL

International instruments

The United Nations Convention on the Law of the Sea, provides that “Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag” (Part VII “High seas”, section 1 “General provisions”, article 94, “Duties of the flag State”, paragraph 1). Paragraph 3 further provides that: “Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to: (a) the construction, equipment and seaworthiness of ships; (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments; (c) the use of signals, the maintenance of communications and the prevention of collisions.”

Two ILO instruments specifically concern labour inspection in the maritime sector, the Labour Inspection (Seafarers) Convention, 1996 (No. 178), and its accompanying Recommendation No. 185.¹ Convention No. 178 provides that “[e]ach Member for which the Convention is in force shall maintain a system of inspection of seafarers’ working and living conditions.² It also calls for States to have a “central coordinating authority” which “shall coordinate inspections wholly or partly concerned with seafarers’ living and working conditions and shall establish principles to be observed”. There are also provisions concerning frequency of inspections; inspections following complaints or substantial changes in construction or accommodation arrangements; qualifications of inspectors; procedures for detention of ships; penalties and other matters. The Convention is aimed at seagoing vessels. It does not apply to vessels less than 500 gt. It provides that “[t]o the extent the central coordinating authority deems it practicable, after consulting the representative organizations of fishing vessel owners and fishermen, the provisions of this Convention shall apply to commercial maritime fishing vessels”.

¹ The General Labour Inspection Convention, 1947 (No. 81), provides for a system of labour inspection to secure the enforcement of legal provisions relating to conditions of work and the protection of workers in industrial workplaces, as well as commercial workplaces, if the ratifying States accept this extension.

² In Convention No. 178, the term “seafarers’ working and living conditions” means “the conditions such as those relating to the standards of maintenance and cleanliness of shipboard living and working areas, minimum age, articles of agreement, food and catering, crew accommodation, recruitment, manning, qualifications, hours of work, medical examinations, prevention of occupational accidents, medical care, sickness and injury benefits, social welfare and related matters, repatriation, terms and conditions of employment which are subject to national laws and regulations, and freedom of association as defined in the Freedom of Association and Protection of the Right to Organise Convention, 1948, of the International Labour Organization”.

The administration and enforcement provisions vary in the five ILO Conventions specifically concerned with the fishing sector. The Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), and the Fishermen's Articles of Agreement Convention, 1959 (No. 114), do not contain a specific part on enforcement. However, the Fishermen's Competency Certificates Convention, 1966 (No. 125), includes dedicated provisions on enforcement measures (Articles 14 and 15); and in the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), enforcement is also dealt with under Articles 3, 4 and 5.

The Torremolinos Convention and Protocol of 1993 provide for surveys (Regulation 6) resulting in the issue or endorsement of certificates (Regulation 7) as a means of ensuring that vessels comply with its requirements.

The STCW-F Convention includes enforcement provisions under article 1, General obligations, and article 7, National provisions. The latter includes penalties and disciplinary measures.

The FAO Code of Conduct for Responsible Fisheries provides, in paragraph 8.2.5, that:

Flag States should ensure compliance with appropriate safety requirements for fishing vessels and fishers in accordance with international conventions, internationally agreed codes of practice and voluntary guidelines. States should adopt appropriate safety requirements for all small vessels not covered by such international conventions, codes of practice or voluntary guidelines.

Regional instruments

Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels provides in article 3(1), *inter alia*, that "Member States shall take the measures necessary to see that: (a) owners ensure that their vessels are used without endangering the safety and health of workers, in particular in foreseeable meteorological conditions, without prejudice to the skipper's responsibility" and, in paragraph 2, that: "Member States shall take the measures necessary to ensure that, as regards compliance with this Directive, vessels are subject to regular checks by authorities specifically empowered to carry out such checks. Certain checks concerning compliance with this Directive may be carried out at sea." Article 7(2) provides that: "Member States shall take all necessary measures to ensure that, for the protection of the safety and health of workers, the owner supplies the skipper with the means needed to enable him to fulfil the obligations imposed upon him by this Directive." Article 13, Final provisions, provides that: "Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 November 1995."

NATIONAL LAW AND PRACTICE

The effective enforcement of national laws or regulations is ensured by:

- setting out the competent authority responsible for the implementation of the pertinent provisions;
- providing for the maintenance of an efficient system of inspection;

- prescribing adequate penalties or disciplinary measures for cases in which these laws or regulations are not respected.

Competent authorities

The implementation of national laws, regulations and programmes concerning living and working conditions in the fishing sector often involves – or should involve – the ministry of labour, the ministry responsible for maritime activities, the ministries responsible for fisheries, health authorities and others. Given that fishing is often regulated at the local level, there must be coordination at that level – but also with the federal authorities.

Issues addressed in the existing five ILO Conventions concerning the fishing sector

As regards the protection of young fishermen, the competent authority for enforcement is mostly the labour authority, sometimes in cooperation with the tribunal of minors,³ or with the maritime, naval, port or transport authorities.⁴

Concerning the medical examination of fishermen, the competent authority for the enforcement of the laws and regulations in some member States is the maritime, naval, port or transport authority.⁵ Other countries,⁶ however, specify that the health (including port health) and social security authorities are the competent authority for the enforcement of the pertinent provisions. A few member States (e.g. Germany) give the full responsibility for enforcement to insurance associations.

In a number of member States,⁷ the single competent authority for the enforcement of the pertinent laws and regulations concerning the issue of articles of agreement for fishermen is the maritime, naval, port or transport authority. Some countries (e.g. Costa Rica) provide for cooperation between labour authorities and maritime, naval or port authorities. A few other countries (e.g. Ecuador, Tunisia) set out that the agriculture or fishery authority is the single competent authority for the enforcement of the pertinent laws and regulations.

Laws and regulations concerning competency certificates for fishermen are dealt with solely by the maritime, naval, port or transport authority in many member States.⁸ Some countries (e.g. Poland) entrust the labour authorities with enforcement. A few (e.g. Mexico) provide for cooperation between the agriculture or fishery authorities and the maritime, naval or port authorities. One country (Germany) gives the full responsibility for enforcement to insurance associations.

As to the issue of crew accommodation, in several member States⁹ the single competent authority for the enforcement of the pertinent laws and regulations is the

³ Ecuador (ratified C. 138 and C. 112).

⁴ Mexico (ratified C. 112).

⁵ Australia, Denmark, Republic of Korea, New Zealand, Norway.

⁶ Ecuador, Guatemala, Lithuania, Mauritius, Nigeria, Romania.

⁷ Australia, Denmark, Republic of Korea, New Zealand, Norway, Panama, Romania, Spain.

⁸ Belgium, Chile, Denmark, Lithuania, New Zealand, Norway, Panama, Romania, Senegal, Syrian Arab Republic.

⁹ Belgium, Denmark, France, Greece, Japan, Mexico, Netherlands, Norway, Panama, United Kingdom.

maritime, naval, port or transport authority. In some others¹⁰ this is carried out through cooperation between the labour authority and maritime, naval or port authority. Others¹¹ involve the agriculture or fishery authority and the maritime, naval or port authority. In one country (Sierra Leone), the agriculture and fishery authority is the single competent authority for the enforcement of the pertinent laws and regulations. A few States give the full responsibility for enforcement to insurance associations (Germany) or the partial responsibility to trade unions (Azerbaijan).

Occupational safety and health issues

Laws and regulations concerning occupational safety and health issues are often the responsibility of maritime safety authorities,¹² workers' compensation boards (in Canada), labour authorities and fisheries ministries. In some cases, trade union officials play a role in ensuring compliance with provisions in collective agreements based on laws and regulations. In many cases, more than one government agency is involved. In Mexico, these matters are, in accordance with the law of navigation, dealt with by the ships' captains and the Foreign Mexican Consulate. The Naval Inspection Service is in charge of inspecting ships. In New Zealand, the Maritime Safety Authority is responsible for ensuring the occupational health and safety of seafarers; monitoring and reviewing safety in the maritime system; and promoting safety compliance. The Maritime and Coast Guard Agency (MCA) of the United Kingdom requires surveys of vessels and subjects them to random inspections. In Spain, it is the responsibility of the Labour and Social Security Inspectorate to ensure compliance with occupational safety and health regulations – although the National Institute of Occupational Safety and Health collaborates in this work. In Chile, the General Directorate of the Maritime Territory and the Merchant Marine (DIRECTEMAR), which comes under the Chilean navy, is responsible for enforcing laws and international agreements concerning maritime safety and marine pollution prevention; however, the employers' mutual insurance organizations are responsible for insurance covering injuries and occupational diseases; the Ministry of Health controls health conditions; and the Ministry of Labour inspects and controls standards concerning occupational safety and health. The Danish Maritime Authority is responsible for the regulation of the occupational safety and health of seafarers and fishermen in Denmark – with the assistance of the Danish occupational safety and health services (see box 7.2 later in the text concerning the Fisheries Occupational Health Council). In Italy, the Ministry of Transport and Shipping, local health agencies and maritime health offices are involved in the supervision of laws and regulations concerning safety and health on fishing vessels.

Coordination among ministries and agencies

The involvement of several ministries and agencies in the enforcement of living and working conditions of fishermen, particularly safety and health issues, calls for careful coordination between these authorities. This issue was raised at the ILO's

¹⁰ Azerbaijan, Brazil, Spain.

¹¹ Russian Federation, Slovenia, Ukraine.

¹² Denmark, Republic of Korea, Mexico, Mozambique, New Zealand, United Kingdom.

Tripartite Meeting on Safety and Health in the Fishing Industry, which concluded, *inter alia*, that:

Governments should ensure coordination of all ministries and agencies (national, regional and local) with an interest in the safety and health of fishermen and should avoid duplication of efforts. Officials responsible for fishing safety and health issues should have a thorough understanding of the fishing industry and its specific safety and health problems.

Coordination mechanisms have been established in several countries.

In the State of Queensland, in Australia, the Division of Workplace Health and Safety (DWHS) has a Memorandum of Understanding (MOU) with the Australian Maritime Safety Authority (AMSA). Signed by the heads of both agencies, the MOU clarifies jurisdictional requirements associated with ships (including fishing vessels) in Queensland ports.

In 2001, the Canadian Marine Advisory Council (CMAC) established a Standing Committee on Fishing Vessel Safety (previously, CMAC had dealt with fishing issues in the same forum as shipping and recreational boating issues). At the provincial level, in British Columbia, there is extensive and ongoing coordination between the Workers' Compensation Board, the Canadian Coast Guard and other agencies involved in regulating safety and health in the fishing industry. In Newfoundland, there is a provincial committee comprised of local stakeholders who make recommendations to CMAC. There is also a working group, which is comprised of the Department of Fisheries and Oceans, the Canadian Coast Guard, the Fisheries, Food and Allied Workers' Union (FFAW), Human Resource Development Canada, Transport Canada, and the Workplace Health, Safety and Compensation Commission of Newfoundland and Labrador (WHSCC). The Professional Fish Harvesters' Certification Board (PFHCB) works very closely with Transport Canada, the Coast Guard and the FFAW relating to health and safety conditions of fishing vessel personnel (see box 7.1 setting out the objectives and composition of this body). Protocols are in place with federal agencies, Transport Canada and the Department of Fisheries and Oceans, to cover the reporting of accidents, incidents and complaints regarding work areas.

In Mexico, the Ministry of Agriculture, Farming, Rural Development, Fishing and Nutrition (SAGARPA) organizes meetings to examine various problems of fishing personnel at which both fishing cooperatives and owners of fishing vessels participate. In the area of safety, each federal entity constitutes an advisory occupational safety and health committee which is entrusted with studying and proposing the adoption of all preventive measures to reduce risks in work centres included within its jurisdiction.

A Memorandum of Understanding between the Maritime and Coast Guard Agency and the Association of Port Health Authorities in the United Kingdom provides for coordinated action to maintain an effective system of health and hygiene standards aboard all vessels.

In the United States, the Occupational Safety and Health Administration (OSHA) has safety and health authority over working conditions on board commercial "uninspected" fishing vessels not otherwise covered by United States Coast Guard regulations. Laws and regulations, as well as a Memorandum of Understanding, address the responsibilities of these two agencies.

Box 7.1
Canadian consultation and coordination

In Newfoundland, the Professional Fish Harvesters Certification Board was established by the Professional Fish Harvesters Act. The objectives of the Board are:

- to promote the interests of fish harvesters as a professional group;
- to be responsible for defining the standards for professionalization;
- to provide an advisory role to the federal and provincial governments in the formation of fisheries policies consistent with the common good of fish harvesters, namely in the areas of resource conservation, fish quality improvements, a reasonable return to participants, optimizing product value, and the safety of fish harvesters and the public;
- to operate and maintain a fish harvester registration system;
- to develop, evaluate and recommend courses under the professionalization programme;
- to issue certificates of accreditation to qualifying fishers;
- to develop, maintain and monitor compliance of a code of ethics for professional fish harvesters;
- to apply sanctions against fish harvesters who violate the Board's code of ethics; and
- to provide an independent appeals procedure for fish harvesters.

The Board is composed of 15 members appointed by the Newfoundland and Labrador Minister of Fisheries and Aquaculture, including: seven representatives of the organization that has been recognized by the Labour Relations Board as representing fish harvesting in collective bargaining; a representative from the Association of Newfoundland and Labrador Fisheries Co-operatives; a representative of the Department of Fisheries and Aquaculture; a representative of the Department of Education; two representatives of the Department of Fisheries and Oceans (Canada); a representative of Human Resources Development (Canada); a representative of a post-secondary education training institution; and a representative-at-large chosen by the Minister.

Source: <http://www.pfhcb.com> (20 September 2002).

In Viet Nam, in 1997 the Prime Minister ordered various ministries and institutions (the Ministry of Fishery; Ministry of Transport and Telecommunications; Ministry of Defence; Ministry of Finance; Ministry of Planning and Investment; the Central Flood and Storm Control Management Board; the Committee for Seeking Airlines and Marine Missing Persons; the General Directorate of Post and Telecommunications; and the People's Committees of Centrally Managed Cities and Provinces) to work together immediately to do the following tasks: review and amend regulations on safety and rescue; provide training and information on safety skills; provide protection

and rescue equipment; take steps to ensure climate and weather information and marine safety; make available financing; and provide first aid, etc. Regular meetings (twice a year) are held with the Fishing Industry Safety Group.

Inspection system

General

The inspection of labour conditions of fishermen has been a challenging problem for many States which may not have in place laws and regulations concerning the inspection of vessels – in particular small vessels. Even where the law provides for such inspections, some States, or local authorities within States, may only have the resources to inspect a small percentage of the fishing fleet due to limited resources and the remote location of many fishing communities.

The ILO's Tripartite Meeting on Safety and Health in the Fishing Industry discussed this issue and concluded that:

Laws and regulations, essential for the promotion of safety and health in the fishing industry, are only of value if they are implemented. Government agencies responsible for enforcement must be given sufficient resources to monitor the implementation of safety and health requirements, ensuring, in particular, that vessel inspection services are adequate.

and that

Flag States should ensure compliance with national requirements and minimum international standards in respect of the social conditions, safety and health and environmental conditions on board fishing vessels flying their flag.

The inspection of labour conditions on fishing vessels sometimes falls under the general occupational safety and health legislation.

For example, in Australia, the Workplace Health and Safety Act (1995) provides for the appointment of persons as inspectors. In the Australian State of Queensland, inspectors are employed and deployed. They undertake workplace inspections under Commonwealth [federal] legislation on a contractual basis. Workplaces are inspected as a consequence of complaints/occurrences, random audit programmes, blitzes and targeted audit programmes. There are also special targeted programmes for high-risk industries. In Canada, in British Columbia, inspectors of the Workers' Compensation Board carry out inspections.

In Japan, a distinction is made between workers on vessels covered by the Mariners' Law and those covered by general labour standards. Inspections are carried out by mariners' labour inspectors, who work for the district transport bureaux, transport branch offices and maritime offices. Under the Mariners' Law, the mariners' labour inspectors may inspect any vessel or office at any time – when they draw up a report. Inspectors may give guidance or use the authority of the judicial police to enforce the law. Enforcement of the laws covering those fishermen not covered by the Mariners' Law – i.e. those covered by the Labour Standards Law, the Industrial Safety and Health Law and the Minimum Wage Law – is the responsibility of the Labour Standards Management Bureau, prefectural labour bureaux and labour standards

inspection offices. Labour standards inspectors are authorized to inspect workplaces and offices, question employers and workers, and to use the authority of the judicial police to enforce the law.

In some countries – for example, Mauritius – inspections are only carried out by the inspection and enforcement division of the Ministry of Labour after complaints have been lodged of failure to comply with the Banks Fisherman and Frigo-workers Regulations.

Poland has a fairly advanced system of inspection for fishing vessels. Inspections are carried out by the National Section of Maritime Economy at the District Labour Inspectorate in Gdańsk. This specialized group carries out inspections of all aspects of labour conditions, including occupational safety and health requirements. Inspections cover both deep-sea fishing vessels (at distant fishing grounds), including factory trawlers, and Baltic fishing vessels.

In some countries inspections of certain aspects of living and working conditions (often including inspections for noise levels) are checked during vessel surveys. In Norway, the maritime authority inspects vessels of 15 metres in length and over during the initial and renewal surveys. In Tunisia, the Code of the Administrative Police of Shipping subjects fishing vessels to periodic and exceptional visits to check safety equipment on board. In the United Kingdom, vessels are surveyed every four years and subject to random inspections that generally focus on safety issues. At the time this report was being written (15 October 2002) consultations with the fishing industry were taking place concerning the ratification and possible application of Convention No. 178 to fishing vessels.

*Inspection of issues covered by existing ILO Conventions
concerning the fishing sector*

As regards the issue of protection of young fishermen, some countries¹³ carry out inspections to monitor the ban on certain tasks for young persons under 18 years of age.

The most common means of controlling enforcement of requirements for competency certificates in several countries¹⁴ is inspection.

Crew accommodation is controlled by inspection in many countries.¹⁵ Some States¹⁶ also approve and authorize classification societies to carry out inspections; a few¹⁷ have further established a self-inspection system, whereby inspections are carried out by the master or an officer appointed by him. Most countries¹⁸ provide for compulsory inspections of crew accommodation whenever a fishing vessel is regis-

¹³ Ecuador (ratified C. 138 and C. 112); Mexico (ratified C. 112).

¹⁴ Belgium, Germany, Panama, Senegal, Syrian Arab Republic (ratified C. 125); Denmark, New Zealand, Norway, Poland.

¹⁵ Azerbaijan, Belgium, Brazil, Denmark, France, Germany, Greece, Netherlands, Norway, Panama, Russian Federation, Sierra Leone, Slovenia, Spain, Ukraine, United Kingdom (ratified C. 126); Australia, Japan, Mexico.

¹⁶ Belgium, Brazil, Denmark, Russian Federation, Ukraine (ratified C. 126).

¹⁷ Netherlands, United Kingdom (ratified C. 126).

¹⁸ Belgium, Brazil, France, Germany, Greece (as to registration, only for ships above 500 tonnes), Netherlands, Norway, Panama, Russian Federation, Sierra Leone, Spain, Ukraine (ratified C. 126); Mexico.

tered or re-registered. Furthermore, compulsory inspections of crew accommodation are stipulated by many member States in the event of a vessel's reconstruction or substantial alteration.¹⁹ National legislation also frequently²⁰ includes provisions on inspections upon receipt of a complaint by crew members or fishermen's organizations that the crew accommodation is not in compliance with the terms of the legislation. The majority of countries²¹ provide for periodical inspections. Moreover, national laws and regulations in many countries²² specify that, before work begins on the construction of a new fishing vessel or the crew accommodation of an existing vessel is substantially altered or reconstructed, detailed plans of, and information concerning, the crew accommodation have to be submitted to the competent authority for approval.

Occupational safety and health inspections

As to the issue of occupational safety and health, the Office has sought to obtain information on whether and how occupational safety and health inspections in the fishing sector are carried out in member States (as opposed to maritime safety inspections focusing only on the vessel and on life-saving equipment). However, it is not always clear whether the competent authorities which have the legal authority to carry out inspections are actually doing so. Even when they are, it is unclear whether or not there are periodic (or even occasional) inspections of smaller vessels. For example, in Malaysia and Namibia, officers from the Department of Fisheries may carry out inspections. In Viet Nam, units of the Fisheries Ministry may inspect vessels and prepare reports according to guidance from the Ministry of Labour, War Invalids and Social Affairs. In Canada, in British Columbia, Workers' Compensation Board safety inspectors control working and living conditions on board vessels. In some countries there is also a requirement for self-inspection by the master. The United States Coast Guard seeks to enforce minimum safety equipment regulations by examining fishing vessels for compliance during sea boarding; however, the Occupational Safety and Health Administration inspects fishing vessels and installations upon receiving complaints, accident reports and referrals in addition to planned inspections, and conducts follow-up inspections when necessary. In Romania, there is a general control of all the equipment, the working place and the protection materials at least once a month. Collective agreements may also contain provisions concerning inspection. In Canada, in Newfoundland, health and safety committees established in ports are required to make quarterly inspections of trawlers and to file a written report with the company and the union.

¹⁹ Belgium, Brazil, Germany, Greece (for ships above 500 tonnes), Netherlands, Norway, Panama, Sierra Leone, Slovenia, Spain, Ukraine (ratified C. 126); Mexico.

²⁰ Belgium, Brazil, France, Germany, Greece, Panama, Sierra Leone, Slovenia, Spain (ratified C. 126); Australia (in respect of provisions), Japan, Mexico.

²¹ Belgium (annually), Brazil, France, Greece, Netherlands (every seven days), Norway, Panama, Sierra Leone, Slovenia (annually), Spain, Ukraine, United Kingdom (every seven days) (ratified C. 126); Australia, India (every ten days in respect of provisions and water), Japan.

²² Azerbaijan, Belgium, Brazil, Germany, Greece, Netherlands, Norway, Panama, Russian Federation, Sierra Leone, Spain, Ukraine, United Kingdom (ratified C. 126).

Penalties

In many countries,²³ national legislation prescribes penalties (mostly fines) for violations of laws and regulations concerning the employment of young persons. Penalties are also imposed for the infringement of legislation on competency certificates – in many countries²⁴ and especially for cases in which a fishing vessel owner or his agent, or skipper, has engaged a person not certificated as required, or in which a person has obtained by fraud or forged documents an engagement to perform duties requiring certification without holding the requisite certificate. These penalties may take various forms: the detention of the vessel, fines or prison. As to crew accommodation, a number of countries²⁵ prescribe penalties for any violation of the pertinent provisions or obstruction of inspections. These include detention of the vessel, fines, corrective labour, prison or cancellation of the registry.

Consultation with the fishing sector

The ILO's Tripartite Meeting on Safety and Health in the Fishing Industry concluded, *inter alia*, that:

Social dialogue is essential to improving the safety and health of fishermen, and it should be promoted at the enterprise, local, national, regional and international level and in all forums where fishing issues are discussed. This should include measures to build the capacity of employers' and workers' organizations, and facilitate their emergence where none exists.

Employers' and workers' organizations should be consulted during the development, monitoring and revising of laws and regulations relevant to the safety and health of fishermen. The social partners should also be consulted on other non-legislative efforts to address these issues. Standing consultative bodies, drawing on a wide range of interests in the fishing industry, should be established for the purpose of discussing safety and health issues.

Apparently, many States have established mechanisms for consulting with the fishing sector on the development and implementation of laws, regulations and programmes aimed at improving living and working conditions; but these are not always devoid of problems. Classic tripartite consultation is often difficult on account of the rather limited percentage of trade union membership in the fishing sector. In the case of smaller vessels, the fishing vessel owner and fisherman may be one and the same person – both the employer and employee. In some countries there may be a large number of fishermen's organizations, including community organizations, with differing problems and competing interests. These organizations may not have one organization at the national level to represent their collective views, thus complicating the process of consultation. There are, however, examples of strong consultative bodies at the national level. On a purely practical basis, it may also be difficult to bring

²³ Chile (ratified C. 138), Ecuador (ratified C. 138 and C. 112); Australia, (Northern Territory) (ratified C. 112).

²⁴ Belgium, Germany, Panama, Senegal, Syrian Arab Republic, Trinidad and Tobago (ratified C. 125); Australia, Denmark, India, Norway, United Kingdom.

²⁵ Belgium, Denmark, France, Germany, Greece, Netherlands, Panama, Russian Federation, Sierra Leone, Ukraine, United Kingdom (ratified C. 126); Australia, India, Mexico.

together fishermen to meet on issues because of the long periods they spend at sea. In a few countries, strong organizations of fishermen's spouses have formed and provided continuous representation of fishermen's – and their families' – interests ashore. Fishermen's cooperatives and traditional community structures have also remained important to the consultation process.

In Japan, there is a Central Labour Commission for Seafarers for employers and workers on vessels covered by the Mariners' Law. This Commission includes maritime government, employers' and workers' representatives, including a representative of fishing vessel owners and a representative of fishermen. For those not covered by the Mariners' Law, consultation is through the Labour Condition Division of the Labour Policies Commission which comprises representatives of workers, employers and government; however it does not appear to have a special requirement to include fishing vessel owners and fishermen.

In Mauritius, meetings are held that involve all stakeholders. These include: the Ministry of Labour and Industrial Relations; the Ministry of Health and Quality of Life; the Ministry of Public Infrastructure, Land Transport and Shipping; the Mauritius Marine Authority; the National Coast Guard; the Ministry of Fisheries; the Merchant Navy and Fishing Vessel Employees' Union; the Federation of Progressive Unions; the Maritime Transport and Port Employees' Union; the Apostolat de la Mer; and the Distant Water Vessels, Seamen's and Fishermen's Association.

The Norwegian Maritime Directorate's Fishing Vessel Department has an Advisory Body on Fishing Vessels consisting of five members (in addition to the Norwegian Maritime Directorate), representing the trade unions and fishing vessel owners, specifically: the Norwegian Seamen's Union; the Norwegian Union of Marine Engineers; the Norwegian Maritime Officers' Association; and the Norwegian Fishermen's Association that organizes both fishing vessel owners and fishing vessel personnel. The latter is represented by two members, one representing larger vessels, the other smaller vessels. This advisory body meets once a year to discuss all aspects of fishing vessel safety and protection of the marine environment. All applications for deviations from the Working Hours on Ships Act must be submitted to the Advisory Body, as must other manning-related issues on which the Norwegian Maritime Directorate needs advice. On a trial basis, a regional committee has been established to address occupational safety and health issues involving small vessels of less than eight crew members. Organizations that promote fishing vessel safety include the Council for Labour Supervision on Norwegian Ships and the Council for Safety Training of Fishermen.

Through national legislation, Denmark has established a system of tripartite consultation which operates at both the national and local level (see box 7.2).

PORT STATE CONTROL

The ILO does not have an instrument calling for the port state control of fishing vessels. The Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147),

Box 7.2
**Denmark's Fisheries Occupational Health Council
and Harbour Security Boards**

In Denmark, the Fisheries Occupational Health Council and the Harbour Security Boards provide a means for consultation on occupational safety and health issues. The Council consists of eight members: four from the fishermen's union or the employers' side and four from the Danish Fishermen's Association or the owners and the employees' side. It lays down the guidelines for the Fisheries Occupational Health Service, which is the secretariat of the Fishing Occupational Health Council and of the eight Harbour Security Boards. The Harbour Security Boards are regional boards which consist of six to ten members; the number of crewmembers and skippers or owners is the same, the fishermen choose their representatives among the organized fishermen in the area; the vessel owners, who are often the skippers in Denmark, choose their representatives among their members. A member must participate in a 32-hour course dealing with the working environment and occupational health and safety in general. One of the four persons employed in the Fisheries Occupational Health Service also participates in the Harbour Security Board meetings held four times a year – or if a serious accident occurs on board a fishing vessel in the area of the Harbour Security Board. Each meeting has two compulsory items on the agenda: information from the Occupational Health Council on what is going on at the moment and a general discussion of all accidents in the area reported since the last meeting. In Denmark, all accidents causing more than one day's absence from work must be reported to the Danish Maritime Authority; the Danish Maritime Authority then forwards all the reports to the Fisheries Occupational Health Service which sends them to the appropriate Harbour Security Board. In connection with each reported accident, the local Harbour Security Board recommends measures to prevent a similar accident in the future. When this has been done, the Fisheries Occupational Health Service contacts the skipper on board and explains steps to be taken to avoid accidents of the same kind in the future. If the solution is of general public interest an article is published in a fishing trade magazine. Since 1997, the Fisheries Occupational Health Service has registered all reported accidents in a database. The owner of a fishing vessel has to pay a fee each year for every fisherman engaged on board a fishing vessel to the Fisheries Occupational Health Service. The service provides free-of-charge noise measurements and individual risk assessments on board a vessel. It is also a prime mover in other activities intended to enhance the safety and improve the working environment on board Danish fishing vessels.

Source: Danish Maritime Authority.

provides for such control for seagoing ships²⁶ but does not apply to “ships engaged in fishing or in whaling or in similar pursuits”. However, the Torremolinos Convention and 1993 Protocol provide, in Article 4, for certification and port state control of fishing vessels. The STCW-F Convention includes port state control provisions under Article 8, “Control”.

The ILO did not specifically request States to provide information on port state control in its survey. However, it does understand that a number of countries carry out at least some limited form of port state control of foreign fishing vessels visiting their ports.

THE ROLE OF THE COASTAL STATE

The United Nations Convention on the Law of the Sea provides, in Part V, Article 62(4), that “Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, inter alia, to the following ...” and goes on to list a number of areas related to fisheries management, joint ventures and other issues. It does *not* provide for any kind of regulation of living and working conditions on board fishing vessels registered in other States when they fish in the exclusive economic zone of another State.

The ILO’s Tripartite Meeting on Safety and Health in the Fishing Industry, concluded, inter alia, that: “Coastal States should make provision of decent living and working conditions on board fishing vessels a condition which must be met in order to obtain and retain permission to fish in the coastal State’s exclusive economic zone.”

The Office has sought to obtain information from member States on whether they set requirements concerning living and working conditions on foreign vessels fishing in their exclusive economic zones. So far, it has found requirements of this nature only in fisheries agreements wherein nationals of the coastal States work on board foreign vessels authorized to fish in the exclusive economic zone.

Conclusions

- It goes without saying that laws and regulations are not effective if they cannot be enforced.

²⁶ Article 4 provides: “(1) If a Member which has ratified this Convention and in whose port a ship calls in the normal course of its business or for operational reasons receives a complaint or obtains evidence that the ship does not conform to the standards of this Convention, after it has come into force, it may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health. (2) In taking such measures, the Member shall forthwith notify the nearest maritime, consular or diplomatic representative of the flag State and shall, if possible, have such representative present. It shall not unreasonably detain or delay the ship. (3) For the purpose of this Article, complaint means information submitted by a member of the crew, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew.”

- Adequate resources for enforcement are essential. It would appear that in many countries, insufficient resources are applied to enforcement of labour standards in the fishing sector.
- In view of the difficulty in obtaining sufficient resources to inspect all fishing vessels, it may be necessary to provide for alternative means of inspection, or of ensuring compliance, rather than having every vessel, particularly small vessels, inspected.
- Consultation with not only traditional tripartite constituents but also other representative fishermen's organizations should be promoted.
- Coordination between all government ministries and agencies, including at the national and local levels, is important and should be promoted.
- There are precedents for exercising port state control of fishing vessels. Consideration should be given to extending port state control to labour conditions of foreign fishing vessels.
- Coastal States may be in a position to call for improved labour conditions on vessels fishing in their exclusive economic zones; however, if this is done, it may be appropriate to establish an international minimum standard for such conditions.

CHAPTER VIII

SUMMARY

General

The special nature of fishing calls for the development of international labour standards for the fishing sector. While laws and regulations covering all workers – or, more particularly, maritime workers – often apply to fishermen, they do not appear to take into account the nature of fishing operations, employment relationships and other concerns. This does not imply that a new ILO standard for the fishing sector should repeat the provisions of other standards; it should rather ensure that fishermen, by virtue of their work, do not «fall through the cracks» of social protection provided to other workers.

As concerns the scope and application of national laws and regulations, and therefore of a new ILO standard, it appears that:

- as regards vessels covered, most States prefer to use length rather than tonnage as a basis for determining which vessels should be covered by laws or regulations or deciding which regulations apply to which vessels (i.e., larger or smaller vessels);
- most States exclude recreational fishing from their laws and regulations concerning labour issues in the fishing sector;
- the smaller the vessel, the less likely it is that the fishermen working on such a vessel are protected by labour legislation.

Revision of ILO's seven standards specifically concerning the fishing sector

Minimum age and protection of young fishermen

The Governing Body has invited States parties to the Minimum Age (Fishermen) Convention, 1959 (No. 112), to contemplate ratifying the Minimum Age Convention, 1973 (No. 138). The ratification would, *ipso jure*, involve the immediate denunciation of Convention No. 112. The trend is therefore towards a minimum age requirement applicable to all workers – as opposed to sectoral standards. The majority of member States having ratified Convention No. 112 appear to be moving in this direction. Furthermore, an increase in the ratifications of the Worst Forms of Child Labour Convention, 1999 (No. 182), has led to greater efforts to remove children from hazardous work.

The new ILO fishing standard may add value to these efforts by providing guidance to States on how they should treat the issue of young persons in the fishing sector in their national laws and regulations and programmes. It could provide, for example, criteria which might distinguish whether all work on a fishing vessel, or whether specific types of fishing operations and specific tasks on board vessels, should be considered hazardous and thus be considered off-limits to young persons.

Medical examination

The Governing Body has recommended that the Medical Examination (Fishermen) Convention 1959 (No. 113), be revised to adapt to the existing needs of the fishing sector, inter alia, by taking into account the ILO/WHO Guidelines for conducting pre-sea and periodic medical fitness examinations for seafarers. In addition to the 29 States that have ratified the Convention, a number of others apparently have requirements for medical certificates – despite the fact that they have not ratified the Convention. It would seem that some States may not have ratified this Convention on account of certain details (e.g. duration of period of the validity). Thus, wider ratification might be possible by providing greater flexibility and less detail in the new fishing standard.

However, many small-scale and artisanal fishermen are not required to undergo a medical examination. The new standard might, therefore, seek to promote the extension of health care and occupational safety and health monitoring to this sector, as a way to reach such workers.

Articles of agreement/contracts of employment

The Governing Body has recommended a partial revision of the Fishermen's Articles of Agreement Convention, 1959 (No. 114). The Office has reviewed laws and regulations of States which have and have not ratified the Convention; generally speaking, the requirement that all fishermen should have a written agreement is widespread, but this protection may not be reaching many of the world's small-scale and artisanal fishermen; the reasons for this are not yet clear. There may, however, be a basis for a provision in the new standard that all fishermen should have a written agreement when working on vessels owned by others and that there should be a means of settling disputes related to the agreement. Furthermore, there may be grounds for a provision concerning greater transparency in share-arrangement systems, as a means of protecting fishermen from underpayment.

The main reason cited by the Governing Body for the revision of Convention No. 114 was the need to address the issue of an identity document for fishermen. From the information available to the Office, it would appear that there are grounds for a provision calling upon member States to provide fishermen working on international voyages with a seafarer's identity card. However, this issue will require re-examination following the discussion on the improved security of seafarers' identification at the 91st Session of the International Labour Conference in 2003.

Accommodation

The Governing Body has invited member States to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126) – or to point to the need to revise it. The information so far available to the Office indicates that a substantial number of States have laws and regulations concerning accommodation on fishing vessels. Many States which have such laws and regulations but have not ratified the Convention appear to have requirements that are not at the level provided in this instrument. A number of important issues (e.g., vibration) have apparently not been adequately addressed in Convention No. 126.

Bearing this in mind, it would appear that there is scope for including broader but less detailed provisions on accommodation in the new fishing standard in order to ensure wider ratification and to reach a greater percentage of the world's fishing fleet (and thus fishermen). This would include basic provisions concerning fishing vessels smaller than those currently provided for under Convention No. 126. It may call for a link to the existing FAO/ILO/IMO codes and guidelines referring to accommodation issues. Furthermore, the new standard should place greater emphasis on the issue of medical equipment and medical care at sea.

Competency certificates and vocational training

The Governing Body has taken the view that the Fishermen's Competency Certificates Convention, 1966 (No. 125), should be revised and brought up to date to take into account developments in the fishing industry. Referring to the IMO's STCW-F Convention, it also agreed that, in the light of the different supervisory mechanisms applicable to the IMO and ILO Conventions, the method of adoption of ILO instruments and the need for comprehensive coverage, the revision of Convention No. 125 was appropriate.

An examination of the provisions of Convention No. 125 and the STCW-F Convention indicates that, generally, the STCW-F Convention covers not only all the issues covered by Convention No. 125 – and in more detail – but also provides mandatory requirements for basic safety training of all fishermen, which Convention No. 125 does not. Therefore, while the new ILO fishing standard might contain general principles on competency certificates, it would not seem advisable that it should repeat – or duplicate – the IMO standard. In fact, it may serve to promote and reinforce that Convention.

The Governing Body agreed that the Vocational Training (Fishermen) Recommendation 1966 (No. 126), should be revised to adapt it to new technologies and advances in navigational and fishing equipment; it should also take account of the fact that other international instruments failed to adequately address vocational training. The Office will seek to obtain a better understanding of what changes need to be made to achieve this.

Hours of work/rest

The Governing Body agreed to maintain the status quo with respect to the Hours of Work (Fishing) Recommendation, 1920 (No. 7), until after the Office had undertaken a study of working-time arrangements and rest periods in the fishing sector. The Office has therefore provided a substantial amount of information on law and practice on this issue. From this information, it would appear that there is a basis for including a provision in the new fishing standard concerning minimum rest periods.

New issues to be addressed in the fishing standard

Occupational safety and health

In the light of the well-documented hazardous nature of fishing, the Office has sought to provide substantial information on how this issue is dealt with in member

States to determine whether there is a basis for addressing this issue in the new fishing standard. From the information collected, it would appear that such provisions would be useful and desirable, in particular if they assisted States in setting and achieving the objective of lowering the fatality, injury and illness rates of fishermen. The new standard could seek to ensure that laws and regulations concerning occupational safety and health apply to the fishing sector and are adapted to the special nature of fishing operations. It could also help to improve coordination among the many ministries and agencies with jurisdiction or influence over these issues. It should also seek to improve the collection and dissemination of statistics and other information relevant to safety and health. Perhaps most importantly, it could promote an approach which truly involves fishermen, their representative organizations, fishing vessel owners and other relevant parties in the development and implementation of occupational safety and health laws, regulations and promotional programmes. The new standard should in particular aim at the many small-scale and artisanal fishermen not protected, in law or in fact, by existing occupational safety and health legislation.

Social security

From the information available to the Office, it would appear that fishermen, particularly share fishermen, may not – at least in many countries – have the same level of social protection provided to workers in general due to the nature of their employment relationship (“self-employed”). However, the hazardous nature of fishing means that death, sickness and injury benefits are particularly important for fishermen and their families. Furthermore, projected reductions in fishing capacity may create a need for improved unemployment insurance and retraining programmes for fishermen.

Several member States have established social protection programmes specifically for the fishing sector. In other countries, fishermen have been integrated into the social security system for all workers. There are apparently clear grounds for a provision calling for extending social security protection to all fishermen.

Other issues

International commercial fishing

Many fishermen working on vessels engaged on international voyages or on foreign vessels experience the same kinds of problems as seafarers: long sea voyages, abandonment, the need for welfare services, etc. The Office has attempted to provide some information on these issues in this report. The new standard should seek to ensure that such fishermen receive the same level of protection on these issues as that provided to seafarers.

Small-scale and artisanal fishermen

The existing ILO standards tend to focus on seagoing fishing vessels, in some cases excluding – or providing for the exclusion of – coastal vessels, vessels fishing in harbours and estuaries, etc. Given the distribution of fishermen according to the size of their vessels (see Chapter I), it would appear that this may lead to the exclusion of

the vast majority of fishermen from the protection offered in international labour standards.

In order to ensure that the provisions addressing the issues mentioned above extend to these fishermen, it is proposed that the focus should be on principles and not details. The provisions should be “objective-based” rather than “prescriptive”. In other words, they should set and hold States to achieving certain objectives but provide States with greater flexibility in the way they achieve these objectives.

The Office notes, however, that while the use of the terms “small-scale” and “artisanal” fishermen or fishing helps focus attention on those working on smaller vessels, most member States – often developing countries – do not use such terms in their legislation governing the fishing sector.

Fisheries’ observers

The Office will seek more information on the number of fisheries’ observers (a growing group) working on fishing vessels; it will try to ascertain whether such workers are protected by national laws and regulations and whether they should be covered in the new ILO fishing standard.

Enforcement

From the information available to the Office, it would appear that even where laws and regulations exist concerning labour conditions in the fishing sector, many States do not have adequate resources to enforce effectively these requirements. The new standard should address this issue, including the need for inspection services – or perhaps alternative means of ensuring enforcement.

QUESTIONNAIRE

As noted in the introduction to the law and practice report, the Governing Body has placed on the agenda of the 92nd (June 2004) Session of the International Labour Conference an item concerning a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector. It is proposed that this new standard (or standards) would revise the existing seven ILO instruments – five Conventions (concerning minimum age, medical examination, articles of agreement, accommodation and competency certificates) and two Recommendations (concerning vocational training and hours of work) of persons working on fishing vessels. As a comprehensive standard, it will address other issues, such as occupational safety and health and social security. It is also intended that it will provide protection for persons working on both large and small fishing vessels.

This questionnaire seeks to elicit views on the content of a comprehensive standard. The views expressed, and proposed conclusions on the structure and content of the Convention and Recommendation, will be provided in a second report. Both the law and practice report and the second report will be the basis for discussions for the item on the fishing sector standard by the International Labour Conference in 2004 (the first discussion). The second discussion would take place at the 93rd (June 2005) Session of the International Labour Conference with a view to the adoption of the revised standards.

The Office believes that the objectives of the new instruments should be to: extend coverage to reach as many persons working on board fishing vessels as possible; minimize obstacles to ratification; provide a better chance for wide ratification; enable the provisions to be implemented into practice; and minimize the risk of the Convention becoming outdated in a short period of time.

In order to develop a Convention covering as many persons as possible working on board fishing vessels, the approach being taken by the Office in the questionnaire is to pose questions concerning provisions of a general nature – and therefore applicable to all, or nearly all, persons working on fishing vessels – and then to ask questions on provisions of a more targeted nature for possible inclusion in a part of the Convention applying to only certain categories of vessels. Questions concerning detailed provisions are also included in the accompanying Recommendation. The questions reflect, to a certain extent, the Office's perception as to whether a particular provision should be included in the Convention (which would be binding for Members which ratify it) or in the Recommendation (which would not be binding but would provide guidance). However, if respondents believe that a provision does not belong in the Convention but rather belongs in the Recommendation, or vice versa, they should state this clearly.

In preparing this questionnaire, the Office has taken into account the provisions not only of existing ILO standards but also of standards adopted by other international organizations, such as the Food and Agriculture Organization of the United Nations (FAO) and the International Maritime Organization (IMO). For example, the Office has taken into account the provisions of the FAO Code of Conduct for Responsible

Fisheries.¹ The intent of this approach is to integrate, to the extent possible, the work of the ILO with that of other international organizations concerned with the fisheries and the operation of fishing vessels. It is expected that this will lead to the development of a new ILO standard for the fishing sector which is clearly understood and more likely to be found acceptable not only by ministries responsible for labour issues but also by those responsible for fisheries management and fishing vessel safety, as well as fishing vessel owners and those working on fishing vessels. Similarly, the questionnaire attempts to draw upon internationally accepted fisheries terminology.

With regard to article 38, paragraph 1, of the Standing Orders of the Conference, governments are requested to consult with the most representative organizations of employers and workers before finalizing their replies to this questionnaire, to give reasons for their replies and to indicate which organizations have been consulted. Governments are also reminded of the importance of ensuring that all relevant departments are involved in the present consultative process including the departments responsible for labour and social affairs, fisheries, maritime safety, health and the environment. The experience gained by the Office in obtaining the information provided in the law and practice report also points to the value of consultations, where possible, with regional and local authorities within member States. **In order to enable the Office to take account of the replies to this questionnaire, governments are requested to send their replies so as to reach the Office no later than 1 August 2003.**

In preparing replies to the questionnaire, governments, as well as representative organizations of employers and workers, are encouraged to provide reasons for their replies and to provide any additional comments or information which they believe will contribute to an internationally shared sense of what should or should not be addressed in the proposed new Convention and Recommendation. This is particularly important when the reply by the member State does not fit into the set answers (i.e., the “yes” and “no” boxes) provided by the Office. Respondents are also strongly encouraged to draw attention to any issues which the Office has not addressed or which require further development.

While the Office has attempted to provide a questionnaire which is not overly onerous or time consuming to answer, it recognizes the work involved in preparing replies and extends its thanks, in advance, to those carrying out this essential work.

¹ The World Summit on Sustainable Development, inter alia, agreed that to achieve sustainable fisheries, States should implement the Code, taking note of the special requirements of developing countries and the relevant FAO international plans of action and technical guidelines.

A. FORM OF THE INSTRUMENT OR INSTRUMENTS

Question A1 – *Do you consider that the International Labour Conference should adopt one or more instruments on work in the fishing sector?*

Yes No

Question A2 – *If yes, should the instrument or instruments take the form of (a) a Convention, (b) a Recommendation, (c) a Convention supplemented by a Recommendation?*

Comments: _____

Note: For practical reasons, the Office is presenting the following questions under the headings “Contents of a proposed Convention” and “Contents of a proposed Recommendation”. This presentation does not pre-determine the final form of the instrument or instruments or the number of instruments that could be adopted.

B. CONTENTS OF A PROPOSED CONVENTION

B1. Scope

Commentary

The seven existing ILO instruments concerning work on board fishing vessels set out their scope in different ways. Generally, they provide that they apply to vessels engaged in “maritime fishing in salt waters”. Several provide exceptions or exemptions for certain categories of fishing vessels (those engaged in whaling or recreational fishing, or primarily propelled by sail) or for fishing vessels operating in certain areas (ports, harbours, estuaries of rivers). Some provide that the instrument applies, in whole or in part, to fishing vessels of a certain size (vessel length in feet and metres, or tonnage) or engine power.

For the purpose of this Convention the term “fishing vessel” should mean any vessel used or intended for use for the purposes of the commercial exploitation of living marine resources, including mother ships and any other vessels directly engaged in fishing operations.²

When preparing the law and practice report, the Office observed that many States regulated some aspects of conditions of work on board fishing vessels according to the area of operation of the vessel. To delimit their application these States often use terms such as “coastal”, “inshore”, “offshore”, “small-scale” and “artisanal”. Such terms are often not defined by States or, even when defined, vary from State to State. In an attempt to improve clarity in the use of terms concerning the area of operation, the

² Extracted from the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, article I(a).

Office for the purposes of this questionnaire, identifies five areas of operation. In doing so, it recognizes that many States may not regulate conditions of work on fishing vessels according to these five areas of operation. Nevertheless, responses using these five areas of operation will help the Office obtain a common understanding of the preferred scope of the instruments. If such an approach is not considered appropriate by the respondent, the questionnaire also provides for the possibility of indicating preferences for other methods of setting out the scope (e.g. by vessel length, tonnage, length of time at sea).

The following areas of operation are used in the questionnaire:³

- vessels engaged in fishing operations on the high seas and in waters other than those of the flag State (hereinafter referred to as “A”);⁴
- vessels engaged in fishing operations up to the limits of the exclusive economic zone of the flag State (hereinafter referred to as “B”);
- vessels engaged in fishing operations up to the limits of the territorial waters of the flag State (hereinafter referred to as “C”);
- vessels engaged in fishing operations up to three miles from the baseline (hereinafter referred to as “D”);⁵
- vessels engaged in fishing operations in rivers and inland waters (hereinafter referred to as “E”).

Question B1(a) – *Should the Convention apply to fishing vessels in all of the abovementioned areas of operation?*

Yes No

Question B1(b) – *Should the Convention provide the possibility to exclude certain fishing vessels in the following areas of operation:*

- vessels engaged in fishing operations up to the limits of the territorial waters of the flag State (“C”)?*
- vessels engaged in fishing operations up to three miles from the baseline (“D”)?*
- vessels engaged in fishing operations in rivers and inland waters (“E”)?*

Question B1(c) – *Should the Convention provide for any other exclusions?*

Yes No

Comments: _____

³ The categories are given letters (A, B, C, D, E) for ease of reference when answering questions.

⁴ Based on the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, article II(1), and on terms used in the FAO Standard Specifications for Marking and Identification of Fishing Vessels.

⁵ Article 5 of the UNCLOS Convention provides that “... the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State”.

Question B1(d) – If “areas of operation” would not be an appropriate method of delimiting the scope of the Convention, what other method should be used for this purpose:

fishing vessel length?

tonnage?

time fishing vessel spends at sea?

other? Please specify: _____

Comments: _____

Question B1(e) – Should the Convention apply to all persons working on board fishing vessels irrespective of nationality?

Yes

No

Comments: _____

B2. Minimum age

Question B2(a) – Should the Convention include provisions concerning the minimum age for work on board fishing vessels?

Yes

No

Question B2(b) – If yes, should the minimum age be:

15 years?⁶

16 years?⁷

18 years?

Comments: _____

Question B2(c) – Should the Convention provide for exemptions?

Yes

No

Question B2(d) – If yes, please specify: _____

⁶ Article 2, paragraph 1, of Convention No. 112, ratified by 29 States but since denounced by 20 States following ratification of Convention No. 138 accepting a minimum age of at least 15 years.

⁷ The Tripartite Meeting on Safety and Health in the Fishing Industry (Geneva, 1999) recommended that States party to Convention No. 112 contemplate ratifying Convention No. 138 and, where the minimum age for work is less than 16 years, to specify that Article 3 of Convention No. 138 apply to employment in maritime fishing.

Question B2(e) – *Should the Convention provide that work on certain fishing vessels should be prohibited for persons under the age of 18 years?*

Yes No

Comments: _____

Question B2(f) – *Should the Convention provide that certain types and conditions of work on fishing vessels should be prohibited for persons under the age of 18 years?*

Yes No

Comments: _____

B3. Medical examination

Question B3(a) – *Should the Convention provide that persons working on board fishing vessels should undergo initial and subsequent periodic medical examinations?*

Yes No

Comments: _____

Question B3(b) – *Should the Convention provide for exemptions from the above requirement?*

Yes No

Question B3(c) – *If yes, please indicate what these exemptions should be?*

Comments: _____

Question B3(d) – *Should the Convention provide that a person working on board a fishing vessel and for which a medical examination is required should hold a medical certificate attesting to fitness for work for which he or she is to be employed at sea?*

Yes No

Comments: _____

B4. Medical care at sea

Question B4(a) – *Should the Convention provide that fishing vessels should be required to carry appropriate medical supplies?*

Yes No

Comments: _____

Question B4(b) – *Should the Convention provide that fishing vessels should normally have on board a person (e.g. the master or a member of the crew) qualified or trained in first aid or other forms of medical care?*

Yes No

Comments: _____

Question B4(c) – *Should the Convention provide that certain fishing vessels should be excluded from the above requirement?*

Yes No

Question B4(d) – *If yes, please specify:* _____

B5. Contracts for work

Question B5(a) – *Should the Convention provide that every person working on board a fishing vessel should have a written contract or articles of agreement, subject to such conditions as may be provided for in national laws and regulations?*

Yes No

Comments: _____

Question B5(b) – *Should the Convention provide for possible exemptions from the above requirement?*

Yes No

Question B5(c) – *If yes, which categories of persons working on board fishing vessels could be exempted from the provisions concerning written contracts or articles of agreement?*

Comments: _____

Question B5(d) – *Should the Convention provide that persons working on board a fishing vessel should have access to appropriate mechanisms for the settlement of disputes concerning their contract or articles of agreement?*

Yes No

Comments: _____

B6. Accommodation and provisions on board fishing vessels

Question B6(a) – *Should the Convention provide that all fishing vessels should have appropriate accommodation and sufficient food and drinking water for the service of the fishing vessel?*

Yes No

Question B6(b) – *If yes, should it provide for the possibility of exempting certain categories of fishing vessels from the requirement concerning accommodation?*

Yes No

Question B6(c) – *If yes, please indicate which fishing vessels could be exempted.*

Comments: _____

B7. Crewing of fishing vessels

Question B7(a) – *Should the Convention provide that States should take measures to ensure that fishing vessels have sufficient and competent crew for safe navigation and fishing operations in accordance with international standards?*

Yes No

Question B7(b) – *If yes, please indicate which fishing vessels could be exempted.*

Comments: _____

B8. Hours of rest

Question B8(a) – *Should the Convention provide that persons working on board fishing vessels should have minimum periods of rest established in accordance with national laws and regulations?*

Yes No

Comments: _____

B9. Occupational safety and health

Question B9(a) – *Should the Convention provide that persons working on board fishing vessels should be covered by occupational safety and health provisions?*

Yes No

Comments: _____

Question B9(b) – *If applicable provisions do not at present cover work on board fishing vessels, should such protection be provided through one of the following means:*

- extension of general occupational safety and health provisions?*
- extension of maritime occupational safety and health provisions?*
- specific provisions for work on board fishing vessels?*
- combination of any of the above?*

Yes No

Comments: _____

B10. Social security

Question B10(a) – *Should the Convention provide that persons working on board fishing vessels should be entitled to social security benefits applicable to other workers?*

Yes No

Comments: _____

Question B10(b) – *Should the Convention provide that such benefits might be progressively extended?*

Yes No

Comments: _____

Question B10(c) – *Should the Convention provide for the possible exemption of certain categories of persons working on board fishing vessels?*

Yes No

Question B10(d) – *If yes, which categories of persons might be exempted?*

Comments: _____

B11. Extension of protection for seafarers to persons working on board fishing vessels

Question B11(a) – *Should the Convention provide that persons working on board fishing vessels registered in the State, engaged in fishing operations on the high seas and in the waters of States other than those of the flag State, should generally have labour conditions which are no less favourable than those provided to seafarers working on board vessels registered in the State, engaged in commercial maritime transport?*

Yes No

Question B11(b) – *If yes, should such a provision cover persons working on board other fishing vessels?*

Yes No

Question B11(c) – *If yes, please indicate the persons working on board other fishing vessels to whom the above provision should apply (e.g. those working on vessels of a certain length, vessels intended for fishing in a certain area of operation, vessels remaining at sea for a specified period of time).*

Comments: _____

Question B11(d) – *Should the Convention contain provisions on the following issues:*

- recruitment and placement?
- identity documents?
- repatriation?
- other issues? Please specify: _____

Comments: _____

B12. Enforcement

Question B12(a) – *Should the Convention provide that States should adopt measures to verify compliance with the provisions of the Convention?*

Yes No

Comments: _____

Question B12(b) – *If yes, should the Convention provide for the possibility of exempting certain fishing vessels from the above requirements?*

Yes No

Question B12(c) – *If yes, please indicate which fishing vessels:*

Comments: _____

Question B12(d) – *Should the Convention include a provision on port state control?⁸*

Yes No

Comments: _____

B13. Consultation

Question B13(a) – *Should the Convention include a provision concerning consultation with representative employers' and workers' organizations, as well as representative organizations of persons working on board fishing vessels in the development and implementation of national laws and regulations concerning conditions of work on board fishing vessels?*

Yes No

Comments: _____

⁸ Port state control implies the exercise by the port State of control concerning compliance by a fishing vessel calling at that State's port with relevant provisions of an international instrument ratified by that State.

B14. Other issues

Question B14(a) – Please indicate any other issues which should be addressed in the Convention.

Comments: _____

C. CONTENTS OF A PROPOSED RECOMMENDATION

C1. Minimum age and work of young persons

Question C1(a) – Should the Recommendation provide guidance on the types of work (e.g. night work or in hazardous conditions) or the types of fishing vessels that should be prohibited for persons under the age of 18?

Yes No

Question C1(b) – If yes, what should be included in such guidance?

Comments: _____

C2. Medical examination

Question C2(a) – Should the Recommendation set out guidance on the content of the medical certificate and the procedures to be followed for the issue of the medical certificate?

Yes No

Comments: _____

Question C2(b) – Should the Recommendation provide that the persons issuing such a certificate be approved by the competent authority?

Yes No

Comments: _____

C3. Medical care at sea

Question C3(a) – Should the Recommendation provide guidance on the contents of the medicine chest and the type of medical equipment⁹ required to be carried on board fishing vessels?

⁹ Or first-aid kit for certain smaller fishing vessels.

Yes No

Comments: _____

Question C3(b) – *Should the Recommendation set out guidance on the availability and on instruction concerning the use of radio-medical and similar services on board fishing vessels?*

Yes No

Comments: _____

C4. Qualifications of persons working on board fishing vessels

Question C4(a) – *Should the Recommendation provide additional guidance beyond that provided in international standards¹⁰ concerning training of persons working on board fishing vessels?*

Yes No

Question C4(b) – *If yes, what issues should this guidance address?*

Comments: _____

C5. Contractual arrangements concerning work on board fishing vessels

Question C5(a) – *Should the Recommendation provide guidance, on the basis of the elements contained in Convention No. 114,¹¹ concerning the content of contracts or articles of agreement for work on board fishing vessels?*

Yes No

Question C5(b)(i) – *If yes, should the guidance provided in the Recommendation also include elements not addressed in Convention No. 114?*

Yes No

Question C5(b)(ii) – *If yes, should one of these elements concern the specification of insurance coverage for persons working on board fishing vessels in the event of injury, illness or death¹² in the contract or articles of agreement?*

¹⁰ For example, the International Convention on Standards of Training, Certification and Watchkeeping of Fishing Vessel Personnel, 1995 (STCW-F Convention) (see Chapter III of the report).

¹¹ See, in particular, Article 6 of the Convention.

¹² Paragraph 8.2.8 of the FAO Code of Conduct for Responsible Fisheries provides that: “States should promote access to insurance coverage by owners and charterers of fishing vessels. Owners or charterers of fishing vessels should carry sufficient insurance cover to protect the crew of such vessels and their interests, to indemnify third parties against loss or damage and to protect their own interests.”

Yes No

Comments: _____

Question C5(c) – *Should the Recommendation provide guidance on contracts or articles of agreements (e.g. procedures concerning the examination prior to signing; signing and termination of contracts or articles of agreement; records of employment; circumstances for discharge) for work on board fishing vessels?*¹³

Yes No

Comments: _____

Question C5(d) – *Should the Recommendation provide guidance on systems of remuneration and, if appropriate, including systems based on a share of the catch?*

Yes No

Question C5(e) – *If yes, please specify the issues to be included:*

Comments: _____

C6. Accommodation and provisions on board fishing vessels

Question C6(a) – *Should the Recommendation provide that States should have national laws and regulations concerning planning and control of crew accommodation on board fishing vessels?*

Yes No

Comments: _____

Question C6(b) – *Should the Recommendation provide guidance concerning standards of accommodation and of food and drinking water?*

Yes No

Question C6(c) – *If yes, should these cover:*

- construction and location?*
- ventilation?*
- heating?*

¹³ See Convention No. 114.

- lighting?
- sleeping rooms?
- sanitary accommodation?
- noise and vibration?
- drinking water?
- food?
- other issues?

Comments: _____

Question C6(d) – *Should the above guidance concerning accommodation and provisions on board fishing vessels make distinctions based on:*

- fishing vessel length?
- operating area?
- tonnage?
- time a fishing vessel normally spends at sea?
- other?

Comments: _____

C7. Hours of work and rest

Question C7(a) – *Should the Recommendation set out guidance concerning hours of work or rest periods?*

- Yes No

Question C7(b) – *If yes, please indicate what should be the limits of working hours or provisions for minimum rest periods.*

Comments: _____

C8. Occupational safety and health

Question C8(a) – *Should the following issues be addressed in the Recommendation:*

- the inclusion of fishing occupational safety and health issues in an integrated national policy on occupational safety and health?
- rights and duties of fishing vessel owners and of persons working on board fishing vessels in the area of occupational safety and health?
- where appropriate, safety management systems?
- personal protective equipment?
- guarding of machinery?

- the recording and notification of accidents, injuries and fatalities?*
 investigation of occupational accidents?
 other issues? Please specify: _____

Comments: _____

C9. Social security

Question C9(a) – *Should the Recommendation include guidance on social security provisions for persons working on board fishing vessels?*

- Yes No

Comments: _____

Question C9(b) – *Should the guidance include the following benefits (please specify the reasons for your choice):*

- medical care?*
 sickness benefit?
 old-age benefit?
 employment injury benefit?
 maternity benefit?
 invalidity benefit?
 survivors' benefit?
 unemployment benefit?
 family benefit?

Comments: _____

C10. Register of persons working on board fishing vessels

Question C10(a) – *Should the Recommendation include provisions concerning maintenance by the competent authority of a register of persons working on board fishing vessels?*

- Yes No

Comments: _____

C11. Fisheries observers

Question C11(a) – *Should the Recommendation provide guidance concerning the conditions of work of fisheries observers¹⁴ on board fishing vessels?*

Yes No

Question C11(b) – *If yes, what should be included in such guidance?*

Comments: _____

C12. Application within the exclusive economic zone

Question C12(a) – *Should the Recommendation provide that coastal States should require, when they grant licences for fishing in their exclusive economic zones, that fishing vessels conform with the standards of this Convention?*

Yes No

Comments: _____

C13. Other issues

Question C13(a) – *Please indicate any other issues which should be addressed in the Recommendation.*

Comments: _____

¹⁴ Article 62 (Utilization of the living resources) of the UNCLOS Convention provides that: “Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with the Convention and may relate, inter alia, to the following: ... (g) the placing of observers ... on board such vessels by the coastal State”.

ANNEX

**SUBSTANTIVE TEXTS OF ILO CONVENTIONS AND RECOMMENDATIONS
SPECIFICALLY CONCERNED WITH THE FISHING SECTOR**

Hours of Work (Fishing) Recommendation, 1920 (No. 7)

The General Conference of the International Labour Organisation,

Having been convened at Genoa by the Governing Body of the International Labour Office on the 15th day of June 1920, and

Having decided upon the adoption of certain proposals with regard to the application to seamen of the Convention drafted at Washington, last November, limiting the hours of work in all industrial undertakings, including transport by sea and, under conditions to be determined, transport by inland waterways, to eight hours in the day and forty-eight in the week; consequential effects as regards manning and the regulations relating to accommodation and health on board ship, which is the first item in the agenda for the Genoa meeting of the Conference, and

Having determined that these proposals shall take the form of a Recommendation,

adopts the following Recommendation, which may be cited as the Hours of Work (Fishing) Recommendation, 1920, to be submitted to the Members of the International Labour Organisation for consideration with a view to effect being given to it by national legislation or otherwise, in accordance with the provisions of the Constitution of the International Labour Organisation:

In view of the declaration in the Constitution of the International Labour Organisation that all industrial communities should endeavour to adopt, so far as their special circumstances will permit, “an eight hours’ day or a forty-eight hours’ week as the standard to be aimed at where it has not already been attained”, the International Labour Conference recommends that each Member of the International Labour Organisation enact legislation limiting in this direction the hours of work of all workers employed in the fishing industry, with such special provisions as may be necessary to meet the conditions peculiar to the fishing industry in each country; and that in framing such legislation each Government consult with the organisations of employers and the organisations of workers concerned.

Minimum Age (Fishermen) Convention, 1959 (No. 112)

Article 1

1. For the purpose of this Convention the term “fishing vessel” includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters.

2. This Convention shall not apply to fishing in ports and harbours or in estuaries of rivers, or to individuals fishing for sport or recreation.

Article 2

1. Children under the age of fifteen years shall not be employed or work on fishing vessels.

2. Provided that such children may occasionally take part in the activities on board fishing vessels during school holidays, subject to the conditions that the activities in which they are engaged:

- (a) are not harmful to their health or normal development;
- (b) are not such as to prejudice their attendance at school; and
- (c) are not intended for commercial profit.

3. Provided further that national laws or regulations may provide for the issue in respect of children of not less than fourteen years of age of certificates permitting them to be employed in cases in which an educational or other appropriate authority designated by such laws or regulations is satisfied, after having due regard to the health and physical condition of the child and to the prospective as well as to the immediate benefit to the child of the employment proposed, that such employment will be beneficial to the child.

Article 3

Young persons under the age of eighteen years shall not be employed or work on coal-burning fishing vessels as trimmers or stokers.

Article 4

The provisions of Articles 2 and 3 shall not apply to work done by children on school-ships or training-ships, provided that such work is approved and supervised by public authority.

Article 5

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 6

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 7

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Medical Examination (Fishermen) Convention, 1959 (No. 113)

Article 1

1. For the purpose of this Convention the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters.

2. The competent authority may, after consultation with the fishing-boat owners' and fishermen's organisations concerned, where such exist, grant exemptions from the application of the provisions of this Convention in respect of vessels which do not normally remain at sea for periods of more than three days.

3. This Convention shall not apply to fishing in ports and harbours or in estuaries of rivers, or to individuals fishing for sport or recreation.

Article 2

No person shall be engaged for employment in any capacity on a fishing vessel unless he produces a certificate attesting to his fitness for the work for which he is to be employed at sea signed by a medical practitioner who shall be approved by the competent authority.

Article 3

1. The competent authority shall, after consultation with the fishing-boat owners' and fishermen's organisations concerned, where such exist, prescribe the nature of the medical examination to be made and the particulars to be included in the medical certificate.

2. When prescribing the nature of the examination, due regard shall be had to the age of the person to be examined and the nature of the duties to be performed.

3. In particular the medical certificate shall attest that the person is not suffering from any disease likely to be aggravated by, or to render him unfit for, service at sea or likely to endanger the health of other persons on board.

Article 4

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

2. In the case of persons who have attained the age of twenty-one years, the competent authority shall determine the period for which the medical certificate shall remain in force.

3. If the period of validity of a certificate expires in the course of a voyage the certificate shall continue in force until the end of that voyage.

Article 5

Arrangements shall be made to enable a person who, after examination, has been refused a certificate to apply for a further examination by a medical referee or referees who shall be independent of any fishing-boat owner or of any organisation of fishing-boat owners or fishermen.

Fishermen's Articles of Agreement Convention, 1959 (No. 114)

Article 1

1. For the purpose of this Convention, the term "fishing vessel" includes all registered or documented ships and boats of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters.

2. The competent authority may exempt from the application of the provisions of this Convention fishing vessels of a type and size determined after consultation with the fishing-boat owners' and fishermen's organisations concerned, where such exist.

3. The competent authority may, if satisfied that the matters dealt with in this Convention are adequately regulated by collective agreements between fishing-boat owners or fishing-boat owners' organisations, and fishermen's organisations, exempt from the provisions of the Convention concerning individual agreements owners and fishermen covered by such collective agreements.

Article 2

For the purpose of this Convention, the term “fisherman” includes every person employed or engaged in any capacity on board any fishing vessel and entered on the ship’s articles. It excludes pilots, cadets and duly indentured apprentices, naval ratings, and other persons in the permanent service of a government.

Article 3

1. Articles of agreement shall be signed both by the owner of the fishing vessel or his authorised representative and by the fisherman. Reasonable facilities to examine the articles of agreement before they are signed shall be given to the fisherman and, as the case may be, also to his adviser.

2. The fisherman shall sign the agreement under conditions which shall be prescribed by national law in order to ensure adequate supervision by the competent public authority.

3. The foregoing provisions shall be deemed to have been fulfilled if the competent authority certifies that the provisions of the agreement have been laid before it in writing and have been confirmed both by the owner of the fishing vessel or his authorised representative and by the fisherman.

4. National law shall make adequate provision to ensure that the fisherman has understood the agreement.

5. The agreement shall not contain anything which is contrary to the provisions of national law.

6. National law shall prescribe such further formalities and safeguards in respect of the completion of the agreement as may be considered necessary for the protection of the interests of the owner of the fishing vessel and of the fisherman.

Article 4

1. Adequate measures shall be taken in accordance with national law for ensuring that the agreement shall not contain any stipulation by which the parties purport to contract in advance to depart from the ordinary rules as to jurisdiction over the agreement.

2. This Article shall not be interpreted as excluding a reference to arbitration.

Article 5

A record of employment shall be maintained for every fisherman by or in a manner prescribed by the competent authority. At the end of each voyage or venture a record of service in regard to that voyage or venture shall be available to the fisherman concerned or entered in his service book.

Article 6

1. The agreement may be made either for a definite period or for a voyage or, if permitted by national law, for an indefinite period.

2. The agreement shall state clearly the respective rights and obligations of each of the parties.

3. It shall contain the following particulars, except in so far as the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations:

- (a) the surname and other names of the fisherman, the date of his birth or his age, and his birthplace;
- (b) the place at which and date on which the agreement was completed;
- (c) the name of the fishing vessel or vessels on board which the fisherman undertakes to serve;

- (d) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;
- (e) the capacity in which the fisherman is to be employed;
- (f) if possible, the place at which and date on which the fisherman is required to report on board for service;
- (g) the scale of provisions to be supplied to the fisherman, unless some alternative system is provided for by national law;
- (h) the amount of his wages, or the amount of his share and the method of calculating such share if he is to be remunerated on a share basis, or the amount of his wage and share and the method of calculating the latter if he is to be remunerated on a combined basis, and any agreed minimum wage;
- (i) the termination of the agreement and the conditions thereof, that is to say:
 - (i) if the agreement has been made for a definite period, the date fixed for its expiry;
 - (ii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisherman shall be discharged;
 - (iii) if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission: Provided that such period shall not be less for the owner of the fishing vessel than for the fisherman;
- (j) any other particulars which national law may require.

Article 7

If national law provides that a list of crew shall be carried on board the agreement shall either be recorded in or annexed to the list of crew.

Article 8

In order that the fisherman may satisfy himself as to the nature and extent of his rights and obligations the competent authority shall lay down the measures to be taken to enable clear information to be obtained on board as to the conditions of employment.

Article 9

An agreement entered into for a voyage, for a definite period, or for an indefinite period, shall be duly terminated by:

- (a) mutual consent of the parties;
- (b) death of the fisherman;
- (c) loss or total unseaworthiness of the fishing vessel;
- (d) any other cause that may be provided for in national law.

Article 10

National law, collective agreements or individual agreements shall determine the circumstances in which the owner or skipper may immediately discharge a fisherman.

Article 11

National law, collective agreements or individual agreements shall also determine the circumstances in which the fisherman may demand his immediate discharge.

Article 12

Except as otherwise provided therein, effect may be given to the provisions of this Convention by national law or by collective agreements.

Fishermen's Competency Certificates Convention, 1966 (No. 125)

PART I. SCOPE AND DEFINITIONS

Article 1

For the purposes of this Convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters and are registered in a territory for which the Convention is in force, with the exception of:

- (a) ships and boats of less than 25 gross registered tons;
- (b) ships and boats engaged in whaling or similar pursuits;
- (c) ships and boats engaged in fishing for sport or recreation;
- (d) fishery research and fishery protection vessels.

Article 2

The competent authority may, after consultation with the fishing vessel owners' and fishermen's organisations where such exist, exempt from this Convention fishing vessels engaged in inshore fishing, as defined by national laws and regulations.

Article 3

For the purpose of this Convention, the following terms have the meanings hereby assigned to them:

- (a) skipper: any person having command or charge of a fishing vessel;
- (b) mate: any person exercising subordinate command of a fishing vessel, including any person, other than a pilot, liable at any time to be in charge of the navigation of such a vessel;
- (c) engineer: any person permanently responsible for the mechanical propulsion of a fishing vessel.

PART II. CERTIFICATION

Article 4

Each Member which ratifies this Convention shall establish standards of qualification for certificates of competency entitling a person to perform the duties of skipper, mate or engineer on board a fishing vessel.

Article 5

1. All fishing vessels to which this Convention applies shall be required to carry a certificated skipper.

2. All fishing vessels over 100 gross registered tons engaged in operations and areas to be defined by national laws or regulations shall be required to carry a certificated mate.

3. All fishing vessels with an engine power above a level to be determined by the competent authority, after consultation with the fishing vessel owners' and fishermen's organisations where such exist, shall be required to carry a certificated engineer: Provided that the skipper or mate of a fishing vessel may act as engineer in appropriate cases and on condition that he also holds an engineer's certificate.

4. The certificates of skippers, mates or engineers may be full or limited, according to the size, type, and nature and area of operations of the fishing vessel, as determined by national laws or regulations.

5. The competent authority may in individual cases permit a fishing vessel to put to sea without the full complement of certificated personnel if it is satisfied that no suitable substitutes are available and that, having regard to all the circumstances of the case, it is safe to allow the vessel to put to sea.

Article 6

1. The minimum age prescribed by national laws or regulations for the issue of a certificate of competency shall be not less than:

- (a) 20 years in the case of a skipper;
- (b) 19 years in the case of a mate;
- (c) 20 years in the case of an engineer.

2. For the purpose of service as a skipper or mate in a fishing vessel engaged in inshore fishing and for the purpose of service as an engineer in small fishing vessels with an engine power below a level to be determined by the competent authority after consultation with the fishing vessel owners' and fishermen's organisations, where such exist, the minimum age may be fixed at 18 years.

Article 7

The minimum professional experience prescribed by national laws or regulations for the issue of a mate's certificate of competency shall be not less than three years' sea service engaged in deck duties.

Article 8

1. The minimum professional experience prescribed by national laws or regulations for the issue of a skipper's certificate of competency shall be not less than four years' sea service engaged in deck duties.

2. The competent authority may, after consultation with the fishing vessel owners' and fishermen's organisations where such exist, require a part of this period to be served as a certificated mate; where national laws or regulations provide for the issue of different grades of certificates of competency, full and limited, to skippers of fishing vessels, the nature of the qualifying service as a certificated mate or the type of certificate held while performing such qualifying service may vary accordingly.

Article 9

1. The minimum professional experience prescribed by national laws or regulations for the issue of an engineer's certificate of competency shall be not less than three years' sea service in the engine-room.

2. In the case of a certificated skipper or mate a shorter qualifying period of sea service may be prescribed.

3. In the case of the small fishing vessels referred to in Article 6, paragraph 2, of this Convention, the competent authority may, after consultation with the fishing vessel owners' and fishermen's organisations where such exist, prescribe a qualifying period of sea service of twelve months.

4. Work in an engineering workshop may be regarded as equivalent to sea service for part of the qualifying periods provided for in paragraphs 1 to 3 of this Article.

Article 10

In respect of persons who have successfully completed an approved training course, the periods of sea service required in virtue of Articles 7, 8 and 9 of this Convention may be reduced by the period of training, but in no case by more than twelve months.

PART III. EXAMINATIONS

Article 11

In the examinations organised and supervised by the competent authority for the purpose of testing whether candidates for competency certificates possess the qualifications necessary for performing the corresponding duties, the candidates shall be required to show knowledge, appropriate to the categories and grades of certificates, of such subjects as:

- (a) in the case of skippers and mates:
 - (i) general nautical subjects, including seamanship, shiphandling and safety of life at sea, and a proper knowledge of the international Regulations for Preventing Collisions at Sea;
 - (ii) practical navigation, including the use of electronic and mechanical aids to navigation;
 - (iii) safe working practices, including safety in the handling of fishing gear;
- (b) in the case of engineers:
 - (i) theory, operation, maintenance and repair of steam or internal combustion engines and related auxiliary equipment;
 - (ii) operation, maintenance and repair of refrigeration systems, pumps, deck winches and other mechanical equipment of fishing vessels, including the effects on stability;
 - (iii) principles of shipboard electric power installations, and maintenance and repair of the electrical machinery and equipment of fishing vessels; and
 - (iv) engineering safety precautions and emergency procedures, including the use of life-saving and fire-fighting appliances.

Article 12

The examinations for certificates of skippers and mates referred to in Article 11, subparagraph (a), of this Convention may also cover the following subjects:

- (a) fishing techniques, including where appropriate the operation of electronic fish-finding devices, and the operation, maintenance and repair of fishing-gear; and
- (b) stowage, cleaning and processing of fish on board.

Article 13

During a period of three years from the date of the coming into force of national laws or regulations giving effect to the provisions of this Convention, competency certificates may be issued to persons who have not passed an examination referred to in Articles 11 and 12 of this Convention, but who have in fact had sufficient practical experience of the duties corresponding to the certificate in question and have no record of any serious technical error against them.

PART IV. ENFORCEMENT MEASURES

Article 14

1. Each Member shall ensure the enforcement of national laws or regulations giving effect to the provisions of this Convention by an efficient system of inspection.

2. National laws or regulations giving effect to the provisions of this Convention shall provide for the cases in which the authorities of a Member may detain vessels registered in its territory on account of a breach of these laws or regulations.

Article 15

1. National laws or regulations giving effect to the provisions of this Convention shall prescribe penalties or disciplinary measures for cases in which these laws or regulations are not respected.

2. In particular, such penalties or disciplinary measures shall be prescribed for cases in which:

- (a) a fishing vessel owner or his agent, or a skipper, has engaged a person not certificated as required;
- (b) a person has obtained by fraud or forged documents an engagement to perform duties requiring certification without holding the requisite certificate.

Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)

PART I. GENERAL PROVISIONS

Article 1

1. This Convention applies to all seagoing mechanically propelled ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters and are registered in a territory for which this Convention is in force.

2. National laws or regulations shall determine when ships and boats are to be regarded as seagoing for the purpose of this Convention.

3. This Convention does not apply to ships and boats of less than 75 tons: Provided that the Convention shall be applied to ships and boats of between 25 and 75 tons where the competent authority determines, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, that this is reasonable and practicable.

4. The competent authority may, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, use length instead of tonnage as a parameter for the purposes of this Convention, in which event the Convention does not apply to ships and boats of less than 80 feet (24.4 metres) in length: Provided that the Convention shall be applied to ships and boats of between 45 and 80 feet (13.7 and 24.4 metres) in length where the competent authority determines, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, that this is reasonable and practicable.

5. This Convention does not apply to:

- (a) ships and boats normally employed in fishing for sport or recreation;
- (b) ships and boats primarily propelled by sail but having auxiliary engines;
- (c) ships and boats engaged in whaling or similar pursuits;
- (d) fishery research and fishery protection vessels.

6. The following provisions of this Convention do not apply to vessels which normally remain away from their home ports for periods of less than 36 hours and in which the crew does not live permanently on board when in port:

- (a) Article 9, paragraph 4;
- (b) Article 10;
- (c) Article 11;
- (d) Article 12;
- (e) Article 13, paragraph 1;
- (f) Article 14;
- (g) Article 16;

Provided that in such vessels adequate sanitary installations as well as messing and cooking facilities and accommodation for resting shall be provided.

7. The provisions of Part III of this Convention may be varied in the case of any vessel if the competent authority is satisfied, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, that the variations to be made provide corresponding advantages as a result of which the over-all conditions are no less favourable than those that would result from the full application of the provisions of the Convention; particulars of all such variations shall be communicated by the Member to the Director-General of the International Labour Office, who shall notify the Members of the International Labour Organisation.

Article 2

In this Convention:

- (a) the term "fishing vessel" or "vessel" means a ship or boat to which the Convention applies;
- (b) the term "tons" means gross registered tons;
- (c) the term "length" means the length measured from the fore part of the stem on the line of the forecastle deck to the after side of the head of the sternpost, or to the foreside of the rudderstock where no sternpost exists;
- (d) the term "officer" means a person other than a skipper ranked as an officer by national laws or regulations or, in the absence of any relevant laws or regulations, by collective agreement or custom;
- (e) the term "rating" means a member of the crew other than an officer;
- (f) the term "crew accommodation" includes such sleeping rooms, mess rooms and sanitary accommodation as are provided for the use of the crew;
- (g) the term "prescribed" means prescribed by national laws or regulations, or by the competent authority;
- (h) the term "approved" means approved by the competent authority;
- (i) the term "re-registered" means re-registered on the occasion of a simultaneous change in the territory of registration and in the ownership of the vessel.

Article 3

1. Each Member for which this Convention is in force undertakes to maintain in force laws or regulations which ensure the application of the provisions of Parts II, III and IV of this Convention.

2. The laws or regulations shall:

- (a) require the competent authority to bring them to the notice of all persons concerned;
- (b) define the persons responsible for compliance therewith;
- (c) provide for the maintenance of a system of inspection adequate to ensure effective enforcement;
- (d) prescribe adequate penalties for any violation thereof;
- (e) require the competent authority to consult periodically the fishing-vessel owners' and fishermen's organisations, where such exist, in regard to the framing of regulations, and to collaborate so far as practicable with such parties in the administration thereof.

PART II. PLANNING AND CONTROL OF CREW ACCOMMODATION

Article 4

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

Article 5

1. On every occasion when:
 - (a) a fishing vessel is registered or re-registered,
 - (b) the crew accommodation of a vessel has been substantially altered or reconstructed, or
 - (c) complaint that the crew accommodation is not in compliance with the terms of this Convention has been made to the competent authority, in the prescribed manner and in time to prevent any delay to the vessel, by a recognised fishermen's organisation representing all or part of the crew or by a prescribed number or proportion of the members of the crew of the vessel,the competent authority shall inspect the vessel and satisfy itself that the crew accommodation complies with the requirements of the laws and regulations.
2. Periodical inspections may be held at the discretion of the competent authority.

PART III. CREW ACCOMMODATION REQUIREMENTS

Article 6

1. The location, means of access, structure and arrangement of crew accommodation in relation to other spaces shall be such as to ensure adequate security, protection against weather and sea and insulation from heat or cold, undue noise or effluvia from other spaces.
2. Emergency escapes shall be provided from all crew accommodation spaces as necessary.
3. Every effort shall be made to exclude direct openings into sleeping rooms from fish holds and fish meal rooms, from spaces for machinery, from galleys, lamp and paint rooms or from engine, deck and other bulk store rooms, drying rooms, communal wash places or water closets. That part of the bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or other approved substance and shall be water-tight and gas-tight.
4. External bulkheads of sleeping rooms and mess rooms shall be adequately insulated. All machinery casings and all boundary bulkheads of galleys and other spaces in which heat is produced shall be adequately insulated when there is a possibility of resulting heat effects in adjoining accommodation or passageways. Care shall also be taken to provide protection from heat effects of steam and/or hot-water service pipes.
5. Internal bulkheads shall be of approved material which is not likely to harbour vermin.
6. Sleeping rooms, mess rooms, recreation rooms and passageways in the crew accommodation space shall be adequately insulated to prevent condensation or over-heating.
7. Main steam and exhaust pipes for winches and similar gear shall, whenever technically possible, not pass through crew accommodation or through passageways leading to crew accommodation; where they do pass through such accommodation or passageways they shall be adequately insulated and encased.
8. Inside panelling or sheeting shall be of material with a surface easily kept clean. Tongued and grooved boarding or any other form of construction likely to harbour vermin shall not be used.
9. The competent authority shall decide to what extent fire prevention or fire retarding measures shall be required to be taken in the construction of the accommodation.
10. The wall surface and deckheads in sleeping rooms and mess rooms shall be easily kept clean and, if painted, shall be light in colour; lime wash must not be used.
11. The wall surfaces shall be renewed or restored as necessary.
12. The decks in all crew accommodation shall be of approved material and construction and shall provide a surface impervious to damp and easily kept clean.

13. Overhead exposed decks over crew accommodation shall be sheathed with wood or equivalent insulation.

14. Where the floorings are of composition the joinings with sides shall be rounded to avoid crevices.

15. Sufficient drainage shall be provided.

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

Article 7

1. Sleeping rooms and mess rooms shall be adequately ventilated.

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

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

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

5. Power for the operation of the aids to ventilation required by paragraphs 3 and 4 of this Article shall, when practicable, be available at all times when the crew is living or working on board and conditions so require.

Article 8

1. An adequate system of heating the crew accommodation shall be provided as required by climatic conditions.

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

3. Heating by means of open fires shall be prohibited.

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

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

Article 9

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

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

3. Artificial lighting shall be so disposed as to give maximum benefit to the occupants of the room.

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

5. A permanent blue light shall, in addition, be provided in the sleeping room during the night.

Article 10

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

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

- (a) in vessels of 25 tons but below 50 tons ... 5.4 sq. ft. (0.5 sq. m)
- (b) in vessels of 50 tons but below 100 tons ... 8.1 sq. ft. (0.75 sq. m)
- (c) in vessels of 100 tons but below 250 tons ... 9.7 sq. ft. (0.9 sq. m)
- (d) in vessels of 250 tons or over ... 10.8 sq. ft. (1.0 sq. m)

3. Where the competent authority decides, as provided for in Article 1, paragraph 4, of this Convention, that length shall be the parameter for this Convention, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than:

- (a) in vessels of 45 feet (13.7 m) but below 65 feet (19.8 m) in length ... 5.4 sq. ft. (0.5 sq. m)
- (b) in vessels of 65 feet (19.8 m) but below 88 feet (26.8 m) in length ... 8.1 sq. ft. (0.75 sq. m)
- (c) in vessels of 88 feet (26.8 m) but below 115 feet (35.1 m) in length ... 9.7 sq. ft. (0.9 sq. m)
- (d) in vessels of 115 feet (35.1 m) in length or over ... 10.8 sq. ft. (1.0 sq. m)

4. The clear head room in the crew sleeping room shall, wherever possible, be not less than 6 feet 3 inches (1.90 metres).

5. There shall be a sufficient number of sleeping rooms to provide a separate room or rooms for each department: Provided that the competent authority may relax this requirement in the case of small vessels.

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

- (a) officers: one person per room wherever possible, and in no case more than two;
- (b) ratings: two or three persons per room wherever possible, and in no case more than the following:
 - (i) in vessels of 250 tons and over, four persons;
 - (ii) in vessels under 250 tons, six persons.

7. Where the competent authority decides, as provided for in Article 1, paragraph 4, of this Convention, that length shall be the parameter for this Convention, the number of ratings allowed to occupy sleeping rooms shall in no case be more than the following:

- (a) in vessels of 115 feet (35.1 m) in length and over, four persons;
- (b) in vessels under 115 feet (35.1 m) in length, six persons.

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.

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

10. Members of the crew shall be provided with individual berths.

11. Berths shall not be placed side by side in such a way that access to one berth can be obtained only over another.

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

13. The lower berth in a double tier shall not be less than 12 inches (0.30 metre) above the floor; the upper berth shall be placed approximately midway between the bottom of the lower berth and the lower side of the deckhead beams.

14. The minimum inside dimensions of a berth shall wherever practicable be 6 feet 3 inches by 2 feet 3 inches (1.90 metres by 0.68 metre).

15. The framework and the lee-board, if any, of a berth shall be of approved material, hard, smooth and not likely to corrode or to harbour vermin.

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

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

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

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

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

21. Each sleeping room shall be provided with a table or desk, which may be of the fixed, dropleaf or slide-out type, and with comfortable seating accommodation as necessary.

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

23. The furniture shall include a drawer or equivalent space for each occupant which shall, wherever practicable, be not less than 2 cubic feet (0.056 cubic metre).

24. Sleeping rooms shall be fitted with curtains for the sidelights.

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

26. As far as practicable, berthing of crew members shall be so arranged that watches are separated and that no day-men share a room with watchkeepers.

Article 11

1. Mess room accommodation separate from sleeping quarters shall be provided in all vessels carrying a crew of more than ten persons. Wherever possible it shall be provided also in vessels carrying a smaller crew; if, however, this is impracticable, the mess room may be combined with the sleeping accommodation.

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

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

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

5. Mess rooms shall be as close as practicable to the galley.

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

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

8. Wherever practicable mess rooms shall be planned, furnished and equipped to give recreational facilities.

Article 12

1. Sufficient sanitary accommodation, including washbasins and tub and/or shower baths, shall be provided in all vessels.

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:

- (a) one tub and/or shower bath for every eight persons or less;
- (b) one water closet for every eight persons or less;
- (c) one wash basin for every six persons or less:

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.

3. Cold fresh water and hot fresh water or means of heating water shall be available in all communal wash places. The competent authority, in consultation with the fishing-vessel owners' and fishermen's organisations where such exist, may fix the minimum amount of fresh water which shall be supplied per man per day.

4. Wash basins and tub baths shall be of adequate size and constructed of approved material with a smooth surface not liable to crack, flake or corrode.

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

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

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

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

- (a) floors shall be of approved durable material, easily cleaned and impervious to damp, and shall be properly drained;
- (b) bulkheads shall be of steel or other approved material and shall be water-tight up to at least 9 inches (0.23 metre) above the level of the deck;
- (c) the accommodation shall be sufficiently lighted, heated and ventilated;
- (d) water closets shall be situated convenient to, but separate from, sleeping rooms and washrooms, without direct access from the sleeping rooms or from a passage between sleeping rooms and water closets to which there is no other access: Provided that this requirement shall not apply where a water closet is located between two sleeping rooms having a total of not more than four persons;
- (e) where there is more than one water closet in a compartment, they shall be sufficiently screened to ensure privacy.

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

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

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

Article 13

1. Wherever possible, an isolated cabin shall be provided for a member of the crew who suffers from illness or injury. On vessels of 500 tons or over there shall be a sick bay. Where the competent authority decides, as provided for in Article 1, paragraph 4, of this Convention, that length shall be the parameter for this Convention, there shall be a sick bay on vessels of 150 ft (45.7 metres) in length or over.

2. An approved medicine chest with readily understandable instructions shall be carried in every vessel which does not carry a doctor. In this connection the competent authority shall give consideration to the Ships' Medicine Chests Recommendation, 1958, and the Medical Advice at Sea Recommendation, 1958.

Article 14

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

Article 15

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

Article 16

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

2. The galley shall be of adequate dimensions for the purpose and shall be well lighted and ventilated.

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

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

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

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

PART IV. APPLICATION TO EXISTING SHIPS*Article 17*

1. Subject to the provisions of paragraph 2, 3 and 4 of this Article, this Convention applies to vessels the keels of which are laid down subsequent to the coming into force of the Convention for the territory of registration.

2. In the case of a vessel which is fully complete on the date of the coming into force of this Convention for the territory of registration and which is below the standard set by Part III of this Convention, the competent authority may, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, require such alterations for the purpose of bringing the vessel into conformity with the requirements of the Convention as it deems possible having regard to the practical problems involved, to be made when:

- (a) the vessel is re-registered;
- (b) substantial structural alterations or major repairs are made to the vessel as a result of long-range plans and not as a result of an accident or an emergency.

3. In the case of a vessel in the process of building and/or reconversion on the date of the coming into force of this Convention for the territory of registration, the competent authority may, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, require such alterations for the purpose of bringing the vessel into conformity with the requirements of the Convention as it deems possible having regard to the practical problems involved; such alterations shall constitute final compliance with the terms of this Convention, unless and until the vessel be re-registered.

4. In the case of a vessel, other than such a vessel as is referred to in paragraphs 2 and 3 of this Article or a vessel to which the provisions of this Convention were applicable while she was under construction, being re-registered in a territory after the date of the coming into force of this Convention for that territory, the competent authority may, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, require such alterations for the purpose of bringing the vessel into conformity with the requirements of the Convention as it deems possible having regard to the practical problems involved; such alterations shall constitute final compliance with the terms of this Convention, unless and until the vessel is again re-registered.

PART V. FINAL PROVISIONS

Article 18

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

Vocational Training (Fishermen) Recommendation, 1966 (No. 126)

I. SCOPE AND DEFINITIONS

1. (1) For the purposes of this Recommendation, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters, with the exception of ships and boats engaged in whaling or similar pursuits and fishery research and fishery protection vessels.
 - (2) This Recommendation applies to all training for work on board fishing vessels.
 - (3) This Recommendation does not apply to persons fishing for sport or recreation.
2. For the purpose of this Recommendation, the following terms have the meanings hereby assigned to them:
 - (a) skipper: any person having command or charge of a fishing vessel;
 - (b) mate: any person exercising subordinate command of a fishing vessel, including any person, other than a pilot, liable at any time to be in charge of the navigation of such a vessel;
 - (c) engineer: any person permanently responsible for the mechanical propulsion of a fishing vessel, as well as any other person liable at any time to operate and maintain the engines and mechanical equipment of such a vessel;
 - (d) skilled fisherman: any experienced member of the deck crew working on board a fishing vessel, participating in the operation of the vessel, preparing gear for fishing, catching, loading catch and processing it, and maintaining and repairing nets or other fishing equipment.

II. NATIONAL PLANNING AND ADMINISTRATION

Planning and Co-ordination

3. In planning a national education and training policy, the competent authorities in the countries possessing or intending to develop a fishing industry should ensure that adequate provision is made in the general network of training facilities for the training of fishermen.

4. Where national circumstances do not permit the development of facilities for the training of fishermen at all levels of skill required, collaboration with other countries, as well as with international organisations, in the development of common fishery training schemes for such skills and occupations as cannot be covered by national programmes should be considered.

5. (1) The activities of all public and private institutions in each country engaged in the training of fishermen should be co-ordinated and developed on the basis of a national programme.

(2) Such a programme should be drawn up by the competent authorities in co-operation with fishing vessel owners' and fishermen's organisations, with educational and fishery research institutions, and with other bodies or individuals having an intimate knowledge of the vocational training of fishermen. In developing countries in which specialised fishery research or development institutes are established in co-operation with other countries or international organisations, such institutes should play a leading part in the establishment of the national programme.

(3) To facilitate the planning, development, co-ordination and administration of fishermen's training schemes, joint advisory policy and administrative bodies should whenever possible be set up at the national level and, where appropriate, also at the regional and local levels.

6. The competent authorities should ensure that the various agencies and institutions responsible for the dissemination of information on training and employment opportunities, such as primary and secondary schools, vocational guidance and employment counselling services, public employment services, vocational and technical training institutions and fishing vessel owners' and fishermen's organisations, are supplied with complete information on public and private training schemes for fishermen and on conditions of entry into fishing.

7. The competent authorities should ensure that fishermen's vocational training schemes are fully co-ordinated with any other programmes and activities, public or private, related to the fishing industry. In particular, they should make certain that:

- (a) fishery research institutions make information on their latest discoveries of practical interest to fishing readily available to training centres and other interested bodies, and through these to working fishermen; where possible, the research institutions should contribute to the advanced training of fishermen, and fishermen's training centres should, as appropriate, assist these institutions in their work;
- (b) measures are taken, through the provision of general education prior to or simultaneously with vocational training, to advance the general level of education in fishing communities, to promote greater satisfaction among fishermen and to facilitate the assimilation of technical and vocational training;
- (c) arrangements are made, with the co-operation of fishing vessel owners' and fishermen's organisations, in order that, other things being equal, preference may be given in employment placement to persons who have completed a public or private training course;
- (d) arrangements are made, with the co-operation of fishing vessel owners' and fishermen's organisations, particularly in developing countries, for trainees completing public and private courses either to enter employment on fishing vessels or, alternatively, to acquire and operate suitably equipped fishing vessels, either individually, or by forming co-operatives for the joint purchase and use of fishing boats, or by any other appropriate means;
- (e) the number of trained fishermen corresponds to the number of boats and the equipment available or planned to be available in the country.

Financing

8. (1) Fishermen's training schemes should be systematically organised; financing should be on a regular and adequate basis and should have regard to the present and planned requirements and development of the fishing industry.

(2) Where required, the government should make financial contributions to training schemes carried on by local government or private bodies. These contributions may take the form of general subsidies, grants of land and buildings or of demonstration material such as boats, engines, navigational equipment and fishing gear, provision of instructors free of charge, or payment of fees for trainees.

(3) Training in publicly operated training centres for fishermen should be given without charge to the trainee. In addition, the training of adults and young persons in need should be facilitated by financial and economic assistance of the kind envisaged in Paragraph 7, subparagraphs (3) and (5), of the Vocational Training Recommendation, 1962.

Training Standards

9. (1) The competent authorities, in co-operation with the joint bodies mentioned in Paragraph 5, subparagraph (3), of this Recommendation, should define and establish general standards for fishermen's training applicable throughout the territory of the country. These standards should be in conformity with the national requirements for obtaining the various fishermen's certificates of competency and should lay down:

- (a) the minimum age of entry into fishermen's training schemes;
- (b) the nature of medical examinations, including chest X-rays and hearing and sight tests, required for persons entering training schemes; the examinations, particularly the hearing and sight tests, may differ for persons entering deck and persons entering engine courses;
- (c) the level of general education which is required for admission to fishermen's training schemes;
- (d) the fishing, navigation and seamanship, safety, engineering, catering and other subject matter which should be included in the training curricula;
- (e) the amount of practical training, including time spent in engineering shops and at sea, which trainees should undergo;
- (f) the duration of the training courses for the various fishing occupations and the different levels of competency;
- (g) the nature of any examinations following the completion of the training courses; and
- (h) the experience and qualifications of the teaching staff of training institutions.

(2) Where it is not possible to lay down standards applicable throughout the country, recommended standards should be drawn up by the competent authorities, in co-operation with the joint bodies mentioned in Paragraph 5, subparagraph (3), of this Recommendation, to serve as a guide to the setting of standards which are as uniform as possible throughout the country.

III. TRAINING PROGRAMMES

10. The curricula of the various training programmes for fishermen should be based on a systematic analysis of the work required in fishing and should be established in co-operation with the joint bodies mentioned in Paragraph 5, subparagraph (3), of this Recommendation. They should be periodically reviewed and kept up to date with technical developments and should, as appropriate for the functions to be exercised, include training in:

- (a) fishing techniques, including where appropriate the operation and care of electronic fish-finding devices, and operation, maintenance and repair of fishing gear;
- (b) navigation, seamanship and ship handling appropriate to the sea area and to the type of fishing for which the course is designed, including a proper knowledge of the international Regulations for Preventing Collisions at Sea;
- (c) stowage, cleaning and processing of fish on board;
- (d) vessel maintenance and other related matters;
- (e) operation, maintenance and repair of steam or internal combustion (gasoline or diesel) engines or other equipment which the trainee may be called upon to use;

- (f) operation and care of radio and radar installations which the trainee may be called upon to use;
- (g) safety at sea and safety in handling fishing gear, including such matters as stability, effects of icing, fire fighting, water-tight integrity, personal safety, gear and machinery safeguards, rigging safety measures, engine-room safety, lifeboat handling, use of inflatable life rafts, first aid and medical care and other related matters;
- (h) theoretical subjects relevant to fishing, including marine biology and oceanography, which will enable trainees to gain a broad foundation for further instruction and training leading to promotion or to transfer to another fishing occupation or another type of fishing;
- (i) general education subjects, although this may be provided for to a more limited extent in short courses;
- (j) operation, maintenance and repair of refrigeration systems, fire-fighting equipment, deck and trawling winches and other mechanical equipment of fishing vessels;
- (k) principles of shipboard electrical power installations, and maintenance and repair of the electrical machinery and equipment of fishing vessels;
- (l) health and physical education, especially swimming, where training facilities permit;
- (m) specialised courses in deck, engine and other subjects after an introductory period of general fishing instruction.

11. (1) National standards should, where practicable and appropriate, be established for certificates of competency or diplomas qualifying a person to act as skipper (various grades); mate (various grades); engineer (various grades); fishery technician (various grades); boatswain; skilled fisherman (various grades); cook; or other deck or engine-room personnel.

(2) Training programmes should be chiefly designed to prepare trainees for certification and should be directly related to national certification standards; they should take account of the minimum ages and minimum professional experience laid down by the competent authorities in respect of the various grades of certificates of competency.

(3) Where national certification examinations do not exist or do not exist for the particular duty in question, training courses should nevertheless prepare trainees for particular duties such as those listed above. All trainees successfully completing such training courses should receive a diploma concerning the course followed.

12. (1) Programmes should be available to train fishermen to perform duties as skippers and engineers of all types of vessels in use in the fishing fleet of the country concerned, including larger distant-water vessels.

(2) Where appropriate to the vessels in use, college-level fishing and navigation courses should be established which are of the same level as merchant navy officers' training programmes but which provide training in subject matters appropriate to fishing.

13. The duration of the various training programmes should be sufficient to enable trainees to assimilate the instruction given, and should be determined with reference to such matters as:

- (a) the level of training required for the occupation for which the course is designed;
- (b) the general educational level and age required of trainees entering the course;
- (c) the trainees' previous practical experience; and
- (d) the urgency of turning out trained fishermen in the country, subject to the maintenance of adequate standards of training.

14. (1) The teaching staff should consist of persons possessing a broad general education, a theoretical technical education and satisfactory relevant practical fishing experience.

(2) Where it is not possible to recruit a teaching staff with these qualifications, persons with practical experience in fishing and holding appropriate certificates of competency should be employed.

(3) Where it is not possible to recruit a full-time teaching staff with practical fishing experience, persons with satisfactory relevant practical fishing experience should be employed on a part-time basis.

(4) All teaching staff should have an aptitude for teaching and should be given appropriate teacher training by the competent educational authorities.

Pre-Vocational Training

15. In fishing communities, measures consistent with the Minimum Age (Fishermen) Convention, 1959, should be taken to provide pre-vocational training to schoolchildren, including training in elementary practical seamanship, basic commercial fishing techniques and navigational principles, in so far as this is appropriate to the general conditions in the particular country.

Short Courses for Working Fishermen

16. Training courses should be available for working fishermen to enable them to increase their technical skills and knowledge, to keep abreast of improved fishing and navigation techniques, and to qualify for promotion.

17. (1) Training courses for working fishermen should be specifically designed for the purposes of:

- (a) complementing the basic long-term courses by providing advanced specialised training for promotion;
- (b) providing training in fishing techniques new to the area; in operating, maintaining and repairing new types of engines or gear; and in making gear where appropriate;
- (c) providing all levels of training for fishermen who were unable to participate in a basic long-term training course;
- (d) providing accelerated training in developing countries.

(2) The courses should be of short duration and should be considered to be complementary to and not substitutes for basic long-term training programmes.

18. The courses, which may take the form of mobile courses bringing instructors and demonstration equipment to fishing centres, should in particular consist of programmes involving:

- (a) evening courses;
- (b) seasonal courses offered during stormy months or slack fishing periods; or
- (c) daytime courses for which fishermen temporarily leave their work for short periods.

19. (1) All appropriate measures should be taken to enable working fishermen to attend short courses ashore.

(2) Working fishermen should receive adequate financial compensation for the periods in which they attend short training courses.

20. Where long-term courses and short courses for working fishermen do not meet training needs, particularly in isolated areas, these courses may be supplemented by:

- (a) special radio and television courses and programmes providing fishing information;
- (b) correspondence courses specially adapted to the needs of working fishermen and arranged for use by study groups with occasional lectures or attendance at training schools;
- (c) periodic visits of research workers and extension officers to fishing communities.

IV. METHODS OF TRAINING

21. The training methods adopted by fishermen's training schemes should be the most effective possible, having regard to the nature of the courses, the trainees' experience, general education and age, and the demonstration equipment and financial support available.

22. Practical training, in which the students themselves participate, should be an important part of all fishermen's training programmes.

23. (1) Fishing training vessels should be used by all training institutions with programmes for persons entering fishing to provide instruction in fishing techniques,

navigation and seamanship, engine operation and other matters. These vessels should conduct actual fishing operations.

(2) Training vessels should, whenever possible, be attached to technical schools providing advanced training.

24. (1) Demonstration equipment such as engines, gear, fishing-boat models, workshop equipment and navigational aids should be used in training programmes.

(2) Such equipment should be prepared in collaboration with fishery research institutions and should include, whenever possible, the latest gear and navigational aids.

(3) Such equipment should be selected with reference to the gear, boats and engines which the trainees may be called upon to use.

(4) Films and other audio-visual aids, although they may be useful in some cases, should not be a substitute for demonstration equipment in the use of which trainees themselves take an active part.

(5) Visits should be organised for trainees to fishing vessels equipped with modern or special installations, to fishery research institutions, or to fishing centres away from the area in which the school is located.

25. Practical training may also be provided by periods of fishing at sea on board commercial fishing vessels.

26. Theoretical training, including general education, given as part of a training course should be directly related to the knowledge and skills required by fishermen and should, wherever possible, be integrated with the practical training offered.

V. INTERNATIONAL CO-OPERATION

27. (1) Countries should co-operate in promoting fishermen's vocational training, particularly in developing countries.

(2) This co-operation, as appropriate, may include such matters as:

- (a) with the help of international organisations or other countries, obtaining and training teaching staff to establish and improve fishermen's training facilities;
- (b) establishing joint training facilities or joint fishery research institutions with other countries;
- (c) making training facilities available to selected trainees or instructor trainees from other countries, and sending trainees or instructor trainees to training facilities in other countries;
- (d) arranging international exchanges of personnel and international seminars and working parties;
- (e) providing instructors for fishermen's training schools in other countries.