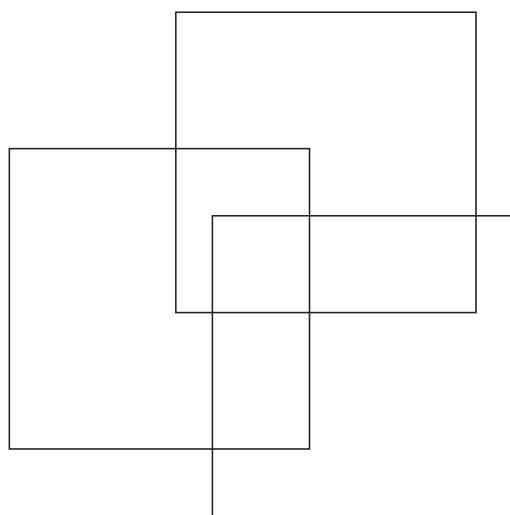




Final report of the discussion

**Report for discussion at the Meeting of Experts to
Adopt Flag State Guidelines for the Implementation
of Work in Fishing Convention, 2007 (No. 188)
(21–25 September 2015)**



MEIWFC/2015/8

INTERNATIONAL LABOUR ORGANIZATION

Sectoral Policies Department

Final report of the discussion

**Meeting of Experts to Adopt Flag State Guidelines for the
Implementation of in Fishing Convention, 2007 (No. 188)**
(21–25 September 2015)

Geneva, 2016

INTERNATIONAL LABOUR OFFICE, GENEVA

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Introduction

1. The Meeting of Experts to Adopt Flag State Guidelines for the Implementation of the Work in Fishing Convention, 2007 (No. 188), was held from 21 to 25 September 2015 at the International Labour Office in Geneva, in accordance with a Governing Body decision at its 317th Session (January 2013). At its 320th Session (January 2014), the Governing Body decided that the Meeting would be composed of 24 experts – eight experts nominated by the Employers’ group of the Governing Body; eight experts nominated by the Workers’ group of the Governing Body; and eight experts nominated by the Governments of Argentina, Brazil, Morocco, Namibia, Norway, South Africa, Spain and Thailand. The Meeting was open to all governments as observers.
2. The Meeting was attended by seven Government experts accompanied by seven advisers, seven Employer experts, and eight Worker experts accompanied by ten advisers. There were 61 observer experts from interested governments, and 12 observers from international governmental organizations (IGOs) and non-governmental organizations (NGOs).
3. The purpose of the Meeting was to review and adopt flag State guidelines for the Implementation of the Work in Fishing Convention, 2007 (No. 188). These *Guidelines on flag State inspection of working and living conditions on board fishing vessels* (hereinafter Guidelines) would serve to provide supplementary practical information to flag States to be reflected in their national laws and other measures to implement Convention No. 188.
4. The Officers of the Meeting were:

Chairperson: Mr Nigel Campbell (South Africa)

Vice-Chairpersons: Mr Bro-Matthew Shingudja (Government member, Namibia)

Mr Ment van der Zwan (Employer member, Netherlands)

Mr Johnny Hansen (Worker member, Norway)

Opening speeches

5. The Secretary-General welcomed the participants to the Meeting. She informed the Meeting of the increasing interest from member States requesting guidance about how to inspect working conditions on fishing vessels. As of the date of the Meeting, only five States had ratified Convention No. 188 (Argentina, Bosnia and Herzegovina, Congo, Morocco and South Africa) and ten ratifications were necessary for the Convention to enter into force. She urged all the participants in the Meeting to work towards ratification of the Convention in order to improve working conditions in the fishing sector.
6. The Chairperson reminded the Meeting of the four resolutions that were adopted at the same time as Convention No. 188 during the 99th Session of the International Labour Conference (ILC) (2010). The resolutions prioritized the development of the Guidelines for flag States to implement Convention No. 188, which was the purpose of this Meeting. The Guidelines would assist governments to draft national legislation along with the social partners. He echoed the fact that ratifications of Convention No. 188 were vital.

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7. The Deputy Secretary-General introduced the Office proposal for the Guidelines. He provided a brief overview of its contents and highlighted issues for the participants' consideration.
 8. The Employer Vice-Chairperson emphasized that Convention No. 188 was an important piece in the puzzle of international regulations of the fishing sector. He commended the proposed Guidelines proposed by the Office for discussion at the Meeting. He would ask for clarification where appropriate to ensure that skipper and fishing vessel owner rights were also protected.
 9. The Worker Vice-Chairperson hoped that there would be more ratifications of Convention No. 188 before the end of the year. The hazards of working in the fishing sector had received greater attention due to the publication of news articles about forced labour in fishing, illegal, unreported and unregulated (IUU) fishing and other unlawful activities. Flag States should adopt regulations that protect fishers and deter unlawful practices. He was confident that the Meeting would be another example of good social dialogue and hoped that there would be sufficient time to discuss how to encourage more ratifications of Convention No. 188.
 10. The Government Vice-Chairperson summarized the sentiments of the Government group by stating they had taken note of the importance of the fishing industry and looked forward to the Guidelines making a meaningful contribution to improve working conditions in the sector.
 11. Observer representatives from the Food and Agriculture Organization of the United Nations (FAO) commended the Office on the ongoing collaboration among the ILO, the FAO and the International Maritime Organization (IMO) to develop international guidelines and standards on the health and safety of fishing vessels and fishers, and to fight against IUU fishing and forced labour.
 12. The observer representative of the IMO stated that the third anniversary of the entry into force of the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F), would be celebrated in 2015. He stressed the importance of the shared responsibility between port States and flag States to cooperate with each other to ensure that international standards are implemented. He explained that the priority for the IMO was the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, which he expected to enter into force soon. He concluded by stating that the IMO would continue working with the FAO and the ILO on issues related to the fishing sector.
 13. The observer representative from the International Maritime Health Association proposed a working group on medical fitness standards for fishers. She stated that fishers had different health risks than seafarers. She proposed the creation of medical fitness guidelines for fishers. While Meeting participants agreed that medical fitness guidelines for fishers would be useful, they felt that this was beyond the scope of the mandate of this Meeting of Experts.
 14. The observer representative from the International Collective in Support of Fishworkers (ICSF) stated that he hoped that these Guidelines would benefit working and living conditions around the world on both large and small vessels. He stated that the ILO should "develop guidelines to establish national action plans for progressive implementation of relevant provisions of the Convention" as reflected in the resolution concerning the promotion of the ratification of Convention No. 188, adopted at the 96th Session of the ILC in 2007.

Consideration of the proposal for the Guidelines

1. Introduction

1.1. Objectives and content of the Guidelines

Paragraph 1

15. Paragraph 1 was adopted without change.

Paragraph 2

16. The Worker Vice-Chairperson asked who the phrase “and others” was referring to.
17. The Employer Vice-Chairperson asked why the last sentence of the paragraph had been left in since the Guidelines did not provide any information on promotional measures.
18. A representative of the Office agreed that the phrase “and others” was superfluous. The last sentence had been included so that issues such as forced labour could be addressed.
19. The Chairperson suggested deleting “and others” and moving the last sentence into a footnote.
20. The Government Vice-Chairperson suggested deleting the last sentence, and the expert from the Government of Norway agreed with this proposal.
21. Following an intervention from a Government representative of Brazil followed by additional information provided by the observer from the FAO, it was suggested that a new footnote 3 should be added to the paragraph. The proposed footnote read as follows:

The Guidelines should be applied in recognition of the broader international duties and obligations of flag States regarding the flagging and control of fishing vessels, together with their responsibilities to manage fishing and fishing-related activities in a manner that ensures the conservation and sustainable use of living marine resources. Flag States may, in this regard, be guided by the following instruments: FAO Voluntary Guidelines for Flag State Performance of 2014; FAO/ILO/IMO Implementation Guidelines on Part B of the Code, the Voluntary Guidelines and the Safety Recommendations; and FAO Technical guidelines on best practices to improve safety at sea in the fisheries sector.

22. The Employer Vice-Chairperson requested clarification from the Governments on footnote 3.
23. The Government Vice-Chairperson said that the Governments agreed with the proposal.
24. The Employer Vice-Chairperson proposed to replace “should” with “may”.
25. The expert from the Government of Brazil requested further information on the reason for that proposal by the Employers, as he understood that there were international obligations that were not optional which was why it would be best to use “should”.
26. The Employer Vice-Chairperson replied that it was for flexibility reasons.

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27. The expert from the Government of Morocco stated that mostly northern countries had participated in the discussions on these Guidelines and pointed out that a number of fisheries in southern countries were in a lamentable state. The gap between the capacities of northern and southern countries continues to be very large. Southern countries would not be able to ratify Convention No. 188 given their current capacities. He further clarified that he was addressing Article 3 of Convention No. 188 and suggested that the Office should provide guidance to support fisheries in all countries.
 28. The Employer Vice-Chairperson commented that many northern countries had not ratified Convention No. 188, particularly countries in the European Union (EU). He urged the Office to produce documents that strengthened flexibility in acceding to Convention No. 188.
 29. Paragraph 2 was adopted as amended.

Paragraph 3

30. The Employer Vice-Chairperson said that it should be made clear that all of the ILO instruments mentioned in this paragraph were not specifically related to the fishing sector and that he wanted to avoid influencing social dialogue within member States.
31. The Government Vice-Chairperson suggested deleting the first three bullet points because they did not relate to fishing.
32. The Worker Vice-Chairperson asked whether the Labour Inspection (Agriculture) Convention, 1969 (No. 129), applied to fishing.
33. The expert from the Government of Argentina emphasized the importance of the founding principles and the coverage that inspections should have.
34. A representative of the Office explained the reason behind the ILO instruments listed under this paragraph. The Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection Recommendation, 1947 (No. 81), the ILO's main instruments on labour inspection, did not specifically exclude the fishing sector. The other instruments listed were the source of inspiration for some provisions of the Guidelines, for example, on inspection procedures set out in the proposed Guidelines.
35. The Employer Vice-Chairperson said that he did not agree with the explanation provided by the secretariat which was why he suggested adding the phrase "which do not all apply to fishing".
36. The Worker Vice-Chairperson proposed retaining the mention of Convention No. 81 Labour Inspection Convention, 1947 (No. 81) because even if it was not applicable to the fishing sector it could be used in relation to inspections. He supported the amendment proposed by the Employers' group.
37. The expert from the Government of Norway suggested that either the bullet points be deleted altogether or that it be made clear that these ILO instruments were to be used for guidance purposes only.
38. The expert from the Government of Argentina stated that his country would like to keep the bullet points as the paragraph referred to inspectors and these ILO instruments granted them rights.

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39. The observer expert from the Government of Denmark stated that the list was not comprehensive and suggested deleting the bullet points but retaining the mention of the Guidelines drawing on other instruments.
 40. The Worker Vice-Chairperson proposed keeping the last bullet point as it directly related to fishing, which the Employer Vice-Chairperson supported.
 41. The Chairperson proposed rewording the text to “The Guidelines draw not only on the requirements of Convention No. 188 and the guidance in the Work in Fishing Recommendation, 2007 (No. 199), but also, where appropriate, on the principles and approaches to labour inspection found in other ILO instruments, not all of which apply to fishing.”
 42. Paragraph 3 was adopted as amended.

Paragraph 4

43. The expert from the Government of Morocco requested clarification on whether the phrase “that can be adapted to reflect national laws and other measures” meant that the Guidelines could be adapted, or the national laws.
44. The Chairperson explained that the Guidelines could be used to train people in member States that had ratified Convention No. 188.
45. The Employer Vice-Chairperson asked whether it would be a requirement to use the exact text found in the Guidelines or whether it could be adapted to match national legislation.
46. The Chairperson clarified that the exact text would not need to be used.
47. The expert from the Government of Norway proposed deleting the paragraph.
48. The observer expert from the Government of Denmark agreed with Norway, saying that it was unfair to request member States to draft their national laws in line with the Guidelines if they were still in the process of ratifying Convention No. 188.
49. The Chairperson explained that the word “may” did not entail any obligation.
50. The expert from the Government of Spain stated that the paragraph was useful as it provided supplementary practical information and guidance that States needed in order to implement Convention No. 188.
51. The Worker Vice-Chairperson agreed that the paragraph should remain in the Guidelines.
52. The expert from the Government of Norway said that despite the paragraph not improving the Guidelines, he could accept that it be left in.
53. The observer expert from the Government of Denmark expressed his concern that if the Guidelines did not reflect the legislation of his country, it would not be possible to adopt them. However, he accepted the paragraph as it was.
54. The Employer Vice-Chairperson drew attention to the fact that in paragraph 4 it said that the Guidelines were intended to provide supplementary practical information and guidance that could be used by any government that found them helpful, giving them the freedom to use them as they saw fit. However, the implementation of the Guidelines should be done

through social dialogue. It was important for the social partners to be aware of the content of the text, therefore paragraph 4 should remain.

55. The expert from the Government of Norway said that the Guidelines would be taken very seriously, which was why they were being considered so carefully.
56. Paragraph 4 was adopted without change.

Paragraph 5

57. The Worker Vice-Chairperson proposed to add the following text at the end of paragraph 5: “It should be made clear that the provisions in the text of Convention No. 188 are only the minimum standards and flag States may wish to adopt higher standards in national laws, regulations or other measures following consultation. Revision of existing regulations should not mean reducing existing, more favourable legislation already in place (see Article 6(2)).”
58. The Employer Vice-Chairperson noted that the sense of the amendment was already in the ILO Constitution and therefore there was no need to repeat it. He suggested changing the amendment phrase “it should be made clear” to “it should be noted”, and the Worker Vice-Chairperson agreed.
59. The observer expert from the Government of the Netherlands clarified that the use of the word “should” was in line with ILO procedure, as confirmed by the secretariat.
60. The expert from the Government of Norway said that the use of the term “minimum standards” denigrated Convention No. 188. The amendment proposed by the Workers’ group repeated principles that were already reflected in the ILO Constitution and Convention No. 188. Therefore, he did not agree with adding this text to the Guidelines.
61. The Worker Vice-Chairperson agreed with the fact that the aim was to not be repetitive but it was important for everyone to be aware of existing standards. He agreed that “the minimum standards” could be deleted.
62. The expert from the Government of Brazil made reference to Article 6 of Convention No. 188 for clarification purposes.
63. The proposed additions to the text were subsequently amended to reflect more closely the provisions of Article 6(2) of Convention No. 188.
64. Paragraph 5 was adopted as amended.

Paragraph 6

65. The Government Vice-Chairperson requested clarification on the reasoning behind the paragraph.
66. A representative of the Office stated that the purpose of the paragraph was to inform the reader as to how the Guidelines were organized.
67. The representative of the FAO observed that it might be appropriate to include a reference to the broader international duties and obligations of flag States regarding flagging and control of fishing vessels. The text could be provided by the FAO for consideration. This text was later included, as noted above, in a footnote to paragraph 2.
68. Paragraph 6 was ultimately adopted without change.

Proposal for a new paragraph after paragraph 6

- 69.** The Employer Vice-Chairperson proposed that a new paragraph be added which would be numbered 6bis: “Wherever these Guidelines call for interviews with fishers, skippers or fishing vessel owners, these should be undertaken in private.”
- 70.** The Worker Vice-Chairperson noted that some people might want to have an adviser or legal assistance during an interview, and the Employers’ group agreed with this statement.
- 71.** The Chairperson stated that he would read “in private” to mean including legal counsel.
- 72.** The Government Vice-Chairperson asked the Employers’ group to explain the reasoning behind the new proposal.
- 73.** The Employer Vice-Chairperson said that, throughout the text, it was stated that interviews with fishers must be conducted in private to protect them from repercussions. However, fishing vessel owners and skippers had the same civil rights and should therefore be allowed to be interviewed in private. If deficiencies were found in the course of the inspection, then the results should be made public and reported to governmental organizations in order for appropriate measures to be taken.
- 74.** The Government Vice-Chairperson said that the proposed addition implied that fishing vessel owners would also be interviewed, and the Chairperson agreed.
- 75.** The expert from the Government of Spain said that he had serious concerns relating to the wording as it might limit what the inspectors could do. It was important that their work remain confidential. He felt that interviews did not always have to be in private, and in fact public interviews could sometimes lead to a successful intervention.
- 76.** The expert from the Government of Brazil said that the new text was not necessary because Convention No. 188 already provided for separate interviews when the inspectors thought them necessary. He understood the reason behind holding private interviews with fishers, however not in the case of fishing vessel owners and skippers.
- 77.** The expert from the Government of Argentina agreed that the new text was unnecessary. Private meetings with fishing vessel owners might make inspections more difficult.
- 78.** The Chairperson observed that skippers also needed to have privacy during interviews.
- 79.** The expert from the Government of Norway said that while he supported the addition proposed by the Employers’ group, it made more sense to include it in paragraph 109 of Chapter 3, and the observer expert from the Government of the United Kingdom supported this statement.
- 80.** The observer expert from the Government of the Philippines objected to all the provisions pertaining to interviews in private, as their current inspection system and proposed legislation relied on joint assessments with the participation of the employer.
- 81.** The Chairperson drew attention to the fact that it was stated earlier that the Guidelines were not binding but only guidance.
- 82.** The Employer Vice-Chairperson said that he did not object to placing the text somewhere else in the Guidelines. He stressed that fishing vessel owners also had a right to privacy. He agreed that fishers should have privacy because of the possible negative repercussions.

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83. The Chairperson suggested that the text should be added to paragraph 109.
84. The proposal for a new paragraph after paragraph 6 was therefore not adopted, as the issue was reflected later in the Guidelines.

1.2. Overview of Convention No. 188

1.2.1. Objective of the Convention

Paragraph 7

85. Paragraph 7 was adopted without change.

1.2.2. Structure of the Convention

Paragraph 8

86. Paragraph 8 was adopted without change.

Paragraph 9

87. Paragraph 9 was accepted with the agreement that the text of Convention No. 188 should be included in an appendix and, in keeping with a suggestion from the expert from the Government of the Netherlands, the appendix containing the text of Convention No. 188 should be the first appendix to the Guidelines.
88. The representative of the FAO stated that the Guidelines would be strengthened by adding more references from other existing guidelines and instruments. He suggested that such references be added in footnotes. The FAO had drafted a text to that effect.
89. A representative of the Office read the text proposed by the FAO which would be added at the end of 1.1.2 as a footnote. This text, as noted earlier, was then included in a footnote to paragraph 2 (footnote 3).

1.2.3. Key concepts of the Convention

Paragraph 10

90. Paragraph 10 was adopted without change.

1.2.3.1. Scope

Paragraph 11

91. The expert from the Government of the Philippines questioned why engineers and mechanics were not mentioned along with fishers.
92. The Chairperson said that it was clearly stated in Convention No. 188 that the term “fisher”, as defined in Article 1(e), generally included everyone working on board fishing vessels (with some specific exclusions for pilots, naval personnel and others).
93. The expert from the Government of Norway felt that this paragraph was superfluous because the Guidelines are directed at inspectors and therefore it should be deleted.

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94. The Employer Vice-Chairperson said that this text provided useful background information and therefore should remain in the Guidelines. The Workers' group agreed.
 95. The expert from the Government of Argentina agreed that the paragraph should be kept as the Guidelines were not only directed at inspectors.
 96. The observer expert from the Government of Panama agreed that the Guidelines were not just for inspectors but also for government authorities, and therefore it would be helpful for clarification purposes to retain paragraph 11.
 97. The expert from the Government of Morocco pointed out that Convention No. 188 primarily addressed member States but was also directed at inspectors.
 98. The expert from the Government of Norway stated that this guidance would not be used to implement Convention No. 188, but instead the Convention itself would be used.
 99. The Worker Vice-Chairperson mentioned that the same approach was used in the Guidelines for port State control officers; therefore, the format should be kept for consistency purposes.
 100. The observer expert from the Government of the Netherlands agreed with Norway, stating that workers and employers would complain if items in the Guidelines were not implemented. He proposed inserting a disclaimer that governments would not be required to fully implement the Guidelines. In his opinion, the paragraph was incomplete.
 101. The Chairperson mentioned that such a disclaimer was already included in the document.
 102. The Deputy Secretary-General stated that, bearing in mind the concerns expressed by the observer expert from the Government of the Netherlands, the valid document should refer to any exemptions, exclusions or substantial equivalencies or variations that applied to the vessel concerned as permitted by the competent authority of the flag State.
 103. Paragraph 11 was adopted without change.

Paragraph 12

104. Paragraph 12 was adopted without change.

1.2.3.2. Implementation

Paragraph 13

105. Paragraph 13 was adopted without change.

1.2.3.3. Consultation

Paragraph 14

106. The Worker Vice-Chairperson proposed adding a new sentence to the end of paragraph 14: "It should be kept in mind when developing and updating legislation, to provide for regular consultation with the organizations mentioned above in order to secure their active participation in the process of effective implementation of the provisions of the Convention."
107. The expert from the Government of Norway stated that the additional text was superfluous.

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- 108.** The observer expert from the Government of Denmark stated that the text in paragraph 14 was repeated in paragraph 26, and therefore suggested deleting it and replacing it with the proposal made by the Workers' group.
 - 109.** The Government Vice-Chairperson sought clarification on which definition of "consultation" should be followed.
 - 110.** The observer expert from the Government of the United Kingdom agreed that repetitions should be avoided wherever possible.
 - 111.** The Worker Vice-Chairperson withdrew the proposed amendment to paragraph 14 based on the comments during the discussion.
 - 112.** Paragraph 14 was adopted without change.

1.2.3.4. More stringent requirements for larger vessels (24 metres in length and over) or vessels at sea for longer periods

Paragraph 15

- 113.** The observer expert from the Government of the Netherlands, referring to the heading, inquired whether "longer periods" meant longer than three days.
- 114.** The Employer Vice-Chairperson noted that the more stringent requirements were not only for vessels embarking for longer periods, but also for vessels travelling over a distance of 200 nautical miles.
- 115.** The expert from the Government of Norway noted that because the exact text of Convention No. 188 was not reproduced in this paragraph the text only created confusion and therefore should be deleted.
- 116.** A representative of the Office explained that the reason for including this paragraph was because people had misread Article 2(3) of Convention No. 188, believing that it only applied to vessels that were 24 metres in length and over. The Office had encountered difficulty in fighting this misunderstanding.
- 117.** The Employer Vice-Chairperson suggested deleting "for larger vessels (24 metres in length and over) or vessels at sea for longer periods" from heading 1.2.3.4. The Worker Vice-Chairperson agreed.
- 118.** The Government Vice-Chairperson stated that the text offered explanations in some places while leaving only the provision without explanation in other places. He suggested deleting explanations and reproducing them as appendices in order to reduce confusion.
- 119.** The expert from the Government of Norway expressed reluctance to accept explanations that were interpretations at the time of drafting. He stated that Norway would not accept this change unless it referred directly to the Article.
- 120.** The expert from the Government of Brazil stated that he accepted paragraph 15 without amendments, and that it was clear from the text that larger vessels would have more stringent requirements.
- 121.** The observer expert from the Government of Denmark agreed with Norway, and expressed concern that attempts to solve the misunderstanding would result in additional issues, such

as not being able to enforce the provisions. He suggested either inserting a reference to Convention No. 188 or deleting the paragraph.

122. The expert from the Government of Brazil proposed deleting the text in brackets at the end of the first sentence and proposed that the words “for certain vessels” be added to heading 1.2.3.4. in place of “for larger vessels (24 metres in length and over) or vessels at sea for longer periods)”.

123. The Worker Vice-Chairperson suggested the addition of “after consultation” at the end of the paragraph.

124. Paragraph 15 was adopted as amended.

1.2.3.5. Exclusions, exemptions and use of substantial equivalence

1.2.3.5.1. *Exclusions under Article 3*

Paragraph 16

125. The observer expert from the Government of Denmark suggested changing the first sentence to “Article 3(1) of the Convention provides”.

126. Paragraph 16 was adopted as amended.

1.2.3.5.2. *Progressive implementation of certain provisions of the Convention in accordance with Article 4*

Paragraph 17

127. The Worker Vice-Chairperson suggested amending footnote 7 as follows: “For example, in cases of distress or bad weather”.

128. Paragraph 17 was adopted as amended.

1.2.3.5.3. *Use of substantial equivalence in Articles 14 and 28*

Paragraphs 18 and 19

129. Paragraphs 18 and 19 were adopted without change.

1.2.3.5.4. *Other exclusions, exemptions and variations*

Paragraphs 20 and 21

130. Paragraphs 20 and 21 were adopted without change.

1.2.3.6. Possibility of using either length (L), length overall (LOA) or, with respect to certain requirements of Annex III, gross tonnage (gt)

Paragraph 22

131. The Worker Vice-Chairperson proposed the inclusion of a diagram in order to clarify the terms “length” (L) and “length overall” (LOA).

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132. A representative from the Office provided an illustration of “length” (L) and “length overall” (LOA).
133. The Employer Vice-Chairperson supported the inclusion of the diagram. He also noted that while in Convention No. 188 the reference to length solely referred to “length” (L), in practice it could also refer to “length overall” (LOA).
134. The expert from the Government of Norway said that the Government group suggested adding a note to the drawing to clarify where the diagram had been taken from.
135. Paragraph 22 was adopted with the amendment of including a drawing after subparagraph (c).

Paragraph 23

136. Paragraph 23 was adopted without change.

1.2.4. Compliance and enforcement

1.2.4.1. General

Paragraph 24

137. The Worker Vice-Chairperson suggested changing the title “General” to “General requirements for ensuring compliance”.
138. Paragraph 24 was adopted as amended.

1.2.4.2. Vessels required to carry a valid document

Paragraph 25

139. Paragraph 25 was adopted without change.

1.3. Definitions

Paragraph 26

140. The Employer Vice-Chairperson proposed to define the term “subsistence fishing” under subparagraph (a) either in the text or by adding a footnote to the Guidelines.
141. The Worker Vice-Chairperson agreed with the proposal of the Employers’ group.
142. A representative of the Legal Adviser to the Office said that the Office had formulated an informal opinion on the term “subsistence fishing” which could be found in the ILO *Handbook for improving living and working conditions on board fishing vessels*. The Office suggested adding the definition as a footnote in the Guidelines.
143. The expert from the Government of Brazil proposed that it should be clearly stated that the Office’s definition was an informal opinion, and therefore was not binding.
144. The expert from the Government of Norway supported this proposal.
145. Paragraph 26 was adopted with the additional footnote.

Paragraph 27

146. Paragraph 27 was adopted without change.

Paragraph 28

147. The Government Vice-Chairperson asked for clarification of the term “Member” under subparagraph (c).

148. A representative of the Legal Adviser to the Office clarified that only Members that ratified a Convention were bound by it.

149. The Worker Vice-Chairperson proposed deleting “normally”.

150. Paragraph 28 was adopted as amended.

2. Flag State inspection systems for the fishing sector

2.1. Overview of flag State responsibilities

Paragraph 29

151. Paragraph 29 was adopted without change.

Paragraph 30

152. The Government Vice-Chairperson suggested “on board fishing vessels” to be added in the last sentence of the paragraph.

153. Paragraph 30 was adopted as amended.

Paragraph 31

154. The observer expert from the Government of the Netherlands proposed deleting the paragraph as the same text already existed in paragraph 24. The experts from the Government of Norway and the Government of Argentina and the observer experts from the Government of the United Kingdom and the Government of Jamaica agreed with this suggestion.

155. The Employer Vice-Chairperson and the Worker Vice-Chairperson preferred the paragraph as originally drafted.

156. Paragraph 31 was adopted without change.

Paragraphs 32 and 33

157. Paragraphs 32 and 33 were adopted without change.

Paragraph 34

158. The Government Vice-Chairperson requested the deletion of the paragraph as all definitions should be under the same chapter of the Guidelines.

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159. The Employer Vice-Chairperson and the Worker Vice-Chairperson preferred the paragraph as drafted.
160. The expert from the Government of Norway suggested that the paragraph could be amended by replacing “the previous chapter” with “Convention No. 188” and offered an editorial change.
161. The Government Vice-Chairperson said that, as a general rule, definitions should not be repeated in the document.
162. The Employer Vice-Chairperson believed that the repetition of definitions was helpful to the reader of the document.
163. The expert from the Government of Brazil said that the aim of the Guidelines was to clarify the Convention and its provisions. Therefore, he believed that there was no harm in repeating some of the definitions.
164. The observer expert from the Government of the Netherlands stressed that several governments opposed the repetition of definitions and preferred that the document be more concise.
165. Paragraph 34 was adopted without change.

Paragraph 35

166. The Worker Vice-Chairperson proposed a new sentence to be added after the second sentence of the paragraph regarding reporting the plan to the ILO and the social partners.
167. The Employer Vice-Chairperson agreed with the new sentence as it reflected paragraph 3 of Article 4.
168. The Government Vice-Chairperson agreed with the new sentence.
169. Paragraph 35 was adopted as amended.

2.2. General application to fishing vessels and fishers

2.2.1. *Responsibilities of fishing vessel owners, skippers and fishers*

Paragraph 36

170. Paragraph 36 was adopted without change.

2.2.1.1. Fishing vessel owners

Paragraphs 37 and 38

171. Paragraphs 37 and 38 were adopted without change.

2.2.1.2. Skippers

Paragraphs 39–41

172. Paragraphs 39–41 were adopted without change.

2.2.1.3. Fishers

Paragraphs 42 and 43

173. Paragraphs 42 and 43 were adopted without change.

2.2.2. Considerations with respect to some of the employment or working relationships that may be found on fishing vessels

Paragraph 44

Subparagraph (a)

174. The Employer Vice-Chairperson agreed with the text as proposed; however, it should be clear that even in cases where there was no written contract, there was still a legal relationship between the fisher and the fishing vessel owner.

175. Subparagraph (a) was adopted without change.

Subparagraph (b)

176. The Government Vice-Chairperson proposed to amend subparagraph (b) by deleting “considered to be self-employed because they do not work for a fixed wage”.

177. The Employer Vice-Chairperson stated that the Employers could not agree because there were employed fishers who were still paid with a share of the catch. Being paid with a share of the catch was not equivalent to self-employment.

178. The Worker Vice-Chairperson proposed keeping the text as originally drafted.

179. The expert from the Government of Brazil stated that the definition as it was written implied that people were self-employed because they were remunerated through a share of the catch. However, that was not the legal definition of “self-employed”. Fishers could be employees and not have a fixed wage; they could be remunerated through a share of the catch and still be an employee.

180. The expert from the Government of Spain supported the deletion proposed by the Government Vice-Chairperson. The term “self-employed” varied a great deal from country to country and thus the only way to come up with a consensus text was through the proposal of the Government group, namely to eliminate the reference to “self-employed”.

181. The expert from the Government of Brazil stated that in Brazil the majority of fishers were in the informal sector. The text as it was written was problematic in the context of reducing informality in the fishing sector.

182. The expert from the Government of Norway fully agreed with the proposal to amend. He said that the problem with the current formulation was that it seemed to make a legal link

between receiving a share of the catch and self-employment. He agreed with Brazil and Spain and asked to see the term “self-employed” removed from subparagraph (b).

183. The observer expert from the Government of Canada clarified that the majority of the Governments were in agreement with the deletion.

184. The expert from the Government of Brazil spoke on behalf of a tripartite working group that proposed deleting the first two sentences in subparagraph (b), and that the phrase “with the exception of the exclusion provided in Article 19” should be added to the end of the first sentence after the bullet points.

185. Subparagraph (b) was adopted as amended.

Subparagraph (c)

186. Subparagraph (c) was adopted without change.

Subparagraph (d)

187. The Employer Vice-Chairperson requested clarification of the last sentence of the subparagraph.

188. The expert from the Government of Morocco noted that this subparagraph also appeared to address fishers who were paid with a share of the catch.

189. The observer expert from the Government of Denmark proposed that the sentence read: “Such arrangements should not result in the lack of an agreement.”

190. The Employer Vice-Chairperson and the Worker Vice-Chairperson supported this formulation.

191. The expert from the Government of Norway supported the amendment.

192. Subparagraph (d) was adopted as amended.

Subparagraph (e)

193. Subparagraph (e) was adopted without change.

194. Paragraph 44 was adopted as amended.

Paragraph 45

195. The Employer Vice-Chairperson inquired what connection the paragraph had with the provisions of Convention No. 188.

196. The Government Vice-Chairperson stated that labour inspectors did not always have the competence to interpret the nature of employment relationships. Such issues might require legal interpretation and a judicial opinion.

197. The expert from the Government of Norway noted that the Guidelines should address gaps in Convention No. 188. While the matter of employment relationships was important, including for taxation reasons, it remained unclear how this issue was related to the Convention. The Convention recognized all kinds of employment relationships and catered for these by requiring a written “work agreement”, a specific term used rather than “employment agreement”, so that fishers of any status had a written agreement.

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198. A representative of the Office pointed out that in some jurisdictions, labour inspectors' duties included identifying employment relationships, as this matter determined the application of national legislation. Even when their mandate was focused on occupational safety and health, inspectors often had to examine employment relationships in order to determine which laws applied to specific workers.
199. The Employer Vice-Chairperson agreed with Norway that the point of the Guidelines was to talk about inspections as they related to Convention No. 188. However, he provided the example of social security protection as an instance whereby it would be important for the inspector to know whether an individual was self-employed. He noted that paragraph 34 of Convention No. 188 referred to social security rights of both self-employed and employed fishers. Annex II of the Convention also touched on issues which were dependent on the employment relationship, such as annual leave. These provisions might be suitable references to anchor the proposed paragraph.
200. The observer expert from the Government of the United Kingdom expressed concern that paragraph 45 emphasized the inspector's role in determining the nature of employment. In the United Kingdom and other countries which had case law, this would pose a problem. He proposed deleting the entire paragraph, or alternatively, that at least the first sentence should be deleted.
201. The observer expert from the Government of Denmark shared the concerns of the United Kingdom.
202. The expert from the Government of Norway mentioned that the language of paragraph 45 identified that the nature of the employment relationship could be a problem, yet Convention No. 188 did not say so. He suggested that if paragraph 45 could not be deleted, then it should be guided more towards the labour inspector.
203. The observer expert from the Government of the Philippines expressed support for the comments from Norway. She suggested that since paragraph 44(b) already identified this task, paragraph 45 might be unnecessary.
204. The expert from the Government of Brazil spoke on behalf of a tripartite working group that suggested redrafting the first two sentences and retaining the footnote and the last sentence. The working group believed that, with these changes, the text was sufficiently flexible given the wide variation between different countries.
205. Paragraph 45 was adopted as amended.

Paragraph 46

206. Paragraph 46 was adopted without change.

2.3. Types of flag State competent authority responsible for the inspection of working and living conditions on board fishing vessels

Paragraph 47

207. Paragraph 47 was adopted without change.

Paragraph 48

- 208.** The observer expert from the Government of the Netherlands opposed the wording, “to ensure better compliance and enforcement”, and suggested inserting instead “for”. He also suggested deleting “Existing policies and practices” from the following sentence, as the Government of the Netherlands was already carrying out good inspections. Following further discussion, the proposal was subamended so that the words “Existing policies and practices” were replaced with the words “Inspection policies and practices”.
- 209.** The observer expert from the Government of the Philippines supported the proposed amendment, as subamended.
- 210.** The Employer Vice-Chairperson supported the proposed amendment, as subamended.
- 211.** Paragraph 48 was adopted as amended.

Paragraphs 49 and 50

- 212.** Paragraphs 49 and 50 were adopted without change.

2.3.1. *Maritime and fisheries agencies*

Paragraph 51

- 213.** The Employer Vice-Chairperson stated that while he considered the second bullet point to be important, he could not find a link between this bullet point and the text of Convention No. 188.
- 214.** The Worker Vice-Chairperson stated that he agreed with the paragraph as proposed by the Office.
- 215.** The expert from the Government of Norway stated that the reference to certification in the first line was unnecessary, since it defined what was already the role of the government. He suggested deleting that reference. With regard to the second bullet point, the Government of Norway was fine with the text as proposed by the Office.
- 216.** The observer expert from the Government of the Netherlands noted that paragraph 34 already covered the topic of the second bullet point.
- 217.** The Chairperson proposed deleting the second bullet point.
- 218.** The expert from the Government of Argentina emphasized that the focus of the Meeting should be to guarantee that workers were protected, and that the word “certificate” could be a reference to other international Conventions dealing with safety.
- 219.** The expert from the Government of Norway mentioned that safety certificates were not an international requirement and were not presently enforced internationally. He supported maintaining the language used in Convention No. 188, in order to avoid confusion.
- 220.** The observer expert from the Government of Denmark suggested deleting the entire opening phrase.
- 221.** Paragraph 51 was adopted as amended.

2.3.2. Labour inspectorates

Paragraph 52

- 222.** The Government Vice-Chairperson said that paragraph 52 was wrong because it is for parliaments to determine which competent authorities are responsible for labour inspection.
- 223.** The Employer Secretary proposed replacing the word “establish” with “implement”.
- 224.** The expert from the Government of Argentina noted that with that modification, the meaning of the paragraph would change.
- 225.** The observer expert from the Government of the Netherlands said that Convention No. 81 does not necessarily apply to the fishing sector but the proposal would make its application to the sector mandatory.
- 226.** The expert from the Government of Norway agreed. He said that the text made the relationship between Convention No. 81 and Convention No. 188 unclear. He further added that the paragraph should not establish national laws and regulations but encourage implementation of inspection systems that were in compliance with Convention No. 81.
- 227.** The observer expert from the Government of Denmark suggested using a general term to designate that the competent authorities should establish national laws and regulations concerning “labour inspectorates”.
- 228.** A representative of the Office proposed a new paragraph as follows: “According to Convention No. 81, labour inspectorates are the competent authorities established to promote compliance with national labour laws and regulations.”
- 229.** The Employer Vice-Chairperson agreed with the new sentence.
- 230.** The observer expert from the Government of Denmark noted that paragraphs 52 and 53 were explanatory notes introducing paragraphs 54 and 55 and suggested using them as footnotes and focused on paragraph 54.
- 231.** Speaking also on behalf of the expert from the Government of Argentina, the expert from the Government of Spain agreed with the rewording proposed by the Office as it reflected the spirit of Convention No. 81.
- 232.** The observer expert from the Government of Chile agreed with the proposed rewording of the sentence and suggested replacing the word “promote” with “ensure”.
- 233.** The experts from the Governments of Spain and Brazil and the observer expert from the Government of the Netherlands preferred the original version of the new sentence.
- 234.** A representative of the Office proposed using “secure” instead of “promote” or “ensure”.
- 235.** Paragraph 52 was adopted as amended.

Paragraph 53

- 236.** Paragraph 53 was adopted without change.

Paragraph 54

237. The observer expert from the Government of Denmark pointed out that the Meeting did not have any mandate to discuss Convention No. 81 and that the government authorities involved in inspecting fishing vessels in some countries may not have authority within the scope of Convention No. 81.

238. Paragraph 54 was adopted without change.

Paragraph 55

239. Paragraph 55 was adopted without change.

2.3.3. Other government agencies

Paragraph 56

240. Paragraph 56 was adopted without change.

2.3.4. Recognized organizations

Paragraph 57

241. The Employer Vice-Chairperson proposed that a footnote concerning the meaning of “recognized organization”, drawn from Article 42 of the Convention, be added to the paragraph.

242. Paragraph 57 was adopted with the new footnote.

Paragraph 58

243. Paragraph 58 was adopted without change.

2.3.5. Avoiding a conflict of interest with respect to responsibilities for inspection of living and working conditions and other responsibilities

Paragraph 59

244. Paragraph 59 was adopted without change.

2.4. Responsibilities and policies of the flag State authority or authorities competent to carry out inspections of working and living conditions on board fishing vessels

Paragraph 60

245. The Employer Vice-Chairperson said that because there were different understandings of the relevance of Convention No. 81, he requested that the Office provide an opinion as to whether Convention No. 81 applied to fishing.

246. A representative of the Legal Adviser to the Office provided a legal opinion explaining the applicability of Convention No. 81 to the fishing sector (see appendix to this report). In summary, Convention No. 81 covered all sectors, with only mining and transport being subject to possible exemptions. The term “industrial workplaces” covered the fishing sector. The only sector that was not covered by Convention No. 81 was the agricultural sector. In fact, a number of member States had applied Convention No. 81 to the fishing sector. Therefore, for the purpose of the Guidelines, Convention No. 81 was relevant to the fishing sector, and should be used as a reference.

247. The expert from the Government of Morocco suggested adding a sentence at the end of the paragraph regarding the relevance of Convention No. 81. The footnote would direct the reader to the Meeting report where the full legal statement on this matter would be available.

248. Paragraph 60 was adopted as amended.

Paragraph 61

249. The Employer Vice-Chairperson stated for the record that guidance in the text providing that flag States may use the experiences gained from inspections carried out as part of their responsibilities under the Maritime Labour Convention, 2006 (MLC, 2006), was acceptable but only within the scope of Convention No. 188.

250. Paragraph 61 was adopted without change.

Paragraph 62

251. The observer expert from the Government of the Netherlands suggested deleting the word “including” in the first sentence.

252. The expert from the Government of Norway requested clarification from the Office on the purpose of the paragraph.

253. A representative of the Office explained that the purpose of the paragraph was to emphasize the importance of establishing an effective system of enforcement and establishing a mechanism for coordination among authorities when several were involved. In keeping with the intervention from the experts from the Government of the Netherlands, he suggested removing the phrase “including with regard to compliance and enforcement”.

254. Paragraph 62 was adopted as amended.

Paragraph 63

255. Paragraph 63 was adopted without change.

2.4.1. *Defining the functions and management of the inspection system*

Paragraph 64

Subparagraph (a)

256. A representative of the Office suggested deleting the word “labour” from subparagraph (a), as inspectors may not necessarily be “labour inspectors”.

257. Subparagraph (a) was adopted as amended.

Subparagraph (c)

258. The Government Vice-Chairperson noted that there was a language inconsistency between the heading and the beginning of subparagraph (c). He suggested rewording the subparagraph.

259. A representative of the Office explained that this subparagraph drew from Article 3 of Convention No. 81. He proposed amending it by replacing “competent authority” with another term.

260. The Chairperson suggested that the term “relevant authority” would be appropriate.

261. The Worker and Employer Vice-Chairpersons agreed with the Chairperson.

262. Paragraph 64 was adopted as amended.

2.4.2. Inspectors

2.4.2.1. General

Paragraph 65

263. The observer expert from the Government of the Netherlands requested clarification on the purpose of having added the phrase “including inspections at sea”.

264. A representative of the Office explained that the intention of this phrase was to include situations where vessels did not come into the flag State’s port and therefore had to be inspected while at sea.

265. Paragraph 65 was adopted without change.

Paragraphs 66–68

266. Paragraphs 66–68 were adopted without change.

Paragraph 69

267. The Employer Vice-Chairperson said that it was impossible to completely guarantee the safety of inspectors.

268. A number of Government experts expressed concern over the second sentence, particularly regarding when police protection would be required and the role of inspectors in terms of identifying criminal activities. Furthermore, it was highlighted that dealing with both the safety of inspectors and issues such as human trafficking in the same paragraph was too complicated.

269. The observer expert from the Government of the Netherlands suggested adding “the risk evaluation for the inspectors should address this” to the second sentence.

270. The expert from the Government of Morocco suggested deleting the second sentence because it was not applicable.

271. The Worker Vice-Chairperson and the Chairperson suggested the following amendment: “The risk evaluation for inspectors should address their personal safety, security and health and the inspectors should have access to protection services.” They stressed that they had attempted to highlight particularly dangerous situations, which included criminal activities such as human trafficking and forced labour.

272. The Employer Vice-Chairperson was disappointed that the text concerning human trafficking and forced labour was not kept considering the human pain that they caused.

273. Paragraph 69 was adopted as amended.

Paragraphs 70 and 71

274. Paragraphs 70 and 71 were adopted without change.

Paragraph 72

275. The expert from the Government of Norway noted that the text in paragraph 72 had been drawn from the MLC, 2006, which in turn was taken from the Labour Inspection (Seafarers) Convention, 1996 (No. 178), and therefore had already been adopted in other tripartite meetings.

Subparagraph (a)

276. A representative of the Office suggested that in subparagraph (a) the word “skipper” should be used instead of “master”.

277. Subparagraph (a) was adopted as amended.

Subparagraph (b)

278. The expert from the Government of Spain felt that this subparagraph contradicted Article 12 of Convention No. 81, which said that labour inspectors could interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions.

279. Subparagraph (b) was adopted without change.

Subparagraph (e)

280. The Employer Vice-Chairperson said that he preferred regular inspections to take place in port instead of at sea. He asked what the “provisions” referred to.

281. A representative of the Office suggested changing the word “provisions” to “food”.

282. The Worker Vice-Chairperson noted that certain vessels might not call in port for many years and that in those cases inspections should be conducted at sea.

283. Subparagraph (e) was adopted as amended.

Subparagraph (h)

284. The observer expert from the Government of the United Kingdom stated that the responsibility should not be placed on inspectors to report incidents because it might not be in their power to do so.

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- 285.** The expert from the Government of Morocco agreed, saying that the vessel owners were responsible for reporting these incidents.
- 286.** The Employer Vice-Chairperson and the expert from the Government of Norway agreed.
- 287.** The Chairperson stated that sometimes the fishing vessel owner may also have forgotten, sometimes deliberately, to report an incident. The Worker Vice-Chairperson affirmed the Chairperson's comment.
- 288.** The expert from the Government of Norway agreed that the wording should stay in. The fact that the inspector had the obligation to report incidents did not take away the responsibility of the employer to do the same thing; the two obligations did not exclude each other. Vessel owners had the reporting responsibility in any case.
- 289.** The Chairperson noted that the social partners wanted to keep the wording as it was.
- 290.** The observer expert from the Government of the United Kingdom asked for it to be noted in the report that they had made that statement. He recognized that sometimes something may come to the inspector's attention, but that their concern was that it would then be up to the inspector to discover things although it may not be in their power to do so.
- 291.** Subparagraph (h) was adopted without change.
- 292.** Paragraph 72 was adopted as amended.

2.4.2.2. Training

Paragraph 73

- 293.** The observer expert from the Government of the Philippines suggested replacing the word "ongoing" with "continuing", and "additional" with "specialized". This proposal was subamended so that the first sentence would read "Inspectors should receive proper and continuing training."
- 294.** The chapeau of paragraph 73 was adopted as subamended.

Subparagraphs (a), (b) and (c)

- 295.** The Meeting discussed the content of these three subparagraphs in detail, highlighting concerns regarding the references to labour inspectors, fishing laws and Convention No. 188, among other issues.
- 296.** Upon request, the Office redrafted the three subparagraphs based on the discussion.
- 297.** The Worker Vice-Chairperson agreed with the new proposed text.
- 298.** The Government Vice-Chairperson also accepted the new proposed text.
- 299.** The expert of the Government of Norway indicated that he could agree with the proposed new text, but wanted clarification regarding the distinction between "pay records" and "payment systems" in (a) and (b), respectively.
- 300.** A representative of the Office explained that the formulation in (a) on payment records referred to controls on whether the fishers had been paid, while (b) put emphasis on the specific payment systems in the fishing industry.

301. Paragraph 73 was adopted as amended.

Paragraph 74

302. Paragraph 74 was adopted without change.

2.4.2.3. Reporting

Paragraph 75

303. The expert from the Government of Norway suggested replacing “visits” with “inspections”. The Meeting agreed to adopt this change as a global amendment throughout the document.

304. Paragraph 75 was adopted as amended.

Paragraph 76

305. The observer expert from the Government of the Netherlands suggested that a copy of the report should only be provided to the skippers. Provision of reports to safety and health representatives should be optional and that text should be deleted from the paragraph.

306. The Employer Vice-Chairperson disagreed since it was the responsibility of fishing vessel owners to take action based on the report and therefore they should be given a copy.

307. The Government Vice-Chairperson provided the Government group’s opinion that the inspection reports should be given to the skipper only, not to all the people listed, as this was in accordance with Convention No. 188.

308. The Employer Vice-Chairperson requested a concrete reference to the Convention that would provide for reports to be only given to skippers. He insisted that reports needed to be given to the fishing vessel owners as well because they were responsible for taking action based on the report.

309. The expert from the Government of Norway stated it was the responsibility of the fishing vessel owner to distribute copies of the inspection report within their organization. This was not a responsibility of the inspector or administration. According to the MLC, 2006, the master or skipper was the first recipient of the report.

310. The Employer Vice-Chairperson explained that although Convention No. 188 did not call for the provision of inspection reports to the vessel owners, Article 8 established the owner’s responsibility to take action. He further clarified that skippers normally served as the representative of the fishing vessel owner, and skippers may be the only ones present on the vessel during the inspection. He reiterated his disagreement with the exclusion of owners as recipients of the report.

311. The Worker Vice-Chairperson agreed that reference to the safety and health representative could be deleted.

312. The Employer Vice-Chairperson could accept this suggestion because it was the fishing vessel owners’ responsibility to inform staff and the safety and health representatives.

313. The observer expert from the Government of the Netherlands disagreed with this proposal. In his view it should be a choice and not compulsory as to whom the report should be sent.

314. Paragraph 76 was adopted as amended.

2.4.3. Central services and data collection and recording

Paragraph 77

315. The Government Vice-Chairperson proposed deleting “central” considering that the data collected should be not centralized and it would not be necessary.

316. Paragraph 77 was adopted as amended.

Paragraph 78

317. The Employer Vice-Chairperson noted that the annual report should be anonymous with regards to the crew, skipper and shipowner. Annual inspection reports were important to identify lessons learned but the privacy of those involved should be protected, and offered an amendment to the paragraph.

318. Paragraph 78 was adopted as amended.

Paragraph 79

319. The Government Vice-Chairperson proposed the deletion of “Central” from the beginning of the paragraph. Competent authorities may organize the data in a variety of ways.

320. The Employer Vice-Chairperson pointed out the need to have a centralized access point for the public, where the data are stored is not important.

321. The expert from the Government of Norway identified that the main purpose of the paragraph was to ensure that the services were provided and not to specify the location of such services. He added that governments needed flexibility to allow efficiency.

322. The observer expert of the Government of the United Kingdom explained that, practically, a physical central point of access would not be feasible considering the involvement of different authorities.

323. The expert from the Government of Morocco made reference to the difficulties of using the Internet in some countries as a central point of access for the government and considered that a website to centralize all information may not be practical for all countries.

324. The Worker Vice-Chairperson agreed with the Employers’ group that the important issue was that the information could be accessed centrally.

325. The first line of paragraph 79 was amended to change the first words to “Services for central access, where available ...”.

Subparagraph (g)

326. The Government Vice-Chairperson indicated that “child labour authorities” may not be the appropriate wording.

327. The observer expert of the Government of Denmark proposed replacing the term “child labour authorities” with “authorities responsible for child labour”.

328. The Worker Vice-Chairperson suggested “dealing with” instead of “responsible for”.

329. Subparagraph (g) was adopted as amended.

330. Paragraph 79 was adopted as amended.

2.4.4. *Establishing the types and cycles of inspections*

Paragraph 80

331. The Employer Vice-Chairperson agreed with the language as drafted and observed that Article 41(2) of Convention No. 188 defined five years as the maximum period of validity for a document certifying inspection under the Convention.

332. Paragraph 80 was adopted without change.

Paragraph 81

333. The observer expert from the Government of Jamaica asked for clarification concerning paragraph 81. She wanted to know if paragraphs 80 and 81 were used as a chapeau for the whole section. She asked if those paragraphs defined the type of inspections and who was supposed to be notified.

334. The observer expert from the Government of Denmark shared the observations of the observer expert from the Government of Jamaica. He said that the vessel owner and the skipper should be informed of the inspections.

335. A representative of the Office clarified that the first two paragraphs of section 2.4.4 informed the reader why and how the inspections should be conducted. Paragraph 82 provided more details about the different types of inspection.

336. The observer expert from the Government of the Netherlands proposed deleting “the vessel owner and the skipper”.

337. The Employer Vice-Chairperson said that the employer must be informed of inspections.

338. The Worker Vice-Chairperson agreed with the proposal from the observer expert from the Government of the Netherlands. He further added that it was not possible to know in advance who would be the skipper of the vessel and that the inspections should be established, whether or not they were routine.

339. The expert from the Government of Norway proposed to maintain “the skipper” and add “if necessary”.

340. Paragraph 81 was adopted as amended.

Paragraph 82

Subparagraph (a)

341. The observer expert from the Government of the Netherlands proposed deleting the term “routine” and adding “related to the Convention No. 188” in subparagraph (a). He also suggested clarifying that the routine inspections were carried out in port.

342. The expert from the Government of Spain stated that the proposal was not acceptable because the inspections related to the valid document referred to in Convention No. 188

should be announced in advance, whereas other types of inspections such as spot checks were better unannounced. He added that the text should also give the freedom to inspect in port or at sea.

- 343.** The expert from the Government of Norway agreed with Spain. He added that the problem was related to the term “routine” and proposed to replace it by “regular” or “ordinary”. He agreed with the fact that paragraph 82 should be consistent with paragraph 81 but not repetitive.
- 344.** The observer expert from the Government of Denmark said he would keep the original text, without the Netherlands’ amendment. Concerning the issue of the frequency, the interval between two inspections should be decided by the law and that a better term would be “periodic”.
- 345.** The Employer Vice-Chairperson wondered whether it would be better for the governments to allow flexibility regarding where the inspections were conducted.
- 346.** The Worker Vice-Chairperson did not agree with the proposal from the Netherlands but could accept the proposal of Norway. He pointed out the fact that some vessels remained at sea for years. If they limited the place of inspections only to ports, then those vessels would not be inspected.
- 347.** The observer expert from the Government of the Philippines suggested that governments needed flexibility regarding the frequency of inspections and where they are conducted.
- 348.** The observer expert from the Government of the Netherlands said that in his country, vessels return to the port. There was a difference between inspections conducted for the purpose of certification and inspections for enforcement.
- 349.** The Chairperson reminded the observer expert from the Government of the Netherlands that they were preparing an international document which should be relevant to all countries.
- 350.** The expert from the Government of Morocco pointed out that in French, the terms “regular” and “routine” were quite similar. He preferred the term “periodic”. He added that it was important to not limit inspections in the port because, for instance, they should be able to check whether the crew list accurately reflected who was working on board.
- 351.** The expert from the Government of Norway indicated that “periodic” would be the better term. He added that periodic inspections were planned well in advance and would be conducted while the vessel was in port since that is the safest place for this type of inspection. Therefore, he suggested amending the text and adding “normally carried out in ports”, which could also include the possibility of carrying them out at sea.
- 352.** The Worker Vice-Chairperson was concerned about the proposal, since inspections should be carried out more frequently at sea to avoid accidents while in operation at sea.
- 353.** The Employer Vice-Chairperson considered that the last sentence covered abnormal cases. The proposal for new language should be included as a separate sentence covering periodic inspections normally carried out in port.
- 354.** Subparagraph (a) was adopted as amended.

Subparagraph (b)

- 355.** The expert from the Government of Brazil suggested changing “should” to “could” for more flexibility.
- 356.** The expert from the Government of Norway proposed adding text covering both subparagraphs (b) and (c). It would be useful to use risk assessment to assist with targeting inspections towards those vessels that were more likely to have problems. Thus it would be a more efficient use of resources and would reward good vessel owners with fewer inspections.
- 357.** The expert from the Government of Spain stated that there needed to be flexibility on whether to announce inspections or not.
- 358.** The expert from the Government of Argentina, as with Brazil and Spain, considered that an amendment should be made to subparagraph (b) to clarify that there was some flexibility.
- 359.** The expert from the Government of Norway indicated that his understanding of “announced” in subparagraph (b) was that the competent authority was making a general announcement that they would be carrying out inspections, and not necessarily giving notice to a particular vessel owner.
- 360.** The Chairperson noted that there was some confusion and proposed adding “depending on the situation that has been identified” at the end of subparagraph (b).
- 361.** The expert from the Government of Brazil considered that by changing “should” to “could”, it would cover all possibilities. He preferred the original text without adding the new language on risk assessment.
- 362.** The Employer Vice-Chairperson preferred “should”. He was concerned that including language recommending risk assessment would restrict the flag State. He further added that announcements should be made generally, and suggested adding “generally” after “announced” in the text.
- 363.** The expert from the Government of Norway clarified that adding a reference to risk assessment methodology was not meant to limit the flexibility of the flag State. However, if the Meeting did not find it useful, he agreed to withdraw his proposal.
- 364.** The Employer Vice-Chairperson and the Worker Vice-Chairperson agreed with adding the new phrase and that the reference to risk assessment was unnecessary.
- 365.** Subparagraph (b) was adopted as amended.

Subparagraphs (c) and (d)

- 366.** Subparagraphs (c) and (d) were adopted without change.

Paragraph 83

- 367.** The observer expert from the Government of Denmark proposed deleting the phrase regarding team inspections since there should be procedures in all types of inspections.
- 368.** The Worker Vice-Chairperson agreed with the proposed amendment but noted that there was a typo in the text, as “central authorities” was used instead of “competent authorities”.

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- 369.** The observer expert from the Government of Indonesia noted that in some countries inspection teams could involve different government departments. Therefore, he stated that he would not agree with the proposed deletion.
- 370.** The Worker Vice-Chairperson proposed deleting only the first part of the second sentence, thus the competent authority should establish clear procedures for such inspections.
- 371.** Paragraph 83 was adopted as amended.

Paragraph 84

- 372.** The Government Vice-Chairperson proposed introducing an element on sea survival training to bullet point 2 because it would be important for inspectors to understand survival at sea.
- 373.** The observer expert of the Government of the United Kingdom proposed additional language for bullet point 2 regarding a sea survival course.
- 374.** The Employer Vice-Chairperson hoped that all inspectors would be trained based on basic safety requirements of the STCW-F.
- 375.** The observer representative of the IMO observed that there was already specific wording in Chapter 3 of the STCW-F on basic training for all sea personnel.
- 376.** The observer expert of the Government of the United Kingdom asked whether the entire basic training package was needed for someone just boarding the vessel to conduct an inspection, since it included firefighting and first aid.
- 377.** The observer experts from the Governments of Denmark and the Netherlands preferred the wider description.
- 378.** The expert from the Government of Brazil proposed rewording the amendment to the beginning of paragraph 84 to “suggest” instead of “ensure” to account for the fact that some countries may have difficulty providing the whole basic training package to all inspectors.
- 379.** The Employer Vice-Chairperson remarked that fishing vessel owners would feel much more at ease knowing that inspectors coming aboard their vessels had proper safety training similar to the fishers, and preferred simply “should” rather than “should ensure”.
- 380.** The Chairperson said that from his experience in South Africa, inspectors were not expected to undertake the first-aid course as there would be others on the vessel that were trained in first aid.
- 381.** The expert from the Government of Norway agreed with the Employer Vice-Chairperson. Inspections carried out at sea created special challenges. This was not an issue for Norway because all inspectors in Norway have past experience at sea. He preferred text that did not differ from safety training as normally understood in the fishing industry because safety courses came in packages from training institutions and tailored courses would drive up costs.
- 382.** The Chairperson suggested that the Guidelines were understood as minimum standards and that it was up to the competent authority to increase them.

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- 383.** The expert from the Government of Brazil agreed with Norway but stated that the reality of the world was that the Convention had to fit with the circumstances of all countries.
- 384.** The Chairperson suggested inserting a footnote referring to STCW–F basic safety training requirements.
- 385.** The Employer Vice-Chairperson agreed with the proposal for a footnote, with the stipulation that the Work in Fishing Recommendation, 2007 (No. 199), Paragraph 11, provided that Members should take into account generally accepted international standards concerning training and competencies of fishers in determining the competencies required for skippers, mates, engineers and other persons working on board fishing vessels.
- 386.** The observer expert from the Government of the United Kingdom clarified that when he suggested his amendment he made the assumption that inspectors with a maritime background had the STCW–F basic safety training and that his amendment was aimed at those inspectors without a maritime background.
- 387.** The observer expert from the Government of the Netherlands referred to Paragraph 11 of Recommendation No. 199 stating that training was for persons working on board fishing vessels, and pointed out that the Guidelines referred to when an inspector had to board a ship at sea. He did not think it amounted to requiring anyone working on board to have STCW–F basic safety training, including maintenance and refrigerating engineers.
- 388.** The Employer Vice-Chairperson said that the STCW–F very clearly provides that all fishing vessel personnel must have basic personal safety training.
- 389.** The Chairperson noted that not all countries have ratified the STCW–F, and asked whether all could agree on the paragraph as amended with the footnote included.
- 390.** The observer expert from the Government of Indonesia requested clarification of what was meant in the paragraph by “mariners”.
- 391.** The Chairperson explained that the paragraph used “mariners” to convey the understanding that not all inspectors were mariners and some may not have boarded a vessel in their lives. He proposed replacing the term with “seafarers or fishers”.
- 392.** Paragraph 84 was adopted as amended.

2.4.5. Issuing valid documents

Paragraph 85

- 393.** Paragraph 85 was adopted without change.

Paragraph 86

- 394.** The Employer Vice-Chairperson pointed out that the reference in this paragraph required that the Meeting review Appendix II regarding the contents of a valid document. The primary issue that needed to be discussed within the Appendix was how the inspectors should determine whether the social security requirements of Convention No. 188 were fulfilled since those provisions would be defined by the laws of the flag State. Further discussion of Appendix II between the social partners would be helpful to address the text of paragraph 86.

395. The Worker Vice-Chairperson agreed that the issue of social security was complicated during the negotiations regarding Convention No. 188 and that he would discuss the issue both with his own group and with the Employers' group.

396. The Government Vice-Chairperson and the expert from the Government of Norway agreed that it was important to determine the appropriate language for the second bullet point and Appendix II.

397. The Government Vice-Chairperson also suggested adding "or invalidating" after "procedures for withdrawing" to the fourth bullet point.

398. The observer expert from the Government of Jamaica pointed out that Appendix II was a list of matters to be inspected before a valid document should be issued.

399. A representative of the Office proposed a new sentence for the second bullet point reflecting the discussion.

400. Paragraph 86 and Appendix II were adopted as amended.

Paragraph 87

401. Paragraph 87 was adopted without change.

2.4.6. *Coordination between relevant national authorities*

Paragraph 88

402. Paragraph 88 was adopted without change.

Paragraph 89

403. The Government Vice-Chairperson proposed deleting the last sentence of the paragraph.

404. Paragraph 89 was adopted as amended.

Paragraph 90

405. Paragraph 90 was adopted without change.

Paragraph 91

406. The Government Vice-Chairperson proposed replacing "coordination" with "cooperation".

407. Paragraph 91 was adopted as amended.

Paragraph 92

408. The Government Vice-Chairperson suggested deleting this paragraph.

409. The Employer Vice-Chairperson highlighted that the paragraph dealt with important issues such as slavery, child labour and forced labour.

410. The Chairperson proposed creating a new subsection, 2.4.6bis, entitled “Coordination between relevant international authorities”, which would encompass both paragraphs 91 and 92.

411. New subsection 2.4.6bis and paragraph 92 were adopted.

2.4.7. *Joint inspections of working and living conditions on board fishing vessels*

Paragraph 93

412. The Employer Vice-Chairperson proposed deleting “especially on a small vessel”.

413. The Government Vice-Chairperson proposed adding “or any fisher” after “skipper”.

414. Paragraph 93 was adopted as amended.

Paragraph 94

415. The Government Vice-Chairperson suggested deleting the last two sentences because they were not relevant.

416. Paragraph 94 was adopted as amended.

2.4.8. *Harmonization of inspections*

Paragraph 95

417. The Employer Vice-Chairperson proposed deleting the last sentence.

418. Paragraph 95 was adopted as amended.

2.4.9. *Legal and technical guidance for the fishing sector*

Paragraph 96

419. Paragraph 96 was adopted without change.

2.4.10. *Consultations and communication with the fishing sector*

Paragraph 97

420. Paragraph 97 was adopted without change.

2.4.11. *Private compliance initiatives*

Paragraph 98

421. The Employer Vice-Chairperson proposed deleting the paragraph because it was outside the scope of Convention No. 188.

422. Subsection 2.4.11 and paragraph 98 were deleted.

2.4.12. *Establishment of penalties and corrective measures*

Paragraph 99

423. The Employer Vice-Chairperson pointed out that the wording “equivalent to those applied in commerce and industry” was not supported by the Convention and proposed its deletion.

424. Paragraph 99 was adopted as amended.

2.4.13. *Establishment of complaint procedures*

Paragraph 100

425. Paragraph 100 was adopted without change.

2.4.14. *Violations of fundamental principles and rights at work*

Paragraphs 101 and 102

426. Paragraphs 101 and 102 were adopted without change.

Paragraph 103

427. The observer expert from the Government of Denmark asked if the accuracy of the information related to INTERPOL could be verified, in particular regarding the development of a suspect vessel database.

428. In response to the request from the observer expert from the Government of Denmark related to the INTERPOL suspect vessel database, the Office proposed a new sentence referring to the INTERPOL analytical work file which will capture information from law enforcement on a wide variety of environmental and related crimes including human trafficking in the fisheries sector.

429. Paragraph 103 was adopted as amended.

Paragraphs 104–107

430. Paragraphs 104–107 were adopted without change.

3. On board inspection of working and living conditions on fishing vessels

3.1. General considerations

Paragraph 108

431. Paragraph 108 was adopted without change.

Paragraph 109

- 432.** The observer expert from the Government of the United Kingdom proposed adding “previous inspection reports” to the list, and replacing “it is necessary” with “measures to ensure” in the second bullet point.
- 433.** The Chairperson proposed changing all instances of “visit” to “inspection”.
- 434.** Paragraph 109 was adopted as amended.

New paragraph 109bis

- 435.** The Employer Vice-Chairperson requested that their original proposal, related to privacy of interviews with vessel owners and skippers, be added as a new paragraph, 109bis: “Wherever in this Chapter interviews are called for, they should be undertaken in private.”
- 436.** The Worker Vice-Chairperson suggested, as a result of this additional paragraph, that instances of the phrase “in private” should be deleted in the entire section as consequential amendments.
- 437.** The Government Vice-Chairperson suggested replacing “undertaken” with “conducted”.
- 438.** The Meeting discussed the addition of this paragraph in detail. Concerns were raised regarding whether it contradicted and was incompatible with Article 12 of Convention No. 81.
- 439.** The expert from the Government of Spain indicated that one of the fundamental functions of labour inspectors, set out in Article 12 of Convention No. 81, was to carry out interviews in front of witnesses, if they chose to. He expressed concern that potential contradictions between these Guidelines and Convention No. 81 could arise. The definition of “private” was also questioned, and whether an interview with witnesses present was considered private or public.
- 440.** A representative of the Legal Adviser to the Office stated that there were obvious contradictions and incompatibilities between the two provisions. Member States that had decided to apply the general labour inspection system to fishing and ratified Convention No. 81 would encounter inconsistencies. He clarified that interviews conducted in the presence of witnesses were not necessarily considered public. However, he highlighted that Convention No. 81 would always take precedence over the Guidelines. A member State could not be obliged to change its national laws when implementing the Guidelines. He proposed two possible additions to the text: “unless national legislation provides otherwise” or “unless the presence of witnesses is required under law”. He stressed that Article 12(1)(c)(i) of Convention No. 81 stated that labour inspectors should be empowered to conduct interviews alone or in the presence of witnesses, meaning that the presence of witnesses was not required. He further explained that the term “required” in this context meant that it was required by a labour inspector at the time, unless the presence of witnesses was required under national laws.
- 441.** The Employer Vice-Chairperson proposed changing “law” to “national law”.
- 442.** The expert from the Government of Argentina felt that the text differed from the requirements of Article 12 of Convention No. 81.
- 443.** The Worker Vice-Chairperson suggested that a footnote be included with reference to Article 12(1)(c)(i) of Convention No. 81.

444. New paragraph 109bis was adopted including the footnote.

3.2. Specific issues and areas of on-board inspection

Paragraph 110

445. Paragraph 110 was adopted without change.

New paragraph 110bis

446. The observer expert from the Government of Denmark recommended including the following text: “Where in this chapter, indicative sources of information and examples of deficiencies are provided, inspectors should pay attention to them and whether these may or may not apply to all fishing vessels, fishers, or working relationships.”

447. The new paragraph 110bis was adopted.

3.2.1. *Determination by inspectors of the employment or working relationships on board fishing vessels*

Paragraphs 111 and 112

448. Paragraphs 111 and 112 were accepted without change.

3.2.1.1. Indicative sources of information for inspectors

449. The expert from the Government of Argentina suggested adding “vessel registration” to the list, explaining that it was important to clearly identify the employer so that the inspection could be directed towards that person.

450. The Chairperson suggested that “certificate of registration” be used instead of “vessel registration”.

451. The subsection was adopted as amended.

3.2.1.2. Interviews by inspectors

452. The subsection was adopted without change.

3.2.1.3. Examples of deficiencies

453. Several participants in the Meeting expressed concern regarding the examples given in this subsection. The Employer Vice-Chairperson did not agree with the Office that these were indeed deficiencies. After several suggestions were put forward to amend the content of this subsection, the Meeting decided to delete it altogether.

454. The subsection was deleted.

3.2.2. Responsibilities of fishing vessel owners, skippers and fishers (Article 8)

Paragraph 113

455. Paragraph 113 was adopted without change.

3.2.2.1. Basic requirements of Convention No. 188

456. The subsection was adopted without change.

3.2.2.2. Indicative sources of information for inspectors

457. The observer expert from the Government of the United Kingdom suggested adding “previous inspection reports” to the list.

458. The subsection was adopted as amended.

3.2.2.3. Interviews by inspectors

459. The subsection was adopted with a consequential amendment, as noted earlier, to delete the words “in private”.

3.2.2.4. Reports by fisheries observers

460. The Meeting discussed the concerns about the example presented in this subsection and decided to delete the subsection in its entirety.

461. The subsection and its related footnote were deleted.

3.2.2.5. Examples of deficiencies

462. The Worker Vice-Chairperson, suggested deleting “for example the fisher’s agreement” since the subsection referred to other issues as well.

463. The expert from the Government of Norway believed that the wording seemed to be too general and that it would be difficult to apply it in practice. It was important that fishing vessel owners were only made responsible for deficiencies that they could address. As he understood Article 8 of Convention No. 188, the Article set the scene and provided context to the following Articles, but it did not comprise specific deficiencies that could be checked by flag State control. If the Employers’ group was in agreement with the amendment then it would be fine.

464. The Employer Vice-Chairperson agreed to the deletion proposed by the Workers.

465. The subsection was adopted as amended.

3.2.3. Valid document (Article 41)

Paragraph 114

466. Paragraph 114 was adopted without change.

3.2.3.1. Basic requirements of Convention No.188

467. The subsection was adopted without change.

3.2.3.2. Indicative sources of information for inspectors

468. The observer expert of the Government of the United Kingdom proposed adding a new bullet point at the end of the subsection that would include charts and/or logbooks as in subsection 3.2.3.1 above.

469. The expert from the Government of Morocco pointed out that this seemed superfluous, since this information was already contained in a vessel's safety documents. Charts were not required, since the fishing licence sets out clearly whether or not a vessel could fish outside 200 nautical miles from the coastline.

470. The observer expert of the Government of the United Kingdom pointed out that the safety documents on board its vessels did not contain this information and that it was thus only possible to establish whether a vessel had been at sea for more than three days or beyond 200 nautical miles from the coastline, by verifying these sources.

471. The expert from the Government of Morocco recognized that each country had different specificities and accepted the amendment.

472. The subsection was adopted as amended.

3.2.3.3. Interviews by inspectors

473. The subsection was adopted without change.

3.2.3.4. Examples of deficiencies

474. The Employer Vice-Chairperson proposed deleting the third bullet point. The example given was beyond the scope of the fishing vessel owner's responsibility and should thus not be included.

475. The Worker Vice-Chairperson agreed.

476. The subsection was adopted as amended.

3.2.4. *Crew list (Article 15)*

Paragraph 115

477. Paragraph 115 was adopted without change.

3.2.4.1. Basic requirements of Convention No. 188

Paragraph 116

478. Paragraph 116 was adopted without change.

3.2.4.2. Indicative sources of information for inspectors

Paragraphs 117 and 118

479. The subsection was adopted without change.

3.2.4.3. Interviews by inspectors

480. The Worker Vice-Chairperson asked for clarification regarding the term “supervisors”.

481. A representative of the Office stated that when fishers spoke different languages, the term “supervisor” would be an intermediary who was able to communicate with both the skipper and the crew.

482. The Government Vice-Chairperson proposed that the term “supervisors” should be deleted.

483. The subsection was adopted as amended.

3.2.4.4. Examples of deficiencies

484. The Employer Vice-Chairperson observed that the vessel’s crew could change during the voyage, which could cause inaccuracies to occur on the crew list.

485. The subsection was adopted without change.

3.2.5. *Manning (Articles 13 and 14)*

Paragraph 119

486. Paragraph 119 was adopted without change.

3.2.5.1. Basic requirements of Convention No. 188

487. The subsection was adopted without change.

3.2.5.2. Additional requirements for vessels of 24 metres in length and over

488. The subsection was adopted without change.

3.2.5.3. Indicative sources of information for inspectors

489. The expert from the Government of Argentina suggested mentioning the presence of collective bargaining agreements.

490. The observer expert from the Government of the United Kingdom suggested adding medical certificates where they were issued. He also noted that the last two bullet points were repetitive. He suggested deleting “Certificates of competency”.

491. The Employer Vice-Chairperson stated that if “collective bargaining agreement” was inserted into the paragraph, the text should be followed by “where it exists”.

492. The subsection was adopted as amended.

3.2.5.4. Interviews by inspectors

493. The subsection was adopted without change.

3.2.5.5. Examples of deficiencies

494. The Employer Vice-Chairperson asked for clarification of the first bullet point. He asked how it would be determined if there were not enough fishers on board.

495. The expert from the Government of Norway stated that there existed a specific requirement in Article 13 of Convention No. 188 which would suggest the wording of “as required by national legislation”.

496. The expert from the Government of Morocco agreed with Norway, and stated that some countries had manning certificates for each vessel, and others not.

497. The Employer Vice-Chairperson stated that he was in favour of the amended text, as ensuring that vessels that were properly manned could not only be left to fishing vessel owners.

498. The subsection was adopted as amended.

3.2.6. *Minimum age (Article 9)*

Paragraph 120

499. Paragraph 120 was adopted without change.

3.2.6.1. Basic requirements of Convention No. 188

500. The subsection was adopted without change.

Paragraphs 121–125

501. Paragraphs 121–125 were adopted without change.

3.2.6.2. Indicative sources of information for inspectors

502. The subsection was adopted without change.

3.2.6.3. Interviews by inspectors

503. The expert from the Government of the United Kingdom suggested that a young person should be interviewed only in the presence of a witness if an interview was conducted in private.

504. The Employer Vice-Chairperson agreed with such an amendment of the paragraph. He also pointed out that such an amendment should be consistent with 109bis.

505. The words “in private” were also removed as a consequential amendment.

506. The subsection was adopted as amended.

3.2.6.4. Examples of deficiencies

507. The expert from the Government of Norway suggested adding a new bullet point to the section: “A fishing vessel is not sufficiently manned” as a result of a fisher being under the minimum age.

508. The subsection was adopted as amended.

3.2.7. Recruitment and replacement of fishers (Article 22(1)–(3))

Paragraph 126

509. Paragraph 126 was adopted without change.

3.2.7.1. Basic requirements of Convention No.188

510. The subsection was adopted without change.

3.2.7.2. Indicative sources of information for inspectors

511. The subsection was adopted without change.

3.2.7.3. Interviews by inspectors

512. The observer expert from the Government of the United Kingdom proposed deleting part of the first bullet point, since there was no specific requirement in Convention No. 188 for recruitment and placement services to inform fishers of their rights and duties. He noted, however, that such a requirement existed in the MLC, 2006.

513. The Employer Vice-Chairperson did not support the United Kingdom’s amendment. He agreed with the principle but noted that the MLC, 2006, did not have any provision on private employment agencies as meant in Article 22(4)–(6) of Convention No. 188.

514. The Worker Vice-Chairperson also did not support the amendment. He noted that such a reference was already made in the recommendations for port State control officers concerning Convention No. 188, and therefore should be included in the Guidelines for flag State inspectors.

515. The expert from the Government of Norway pointed out that if there was nothing in Convention No. 188 on this matter, then a mistake had been made in the port State control Guidelines, and the present Guidelines could correct it. As the requirement was not in the Convention itself, it was not a deficiency.

516. The expert from the Government of Morocco indicated that such rights and duties were stated in fishers’ contracts and each fisher should be given a copy of the contract.

517. The Employer Vice-Chairperson mentioned that Article 17 could provide a basis for retaining the text as proposed by the Office.

518. The expert from the Government of Morocco observed that the text repeated information that should be in the work agreement but that the text could be retained.

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- 519.** The observer expert from the Government of the United Kingdom emphasized his Government's opinion that this subsection should be deleted since it was without foundation in Convention No. 188.
- 520.** The expert from the Government of Norway noted that different Articles envisaged different responsibilities. Article 17 was the responsibility of fishing vessel owners. He expressed concern that the responsibilities of one party could be wrongly placed upon another. The deficiencies identified were the responsibilities of recruitment and placement services rather than the direct responsibility of fishing vessel owners.
- 521.** The Employer Vice-Chairperson disagreed with the position of Norway. Article 17 was not the specific responsibility of fishing vessel owners, rather the responsibility of a contracting party. He believed that Article 17 could be used as a basis for the text as proposed by the Office.
- 522.** The Chairperson concluded that there was support from the Meeting to adopt the text as proposed by the Office but suggested adding a footnote to the first bullet of the section. The footnote would refer to Article 17(a) of the Convention.
- 523.** The subsection was adopted as amended.

3.2.7.4. Examples of deficiencies

- 524.** The expert from the Government of Norway asked who was responsible for rectifying the deficiencies listed.
- 525.** A representative of the Office indicated that the intention was to use language similar to the requirements of the MLC, 2006. The Guidelines, however, do not suggest that the competent authority was required to regulate recruitment and placement services in the labour-supplying State.
- 526.** The Employer Vice-Chairperson stated that in cases where recruitment and placement services had failed to fulfil their obligations, fishing vessel owners were still responsible. They should amend deficiencies so that the provision of Article 17 should be or would be fulfilled in any case.
- 527.** The expert from the Government of Norway said that the text in the bullet points could be considered as indicators of possible deficiencies, but not actual deficiencies. He explained that the existence of a blacklist against some fishers was not the direct responsibility of fishing vessel owners but rather an indicator that something was wrong with the recruitment and placement agency that a fishing vessel owner used. An example of a deficiency would involve the situation where a fishing vessel owner failed to use an authorized recruitment and placement agency.
- 528.** The Employer Vice-Chairperson reiterated that his group would like to keep the text as drafted.
- 529.** The expert from the Government of Norway argued that, while the example of the deficiencies was clear, it remained unclear who should rectify these deficiencies.
- 530.** The observer expert from the Government of the Netherlands clarified that according to the Guidelines, these deficiencies would be rectified by the recruitment placement services.
- 531.** The Government Vice-Chairperson added that the Government group would like the subsection to be clear about who was responsible for the deficiencies.

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- 532.** The Employer Vice-Chairperson stated that the answer could be found in Article 22(3) of Convention No. 188. Recruitment and placement services were prohibited from preventing or deterring fishers from working; blacklists were prohibited. Regarding the issue about fishers being charged a fee, the flag State could ban such practices by recruitment and placement services operating within their country. If the vessel owner was using foreign manning agents, it would be very difficult to know whether the manning agent was authorized.
- 533.** The observer expert from the Government of Denmark suggested adding a new bullet point which recommended that the competent authority should cooperate with the vessel owner and the State where the recruitment or placement was based.
- 534.** The Employer Vice-Chairperson said that they could accept such proposed text if “should” was replaced with “may”.
- 535.** The Worker Vice-Chairperson pointed out that Article 22(3)(c) specified the flag States’ duties, and suggested that the additional language could be included in a footnote.
- 536.** The expert from the Government of Norway stated that Article 22 was about the recruitment and placement services in a defined territory, so there were two main problems with the proposed amendment. Convention No. 188 did not address the situation where the shipowner used recruitment and placement services based in a foreign country. The example should not be included in the Guidelines, since the flag State had no duty to regulate foreign recruitment and placement services. He preferred that the additional language was not included. However, if the proposed language would be included in a footnote, he could agree to the use of “may” rather than “should”.
- 537.** The Employer Vice-Chairperson agreed with the proposed language as a footnote.
- 538.** The observer expert from the Government of Denmark explained that flag States had the responsibility to ensure compliance with Convention No. 188 and his proposed amendment was consistent with the workers’ complaints system regarding fees or blacklists. He said employers were not exclusively responsible but should participate in the solution. He had proposed to add the text to the main body of the Guidelines, but a footnote would also be acceptable.
- 539.** The subsection was adopted with the additional footnote.

3.2.8. *Private employment agencies* **(Article 22(4)–(6))**

Paragraph 127

- 540.** Paragraph 127 was adopted without change.

3.2.8.1. Basic requirements

Paragraph 128

- 541.** Paragraph 128 was adopted without change.

3.2.8.2. Indicative sources of information for inspectors

- 542.** The Employer Vice-Chairperson stated that the Employers did not see the necessity of the list in the first bullet point because inspectors of flag States should know whether their

State had ratified Convention No. 188. Whether other countries had ratified the Convention was not relevant. In the case where private employment agencies from a foreign country were being used, the private employment agency still had to fulfil its legal obligations. Regarding the fourth bullet point, he considered that Convention No. 188 did not call for such a document. Therefore, the Employers proposed deleting the first bullet point and being very careful with the fourth bullet point.

543. The Worker Vice-Chairperson agreed with the proposed deletion of the first bullet point only.

544. The Government Vice-Chairperson agreed with the deletion proposed by the Employer Vice-Chairperson. He further added that it was not a duty of the flag State to keep a list of government-licensed private employment agencies.

545. The subsection was adopted with the first bullet point removed.

3.2.8.3. Interviews by inspectors

546. The subsection was adopted without change.

3.2.8.4. Examples of deficiencies

547. The subsection was adopted without change.

3.2.9. *Fisher's work agreement* *(Articles 16–20)*

Paragraph 129

548. Paragraph 129 was adopted without change.

3.2.9.1. Basic requirements of Convention No. 188

549. The subsection was adopted without change.

3.2.9.2. Indicative sources of information for inspectors

550. The Employer Vice-Chairperson proposed adding a fifth bullet point reflecting the prior discussion regarding subsection 3.2.7.3 – Interviews by inspectors.

551. The Government Vice-Chairperson said that they had discussed the proposal within the Government group but they did not reach consensus.

552. The Worker Vice-Chairperson agreed with the proposed amendment.

553. The observer expert from the Government of the United Kingdom recalled that they opposed the amendment that had been adopted in subsection 3.2.7.3 since the requirement was not in Convention No. 188 and they therefore objected to the proposed amendment.

554. The Employer Vice-Chairperson explained that if the amendment was accepted they would propose another amendment for subsection 3.2.9.4 that he hoped would address the concerns of the United Kingdom delegation since it was based upon Article 17 of Convention No. 188. For example, it would address when a fishing vessel owner failed to inform a fisher about his/her rights based on the assumption that the information was

already provided by the recruitment and placement agency. He added that their proposal concerned a recommendation for inspectors rather than the Convention itself.

555. The expert from the Government of Brazil observed that this was just an indicative source, providing guidance for inspectors.

556. The expert from the Government of Norway had no major objections to the proposal. However, he expressed concern with regard to the chain of responsibilities outlined for employers. He pointed out that the obligation in Article 17(a) referred solely to the requirement that a fisher had an opportunity to review the agreement; the obligation did not require actual review of the work agreement.

557. The subsection was adopted with the additional bullet point.

3.2.9.3. Interviews by inspectors

558. The Government Vice-Chairperson suggested deleting “in case of queries” in the second bullet as it was unnecessary.

559. The Worker Vice-Chairperson pointed out that there was no need to interview the owner if the first bullet point was fine. He agreed with the deletion of “in case of queries” in the second bullet.

560. The Employer Vice-Chairperson agreed with the proposal as the text was redundant.

561. The subsection was adopted as amended.

3.2.9.4. Examples of deficiencies

562. The Employer Vice-Chairperson suggested adding a new bullet point that would become the first bullet point regarding a fisher’s lack of opportunity to review a fisher’s work agreement before it was concluded.

563. The Government and Worker Vice-Chairpersons both agreed with the proposal.

564. The new bullet point was adopted.

565. The expert from the Government of Argentina requested more information from the Employers’ group regarding a fisher’s work agreement.

566. The Employer Vice-Chairperson said that the agreement needed to be signed prior to the work, as a fisher had the right to review a contract; failure to provide a worker with such an opportunity would constitute a deficiency, and therefore was incompatible with Article 17(a).

567. The expert from the Government of Morocco agreed with the Employers’ group but noted that it was difficult to prove it.

568. The Government Vice-Chairperson observed that the distinction between bullet points 1 and 5 was unclear.

569. A representative of the Office explained that bullet point 5 addressed the situation where a fisher had an agreement with a third party such as a manning agent. The agreement should still meet the requirements of Convention No. 188.

570. The expert from the Government of Norway stated that if fishers did not have work agreements in accordance with the Convention, such a situation automatically constitutes a deficiency. Article 20 defined responsibilities.

Bullet points 1–3

571. Bullet points 1–3 were adopted with no changes.

Bullet points 4 and 5

572. Bullet points 4 and 5 were adopted with no changes.

Bullet point 6

573. The Employer Vice-Chairperson stated that it would be difficult to assess whether the fisher did not understand an agreement. Therefore, it would be even more difficult to determine whether there was a deficiency.

574. The Worker Vice-Chairperson remarked that if a crew did not understand their contract this would indicate that the crew was not competent to man the vessel. The inspector could not rectify this problem.

575. The Government Vice-Chairperson accepted the bullet point without change.

576. The expert from the Government of Morocco stated that it would be difficult to prove in practice and would put the inspector in a very delicate position.

577. The expert from the Government of Norway agreed with Morocco on this point as it was very difficult to do in practice, but could accept the bullet point without change.

578. The observer expert from the Government of the Philippines stated that it was important that a government could verify if the provisions were in fact explained to a fisher.

579. The observer expert from the Government of the Netherlands understood the desirability of the bullet point but it should not be included as a deficiency.

580. The Employer Vice-Chairperson proposed deleting the bullet point because if a fisher had been given ample time to seek advice and understand his/her agreement but still did not understand the contract then the fishing vessel owners would be left with no alternative but to deny the fisher the job.

581. The expert from the Government of Morocco was in favour of deleting the bullet point. It did not need to be included in the Guidelines here.

582. The Worker Vice-Chairperson agreed with Morocco that fishers could understand their contracts and, since the problem would be rare, the bullet point should be deleted.

583. The sixth bullet point under 3.2.9.4 was deleted.

3.2.10. *Payment of fishers (Articles 23 and 24)*

Paragraph 130

584. Paragraph 130 was adopted without change.

3.2.10.1. Basic requirements of Convention No. 188

585. The Worker Vice-Chairperson agreed with the text and emphasized that all fishers need to be paid regularly.

586. The subsection was adopted without change.

3.2.10.2. Indicative sources of information for inspectors

587. The Employer Vice-Chairperson proposed adding language regarding the payment system to the first bullet point and requested deleting bullet point 5.

588. The Government and Worker Vice-Chairpersons both agreed with the proposal.

589. The subsection was adopted as amended.

3.2.10.3. Interviews by inspectors

590. The subsection was adopted without change.

3.2.10.4. Examples of deficiencies

591. The Worker Vice-Chairperson agreed with the text and noted again the importance of being paid regularly.

592. The subsection was adopted without change.

3.2.11. *Repatriation (Article 21)*

Paragraph 131

593. Paragraph 131 was adopted without change.

3.2.11.1. Basic requirements of Convention No. 188

594. The subsection was adopted without change.

3.2.11.2. Indicative sources of information for inspectors

595. The subsection was adopted without change.

3.2.11.3. Interviews by inspectors

596. The Government Vice-Chairperson proposed deleting “skipper” from bullet point 2 and inserting it into the first sentence, because bullet point 2 should focus on the vessel owner’s responsibilities.

597. The subsection was adopted as amended, including an editorial change.

3.2.11.4. Examples of deficiencies

598. The expert from the Government of Norway proposed language clarifying the meaning of the subsection.

599. The subsection was adopted as amended.

3.2.12. Hours of rest (Articles 13 and 14)

Paragraph 132

600. Paragraph 132 was adopted without change.

3.2.12.1. Basic requirements of Convention No. 188

601. The subsection was adopted without change.

3.2.12.2. Additional requirements for fishing vessels, regardless of size, remaining at sea for more than three days

Paragraphs 133 and 134

602. The subsection was adopted without change.

3.2.12.3. Indicative sources of information for inspectors

Bullet point 1

603. Bullet point 1 was adopted without change.

Bullet point 2

604. The observer expert from the Government of the Netherlands suggested that, in the second bullet point, there need not be any reference to working languages.

605. The Employer Vice-Chairperson stated that the reference to working languages was considered highly desirable by the Employers' group.

606. The expert from the Government of Norway pointed out that this could be resolved by deleting the part of the sentence following the phrase, "A table of working arrangements or a schedule."

607. The Employer and Worker Vice-Chairpersons agreed with the proposal.

608. Bullet point 2 was adopted as amended.

Bullet point 3

609. Bullet point 3 was adopted without change.

Bullet point 4

610. The Government Vice-Chairperson proposed changing the phrase "hours of work" to "hours of rest".

611. The Worker Vice-Chairperson agreed with the amendment, and added consequentially "upper limits" should become "lower limits", which is more appropriate with reference to rest.

612. The Government and Employer Vice-Chairpersons both agreed with the amendments.

613. Bullet point 4 was adopted as amended.

Bullet point 5

614. Bullet point 5 was adopted without change.

3.2.12.4. Interviews by inspectors

615. The subsection was adopted with a consequential change (deletion of the words “in private”).

3.2.12.5. Examples of deficiencies

616. The subsection was adopted without change.

3.2.13. *Medical examination (Articles 10–12)*

Paragraph 135

617. Paragraph 135 was adopted without change.

618. The observer representative of the International Maritime Health Association noted that only a few countries have included fishers within their definition of seafarers, and require them to undergo a medical fitness examination as required under the MLC, 2006.

3.2.13.1. Basic requirements of Convention No. 188

619. The subsection was adopted without change.

3.2.13.2. Additional requirements for fishers on fishing vessels of 24 meters in length and over, or on vessels which normally remain at sea for more than three days

620. The subsection was adopted without change.

3.2.13.3. Indicative sources of information for inspectors

621. The subsection was adopted without change.

3.2.13.4. Interviews by inspectors

622. The subsection was adopted without change.

3.2.13.5. Examples of deficiencies

623. Bullet points 1 and 2 were adopted without change.

Bullet point 3

624. Bullet point 3 was adopted without change.

3.2.14. Occupational safety and health and accident prevention, including risk evaluation
(Articles 31–33)

Paragraph 136

625. Paragraph 136 was adopted without change.

3.2.14.1. Basic requirements of Convention No. 188

Bullet points 1–4 and 6

626. Bullet points 1–4 and 6 were adopted without change.

Bullet point 5

627. The Employer Vice-Chairperson proposed that the use of the word “shall”, should be replaced by the word “should”.

628. Following further discussion, it was agreed to retain language that reflected the requirement to establish safety committees, as this bullet is drawn from the requirements on ratifying States as provided in Article 31 of the Convention, but to include a footnote that sets out various approaches that could be taken by States, including the establishment of such committees ashore.

629. The fifth bullet point was adopted as amended and with the footnote.

3.2.14.2. Additional requirements for fishing vessels of 24 metres in length and over, normally remaining at sea for more than three days

630. The subsection was adopted without change.

3.2.14.3. Indicative sources of information for inspectors

631. The Employer Vice-Chairperson suggested adding “if available” to the end of the sentence of the last bullet point.

632. The Government Vice-Chairperson proposed deleting “Evidence that” from bullet points 4 and 5, and adding “and well-maintained” after “appropriate” in bullet point 4. He further suggested deleting bullet point 6.

633. The subsection was adopted as amended.

3.2.14.4. Additional sources of information pertaining to requirements for fishing vessels of 24 metres in length and over, normally remaining at sea for more than three days

634. The Government Vice-Chairperson proposed deleting the word “evidence” and adding “and well-maintained” to bullet point 2, after “appropriate personal”.

635. Following a discussion about the possibility of deleting the text in brackets in bullet point 1, the Meeting decided to delete “by the competent authority” so that the question regarding who was responsible for providing guidance, training material or other appropriate information was left open.

636. The subsection was adopted as amended.

3.2.14.5. Interviews by inspectors

637. The Employer Vice-Chairperson proposed amending bullet point 3 by inserting after “committee” the following text: “or another appropriate body, after consultation”.

638. The Government Vice-Chairperson proposed adding “and fishers” to bullet point 1 and deleting the phrase “representative number of” from bullet point 3.

639. The subsection was adopted as amended.

3.2.14.6. Examples of deficiencies for all vessels

640. The Government Vice-Chairperson proposed replacing “eliminated or reduced, and significant levels of risk remain” with “addressed” in the third bullet point. He also suggested inserting a new bullet point at the end of the list: “Appropriate corrective measures have not been undertaken”. Lastly, footnote 27 should be moved to subsection 3.2.14.1 (see above).

641. The Employer Vice-Chairperson proposed inserting “if required” after “health” in the last bullet point.

642. The Government Vice-Chairperson suggested the addition of “on board, if required”.

643. The subsection was adopted as amended, and footnote 27 was moved.

3.2.14.7. Examples of deficiencies for vessels of 24 metres in length and over, normally remaining at sea for more than three days

644. The Employer Vice-Chairperson stated that in bullet point 6, the information could not be deficient if it came from the government.

645. The Government Vice-Chairperson proposed deleting the last two bullet points.

646. The subsection was adopted as amended.

3.2.15. *Medical care (Articles 29 and 30)*

Paragraph 137

647. Paragraph 137 was adopted without change.

3.2.15.1. Basic requirements of Convention No. 188

648. The subsection was adopted without change.

3.2.15.2. Additional requirements for fishing vessels of 24 metres in length and over

649. The observer expert from the Government of the Netherlands proposed, in the first bullet point, adding “as required” after “inspected” and then deleting the remainder of the first bullet point.

650. The entire subsection was adopted as amended.

3.2.15.3. Indicative sources of information for inspectors

651. The Government Vice-Chairperson proposed replacing “the trained first aider(s) on board” with “the fisher on board who is qualified or trained in first aid and other forms of medical care” in the second bullet point, last line.

652. The subsection was adopted as amended.

3.2.15.4. Interviews by inspectors

653. The subsection was adopted without change.

3.2.15.5. Examples of deficiencies

654. The Government Vice-Chairperson proposed adding “contrary to national law and practice” to the last bullet point.

655. The subsection was adopted as amended.

3.2.16. *Food and potable water*
(Article 27 and Annex III)

3.2.16.1. Basic requirements of Convention No. 188

656. The subsection was adopted without change.

3.2.16.2. Indicative sources of information for inspectors

657. The subsection was adopted without change.

3.2.16.3. Interviews by inspectors

658. The subsection was adopted without change.

3.2.16.4. Examples of deficiencies

659. The observer expert from the Government of the Netherlands proposed adding the phrase “On fishing vessels of 24 metres or more” at the beginning of the sentence of the first bullet point.

660. The subsection was adopted as amended.

3.2.17. *Accommodation* *(Articles 25,*
26 and 28, and Annex III)

Paragraph 138

661. Paragraph 138 was adopted without change.

3.2.17.1. Basic requirements of Convention No. 188

662. The subsection was adopted without change.

3.2.17.2. Indicative sources of information for inspectors

663. The subsection was adopted without change.

3.2.17.3. Interviews by inspectors

664. The subsection was adopted without change.

3.2.17.4. Examples of deficiencies

665. The subsection was adopted without change.

3.2.18. *Protection in the case of work-related sickness, injury or death (Articles 38 and 39)*

Paragraph 139

666. Paragraph 139 was adopted without change.

3.2.18.1. Basic requirements of Convention No. 188

667. The subsection was adopted without change.

Paragraph 140

668. Paragraph 140 was adopted without change.

3.2.18.2. Indicative sources of information for inspectors

669. The subsection was adopted without change.

3.2.18.3. Interviews by inspectors

670. The subsection was adopted without change.

3.2.18.4. Examples of deficiencies

671. The subsection was adopted without change.

3.2.19. *Social security (Articles 34–37)*

Paragraph 141

672. Paragraph 141 was adopted without change.

3.2.19.1. Basic requirements of Convention No. 188

673. The subsection was adopted without change.

3.2.19.2. Indicative sources of information for inspectors

674. The subsection was adopted without change.

3.2.19.3. Interviews by inspectors

675. The subsection was adopted without change.

3.2.19.4. Examples of deficiencies

676. The expert from the Government of Morocco suggested deleting the first bullet point.

677. The Meeting discussed whether or not to delete the first bullet point.

678. The Employer Vice-Chairperson proposed new language based on the interests raised during the discussion. The proposal would replace the current first bullet point: “The fishing vessel owner, employer or other party to the fisher’s work agreement does not provide the health and social security coverage and benefits they are obliged to provide.” Based on the new language, the second bullet point was just a repetition of the first bullet point and could be deleted.

679. The subsection was adopted as amended.

4. Actions to be taken if deficiencies are identified

4.1. General

Paragraph 142

680. Paragraph 142 was adopted without change.

Paragraph 143

681. Paragraph 143 was adopted without change.

Paragraph 144

682. Paragraph 144 was adopted without change.

Paragraph 145

683. The observer expert from the Government of the United Kingdom proposed replacing “certain action must or may be taken, depending upon the situation” with “some actions are required while others allow for some exercise of discretion”. He explained that the proposed text came from Article 106 of the MLC, 2006.

684. The observer expert from the Government of Denmark proposed deleting the text in brackets, “or, where authorized, the representatives of recognized organizations”.

685. The observer expert from the Government of Ireland suggested deleting “all” and inserting “may” in the second sentence of the paragraph.

686. The expert from the Government of Norway proposed replacing the word “inspectorate” with “competent authority”.

687. Paragraph 145 was adopted as amended.

Paragraphs 146 and 147

688. Paragraphs 146 and 147 were adopted without changes.

4.2. Guidance on making determinations as to action

Paragraph 148

- 689.** The observer expert from the Government of the United Kingdom proposed the insertion of the following wording at the beginning of the fifth bullet point: “and in the case of vessels that carry a valid document under Article 41,”. He also suggested that the order of the last two bullet points should be reversed.
- 690.** The observer expert from of the Government of the Netherlands proposed changing the order of the bullet points to better reflect the order of seriousness, and to delete the last bullet point.
- 691.** The expert from the Government of Morocco proposed replacing “using their professional judgment and applying their professional experience” with “in accordance with national legislation”.
- 692.** The observer expert from the Government of Denmark suggested adding a footnote with an explanation of the term “recognized organization”, which appeared in paragraphs 147 and 148.
- 693.** After discussing the proposal based on language found in Convention No. 188, the Meeting agreed to amend the proposal and to include references to other documents including the IMO Code on Recognized Organizations (RO Code) (IMO resolutions MSC349(92), MEPC237(65)) in the footnote to paragraph 57 of the Guidelines.
- 694.** Several governments expressed concern over which organizations could be “recognized organizations”. A representative of the Office noted that, in accordance with Article 42(2) of the Convention, a member State, where appropriate, may authorize public institutions or other organizations that it recognizes as competent and independent to carry out inspections and issue documents. The Article then specifically provides that “In all cases, the Member shall remain fully responsible for the inspection and issuance of the related documents concerning the living and working conditions of the fishers on fishing vessels that fly its flag.” Therefore the responsibility remains with the flag State.
- 695.** The Meeting agreed to add a new footnote to reflect the discussion. Subsequently, it decided to move the footnote to paragraph 57 of the Guidelines.
- 696.** Paragraph 148 was adopted as amended.

Paragraph 149

697. Paragraph 149 was deleted.

Paragraph 150

- 698.** The expert from the Government of Norway proposed deleting the phrase “accept a rectification plan or”.
- 699.** The Employer Vice-Chairperson suggested the removal of the word “service” in the fourth bullet point.

700. The Worker Vice-Chairperson suggested replacing the word “length” with “duration” from the fourth bullet point.

701. Paragraph 150 was adopted as amended.

Appendix I

Labour Inspection Convention, 1947 (No. 81)

702. The appendix was adopted as proposed, and it was later agreed to make this the second appendix and include the text of Convention No. 188 as Appendix I.

Appendix II

Contents of a valid document

703. The Employer Vice-Chairperson proposed replacing the heading “Contents of a valid document” with “List of matters to be inspected before a valid document should be issued”. He further proposed changing “The Convention requires that the valid document should contain, as a minimum:” to “Contents of a valid document” in bold. He suggested moving the bullet points from “the name of the issuing competent authority” onwards to under the heading “Contents of a valid document”.

704. The Worker Vice-Chairperson supported the proposal of the Employers in terms of the layout of the appendix, but requested that the word “Minimum” be added to the beginning of the amended heading “Contents of a valid document”.

705. The Employer Vice-Chairperson proposed deleting the bullets “social security” and “protection in case of work-related sickness, injury or death” from the list of the contents and adding “this includes, inter alia, social security and protection in cases of work-related sickness, injury or death, as set out in Annex II to the Convention” to the “fisher’s work agreement” bullet point.

706. The Executive-Secretary informed the meeting that the observer expert from the Government of Denmark, with the support of the observer representative from the IMO, had provided, in writing, a footnote to the bullet point concerning “distinctive numbers or letters”, which would read as follows: “Reference to the IMO Ship Identification Number Scheme, as revised by the IMO Assembly Resolution A.1078(28), to allow its voluntary application to fishing vessels of 100 gt and above”. The Government, Employer and Worker Vice-Chairpersons supported the inclusion of the footnote.

707. Appendix II was adopted as amended, and the footnote beginning “Note for the Meeting of Experts” was deleted.

Appendix III

Particulars to be contained in a fisher’s work agreement (in accordance with Annex II to Convention No. 188)

708. Appendix II was adopted without changes.

Appendix IV

Eleven indicators of forced labour

- 709.** The Chairperson informed the plenary that a joint submission had been prepared by the Employers' and Workers' groups to amend Appendix IV.
- 710.** The Employer Vice-Chairperson read the new text to be added to Appendix IV.
- 711.** The expert from the Government of the Netherlands suggested that the last line in the new text for Appendix IV be changed from "is a victim of this crime" to "may be a victim of this crime."
- 712.** The Worker Vice-Chairperson and Employer Vice-Chairperson both stated that they agreed with this change.
- 713.** Appendix IV was adopted as amended.

Appendix

Legal opinion on the applicability of Convention No. 81 to the fishing sector

1. The question referred to the Office is whether the Labour Inspection Convention, 1947 (No. 81), applies to the fishing sector. The following opinion has been prepared in a similar manner as informal Office opinions provided in writing, that is, in consultation between the Office of the Legal Adviser, the International Labour Standards Department and the concerned technical departments, namely the Labour Administration, Labour Inspection and Occupational Safety and Health Branch and the Sectoral Activities Department.
2. The scope of application of Convention No. 81 is described in Article 2 of the Convention as regards labour inspection in industry:
 1. The system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.
 2. National laws or regulations may exempt mining and transport undertakings or parts of such undertakings from the application of this Convention.
3. It follows from those provisions that the scope of Convention No. 81 is not defined by enumeration or proper definition as in other Conventions, but by reference to the legal provisions which are enforceable by labour inspectors. Governments have thus wide discretion to determine, through their national law, which workplaces are covered by labour inspection. Pursuant to Article 26 of the Convention: “In any case in which it is doubtful whether any undertaking, part or service of an undertaking or workplace is an undertaking, part, service or workplace to which this Convention applies, the question shall be settled by the competent authority.”
4. It should be noted, however, that when it adopted the Convention with this flexible scope of definition, the Conference adopted at the same session the resolution concerning the scope of labour inspection, which noted that while the scope of application of Convention No. 81 “may leave Governments free to exclude large numbers of workers from the application of the Convention ... all workers in industrial and commercial undertakings [were] in need of the protection afforded by the appointment of an inspectorate to enforce proper conditions of work”. It therefore “urge[d] Governments to apply to all workers employed in industrial and commercial undertakings the legal provisions for the protection of workers which are enforceable by labour inspectors”. The most recent General Survey of the Committee of Experts on labour inspection (of 2006) describes the evolution of the scope of labour inspection since 1947 as going towards broad coverage.
5. The Protocol of 1995 to Convention No. 81 does not limit the flexibility provided by the Convention but only extends the application of the provisions of the Convention to activities in the non-commercial services sector. In particular, Article 1(3) of the Protocol, according to which “[T]his Protocol applies to all workplaces that do not already fall within the scope of the Convention” cannot be taken out of context to mean that industrial or commercial workplaces not made subject to labour inspection under the Convention, would be covered under the Protocol.
6. Based on the above, unless it is determined that Convention No. 81 cannot cover the fishing sector, it would in principle be for each Member to decide whether or not its workplaces in the fishing sector are subject to labour inspection under Convention No. 81.
7. Paragraph 2 of Article 2 of the Convention quoted above, specifically states that mining and transport undertakings or parts of such undertakings may be exempted from the application of the Convention. This possibility for exemptions clearly does not cover fishing.
8. It is, however, uncontested that there is at least one sector that was never intended to be covered by Convention No. 81, which is agriculture. It was excluded by the formulation of the Conference agenda item as the “organisation of labour inspection in *industrial* and *commercial* undertakings”, which excludes agricultural undertakings. It has also been argued that the maritime sector was not intended to be covered at all since according to a Conference resolution of 1921 “no Conventions or Recommendations shall apply to those employed in the Mercantile Marine unless they have been

passed as a special maritime question on the Agenda”, which was not the case for Convention No. 81.

9. As regards agriculture, it follows from the preparatory work to the Labour Inspection (Agriculture) Convention, 1969 (No. 129), that in some countries, for the purpose of labour inspection, fishing forms part of agriculture, but this is not the case in the majority of countries. Accordingly, the definition of agricultural undertaking in Article 1(1) of Convention No. 129 does not cover fishing but, under paragraph 2, the competent authority has to define the line which separates agriculture from industry and commerce in such a manner as not to exclude any agricultural undertaking from the national system of labour inspection. This provision may accommodate the needs of Members that count fishing under agriculture, but it gives no indication that fishing was intended to be excluded a priori from the scope of Convention No. 81 as part of the agriculture sector.
10. As regards the maritime sector, the Labour Inspection (Seafarers) Convention, 1996 (No. 178), and Recommendation, 1996 (No. 185), have replaced the Labour Inspection (Seamen) Recommendation 1926 (No. 28). Article 1(5) of the Convention provides that: “To 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.” Some governments supported the systematic application of the Convention to fishing vessels as these vessels functioned in the same manner as other merchant vessels, while others held the view that the decision to apply the Convention in this case should be left to governments, which eventually prevailed. The Preamble of Convention No. 178 recalls the provisions of Convention No. 81 and Recommendation No. 81, and the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), which covers other sectors that may be excluded from the application of Convention No. 81, but makes no specific allusion to the situation of the fishing sector with respect to labour inspection. Besides, it should be recalled that Convention No. 178 is among those Conventions that are automatically denounced upon ratification of the Maritime Labour Convention, 2006 (MLC, 2006), and has therefore remained in force for only three member States.
11. There appears therefore to be no indication that the fishing sector was intended to be excluded a priori from the application of Convention No. 81. Conversely, there are indications in certain comments of the Committee of Experts on the Application of Conventions and Recommendations that Convention No. 81 is applied to the fishing sector by some countries and that the Committee supervises that application.
12. When the Conference started discussing the future Work in Fishing Convention, 2007 (No. 188) – under which the inspection of fishing vessels is required – it had before it an Office report that mentioned Convention No. 178 and its accompanying Recommendation No. 185 as relevant instruments, but also referred to the “general” Labour Inspection Convention, 1947 (No. 81).
13. In conclusion, the scope of application of Convention No. 81 varies according to the type or nature of workplaces to which ratifying Members decide to apply their legislation on labour inspection. There is nothing in the text of Convention No. 81, its negotiating history, subsequent comments of the supervisory organs, or in other instruments applying to fishing that would indicate that workplaces in the fishing sector cannot be covered by the Convention. In that sense, Convention No. 81 applies to the fishing sector if so determined by a ratifying Member’s national law and practice.

List of participants
Liste des participants
Lista de participantes

Chairperson
Président
Presidente

Mr Nigel CAMPBELL, Executive Head, Centre for Ships, South African Maritime Safety Authority, Port Elizabeth, South Africa.

Government experts
Experts des gouvernements
Expertos de los gobiernos

ARGENTINA ARGENTINE

Dr. Andrés Gustavo JOHANSEN, Asesor Jurídico, Secretaría de Trabajo, Ministerio de Trabajo, Empleo y Seguridad Social, Argentina.

BRAZIL BRÉSIL BRASIL

Sr. Fernando Antonio de ARAÚJO LIMA JÚNIOR, Auditor Fiscal del Trabajo, Ministerio del Trabajo y Empleo, Brasil.

Sr. Francisco FIGUEIREDO DE SOUZA, Secretario, Misión Permanente del Brasil ante la Oficina de las Naciones Unidas y otros organismos internacionales, Ginebra.

MOROCCO MAROC MARRUECOS

M. Brahim BOUDINAR, directeur de la formation maritime, Département des pêches maritimes, Rabat, Maroc.

NAMIBIA NAMIBIE

Mr Bro-Matthew SHINGUADJA, Permanent Secretary, Ministry of Labour, Industrial Relations and Employment Creation, Windhoek, Namibia.

Mr Meriam NICODEMUS, Deputy Director, Ministry of Labour, Industrial Relations and Employment Creation, Windhoek, Namibia.

NORWAY NORVÈGE NORUEGA

Mr Haakon STORHAUG, Senior Adviser, International, Norwegian Maritime Authority, Smedasundet Norway.

Ms Unn Caroline LEM, Senior Legal Adviser, Risk Management and Health and Safety Executive, Norwegian Maritime Authority, Smedasundet, Norway.

Ms Hilde FLAATEN, Senior Adviser, Norwegian Ministry of Trade, Industry and Fisheries, Smedasundet Norway.

SPAIN ESPAGNE ESPAÑA

Sr. Pedro Luis OTERO RAMÍREZ-CÁRDENAS, Inspector de Trabajo y Seguridad Social, Dirección General de la Inspección de Trabajo, Ministerio de Empleo y Seguridad Social, España.

Sr. José María PÉREZ TORIBIO, Subdirector General de Acción Social Marítima, Instituto Social de la Marina, Ministerio de Empleo y Seguridad Social, España.

THAILAND THAÏLANDE TAILANDIA

Mr Sangkaew MANOCH, Senior Expert on Labour Protection, Department of Labour Protection and Welfare, Ministry of Labour, Bangkok, Thailand.

Ms WILAIWAN KOYKAEWPRING, Senior Technical Labour Officer, Labour Protection Bureau, Department of Labour Protection and Welfare (DLPW), Ministry of Labour, Bangkok, Thailand.

Ms Chuleerat THOGTIP, Minister Counsellor (Labour), Permanent Mission of Thailand, Geneva, Switzerland.

Employer experts Experts des employeurs Expertos de los empleadores

Mr Fridrik FRIDRIKSSON, Attorney at Law, Fisheries Iceland (SFS), Reykjavik, Iceland.

Mr Edwin KAMATOTO, Manager, Human Resources, Human Resources Division, Walvis Bay, Namibia.

Sr. Alejandro LONDOÑO, Director Ejecutivo, Cámara de la Industria Pesquera, Asociación Nacional de Empresarios de Colombia (ANDI), Bogotá, Colombia.

Ms Oyebola Omolara ODUWOLE, Human Resources & Administration Manager, GAC Shipping (Nigeria) Limited, Lagos, Nigeria.

Sr. Jorge RISI MUSSIO, Gerente General, Sociedad Nacional de Pesquería, San Isidro, Lima, Perú.

Mr Mozafari SADEGH, Adviser, Iranian Confederation of Employers' Association (ICEA), Tehran, Islamic Republic of Iran.

Mr Ment VAN DER ZWAN, Senior Policy Adviser, Pelagic Freezer-Tawler Association (PFA), Rijswijk, Netherlands.

Worker experts Experts des travailleurs Expertos de los trabajadores

M. Said EL-HAIRECH, Union des Syndicats des Transports, UMT, General Secretary, Casablanca, Morocco.

Mr Johnny HANSEN, Norwegian Seafarers Union, President, Maritimt Hus, Oslo, Norway.

Mr Katishi MASEMOLA, General Secretary, Food and Allied Workers Union, Gugulethu, South Africa.

Mr Sonny PATTISELANNO, Vice General Secretary, Kesatuan Pelaut Indonesia (KPI), the Indonesian Seafarers Union, Jakarta, Indonesia.

M. Lucien Harinony RAZAFINDRAIBE, Secrétaire général, Syndicat général maritime de Madagascar, Madagascar.

Sr. Enrique Omar SUÁREZ, Presidente Pesca, Secretario General América Latina, Sindicato de Obreros Marítimos Unidos (SOMU), Buenos Aires, Argentina.

Mr Kenji TAKAHASHI, All Japan Seamen's Union, Central Executive Board Member, Tokyo, Japan.

Sr. Juan Manuel TRUJILLO, Experto trabajador, Federación de Servicios a la Ciudadanía de CCOO, Madrid, España.

Workers' advisers Conseillers techniques des travailleurs Consejeros técnicos de los trabajadores

Sr. Leonel Luciano ABREGU, Secretario de Interior, Sindicato de Obreros Marítimos Unidos (SOMU), Argentina.

Mr Charles BOYLE, Director of Legal Services, Nautilus International, London, United Kingdom.

Mr Kirill BUKETOV, International Officer, Fish Industry and Aquaculture (IUF), Geneva, Switzerland.

Mr Rossen KARAVATCHEV, ITF, Maritime Sector, Section Assistant, ITF House, London, United Kingdom.

Ms Asako KIMURA, Japanese Interpreter for Mr Hideo KON, All Japan Seafarers' Union, Indonesia Representative Office, Jakarta, Indonesia

Captain Hideo KON, Chief Representative, All Japan Seafarers' Union, Indonesia Representative Office, Jakarta, Indonesia.

Sr. Rubén Antonio MANNO, Secretario Seccional Mar del Plata, Sindicato de Obreros Marítimos Unidos (SOMU), Argentina.

Captain Petr OSICHANSKY, Seafarers' Union of Russia, Head of Seafarers' Branch, Moscow, Russian Federation.

Mr Gerard SENO, National Executive Vice President, ALU/PSU, National Labor Center, Quezon City, Philippines.

Mr Jon WHITLOW, ITF Secretary, Seafarers, Fisheries and Inland Navigation, ITF House, London, United Kingdom.

**Governments participating as observers
Gouvernements participant en qualité d'observateurs
Gobiernos que participan en calidad de observadores**

BELGIUM BELGIQUE BÉLGICA

M. Pieter BOLLE, attaché, Bruges, Belgique.

CAMBODIA CAMBODGE CAMBOYA

M. Bou CHANBOROTH, Conseiller (Affaires OIT), mission permanente du Royaume du Cambodge, Genève, Suisse.

M. Yang SOKHA, Assistant of Labour Counsellor, mission permanente du Royaume du Cambodge, Genève, Suisse.

CAMEROON CAMEROUN CAMERÚN

M^{me} Corine Elsa ANGONEMANE MVONDO, cheffe de la Cellule des normes internationales du travail, ministère du Travail et de la Sécurité sociale, Yaoundé, Cameroun.

Dr Ayuk ETAH, Sub Director of Fisheries, Surveillance, Ministry of Livestock, Fisheries and Animal Industries (MINEPIA).

CANADA CANADÁ

Mr Sami SAKAA, National Technical Advisor, Transport Canada, Ottawa, Canada.

CHILE CHILI

Mr Pablo Lazo GRANDI, Labour Attaché, Permanent Mission of Chile, Geneva, Switzerland.

DENMARK DANEMARK DINAMARCA

Mr Marin JOHN, Director, Survey and Certification, Danish Maritime Authority, Valby, Denmark.

DJIBOUTI YIBUTI

M. Mohamed SIAD DOUALEH, ambassadeur, République de Djibouti, ministère du Travail, chargé de la réforme de l'administration.

FINLAND FINLANDE FINLANDIA

Mr Jarno VIRTANEN, Ministerial Adviser, Ministry of Social Affairs and Health, Department for Occupational Safety and Health, Helsinki, Finland.

GERMANY ALLEMAGNE ALEMANIA

Mr Kersten-Uwe MACHNER, Dipl. Ing., Federal Ministry of Transport and Digital Infrastructure, Hamburg, Germany.

GUINEA GUINÉE

M. Ansoumane FOFANA, ministre conseiller, chargé de la pêche, Présidence de la République, Conakry, République de Guinée.

INDONESIA INDONÉSIE INDONESIA

Mr Denny ABDI, Counsellor, Permanent Mission of the Republic of Indonesia, Geneva, Switzerland.

Mr Ir. ENDROYONO, SE MM, Sub Directorate of Fisheries Labour and Manning of Fishing Vessels, Ministry of Marine Affairs and Fisheries, Jakarta, Indonesia.

Ms Retna PRATIWI, Industrial Relation Division, Ministry of Manpower, Jakarta, Indonesia.

Mr Arsi Dwinugra FIRDAUSY, First Secretary, Permanent Mission of the Republic of Indonesia, Geneva, Switzerland.

Ms Lena KURNIAWATI, Occupational Safety and Health Supervisor, Ministry of Manpower, Jakarta, Indonesia.

Mr Rihat PURBA, Labour Inspector, Ministry of Manpower, Jakarta, Indonesia.

IRAN, ISLAMIC REPUBLIC OF IRAN, RÉPUBLIQUE ISLAMIQUE D' IRÁN, REPÚBLICA ISLÁMICA DEL

Mr Babak BASTAMIPOUR, Labour Inspector, Ministry of Cooperatives, Labour and Social Welfare, Permanent Mission of the Islamic Republic of Iran.

Mr Fariborz RAJAEI, Senior Expert in Fishery, Associations, Iranian Fisheries Organization, Tehran, Islamic Republic of Iran.

IRELAND IRLANDE IRLANDA

Captain Tom O'CALLAGHAN, Nautical Surveyor, Marine Survey Office, Department of Transport, Tourism and Sport, Dublin, Ireland.

JAMAICA JAMAÏQUE

Ms Patrice LAIRD-GRANT, Minister-Counsellor, Embassy of Jamaica, Permanent Mission of Jamaica, Geneva, Switzerland.

**KOREA, REPUBLIC OF
CORÉE, RÉPUBLIQUE DE
COREA, REPÚBLICA DE**

Mr Chin-Woo LEE, Deputy Director, Seafarers Policy Division, Ministry of Oceans and Fisheries, Busan, Republic of Korea.

Mr Tae-Geon PARK, Fulltime Lecturer, Korea Institute of Maritime and Fisheries Technology, Education and Research Division/Professor, Busan, Republic of Korea.

LEBANON LIBAN LÍBANO

M. Ahmad ARAFA, conseiller, chef de la délégation, mission permanente du Liban auprès de l'Office des Nations Unies à Genève, Suisse.

M. Hani CHAAR, membre, mission permanente du Liban auprès de l'Office des Nations Unies à Genève, Suisse.

MADAGASCAR

M. Lazandrany Eric Michel RATSIMBA, directeur régional de l'Agence portuaire, maritime et fluviale, TOAMASINA.

M. Solofo Andrianjatovo RAZAFITRIMO, Chargé d'affaires a.i auprès de la mission permanente de Madagascar à Genève.

M. Emi-Haulain KOLA, conseiller auprès de la mission permanente de Madagascar à Genève, ambassade de Madagascar à Genève, Suisse.

MALAYSIA MALAISIE MALASIA

Mr Ummar Jai Kumar BIN ABDULLAH, Labour attaché of the Permanent Mission of Malaysia, Geneva, Switzerland.

MOZAMBIQUE

Ms Claudia TOMAS, Deputy General Director of Fisheries Administration, Ministry of Sea, Inland Water and Fisheries, Mozambique.

Mr Paulino CUMBANE, Head of Department of Human Resources, National Fisheries Administration, Ministry of Sea, Inland Water and Fisheries, Mozambique.

Mr Juvenal Arcanjo DENGGO, Counsellor, Permanent Mission of Mozambique, Geneva, Switzerland.

NETHERLANDS PAYS-BAS PAÍSES BAJOS

Mr Diede DE BLAAUW, Senior Inspector ILT, Ministry of Social Affairs and Employment, The Hague, Netherlands.

Mr Pieter OOST, Senior Inspector ILT, Ministry of Infrastructure and the Environment, The Hague, Netherlands.

Mr Martin WINKELMAN, Senior Inspector ILT (Flag State), Ministry of Infrastructure and the Environment, Human Environment and Transport Inspectorate, The Hague, Netherlands.

NIGERIA NIGÉRIA

Dr O.C. ILLOH, Permanent Secretary, Federal Ministry of Labour and Productivity, Federal Secretariat, Abuja, Nigeria.

Captain E.B. AGABA, Executive Director, Maritime Safety and Shipping Department, Nigeria Maritime Administration and Safety Agency, Abuja, Nigeria.

Ms J.A. GUNWA, Director, Maritime Labour Services Department, Nigeria Maritime Administration and Safety Agency, Abuja, Nigeria.

Mr Aniefiok Etm ESSAH, Labour Attaché, Permanent Mission Nigeria.

OMAN OMÁN

Mr Saif Said AL-BALUSHI, Ministry of Manpower in Sultanate of Oman, Oman.

PANAMA PANAMÁ

S. E. Ramón A. MORALES QUIJANO., Embajador, Representante Permanente, Misión Permanente de Panamá ante la Oficina de las Naciones Unidas, Ginebra.

Sra. Mayte BURGOS VALDÉS, Jefa del Departamento de Asuntos Laborales Marítimos, Dirección General de Gente de Mar, Autoridad Marítima, Panamá.

Licda. Gina Lilibeth VERGARA BALLESTEROS, Abogada, Departamento de Control y Cumplimiento, Dirección General de Marina Mercante (AMP).

Sra. Grisselle RODRÍGUEZ, Consejera, Misión Permanente de Panamá ante la Oficina de las Naciones Unidas, Ginebra.

Licdo. Alejandro MENDOZA GANTES, Consejero, Misión Permanente de Panamá ante la Oficina de las Naciones Unidas y otros organismos internacionales, Ginebra.

PHILIPPINES FILIPINAS

Mr Alvin B. CURADA, Republic of the Philippines, Department of Labor and Employment, INTRAMUROS, Manila, Philippines.

Ms Celeste M. VALDERRAMA, Labor Attaché, Republic of the Philippines, Department of Labor and Employment, Manila, Philippines.

POLAND POLOGNE POLONIA

Ms Magdalena NOJSZEWSKA-DOCHEV, First Secretary, Permanent Mission of the Republic of Poland to the UN Office, Geneva, Switzerland.

PORTUGAL

Ms Carlota Leitão CORREIA, Head of the Seafarers and Yachtsmen's Division, Directorate General for Natural Resources, Safety and Maritime Services, Lisbon, Portugal.

SAUDI ARABIA ARABIE SAOUDITE ARABIA SAUDITA

Mr Yousef M. AL HOSAN, General Directorate of Marine Affairs, Head Quarter, Sea Ports Authority, Saudi Arabia.

Mr Abdulaziz A.M. ALSHEHAB, Deputy General Manager, Kingdom of Saudi Arabia, Ministry of Agriculture, Deputy Ministry for Fisheries, Fisheries Research Centre, Eastern Province, Saudi Arabia.

SENEGAL SÉNÉGAL

M^{me} Ramatoulaye Niang FALL, inspecteur du travail et de la sécurité sociale, cheffe de la Division des relations internationales du travail, République du Sénégal, ministère du Travail, du Dialogue social, des Organisations professionnelles et des relations avec les institutions, ministère du Travail du Dialogue social, République du Sénégal, Dakar, Sénégal.

SWEDEN SUÈDE SUECIA

Mr Fredrik JONSSON, Senior Administrative Officer, Civil Aviation and Maritime Department, Swedish Transport Agency, Norrköping, Sweden.

TRINIDAD AND TOBAGO TRINITÉ-ET-TOBAGO TRINIDAD Y TOBAGO

Ms Mariella FONROSE, Second Secretary, Permanent Mission of the Republic of Trinidad and Tobago, Geneva, Switzerland.

Ms Karen CASH, Attorney and Law, Ministry of Labour and Small and Micro Enterprise Development, Port of Spain, Trinidad and Tobago.

Ms Nerissa LUCKY, Fisheries Officer, Fisheries Division, Ministry of Agriculture, Land and Fisheries, Port of Spain, Trinidad and Tobago.

TUNISIA TUNISIE TÚNEZ

M. Lassad TAYEB, ingénieur principal, commandant du Port de la pêche auprès de l'Agence des ports et des installations de la pêche (APIP), ministère de l'Agriculture, Genève, Suisse.

UNITED KINGDOM ROYAUME-UNI REINO UNIDO

Mr David FULLER, Principal Marine Surveyor, Maritime and Coastguard Agency (MCA), Hull Marine Office (Beverley), United Kingdom.

Mr Matt GIACOMINI, Policy Adviser, Maritime and Coastguard Agency (MCA), Southampton, United Kingdom.

**Representatives of the United Nations, Specialized Agencies
and other Official International Organizations
Représentants des Nations Unies, des institutions spécialisées
et d'autres organisations internationales officielles
Representantes de las Naciones Unidas, de los organismos especializados
y de otras organizaciones internacionales oficiales**

EUROPEAN UNION (EU) UNION EUROPÉENNE (UE) UNIÓN EUROPEA (UE)

M^{me} Nathalie N. TOLSTOI, conseiller BIT, délégation de l'Union européenne auprès des Nations Unies à Genève, Suisse.

Food and Agriculture Organization of the United Nations (FAO)
Organisation des Nations Unies pour l'alimentation et l'agriculture
Organización de las Naciones Unidas para la Alimentación y la Agricultura

Mr Matthew CAMILLERI, Fishery Liaison Officer, Policy, Economics and Institutions Branch, Fisheries and Aquaculture Policy and Economics Division (FIP), Fisheries and Aquaculture Department, Rome, Italy.

Mr Ari GUDMUNDSSON, Senior Fishery Industry Officer (Vessels/Fishing Operations), Fishing Operational and Technology Branch, Fisheries and Aquaculture Resources Use and Conversation Division, Fisheries and Aquaculture Department, Rome, Italy.

International Maritime Organization (IMO)
Organisation maritime internationale(OMI)
Organización Marítima Internacional (OMI)

Mr Brice MARTIN-CASTEX, Head, Implementation and Port State Control, Co-ordination (IPC) Section, Department for Member State Audit and Implementation Support, Maritime Safety Division, London, United Kingdom.

Representatives of non-governmental international organizations
Représentants d'organisations internationales non gouvernementales
Representantes de organizaciones internacionales no gubernamentales

International Christian Maritime Association (ICMA)

Sr. Domingo González Joyanes, Madrid, España.

International Collective in Support of Fishworkers (ICSF)

Mr Sebastien MATHEW, Programme Adviser, ICSF – International Collective in Support of Fishworkers, Chennai, India.

International Maritime Health Association (IMHA)
Association internationale de médecine maritime
Asociación Internacional de Medicina Marítima

Dr Ilona DENISENKO, IMHA President, Antwerp, Belgium.

**International Union of Food, Agricultural, Hotel, Restaurant, Catering,
Tobacco and Allied Workers' Associations (IUF)**
**Union internationale des travailleurs de l'alimentation, de l'agriculture,
de l'hôtellerie-restauration, du tabac et des branches connexes (UITA)**
**Unión Internacional de Trabajadores de la Alimentación, Agrícolas, Hoteles,
Restaurantes, Tabaco y Afines (UITA)**

Mr Kirill BUKETOV, International Officer, Fish Industry and Aquaculture, IUF, Geneva, Switzerland.

International Seafarers Welfare and Assistance Network (ISWAN)
Réseau international d'assistance sociale aux gens de mer
Red Internacional para el Bienestar y la Asistencia de la Gente de Mar

Dr Suresh IDNANI, Trustee, Croydon, United Kingdom.

International Transport Workers' Federation (ITF)
Fédération internationale des ouvriers du transport
Federación Internacional de los Trabajadores del Transporte

Mr Jon WHITLOW, Secretary, Seafarers, Fisheries and Inland Navigation, ITF House, London, United Kingdom.

Mr Rossen KARAVATCHEV, Senior Section Assistant, Seafarers, Fisheries and Inland Navigation, ITF House, London, United Kingdom.

International Organisation of Employers (IOE)
Organisation internationale des employeurs (OIE)
Organización Internacional de Empleadores (OIE)

M. Jean DEJARDIN, conseiller, Organisation internationale des employeurs (OIE), Genève, Suisse.

M^{me} Thannaletchimy THANAGOPAL, Organisation internationale des employeurs (OIE), Genève, Suisse.

International Trade Union Confederation (ITUC)
Confédération syndicale internationale (CSI)
Confederación Sindical Internacional (CSI)

Ms Esther BUSSER, Assistant Director, ITUC Geneva Office (ITUC-GO), Geneva, Switzerland.

Organization of African Trade Union Unity (OATUU)
Organisation de l'Unité syndicale africaine (OUSA)
Organización de Unidad Sindical Africana (OUSA)

M. Abdullpaye Lelvuma DIALLO, représentant permanent à l'OIT, Genève, Suisse.