



## **Governing Body**

309th Session, Geneva, November 2010

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### TWELFTH ITEM ON THE AGENDA

## **Reports of the Committee on Legal Issues and International Labour Standards**

### **Second report: International labour standards and human rights**

#### **Improvements in the standards-related activities of the ILO**

(Fourth item on the agenda)

1. The Committee had before it a document <sup>1</sup> concerning improvements in the standards-related activities of the ILO, which focused on the standards policy component of the standards strategy and provided an update on the implementation of the interim plan of action.
2. The representative of the Director-General (Ms Cleopatra Doumbia-Henry, Director of the International Labour Standards Department (NORMES)) introduced the document and drew attention to the appendices, which contained a proposed outline on a possible classification of international labour standards by strategic objective and a proposed Action Plan to improve the conditions of work of fishers. She also drew attention to the six principles which should guide any review of existing standards, on which consensus appeared to be emerging.
3. The Employer Vice-Chairperson regretted that, despite its length and importance, the document had only been made available on the ILO website very recently, leaving the members of the Committee insufficient time to examine it properly. Consideration should be given in future to postponing the examination of documents that were not made available sufficiently in advance.
4. With regard to the alignment of the subjects of General Surveys with those of the recurrent discussions, the speaker considered that it was too early to speak of a “new generation of General Surveys”. In the Committee on the Application of Standards at the 2010 session of the International Labour Conference, the Employer members had indicated that although

<sup>1</sup> GB.309/LILS/4.

there is value to looking at these instruments in an overall context, something very valuable had been lost. The real value of General Surveys lay in helping constituents to gain a better understanding of their voluntarily ratified treaty obligations. This was undermined by mechanically aligning General Surveys with the schedule of the recurrent reviews. If it was not possible to improve the information contents of the new General Survey format, one should return to the previous form and substance of General Surveys. The Office should therefore keep the new format of General Surveys under review and take into account the lessons learnt, one of which was that the substance and value of General Surveys suffered unless they were restricted to a very small number of instruments (two or three).

5. The speaker emphasized the need to consider the standards policy as a whole, with the review of standards and the promotion of relevant standards moving forward together, as it would be pointless to promote standards which might subsequently be considered irrelevant upon review and thus disrespect the relevance of ILO standards requested by the ILO Declaration on Social Justice for a Fair Globalization. The identification of standards in need of revision was part of the standards policy, and the available legal tools for revision should therefore also be kept under review and, if possible, new tools developed. The process of the revision of standards had always been very cumbersome, and the means of revision in the Maritime Labour Convention, 2006 (MLC, 2006), and in certain other international legal instruments might offer useful solutions, eventually leading to modifications to the standard final provisions for future Conventions. The Employers' group further indicated that part of the standard policy is also the definition of appropriate actions to be implemented for the outdated standards identified by the Cartier Working Party. They basically agreed with the six guiding principles for the review of standards, although more information should be provided on their origin. A particularly important principle was that decisions should be responsive and relevant to the world of work, thereby covering the needs of workers and of sustainable enterprise. They indicated that keeping the standards under review was a necessary element for a sound standard strategy. The Employers' group also agreed that the recurrent discussions could provide a thematic framework for the review of standards by strategic objective, rather than on a case-by-case basis. However, as Conference discussions only occurred once a year it would be difficult for them to cover all the standards related to a single strategic objective. The LILS Committee, or possibly a working party of the Committee, met more often than the Conference and should therefore play a central rather than a supplementary role in the review process. Standards adopted over ten years earlier should be subject to review, and particularly those adopted in the period between 1985 and 2000 (following the rule of the Cartier Working Party). They recalled that this clearly shows a need for a regular review mechanism in that all standards that become older than ten years would become candidates for review. Other candidates for review would be those standards identified by the Cartier Working Party as being in need of revision, those with pending requests for information and Conventions currently classified as being up to date, but for which there was no shared opinion or there had been serious calls from constituents for further study. However, it was not appropriate to define too narrowly in advance the procedures for review by the LILS Committee, which should be allowed a certain flexibility in re-examining standards. Concerning the exclusion of standards covered by "recent" General Surveys the Employers' group requested clarifications on what was meant by "recent".
6. The Employers' group welcomed the proposal to let the LILS Committee convene meetings to discuss preparatory work as has recently been done for the MLC, 2006. They were also of the view that the examination of the standards related to a strategic objective should preferably precede the recurrent discussion. The details of the review mechanism should be finalized and decided upon in March 2011. Substantial preparatory work for the review would have to be undertaken by the Office and at least two meetings of the LILS Committee, or a LILS working party, would be needed to cover all the standards related to

a strategic objective (for example in November 2011 and March 2012). Moreover, some time would be needed for the outcome of the review to feed into the preparations for the General Survey and the recurrent discussion. It would therefore seem realistic that the first review should be of standards in the field of social dialogue, which would be covered by the General Survey and recurrent discussions in 2013. The group welcomed the proposals for research on standards-related issues to become a permanent exercise and for Office-wide cooperation, including the Bureaux for Employers' and Workers' Activities (ACT/EMP and ACTRAV).

7. Referring to the promotion of standards through plans of action, the Employers' group considered that a general discussion was overdue on the objectives and format of such plans of action. They should be based on a comprehensive approach, as indicated in the ILO Declaration on Social Justice for a Fair Globalization, which emphasized the interrelated links between all four strategic objectives and warned that failure to promote any of the strategic objectives would harm progress towards the others. The ILO should develop plans of action on important labour themes, such as occupational safety and health, labour inspection and labour conditions in a particular sector, in which the promotion of an ILO standard would be a relevant element alongside other ILO tools. Plans of action should not only be initiated by NORMES, but should constitute a genuine collaborative effort by units from all four sectors of the Office, with the consultation and involvement of ACT/EMP and ACTRAV at all stages. As plans of action focused on building technical capacity in member States, the Committee on Technical Cooperation, the Committee on Sectoral and Technical Meetings and Related Issues and even the Governing Body itself might be more competent for their discussion and adoption than the LILS Committee. Such integrated action plans would be more likely to achieve effective impact in practice.
8. With regard to the promotion of standards through plans of action, the Employer Vice-Chairperson reaffirmed a number of general principles which, according to them, should be set out at an appropriate place in the action plans. First of all, it had to be emphasized that the ratification of Conventions was the prerogative of member States. Decisions regarding the ratification of Conventions should involve tripartite consultations and should only occur at the end of a process of careful prior assessment and preparation that offered certainty that compliance could be achieved. Where correct application could not be guaranteed, ratification should be postponed until there was reasonable certainty in this regard. It had to be recalled that ILO Conventions involved obligations under international law to implement all their provisions. With reference to the proposed Action Plan to improve the conditions of work of fishers, the introductory part on activities that had already been implemented should be placed in an annex. Although there were useful elements to the Action Plan, it had been conceived from a narrow standards perspective. The promotion of the fishing instruments should be embedded in an integral plan of action to improve employment and conditions of work in the fishing sector. Moreover, the priority given to the indicator "Ratification by member States" in the proposed Action Plan did not correspond to its main purpose, which was the provision of assistance to build implementation capacity. That indicator should therefore be placed towards the end of the list.
9. The Employer Vice-Chairperson regretted the isolated focus on standards of the Office's proposal for a plan of action on standards that support economic and jobs recovery and reduce gender inequality. This isolated approach contradicted the integrated approach of the ILO Declaration on Social Justice for a Fair Globalization. Each standard considered for promotion should be selected by consensus by the LILS Committee, in accordance with past practice. Moreover, the introduction of a regular review mechanism would provide a basis for identifying further standards for possible promotion.

- 10.** In addition to issuing information on the results of the Cartier Working Party, the speaker called on the Office to provide links on its website to the reports containing the discussion of each instrument, as the exact wording was important to understand the decisions taken. He expressed reservations concerning the suggestion previously made by the Workers' group that a letter should be sent to governments to remind them of the relevant conclusions of the Cartier Working Party, as the proposal had not been discussed or approved by the LILS Committee. If such a letter were to be sent, the exact decision should be quoted for each instrument, with references to the preceding discussions. The letter should also explain that Conventions adopted between 1985 and 2000, which were over ten years old, had not yet been reviewed, although such a review was envisaged by the planned review mechanism. It should also note cases in which recent discussions of General Surveys had reached conclusions that differed from those of the Cartier Working Party, as in the case of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94). Lastly, he agreed with the point for decision in paragraph 24(b), subject to the amendments outlined, but called for an additional point for decision calling for a paper to be submitted in March 2011 setting out in detail the terms of reference for the planned standards review mechanism so that the Committee could take a decision and move forward on the issue in November 2011.
- 11.** With reference to the implementation of the interim plan of action, the Employer Vice-Chairperson requested the Office to provide further details on the preparations for the meeting of experts on the termination of employment instruments, including when the country studies and the report for the meeting would be available. With regard to the classification of standards by strategic objective, and particularly the difficulties encountered with certain Conventions, such as those relating to specific categories of workers, he emphasized that the alignment of standards-related activities with strategic objectives should not be overdone and that it showed the limits of the alignment according to strategic objectives. Moreover, certain instruments assigned to one strategic objective could be related to another, such as the instruments on the protection of children and young persons and on workers with family responsibilities, which should be classified under social protection rather than fundamental principles and rights at work. Similarly, the indigenous and tribal peoples instruments should be classified under social dialogue and migrant workers instruments under employment. With regard to the report form for the Forced Labour Convention, 1930 (No. 29), he indicated that a change in the report form was not sufficient and that a legal solution needed to be found for the obsolete transitional provisions. Indeed, the Committee of Experts had proposed the adoption of a protocol to revoke those provisions as it did not have the power to declare these provisions inapplicable. With regard to the technical cooperation programme, he warned against undue emphasis being placed on ratification as a criterion for the provision of technical assistance. He suggested that other criteria should be taken into consideration such as: the existence of functioning tripartite consultations on standards-related matters; the identification of a particular Convention or Recommendation by the tripartite constituents in a country for full or partial implementation; and the proven capacity and will of a country to comply with ratified Conventions.
- 12.** Lastly, the Employer Vice-Chairperson noted that the report on the discussions of the Conference Committee on the Application of Standards had once again been published separately. He called on the Office to make greater efforts to increase its visibility, for example by quoting it more frequently in other ILO publications. He also recalled the requests made by the Employer members in the Conference Committee for changes in the contents of the report of the Committee of Experts, which should be brought to the attention of the Committee at its next meeting.
- 13.** The Worker Vice-Chairperson emphasized the importance of all the elements of standards policy, including the identification of new standards and action to promote the ratification

and effective implementation of standards. She expressed support for the definition of the standards policy set out in paragraph 10. She noted that there was a convergence of views among Governments, Employers and Workers on the definition. In view of this, and as promotion of up-to-date standards is a core element of the standards policy, she felt that it was important for the LILS committee to give clear guidance to the Office so that they could carry out their work effectively, particularly with regard to the plans of action that the Office paper had identified. She, therefore, expressed surprise over the Employers' reservation to the Workers' group suggestion for a letter to be sent to governments to remind them of the relevant conclusions of the Cartier Working Party over which there was tripartite agreement. Likewise, as a core element of the Global Jobs Pact is to promote the ratification and implementation of standards pertinent to economic and jobs recovery and to reduce gender inequality, she felt that the Office should be given a clear mandate to proceed with the plan of action. She also expressed support for the six guiding principles that should govern the review of standards. In particular, it was important to observe the first guiding principle which is that proposals should not have the effect of reducing the protection already afforded to workers by ratified Conventions. However, two very important elements should be added to those principles. Firstly, governments, employers and workers should enter the process in good faith, which implied that they would respect the decisions made and that the Office and the constituents would make every effort to implement the conclusions of the process effectively. Secondly, until consensus was reached on the status of an instrument and on any specific action to be taken, its current status should be maintained and up-to-date Conventions should continue to be promoted by the Office. Following the first experience of the recurrent discussion, consideration could be given to supplementing the analysis of standards in General Surveys and recurrent discussion reports, for example through the LILS Committee, which could play a useful supplementary role by holding discussions on the standards related to each strategic objective before or after the recurrent discussion in the Conference. She agreed that the standards adopted between 1985 and 2000 should be covered by the review exercise. She also agreed with the inclusion of the instruments in Appendix III, Part B, and asked for the Office's views on the instruments with interim status. A broad approach should be adopted to the methodologies for further reviewing instruments (working party, meeting of experts, studies prepared by the Office), which could take into account the specificities of each group of instruments. She also approved of the possibility of convening specific meetings to discuss preparatory work being carried for the ratification and implementation of Conventions, such as the recent preparatory meeting on the MLC, 2006.

14. The speaker considered that the first group of instruments to be reviewed should be those related to the strategic objective on fundamental principles and rights at work. The Office could prepare a study on the instruments on the protection of children and young persons, which would not be included in the General Survey, but could be covered by the recurrent discussion. The study could be based on the standard-setting proposal submitted to the Governing Body for the consolidation of 12 instruments on night work, underground work and the medical examination of children and young persons. While generally supporting the proposed classification of standards in Appendix II, she sought clarification on why the instruments on workers' representatives had been listed under social dialogue rather than fundamental principles and rights at work.
15. The Worker Vice-Chairperson welcomed plans of action as a valuable tool for the promotion of up-to-date instruments, but regretted that the whole process was weakened by lack of resources. The Governing Body and the Office should ensure that resources were found urgently for current and future plans of action. However, the promotion of up-to-date standards could not be confined to the implementation of plans of action, which only covered a limited number of instruments. The promotion of up-to-date standards should be an essential part of the everyday work of all ILO technical departments, which should adopt a very proactive approach that should be clearly reflected in the next

programme and budget. Efforts also needed to be stepped up to ensure that all Decent Work Country Programmes included a standards component.

- 16.** The speaker fully supported the proposed Action Plan to improve the conditions of work of fishers as the fishing industry was hazardous and suffered from a widely acknowledged decent work deficit. She also strongly supported the adoption of a plan of action on the standards that support the economic and jobs recovery and reduce gender inequality. Standards were the least developed area in the activities carried out under the Global Jobs Pact. A proposal for a plan of action on instruments relevant in times of crisis, as called for in the Global Jobs Pact, should therefore be submitted to the LILS Committee in March 2011 with funding from extra-budgetary resources or Regular Budget Supplementary Account (RBSA). She welcomed the proposal to send letters to governments reminding them of the relevant conclusions of the Cartier Working Party. At a time when a standards review mechanism was under discussion, it was important to demonstrate that the decisions reached in the previous review were being followed up. A letter should also be sent to governments to remind them of the call made in the ILO Declaration on Social Justice for a Fair Globalization to review their situation with regard to the ratification and implementation of ILO instruments with a view to achieving increasing coverage of each strategic objective.
- 17.** Turning to the implementation of the interim plan of action, the Worker Vice-Chairperson welcomed the information provided on the meeting of experts on the instruments on termination of employment. As the three-year reporting cycle for fundamental and governance instruments was to be introduced as from 2012, she firmly expected that adequate consideration would be given by the Committee of Experts to all comments from workers' organizations outside the regular reporting cycle referring to serious violations of workers' rights. She hoped that the creation of the post of Coordinator for Technical Cooperation in NORMES would facilitate work in that area and strengthen cooperation with technical departments. Starting the technical cooperation programme with two countries per region was a very small target. However, she understood that this was necessitated by budgetary constraints. A key element in the selection of countries should be the nature of the gaps in the implementation of instruments for both ratifying and non-ratifying countries. While requests for assistance for ratification could be a criterion, they should not be a condition for the provision of Office support. ACTRAV and ACT/EMP should be involved in the programme, which should be financed through the regular budget or, if that were not possible, should be given priority in the allocation of extra-budgetary and RBSA funds.
- 18.** The representative of the Government of India considered that the alignment of General Surveys with the topics of recurrent discussions allowed a better understanding of the diverse realities and needs of constituents and contributed to the development of suitable strategies for standards-related activities. Standards adopted between 1985 and 2000 should be reviewed to keep them up to date, with priority being given to the standards on wages and occupational safety and health. Convening meetings on specific Conventions helped to promote the standards and identify obstacles to their ratification. The first standards to be reviewed should be those on social security, in view of their relevance to informal sector workers. He welcomed the proposal for technical assistance to help governments reduce gaps in the implementation of standards and the Action Plan to improve the conditions of work of fishers. Discussions on that Convention had been initiated with stakeholders in his country. He emphasized that the possibility of consolidating existing standards with common elements and overlapping provisions should be considered when reviewing and updating standards. The inclusion of flexibility in labour standards to reflect the diversity of the socio-economic and political conditions in member States would improve their ratification prospects. He expressed commitment to the standards policy and reviewed recent ratifications by his country. He underlined that, in

India, ratification occurred only when national laws and practice were in conformity with the Convention concerned. The ratification of any instrument was a national governance issue, and the special needs of countries and their differing capacities and requirements needed to be borne in mind. Efforts should not focus solely on ratification, and the non-ratification of core or governance Conventions should not be construed as absence of compliance with the principles in those instruments. The overall action taken for the implementation of various labour standards was a better indication of the commitment of countries to labour welfare.

19. The representative of the Government of the Bolivarian Republic of Venezuela, speaking on behalf of the group of Latin American and Caribbean States (GRULAC), welcomed the document submitted for decision and the informal tripartite consultations held in February and March 2010. He welcomed the alignment of the subjects of General Surveys with those of recurrent discussions, and particularly the first analysis and broad discussion of the employment instruments in June 2010. There was no doubt that the experience had created considerable synergy between the Conference Committee on the Application of Standards and the discussion of the recurrent report on employment, thereby contributing to the promotion of those standards. With regard to the standards policy itself, he agreed that it was necessary to keep the body of ILO standards up to date, identify standards in need of revision and identify and promote up-to-date standards. He welcomed the proposed classification of ILO standards by strategic objective and the fact that the Office was exploring the possibility of developing a plan of action on standards that supported the economic and jobs recovery and reduced gender inequality, as indicated in the Global Jobs Pact. GRULAC would continue to monitor progress in those areas and would provide the Office with timely guidance on the measures to be adopted. Lastly, in addition to the LILS Committee, which was specialized in that field, the various components of the standards policy would also need to be submitted to the Governing Body and, where necessary, the International Labour Conference.
20. The representative of the Government of Canada, speaking on behalf of the group of industrialized market economy countries (the IMEC group), expressed support for the alignment of the subject matter of General Surveys and recurrent discussions. However, if the discussion of the General Survey took place a year ahead of the recurrent discussion, the information in the General Survey and the outcomes of its discussion by the Committee on the Application of Standards could be reflected in the report prepared for the recurrent discussion. The proposal to do so would be pursued in the meeting of the Steering Group on the ILO Declaration on Social Justice for a Fair Globalization and the Office should develop options for its implementation. She added that the LILS Committee should play a key and permanent role in following up and supplementing General Surveys and the standards-related aspects of recurrent discussions. She strongly supported the development of an ongoing mechanism within the LILS Committee for keeping international labour standards up to date. There could be merit in establishing a tripartite working group mandated to follow up the work of the Cartier Working Party, review the standards adopted since 1985, identify reasons for the low rates of ratification and formulate appropriate responses. However, given the limited details on the nature of such a review mechanism, additional information was required on its operation and cost implications. If the review were to proceed on the basis of standards grouped by strategic objective, she suggested that the standards related to employment should be examined first, as they had recently been covered by a recurrent discussion and a General Survey. At the same time, the question of the classification of standards that addressed more than one strategic objective remained unresolved. She asked the Office to provide further clarification on the role of the LILS Committee, or a working party of the Committee, on how governments would be included in the process and on the relationship between the full discussion mentioned in paragraph 20, the possible convening of standard-specific meetings, the

outcome of the proposed working party and the information on which the Governing Body would base decisions on the status of instruments.

- 21.** The IMEC group welcomed the Action Plan (2011–16) to improve conditions of work of fishers, though it noted that governments were not identified as implementing partners and there was no reference to their involvement in continuing consultations on the implementation of the Action Plan and possible modifications. Further information was also required on the proposal for a plan of action on standards that support economic and jobs recovery and reduce gender inequality. The posting of the conclusions of the Cartier Working Party on the ILO website and the proposal that governments be sent a letter to remind them of the conclusions were to be welcomed, provided that this did not involve additional reporting obligations. Further information was also required on the impact of the new reporting cycle on the reporting obligations of governments. It should be emphasized that the purpose of grouping Conventions by subject was to reduce the reporting burden. For example, following the grouping of all maritime Conventions together for reporting purposes, the government department responsible for such issues provided input to all reports once every five years instead of to one or more reports every year. The IMEC group would not want to lose that improvement. Clarifications should be provided on how reporting on the strategic objective of fundamental principles and rights at work would proceed, as the list of standards under it included both fundamental and non-fundamental Conventions, for which reporting cycles differed. The speaker endorsed the criteria for determining the allocation of scarce technical cooperation resources and requested the Office to prepare an information document for the March 2011 meeting explaining the operation of the online reporting system and its impact on constituents. Finally, the Office was asked whether any surveys had been carried out to assess whether the production of hard copies of the report of the Conference Committee had contributed to awareness raising. A cost-benefit analysis of the value of hard copy publications might be timely, as scarce resources could perhaps be better used to make more documents available electronically.
- 22.** The representative of the Government of Mexico endorsed the GRULAC statement and suggested that the proposed review be held before the discussions at the Conference so that it could enrich and contribute new elements to the Conference debates. As current discussions in the ILO were based on the strategic objectives, the possibility should be explored of testing the proposal set out in Appendix II so that the standards could be reviewed by strategic objective. The standards to be reviewed should be those relating to one of the next two strategic objectives to be covered, and particularly social security, with a view to promoting broad discussion of the same issue in the various ILO bodies. The speaker concluded that the review of standards by strategic objective would ensure the coherence of the ILO's work.
- 23.** The representative of the Government of China emphasized that the standards policy should be based on consultations. Rather than the number of ratifications, the focus should be on the application of Conventions, which could be improved through technical cooperation. The ILO Declaration on Social Justice for a Fair Globalization provided a well-identified road map, and while the General Survey and recurrent discussion on employment had been good first steps, a more thorough analysis was needed of the progress made. He supported the six guiding principles for the review of standards and emphasized that awareness raising, the exchange of information and the strengthening of capacity, in which the Turin Centre could play a greater role, were also important. Regarding the Action Plan to improve conditions of work of fishers, he recalled that fishers were a vulnerable group in need of protection. However, the fishing industry in many developing countries was geographically dispersed and focusing on a single uniform standard might therefore not be effective in improving their conditions. With regard to the meeting of experts on the termination of employment instruments, he indicated that China



had recently adopted a law requiring the conclusion of a contract between employees and employers, and it wished to participate in the discussion of the meeting of experts. Finally, he welcomed the streamlining of report forms in order to reduce the burden on member States.

- 24.** The representative of the Government of Nigeria, speaking on behalf of the Africa group, regretted that the document had been published only a few days before the meeting. In accordance with the ILO Declaration on Social Justice for a Fair Globalization, the standards policy should be promoted as a central means of achieving the ILO's constitutional objectives. The recurrent discussion assisted in determining the needs and realities of member States, and the General Survey should be aligned with it. He supported the guiding principles outlined to govern the review process, which should be based on independent analysis and consensus at all levels. Regarding the Worker Vice-Chairperson's suggestions on the guiding principles, good faith did not need to be included among the principles, as it was already a component of the review process. He welcomed the Action Plan to improve conditions of work of fishers, the tripartite meeting of experts on the termination of employment instruments, the new reporting cycle and the progress made in the standards strategy, which should be consolidated in line with the strategic objectives. He therefore supported the points for decision.
- 25.** The representative of the Government of Australia supported the statement by the IMEC group and emphasized that an effective standards policy would ensure that the ratification and implementation of ILO labour standards remained a fundamental aspect in ensuring decent work for all. He strongly supported the alignment of the standards policy with the ILO Declaration on Social Justice for a Fair Globalization. The recurrent discussions provided a structured approach for an ongoing mechanism to follow up the recommendations of the Cartier Working Party, and to review standards more generally. The establishment of a tripartite working group within the LILS Committee with a wide-ranging mandate to examine all the instruments falling within a strategic objective, including those not examined by the Cartier Working Party, had merit, although the relationship between the new working group and the LILS Committee would require further clarification. The mandate of these bodies appeared to be mutually supportive, which suggested that the working group should undertake the necessary analysis for each body of Conventions and report regularly to the LILS Committee. The LILS Committee would then be directly responsible for following up the recommendations of the working group, thereby ensuring their prompt implementation, once accepted. The review of the labour standards under each strategic objective should be undertaken upon the conclusion of each recurrent discussion, which would allow the working group and the LILS Committee to consider the conclusions of the Conference Committee. The instruments under the strategic objective of employment should accordingly be considered first. Although the issue of time frames for the review process had not been covered by the document, he suggested that the time frame for each review be linked to that of the recurrent discussions, where each strategic objective was to be discussed twice in a seven-year cycle. An appropriate time frame should accompany each review to ensure its timely completion and subsequent follow-up action. The proposal would create an ongoing programme of work for the LILS Committee to reinvigorate and reinforce international labour standards. Finally, he reaffirmed his view that the discussion of standards policy should always include discussion of the effective implementation of ILO Conventions. The fundamental benefit of the review mechanism would be to ensure that ILO Conventions provided robust protection for workers and could be widely ratified.
- 26.** The representative of the Government of Bangladesh supported the promotion of ILO standards and called on the ILO to bear in mind the differing levels of ability of the various countries to ratify and implement Conventions. Despite being among the least developed countries, Bangladesh had ratified 33 Conventions, including seven fundamental

Conventions, and focused on their proper implementation. It also consulted the provisions of non-ratified Conventions when formulating new laws. Ratification undeniably depended largely on a country's socio-economic and political circumstances and there should therefore be flexibility in the ratification and implementation of ILO Conventions. ILO technical assistance had contributed much, not only to the ratification and implementation of Conventions, but also to the framing of labour policy, labour legislation and labour administration. Improving ILO standards alone would have little effect unless the capacity of constituents in member States was strengthened by means of assistance in the form of needs assessment, sensitization and the sharing of experience and good practices. The improvement of ILO standards-related activities should therefore be accompanied by a plan of action to assist member States facing resource constraints.

- 27.** The representative of the Director-General, responding to the questions raised during the discussion, noted that most of the guiding principles for the review of standards had been discussed during the informal consultations on the standards policy. Some of them, and particularly the principle that proposals should not have the effect of reducing the protection already afforded to workers by ratified Conventions, had been outlined by the Cartier Working Party. A set of guiding principles had been developed for the preparation of the MLC, 2006, taking as a point of departure those of the Cartier Working Party. They had proven to be very important in finding consensus on the way forward. One important element was also drawn from the ILO Declaration on Social Justice for a Fair Globalization.
- 28.** The speaker explained that NORMES was not necessarily taking the lead in the preparation or promotion of the plans of action. For example, the department had worked with SECTOR on the action plan for the MLC, 2006, and the action plan on the fishing sector was led by SECTOR. The plans of action proposed were developed and implemented with the technical departments in consultation with ACT/EMP and ACTRAV. The emphasis on technical cooperation offered greater opportunities to reach out to the technical departments and to strengthen the standards components of all technical assistance activities.
- 29.** With regard to the Tripartite Meeting of Experts to Examine the Termination of Employment Convention, 1982 (No. 158), and Termination of Employment Recommendation, 1982 (No. 166), to be held in Geneva in April 2011, she indicated that ten national studies have been prepared, five concerning countries which had ratified Convention No. 158 and five which had not. The information obtained would be used in the working document that the Office was preparing for the Tripartite Meeting of Experts. She referred to the concerns expressed by authors of the studies about the difficulties in finding quantitative data concerning the issues related to the Convention. The Office was confident that the meeting would be the opportunity for a constructive discussion. With reference to the report form for Convention No. 29, she recalled that the matter had been discussed on two occasions by the LILS Committee, which had decided not to follow the guidance of the Committee of Experts. Under those circumstances, the Office did not have a mandate to take further action on the issue. Concerning the indication that a letter would be sent to governments to remind them of the relevant conclusions of the Cartier Working Party, she noted that the Workers' group had merely reminded the Office of something that it should have done earlier.
- 30.** With regard to the remarks by the Employers' group on the ratification and implementation of Conventions, the speaker reaffirmed that the decision to ratify a Convention was entirely the responsibility of the country concerned. The plans of action in fact contained a strategy which, inter alia, would provide assistance not only to countries to improve implementation of ratified Conventions, but also to countries that wished to ratify a Convention, thereby enabling them to be in a position to effectively implement it. For

many countries, Conventions were a source of inspiration for improved implementation. If it was necessary to wait until law and practice was in full accordance with an instrument before ratification, many countries, and particularly developing countries, might be prevented from ratifying most ILO Conventions. This was where technical assistance was most useful. Finally, she indicated that the Office would review the proposed classification of Conventions by strategic objective in the light of the comments made. Taking into account all the views expressed, it would prepare a paper with a view to the adoption of a decision on the standards policy component of the standards strategy, including an ongoing review mechanism, in March 2011.

31. The Employer Vice-Chairperson emphasized that the Employers' group did not oppose the ratification of Conventions, but that it was important that the countries concerned were able to implement them prior to ratification. When ratification was envisaged, countries needed to change legislation so that the provisions of the instrument could enter into national law and practice. Technical assistance was welcomed in helping countries achieve the level for the implementation of Conventions, at which point they could logically envisage ratification.
32. The Worker Vice-Chairperson emphasized that the ratification of Conventions was a source of inspiration for many countries. For example, the instruments on freedom of association and tripartite consultations had been ratified in many developing countries, which had gradually improved their implementation over the years until social dialogue had become a part of national life. She called on the Office to continue to provide support through technical cooperation and other efforts such as the Decent Work Country Programmes to help countries better implement standards. However, she felt that difficulties in implementation should not be cited as a reason for discouraging ratification, as standards are universal in nature and would apply in all economic or political conditions. The Workers' group looked forward to continued consultations on the many issues raised during the discussion, including the classification of instruments by strategic objective.
33. ***The Committee recommends that the Governing Body:***
  - (a) ***invite the Office to prepare a paper for submission to the 310th Session (March 2011) of the Governing Body containing further details on the implementation of the standards policy component of the standards strategy, including draft terms of reference of a possible standards review mechanism; and***
  - (b) ***approve the Action Plan (2011–16) to improve conditions of work of fishers through widespread ratification and effective implementation of the Work in Fishing Convention, 2007 (No. 188), and the effect given to the Work in Fishing Recommendation, 2007 (No. 199), as revised in light of the discussion, and contained in the appendix to this document.***

## General status report on ILO action concerning discrimination in employment and occupation (Fifth item on the agenda)

34. The Governing Body had before it a document<sup>2</sup> on ILO action concerning discrimination in employment and occupation.
35. The Worker Vice-Chairperson welcomed the efforts by the Office in promoting relevant ILO standards relating to non-discrimination and equality, and considered that the goal of universal ratification of the fundamental Conventions on equality should remain high on the agenda. She also welcomed recent ratifications of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and called for further promotion of these Conventions, as well as the four key gender equality Conventions, to lead to higher ratification rates. She commended the Office for its work in assisting countries to develop and implement effective anti-discrimination and equality legislation, and strengthen national institutions. She considered that more attention should be paid to multiple discrimination, particularly in the context of racial and religious discrimination, and to monitoring discrimination. Increased ILO assistance on equal remuneration was also needed, particularly in the light of the financial and economic crisis, as was assistance to constituents to eliminate barriers to women's participation in the formal labour market. She asked the Office to ensure that trade unions also benefited from ILO technical cooperation regarding indigenous and tribal peoples. A more vigorous campaign was also needed on the ratification of the Migration for Employment Convention (Revised), 1949 (No. 97), and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and she referred in this regard to the ACTRAV model agreement regarding migrant workers. She also called on the Office to pursue its activities on discrimination against persons with disabilities and discrimination based on real or perceived HIV/AIDS status, particularly in light of the adoption of the HIV and AIDS Recommendation, 2010 (No. 200).
36. Mr Funes de Rioja, speaking on behalf of the Employer Vice-Chairperson, stressed the importance of ILO action to combat discrimination in employment and occupation, as it was part of promoting social justice through decent and productive work for all men and women. However, noting that this issue was also discussed in other contexts in the Governing Body and the International Labour Conference, his group considered that the item should be included on the agenda only if specific decisions had to be taken. While there were historical reasons for having this item on the LILS agenda, the discussion within the LILS Committee of a document which contained only a history of the actions implemented by the Office in this area did not really serve a purpose. He recalled that pure information items should be avoided and that it would be more appropriate to provide the information contained in the paper on the ILO website. He stated that "promoting" relevant standards went beyond promoting their ratification, and included improved implementation. The number of observations formulated in the report of Committee of Experts regarding the application of fundamental ILO Conventions showed that efforts had to be focused on the implementation of ILO Conventions rather than on their ratification alone. In terms of the Conventions "related to discrimination", a confusion was made in the document between fundamental Conventions and the other Conventions that could be linked to discrimination. He called upon the Office to maintain a clear distinction between fundamental Conventions and other Conventions, and he stressed that a campaign for ratification had been approved by the Governing Body specifically for fundamental Conventions. He also reiterated the Employers' call that the LILS Committee was not the appropriate body for such a document.

<sup>2</sup> GB.309/LILS/5.

- 37.** The representative of the Government of India expressed appreciation for the global efforts made by the ILO towards the elimination of discrimination in employment and occupation, and outlined his country's efforts in addressing such discrimination. His Government looked forward to continued technical support from the ILO to implement policies and programmes to address discrimination and promote equality.
- 38.** The representative of the Government of Nigeria, speaking on behalf of the Africa group, called on all ILO constituents to work towards the elimination of discrimination in employment and occupation, and expressed support for the campaign to ratify the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The speaker considered that the ILO should work with other UN agencies, using complementary instruments and declarations, to increase the capacity of constituents regarding non-discrimination and equality.
- 39.** The representative of the Director-General suggested that the issue of where this paper should be discussed could be addressed in the context of the ongoing discussions on the reform of the Governing Body.
- 40.** The Committee noted the information in the document and the comments made.

Geneva, 15 November 2010

*Point for decision:* Paragraph 33



## Appendix

### **Action Plan (2011–16) to improve the conditions of work of fishers through the widespread ratification and effective implementation of the Work in Fishing Convention, 2007 (No. 188), and the effect given to the Work in Fishing Recommendation, 2007 (No. 199)**

#### ***Programme outline***

Title	Action Plan to improve the conditions of work of fishers through the widespread ratification and effective implementation of the Work in Fishing Convention 2007 (No. 188), and the effect given to the Work in Fishing Recommendation, 2007 (No. 199).
Purpose	To set out for the Governing Body, for member States (including States that may wish to ratify the Convention and States and others that may wish to assist the ILO to promote the Convention), and for the ILO's social partners and others, what the Office plans to do within the next five years (subject to available internal and external resources) to achieve widespread ratification and implementation of Convention No. 188, taking into account Recommendation No. 199.
Geographic coverage	Global (all ILO member States with a fishing interest).
Counterparts	Collaboration between ILO headquarters and field units, the Bureau for Workers' Activities (ACTRAV) and the Bureau for Employers' Activities (ACT/EMP), the Labour Administration and Inspection Programme (LAB/ADMIN), the Programme on Safety and Health at Work and the Environment (SafeWork), the International Programme on the Elimination of Child Labour (IPEC), the Social Security Department (SEC/SOC), the Social Dialogue Sector and the Turin Centre. In partnership with interested government ministries and agencies, the Food and Agriculture Organization of the United Nations (FAO), International Maritime Organization (IMO) and the European Union, as well as the International Organisation of Employers (IOE), International Trade Union Confederation (ITUC), International Transport Workers' Federation (ITF) and International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), and in cooperation with other intergovernmental and non-governmental organizations, as appropriate.
Duration	Five years (2011–16)
Starting date	1 January 2011
ILO units responsible	SECTOR and NORMES, in collaboration with ILO field offices and the Turin Centre and other technical departments.

## ***I. Justification***

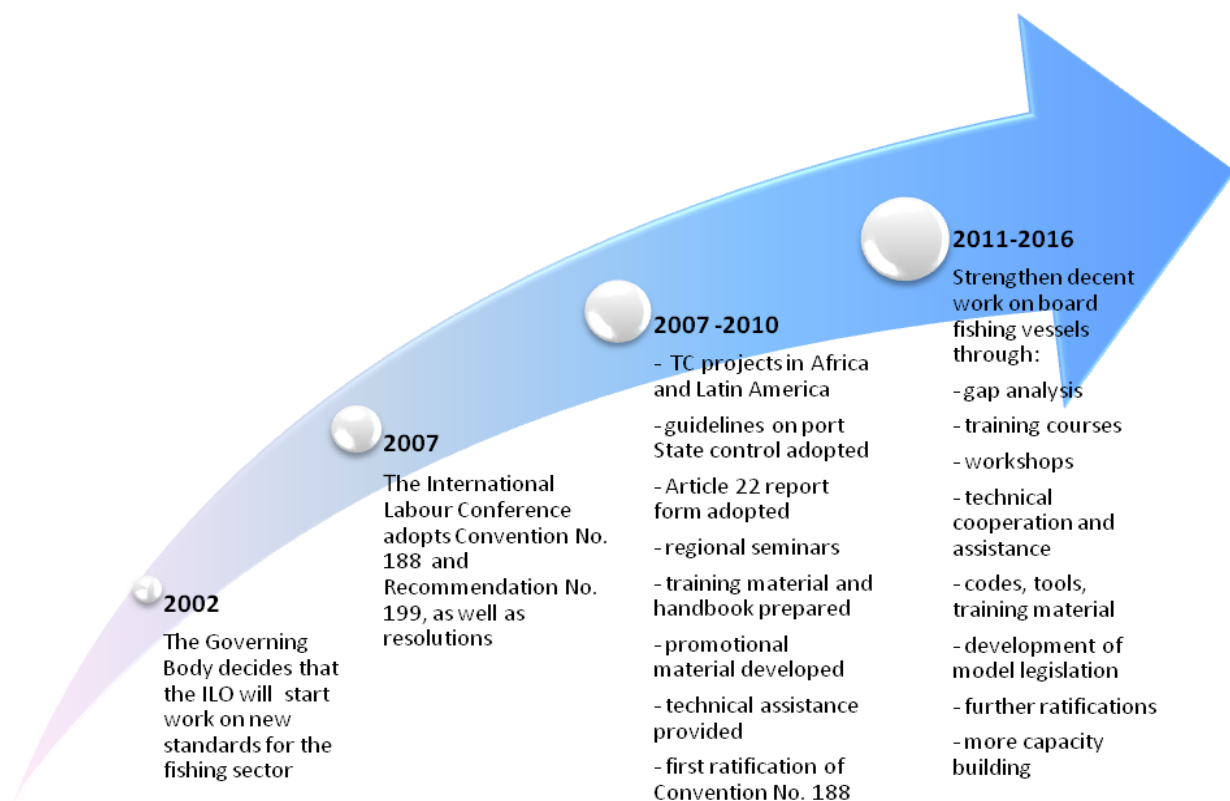
### The fishing sector – The reasons for ILO action

1. More than 30 million people work part time and full time as fishers. It has been estimated that, for each person employed in capture fisheries, there are about four jobs produced in the secondary activities, including post-harvest. Furthermore, each worker on average provides for three dependants or family members. Thus, fishers and those supplying services and goods to them assure the livelihoods of a total of several hundred million people.<sup>1</sup>
2. Work in the fishing sector has many characteristics that set it apart from work in other sectors:
  - The harvesting of fish, and other marine resources, takes place in the often-challenging marine environment. The rate of accidents and event fatalities can be quite high. In many countries, fishing is considered to be the most hazardous occupation.
  - Fishing has long traditions. One of these, found throughout the world, is that of paying fishers on the basis of a share of the catch, which means that fishers are often considered to be “self-employed”.
  - Fishers and their families often live in remote communities that offer only limited alternatives for employment and are far away from regulatory oversight.
  - Increased globalization of fishing has meant increased complexity in working relationships. The State of registration of the vessel, location of the fishing vessel owner, country of residence of the fisher, and area of operation of the vessel may all be different.
  - Many fishers are under economic pressure due to overfishing.
3. The above and other factors call for special considerations for the labour protection of fishers. Yet, in many countries, fishers seem to fall through gaps in the system of laws, regulations and other measures that protect other workers, or may be covered by legislation that does not sufficiently reflect the realities of their work. This may create a “decent work” deficit.
4. In line with the ILO Declaration on Social Justice for a Fair Globalization the ILO is seeking to reduce the decent work deficit in this sector.
5. As described in the annex, much work has already been done and will continue to promote Convention No. 188 and Recommendation No. 199. This Action Plan will build upon this work, and has been developed taking into account lessons learned from promotion efforts undertaken between 2007 and 2010.

<sup>1</sup> FAO: *The state of world fisheries and aquaculture, 2008*, Rome, 2009, p. 26. If aquaculture and its secondary activities and dependants are included, it is estimated that over 500 million directly or indirectly depend on fisheries and aquaculture for their livelihoods.



Figure 1. The way forward: Towards ratification and implementation of Convention No. 188



### *Main challenges*

6. The following summarizes some of the main challenges to be faced in promoting the ratification of the Convention and its implementation, as well as implementation of its accompanying Recommendation:
- how to integrate the work to promote Convention No. 188 and Recommendation No. 199 with other work across all of the ILO's strategic objectives with a view to promoting improvement of conditions of work of fishers;
  - how to make all fishers, fishing vessel owners, employers' organizations, workers' representative organizations, organizations and government ministries/agencies, and other persons or bodies that should know about the Convention aware of its provisions and its utility;
  - how to identify those countries who have the interest and will to review, and possibly change, legislation concerning working conditions in the fishing sector;
  - how to address concerns over the feasibility of the implementation of the Convention in countries that may have special problems of a substantial nature in light of the particular conditions of service of some fishers or fishing vessel operations, as well as in countries that face special problems of a substantial nature due to insufficiently developed infrastructure or institutions;
  - how to strengthen the capacity of government officials to implement the Convention;
  - how to strengthen the capacity of employers' and workers' representative organizations, particularly organizations of fishing vessel owners and fishers, so that they may play their essential role tripartite consultations at the national level on whether and, if so, how, to promote and implement the Convention, and how to assist these organizations to expand their membership to reach greater numbers of fishers;

- how to help encourage better cooperation and coordination among the ministries and agencies that may have a role in the review and implementation of the Convention, and that may need to coordinate the preparation or revision of their regulations;
- how to ensure that those concerned with improving working conditions of fishers are provided with useful tools that will help them to review, ratify and implement the Convention;
- how to facilitate the exchange of experiences, in particular good practices, by the ILO's constituents on the subjects addressed by the Convention;
- how to bring to bear on specific issues (e.g. child labour, social security, safety and health, legal drafting) the wealth of experience and expertise of different ILO headquarters and field units;
- how to keep the Office informed of particular needs and of progress made towards ratification and implementation, in order to allow it to efficiently focus its human and financial resources where action is most needed and where the chances of making real improvements are greatest;
- mobilization of resources.

*Summary of future action to be taken to improve conditions of work of fishers*

7. As will be described below in more detail, the ILO plans to undertake the following types of activities to improve the conditions of work of fishers through possible ratification and implementation of Convention No. 188. It plans to:
  - raise awareness about the purpose, scope and content of the Convention and Recommendation;
  - disseminate and promote the use of existing tools (guidelines, promotional material, training courses) and develop new tools to assist in implementation of the Convention and Recommendation, as needed;
  - assist member States in undertaking comparative analyses (gap analyses) of national laws and regulations or initiating national tripartite consultations concerning improving working conditions in the fishing sector, using Convention No. 188 as a tool to make improvements;
  - assist States to develop tools to promote improved working conditions of fishers, bearing in mind the provisions of the Convention and Recommendation as well as the characteristics and needs of fishers within specific countries, localities and fisheries;
  - facilitate the exchange of experiences, in particular good practices, among the ILO's constituents;
  - help connect States that have specific expertise on subjects covered by the Convention with States that are looking for assistance on those subjects (e.g. South–South cooperation);
  - facilitate and strengthen social dialogue and tripartism in the fishing sector;
  - measure, to the extent possible, progress towards the ratification and implementation of Convention No. 188.
8. The following actions need to be taken by member States and/or social partners that have an interest in possibly ratifying and implementing Convention No. 188. They should:
  - undertake gap analyses of national laws and regulations;
  - hold national consultations concerning improving working conditions in the fishing sector, using Convention No. 188 as a framework for making improvements, where needed;

- allocate the human and financial resources needed to review, revise and implement national laws, regulations or other measures giving effect to the provisions of Convention No. 188;
- include a reference to improving conditions of work in the fishing sector, in particular a reference to giving consideration to implementing Convention No. 188, in Decent Work Country Programmes;
- share lessons learned and good practices, and possibly contribute resources to the ILO's efforts to promote the ratification and implementation of Convention No. 188.

*Specific action to be taken, subject to available resources*

9. The Office plans to undertake the following specific activities, depending on the availability of internal and external resources:

*At the global level*

- integrating its work to promote possible ratification and implementation of Convention No. 188 with related work of all ILO headquarters' units and field offices;
- disseminating the *Handbook for improving living and working conditions on board fishing vessels* (which provides guidance on Convention No.188) and the *Training manual on the implementation of the Work in Fishing Convention, 2007 (No. 188)*, to ILO constituents, fishing sector training institutions, and other interested parties;
- developing guidelines for flag State control implementation of the Work in Fishing Convention, 2007 (No. 188);<sup>2</sup>
- improving the ILO's website on Convention No. 188 and Recommendation No. 199 so that the site can be a better resource for those seeking to promote and implement these instruments (including, where possible, linking to other internal and external sites that provide good practices related to issues addressed in these instruments);
- assisting the Turin Centre in the delivery of training programmes on, or related to, Convention No. 188;
- publishing informal opinions prepared by the Office in reply to interpretation requests concerning the Convention and Recommendation,<sup>3</sup> and publishing frequently asked questions and related answers concerning the Convention and Recommendation;
- preparing guidance to assist States to address issues related to the application of the Convention and Recommendation to small fishing vessels, i.e. those under 24 metres in length;
- developing guidance on addressing specific issues in the fishing sector such as child labour, medical examination and certification of fishers, equipment and supplies to be carried on board fishing vessels;
- promoting and facilitating continued social dialogue at the international level on the implementation of the Convention;

<sup>2</sup> In its report to the Governing Body of the ILO, the Tripartite Meeting of Experts to Adopt Port State Control Guidelines for Implementation of the Work in Fishing Convention, 2007 (No. 188), suggested, inter alia, that the ILO find resources, perhaps through external donors, for the development of guidelines for flag State control implementation of the Work in Fishing Convention, 2007 (No. 188).

<sup>3</sup> Subject to the customary reservation that the Constitution of the International Labour Organization confers no special competence upon the International Labour Office to interpret Conventions.

- providing guidance and disseminating good practice on hours of rest/fatigue prevention/contents of fishers' work agreements/occupational safety and health/social security protection of fishers/reporting and investigation of accidents on board fishing vessels;
- undertaking research on specific issues such as on migrant fishers, pay and wages in the fishing sector, particularly on vessels operating in foreign waters under fisheries agreements;
- preparing practical information on the accommodation provisions of the Convention for use by fishing vessel designers and builders, in order to encourage them to ensure that new vessels meet the requirements of the Convention;
- placing the promotion of the ratification and implementation of Convention No. 188 and Recommendation No. 199 on the agenda of international meetings, involving the major players in the fishing industry, including relevant government ministries and fishers' organizations;
- seeking inclusion of training on Convention No. 188 in the curriculum of the World Maritime University and other IMO-affiliated international maritime training centres, as well as FAO-affiliated training institutions.

*At the regional level*

- placing the promotion of the ratification and implementation of Convention No. 188 and Recommendation No. 199 on the agenda of regional meetings organized or supported by the Office in cooperation with member States with tripartite participation, regional and subregional organizations;
- assisting in the establishment of regional arrangements on port State control of fishing vessels (or the expansion of existing arrangements for inspection of ships to cover inspection of fishing vessels);
- facilitating regional seminars, forums, regional training programmes, information and exchange on the issues addressed in Convention No. 188 and Recommendation No. 199;
- assisting, where requested, in the development of a social partners' agreement on the implementation of Convention No. 188 in the European Union;

*At the national level*

- undertaking general needs assessments of specific countries with respect to possible legislative, infrastructural or training requirements in order to be in a position to ratify Convention No. 188, with emphasis on the possibilities of international cooperation to meet the needs;
- assisting States to develop national plans of action for implementation of the Convention;
- providing assistance to countries in the preparation of legislative gap analyses/legislative reviews to determine areas of adjustment that may be needed;
- encouraging countries to establish tripartite national advisory committees to formulate advice on the preparation/revision of legislation covering fishers;
- assisting countries, upon request to review/comment on their capacity to implement the inspection systems required by the Convention;
- supporting translation of Convention No. 188 and Recommendation No. 199 into languages other than the official ILO languages, based on interest expressed, in particular in Decent Work Country Programmes;

- promoting the integration of Convention No. 188 and Recommendation No. 199 into Decent Work Country Programmes as these are developed or reviewed;
- collecting information for each country, including progress in ratification of the Convention and any problems encountered;
- providing a timely response to requests for legal opinions or other information concerning the Convention and to inquiries concerning the assistance available;
- receiving and acting upon requests for assistance with respect to implementation of the Convention;
- commenting on draft national legislation or assisting in drafting;
- evaluating the difficulties faced by countries that have not been able to move to ratification;
- researching to address gender dimensions in national legislation;
- undertaking expert missions and participation in national seminars when requested (or providing support to ILO field officials undertaking such missions).

*Assistance to representative organizations of fishing vessel owners and fishers*

- assisting ACT/EMP and ACTRAV in building the capacity of representative organizations of fishing vessel owners and fishers and in providing them with information on the Convention and Recommendation.

*Resource mobilization*

- working with the Partnerships and Development Cooperation Department and other ILO units to identify sources of funding to support the above activities;
- assisting member States to identify donors who may wish to directly assist, with financial resources or technical expertise, in strengthening of national capacity for promotional activities with a focus on targeted workshops and training sessions for ILO member States that have not ratified the Convention as well as members that have ratified it but need support for implementation;
- submitting a concept note to donors on related activities that could be undertaken in interested countries with the donors' financial support;
- seeking an extension of the Project for the Rational and Sustainable Development of the Fishing Sector (covering selected countries in Africa and Latin America).

**II. The Action Plan in the context of the ILO's Strategic Policy Framework**

10. The Strategic Policy Framework 2010–15 provides the context for the present Action Plan.
11. The Action Plan will contribute in particular to the realization of outcomes 13, 4, 5, 6, 9, 10, 11, 16, 18 and 19 of the Strategic Policy Framework 2010–15 (see table 1). The work may therefore involve, in a coordinated way, the expertise of several ILO units.

**Table 1. Relationship between the Action Plan and the ILO's Strategic Policy Framework 2010–15**

<b>Outcome number</b>	<b>Outcome description</b>
Outcome 13	<i>Decent work in economic sectors:</i> A sector-specific approach to decent work is applied
Outcome 4	<i>Social security:</i> More people have access to better managed and more gender equitable social security benefits
Outcome 5	<i>Working conditions:</i> Women and men have improved and more equitable working conditions
Outcome 6	<i>Occupational safety and health:</i> Workers and enterprises benefit from improved safety and health conditions at work
Outcome 9	<i>Employers' organizations:</i> Employers have strong, independent and representative organizations
Outcome 10	<i>Workers' organizations:</i> Workers have strong, independent and representative organizations
Outcome 11	<i>Labour administration and labour law:</i> Labour administrations apply up-to-date labour legislation and provide effective services
Outcome 16	<i>Child labour:</i> Child labour is eliminated, with priority being given to the worst forms
Outcome 18	<i>International labour standards:</i> International labour standards are ratified and applied (implies the ratification and implementation of Convention No. 188 and Recommendation No. 199)
Outcome 19	<i>Mainstreaming decent work:</i> Member States place an integrated approach to decent work at the heart of their economic and social policies, supported by key UN and other multilateral agencies

### **III. Relationship to the Global Jobs Pact**

12. This Action Plan will contribute to the implementation of the Global Jobs Pact in particular by strengthening social dialogue and tripartism in the fishing sector, which may carry over into efforts to build consensus on relevant national and international policies and strategies related to future employment opportunities for fishers (as well as transitioning fishers to other forms of work, where necessary due to environmental or economic reasons).

### **IV. Implementing partners**

13. With SECTOR and NORMES as lead units and in close collaboration with ACTRAV and ACT/EMP, this Action Plan will enhance the promotion of the ratification of Convention No. 188 and ensure coordinated action for implementation. It is expected that this collaboration will involve specialists at headquarters and other specialists in the field, LAB/ADMIN, SafeWork, IPEC, SEC/SOC, Social Dialogue Sector and the Turin Centre.
14. The efforts to increase the visibility of Convention No. 188 and of the need to improve working conditions in the fishing sector will be made in cooperation with other relevant international and regional bodies as appropriate, including the IMO, FAO, United Nations Environment Programme (UNEP), IOE, ITUC, ITF and the European Union.
15. Consultations will continue on the implementation of this Action Plan and possible modifications, with governments of ILO member States (through ministries responsible for labour, fisheries, maritime safety and other issues reflected in the Convention) and the ILO's Employers' and Workers' groups, and thus through the social partners in the fishing sector.

### **V. Strategy**

16. In line with the strategic objectives of the ILO as they relate to a sector-specific approach to decent work, the Action Plan will increase awareness in the fishing sector of Convention No. 188 and Recommendation No. 199 and help place ratification and implementation of these instruments high on the national agendas of member States with fishing interests.

17. Promoting ratification and implementation and providing assistance, where needed, are interrelated activities: ratification will often depend upon the availability of technical assistance to help governments to develop national laws and regulations and build the necessary administrative capacity.
18. To focus resources and to measure progress, the Action Plan will set some general targets to be reached within and by the end of the five-year period. Reaching these targets will of course depend in part on resources and on the will and capacity of member States and others within the period concerned.
19. The Office will also seek to place high priority on the promotion of Convention No. 188 in States with large numbers of fishers, with large international fleets and/or large numbers of vessels of 24 metres in length or more (or 300 gross tons or more); States which receive a large number of port visits from foreign vessels; and States having mentioned fishing as a priority in Decent Work Country Programmes. It will also seek to obtain at least one ratification in each ILO region.

### Targets, indicators and monitoring

20. Progress related to awareness-raising and the assistance for ratification and effective implementation of the Convention and its accompanying Recommendation will be measured in a number of different ways and at different levels, consistent with the multi-level and multi-partner approach. It will be monitored on the basis of the indicators in table 2.
21. The progress of the Action Plan will be monitored on a yearly basis and evaluated using these indicators and targets/measurements and in accordance with standard ILO procedures. The progress reports will be prepared by the Office.

**Table 2. Measuring progress towards the ratification and implementation of the Work in Fishing Convention, 2007 (No. 188)**

Indicator	Target/measurement
Comparative analyses undertaken	10 new comparative analyses of Convention No. 188 and national laws and regulations by 2012 20 comparative analyses of Convention No. 188 and national laws and regulations by the end of 2016
Tripartite national seminars, workshops or other events held in member States, or tripartite committees formed for the purpose of reviewing Convention No. 188	10 held by 2012 20 held by the end of 2016
Requests for legal assistance or clarification	10 by 2012 20 by the end of 2016
Partial changes to national laws, regulations and other measures in line with Convention No. 188	10 partial changes (as indicated by new laws or regulations, or amendments thereto) by the end of 2016
Ratification by member States	5 ratifications registered with the Director-General of the ILO by the end of 2012 10 ratifications registered well before the end of 2016 (at least one in each ILO region)
Number of training courses held on Convention No. 188 and Recommendation No. 199	5 by 2012 15 by the end of 2016
References to Convention No. 188 in Decent Work Country Programmes	10 by 2012 20 by 2016
Examples of exchanges of best practices, technical assistance, among member States related to the implementation of Convention No. 188	10 examples by the end of 2016

<b>Indicator</b>	<b>Target/measurement</b>
Government, employer (fishing vessel owner), worker (fishers' representatives) trained on Convention No. 188 (either at the Turin Centre or by others)	50 by 2010 200 by 2016
New tools developed on Convention No. 188 or specific subjects addressed by Convention No. 188 (specific to the fishing sector), by the Office (SECTOR, NORMES or other units, or through collaboration among several units)	4 by 2016

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## Annex

### Background

1. The ILO's first international labour standard for the fishing sector was adopted in 1920. Additional standards were adopted in 1959 and 1966.
2. In 2002 the Governing Body, seeing the need to update these instruments, decided to place on the agenda of the ILC an item concerning a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector.<sup>1</sup> Though many fishers in the past had received protection through other ILO maritime standards aimed at seafarers on merchant ships (standards that applied, or could be applied, to fishing), it had been decided that the new consolidated Convention concerning working and living conditions of seafarers (MLC, 2006), would exclude fishing vessels and fishers from its scope. This created a sense of urgency to adopt a new comprehensive standard for the fishing sector, a standard that would also reflect the often unique characteristics of commercial fishing.
3. After discussing this issue at three sessions, the 96th Session of the ILC in 2007 adopted by an overwhelming majority the Work in Fishing Convention, 2007 (No. 188),<sup>2</sup> and its accompanying Work in Fishing Recommendation, 2007 (No. 199).<sup>3</sup>
4. Convention No. 188 provides a global labour standard that is relevant to all fishers, whether on large vessels on the high seas and on international voyages or in smaller boats operating in coastal waters close to shore. Recommendation No. 199 provides guidance to States on the implementation of the provisions of the Convention.
5. The Convention aims at ensuring that "fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security".<sup>4</sup> It principally targets flag States (States whose vessels fly their national flag) but also provides for inspection of foreign vessels by port States.
6. The tripartite drafters of the Convention recognized that its application might raise special problems of a substantial nature in light of the particular conditions of service of some fishers or fishing vessel operations. They also acknowledged that some States might face such problems due to insufficiently developed infrastructure or institutions. The Convention therefore provides States with some flexibility in the form of possible exclusions of limited categories of fishers and vessels, and progressive implementation of certain provisions while they commit, over time, to improving conditions of all fishers.
7. The Convention stresses the importance of social dialogue and tripartite consultation. Many provisions can only be implemented following "consultation" with representative employers' and workers' organizations (in particular, representative organizations of fishing vessel owners and fishers).
8. Convention No. 188 revises the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126). It also covers other important questions such as

<sup>1</sup> GB.283/2/1, para. 21(b).

<sup>2</sup> See [www.ilo.org/public/english/dialogue/sector/papers/maritime/c188.pdf](http://www.ilo.org/public/english/dialogue/sector/papers/maritime/c188.pdf).

<sup>3</sup> See [www.ilo.org/public/english/dialogue/sector/papers/maritime/r199.pdf](http://www.ilo.org/public/english/dialogue/sector/papers/maritime/r199.pdf).

<sup>4</sup> Convention No. 188, Preamble.

health and safety at work, assignment and hours of rest, crew list, repatriation, recruitment and placement, and social security. The old Conventions will continue to be binding for countries that have ratified them until they ratify the new Convention and it enters into force.

9. The Convention will enter into force one year after it has been ratified by ten member States (including eight coastal States) and will be legally binding for member States that choose to ratify it. Wide ratification is supported by representative organizations of employers and of fishing vessel owners and by representative organizations of workers and of fishers, as well as other professional organizations in the sector.
10. When the ILC adopted Convention No. 188 and Recommendation No. 199 it also adopted four resolutions intended to support the promotion, ratification and effective implementation of the Convention and the improvement of decent work in the fishing sector. These resolutions have helped the Office to determine priorities in its follow-up activities.
11. The **resolution concerning promotion of the ratification of the Work in Fishing Convention, 2007 (No. 188)**, invited the Governing Body to request the Director-General “to give due priority to conducting tripartite work to develop guidelines for flag State implementation and to develop guidelines to establish national action plans for progressive implementation of relevant provisions of the Convention”, as well as to give due consideration in the programme and budget for technical cooperation programmes to promote the ratification of the Convention and to assist members requesting assistance in its implementation in such areas as:
  - technical assistance for Members, including capacity building for national administrations as well as representative organizations of fishing vessel owners and fishers, and the drafting of national legislation to meet the requirements of the Convention;
  - the development of training materials for inspectors and other staff;
  - the training of inspectors;
  - the development of promotional materials and advocacy tools for the Convention;
  - national and regional seminars, as well as workshops on the Convention; and
  - promoting the ratification and implementation of the Convention within ILO Decent Work Country Programmes.
12. The **resolution concerning port State control** invited the Governing Body “to convene a tripartite meeting of experts of the fishing sector to develop suitable guidance for port State control officers concerning the relevant provisions of the Work in Fishing Convention, 2007 (No. 188)”.
13. The **resolution concerning tonnage measurement and accommodation** invited the Governing Body “to request the Director-General to report to it any developments which may have an impact on the Work in Fishing Convention, 2007 (No. 188), especially on Annex III”, and “to act on such a report by giving due priority, if required, to convening a tripartite meeting of experts, as provided for in Article 45 of the Work in Fishing Convention, 2007 (No. 188), to address the matter with a view to maintaining the relevance of Annex III of that Convention”.
14. The **resolution concerning promotion of welfare for the fishers** invited the Governing Body “to request the Director-General, in a cost-effective manner, to consider, as appropriate, the following social issues related to fisheries, as part of its programme and budget:
  - promotion of the provision of effective social protection and social security to all fishers within the ongoing work of the Organization so as to secure effective social protection for all;

- the particular employment problems that are faced by women in the fishing industry, including discrimination and the barriers to access to employment in the industry;
- the causes of occupational diseases and injuries in the fishing sector;
- the need to encourage member States to strongly ensure that fishers on fishing vessels in their ports are able to have access to fishers' and seafarers' welfare facilities;
- the need to provide member States and social partners with advice on developing strategies to improve the retention of fishers and the recruitment and retention of new entrants in fisheries;
- the issues relating to migrant fishers; and
- the education of fishers and their families by working together with appropriate bodies for the prevention of HIV/AIDS among fishers and in fishing communities”.

15. In November 2007 the Governing Body requested the Director-General to:

- take all necessary measures for the promotion of Convention No. 188 and Recommendation No. 199, in accordance with the above resolutions, “taking into account the resources available for sectoral activities under the regular budget and any voluntary contributions that can be obtained from extra-budgetary donors”; and
- “make concrete proposals in due course to the Governing Body with regard to the implementation of those resolutions ...”.<sup>5</sup>

16. The Office seeks to coordinate the work to promote the implementation and ratification of Convention No. 188 with the work under way to promote early ratification and implementation of the MLC, 2006; thus this Action Plan draws on processes, goals and strategies similar to those outlined in the Action Plan 2006–11 for the MLC, 2006.<sup>6</sup>

What has been done between 2007 and 2010

*Actions since 2007 to build a solid foundation for the ratification and implementation of the Work in Fishing Convention, 2007 (No. 188), and its accompanying Recommendation*

17. In keeping with the four resolutions adopted by the 96th Session of the Conference and the decisions taken by the Governing Body in November 2007, and in close consultation with its constituents, in particular with ACTRAV, ACT/EMP, ITUC and the ITF, the Office has sought to quickly and efficiently undertake activities to promote the implementation and ratification of Convention No. 188. In doing so, it has drawn upon regular budget resources as well as extra-budgetary resources provided by external donors. In keeping with the ILO Declaration on Social Justice for a Fair Globalization, these actions have been carried out through collaboration among departments in ILO headquarters, field offices and the Turin Centre. The Office has sought, where possible, to undertake activities that will serve as a foundation – a springboard – for future work (e.g. developing training material, undertaking baseline studies, collecting best practices, strengthening important inter-agency relationships that will enhance future work). The following provides highlights of these activities.

*Development of promotional material*

18. The Office has developed a promotional brochure on Convention No. 188. Originally prepared in English, French and Spanish, the publication now also exists in Japanese

<sup>5</sup> GB. 300/3/1, para. 9.

<sup>6</sup> [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_088034.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088034.pdf).

(courtesy of ILO Tokyo), Portuguese and Brazilian Portuguese. Moreover, the Office has enhanced its website concerning the Convention.

*Article 22 report form*

19. Under article 22 of the ILO Constitution, reports are periodically requested from States which have ratified ILO Conventions. In November 2007 the Governing Body adopted the report form for the Work in Fishing Convention, 2007 (No. 188). The form is available on the website of NORMES.

*Comparative analysis (gap analysis) of Convention No. 188 and national laws and regulations*

20. NORMES, with input from SECTOR, has prepared model terms of reference and matrices for the undertaking of a comparative analysis (gap analysis), which helps to identify the areas where legislative changes may be needed and thus facilitates the work of national authorities when envisaging ratification.

*Development of guidelines on port State control*

21. In keeping with the resolution concerning port State control as noted above, in March 2009 the Governing Body decided that a Tripartite Meeting of Experts to Adopt Port State Control Guidelines for Implementation of the Work in Fishing Convention, 2007 (No. 188), would be held at the ILO in Geneva from 15 to 19 February 2010. The meeting was convened using financial support from the Norwegian-funded Project on Enhancing Labour Inspection Effectiveness (a project which involved cooperation by LAB/ADMIN, SECTOR and SafeWork). The experts adopted the *Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)*, which aim to provide supplementary practical information and guidance to port State administrations that can be adapted to reflect national practices and policies and other applicable international arrangements in force governing port State control inspections of fishing vessels. The *Guidelines* were submitted to the Governing Body at its 309th Session (November 2010) and will be initially published in English, French and Spanish.

*Development of handbook and training material*

22. Bearing in mind the resolution concerning promotion of the ratification of the Work in Fishing Convention, 2007 (No. 188), the Office is developing a *Handbook for improving living and working conditions on board fishing vessels* (which provides guidance on Convention No.188) and a *Training manual on the implementation of the Work in Fishing Convention, 2007 (No. 188)*. The development of these products has been financially supported by the Norwegian-funded Project on Enhancing Labour Inspection Effectiveness and has been assisted by NORMES and SEC/SOC. They draw upon experiences from the capacity-building project for the Latin American fishing sector employers' organizations and from training courses for employers and workers in the fishing sector organized by ACT/EMP, ACTRAV and the Turin Centre, all funded by the Spanish Ministry of Labour and Social Affairs through the Social Marine Institute of Spain. They also draw upon lessons learned through case studies commissioned by the ILO concerning regulation of labour conditions of the fishing sector in Norway, Republic of Korea, South Africa and Spain, as well as a case study from Brazil. By the end of 2010 these two products, originally produced in English, will be translated into French and Spanish utilizing funds from the Project for the Rational and Sustainable Development of the Fishing Sector, funded by Spain's Ministry of Environment and Rural and Marine Affairs.

*Regional seminars*

23. Regional seminars on the Work in Fishing Convention, 2007 (No. 188), were held in the Republic of Korea in September 2008 and in Rio de Janeiro, Brazil, in August 2009. These events were held with financial or in-kind assistance from the host countries. They aimed to:

- promote the ratification and implementation of Convention No. 188 and Recommendation No. 199;
- improve working conditions and legal protection of fishers in the region; and
- identify what parts and provisions of the Convention are of specific concern to the countries.

Following discussion on the Convention and Recommendation requirements, participants requested assistance from the ILO to ratify and implement the Convention. This included: knowledge-building activities (seminars and training courses); technical, legal or financial assistance for conducting baseline studies and the organizing of tripartite consultations and campaigns; drafting or commenting on legislation and providing informal opinions; elaborating information, guidelines, manuals and material on occupational diseases of fishers; undertaking a study on minimum wages, working conditions and social security protection; making available best practices related to occupational health and safety; and facilitating exchange and dissemination of international experiences concerning law and practice related to fishers' working conditions.

#### *Assistance to the European Union*

24. Article 139 of the consolidated version of the Treaty establishing the European Community provides for the possibility of the social partners to negotiate agreements on certain issues. An agreement was concluded by European shipowners and trade unions on the implementation of the MLC, 2006. A somewhat similar agreement is being considered with respect to the implementation of Convention No. 188. The Office has been assisting the fishing sector social partners in their development of such an agreement, which is planned to be completed in 2011.

#### *Technical cooperation projects aimed at specific countries*

25. The Project for the Rational and Sustainable Development of the Fishing Sector <sup>7</sup> funded by the Ministry of Environment and Rural and Marine Affairs of Spain has, since 2007, supported the improvement of social and working conditions of workers in the sector in four African countries (Guinea-Bissau, Mauritania, Morocco and Senegal) and two Latin American countries (Ecuador and Peru). The project has been under the auspices of the ILO's SECTOR, working closely with the ILO Subregional Office for the Andean Countries in Lima (Peru), the Subregional Office for West Africa in Abidjan (Côte d'Ivoire), the Subregional Office for the Sahel Region in Dakar (Senegal), and the ILO Office in Madrid (Spain).
26. While promoting Convention No. 188 and Recommendation No. 199, the project has also, in the spirit of the ILO Declaration on Social Justice for a Fair Globalization and of related provisions of the Global Jobs Pact, addressed such issues as gender equality, the promotion of youth employment, the right to decent work, training in fisheries and aquaculture, and the promotion of good practices. Core activities have included the convening of training courses, workshops, seminars, campaigns and technical assistance. The work of the project began with baseline studies of the fishing sectors, from a labour perspective, in the six target countries. The project has contributed considerably to improving social dialogue in the fishing sector in the countries concerned, and has also contributed to the preparation of comparative studies (gap analyses) of national laws and regulations. Activities have been undertaken in these countries as well as in training centres in Spain. These activities have been realized with the assistance of the Social Marine Institute and the Occupational Safety and Health Institute of Spain.

<sup>7</sup> See [www.ilo.org/public/spanish/region/eurpro/madrid/download/triptico\\_in.pdf](http://www.ilo.org/public/spanish/region/eurpro/madrid/download/triptico_in.pdf);  
[www.ilo.org/public/spanish/dialogue/sector/sectors/mariti/fishing/techcoop.htm](http://www.ilo.org/public/spanish/dialogue/sector/sectors/mariti/fishing/techcoop.htm);  
[www.ilo.org/public/spanish/region/eurpro/madrid/eventos/index\\_pesca.htm](http://www.ilo.org/public/spanish/region/eurpro/madrid/eventos/index_pesca.htm).

27. Even before Convention No. 188 and Recommendation No. 199 were adopted, ACT/EMP and ACTRAV, working with the Turin Centre, had engaged in capacity building of fishing sector employers' and workers' organizations in Latin America through projects funded by the Spanish Ministry of Labour and Social Affairs and undertaken in collaboration with the Social Marine Institute. Courses were held in the Turin Centre and in Spain. As noted above, the outcome of this work was also used in the development of the *Handbook for improving living and working conditions on board fishing vessels* and the *Training manual on the implementation of the Work in Fishing Convention, 2007 (No. 188)*. SECTOR has contributed its technical expertise to this work.

#### *Minimum age/child labour*

28. One of the issues addressed by Convention No. 188 is the minimum age of fishers. Implementation of these provisions is closely related to the ILO's work to address minimum age of all workers and the elimination of the worst forms of child labour.

29. The FAO's great knowledge of and influence in the fishing sector, and the ILO's in-depth knowledge of child labour issues, are both widely recognized. The FAO has shown an interest in addressing child labour in this sector. It was therefore considered important to ensure coordinated work between the FAO and the ILO. In collaboration with the ILO, the FAO hosted a workshop on child labour in fisheries and aquaculture in Rome from 14 to 16 April 2010. The ILO's involvement called for a coordinated approach by IPEC, SECTOR and NORMES which, among other things, were able to bring into the discussion ILO expertise on child labour, standards and sectors, together with the experiences of government labour inspectors and expertise from the fishing sector social partners. The outcomes of the workshop included guidance on the contents and process of developing materials on policy and practice in tackling child labour in fisheries and aquaculture. An agreement was found on conclusions and recommendations relating to the nature, causes and consequences of child labour in fisheries and aquaculture as well as on how to address them through legal and enforcement measures, policy interventions and practical actions. Participants specified priority actions including the development of specific guidance tools to address child labour in the fishing sector and the collection and distribution of "good practices".

#### *Joint FAO–ILO–IMO work related to safety and health of fishers*

30. The ILO has a long history of working with the FAO and the IMO to improve the safety and health of fishers. This work is relevant to the promotion of Convention No. 188 and Recommendation No. 199, as several joint FAO–ILO–IMO publications are specifically referred to in Recommendation No. 199. Furthermore, the three organizations frequently assist each other in the promotion of each other's standards and other instruments, and the ILO often is able to enhance the participation of the social partners in the work of the FAO and the IMO. This work continues. Status reports are frequently provided to the Committee on Sectoral and Technical Meetings and Related Issues.

#### *Decent Work Country Programmes*

31. The Office has promoted the inclusion of references to Convention No. 188 in Decent Work Country Programmes. Some countries have already specifically included text referring to the desire to work towards implementation and ratification of the Convention (e.g. Kiribati, Samoa, Tuvalu, Vanuatu). Others have generally referred to the importance of fishing (e.g. Bahamas, Belize, Cambodia, Indonesia, Kenya, Solomon Islands, United Republic of Tanzania, Timor-Leste, Uganda and Yemen). Moreover, actions related to the improvement of social and working conditions in fishing have been undertaken in Ecuador, Guinea Bissau, Mauritania, Morocco, Peru and Senegal through the Project for the Rational and Sustainable Development of the Fishing Sector. Brazil and India have also expressed interest in carrying out activities in the sector. Bosnia and Herzegovina has already ratified Convention No. 188.