



# The flexibility clauses of the Work in Fishing Convention, 2007 (No. 188)

# **The flexibility clauses of the Work in Fishing Convention, 2007 (No. 188)**

**International Labour Office**  
Geneva

*Working papers are preliminary documents circulated to stimulate  
discussion and obtain comments*

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## Foreword

The Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007 (No. 188), in 2013, adopted points of consensus regarding the promotion of Convention No. 188. These included:

Under Point 3, Experiences and challenges faced in implementation and ratification of Convention No. 188, among other things, that: “Given the diversity of the fishing sector, flexibility devices of the Convention allow countries to adapt the Convention’s provisions to the specificities of certain categories of fishing vessels or fishers within the framework of the Convention”, and

Under Point 4, Recommendations for future actions by the International Labour Organization and its Members, that “In view of the discussion at the Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007 (No. 188), the following future actions were recommended”, among other things, that: ... “To promote among ILO constituents ratification and effective implementation of Convention No. 188 and to build capacity of constituents nationally to ratify and effectively implement the Convention, which may include the preparation of issues papers, for example on the **flexibility provisions** in the Convention, setting up of correspondence groups, establishing tripartite working groups and regional workshops and the dissemination of relevant information”.

At its 319th Session (October 2013), the Governing Body of the ILO:

(a) authorized the Director-General to communicate the final [report]... of the Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007 (No. 188) to governments, requesting them to communicate the reports to the employers’ and workers’ organizations concerned; as well as to the international employers’ and workers’ organizations and other international organizations concerned; and

(b) requested the Director-General to bear in mind, when drawing up proposals for future work, the recommendations for future action by the ILO made by [the Forum].

The present document has therefore solely a promotional purpose to assist constituents in considering the ratification and implementation of the Convention. It responds to the request for a paper concerning “flexibility provisions” in the Convention. However, in keeping with earlier documents and practices concerning such types of provisions, the term “flexibility clauses” has been used in the paper, in lieu of the terms “flexibility provisions”, “flexibility measures” and “flexibility devices”, which have sometimes been used in discussion on this and similar topics.

The paper, on occasion, refers to informal opinions provided by the International Labour Office upon request concerning the meaning of provisions in the Convention, based on its internal procedure. These opinions draw, in particular, upon research into the preparatory work of the Convention and take into account the comments of the ILO supervisory bodies. They are subject to the customary reservation that the ILO Constitution confers no special competence upon the International Labour Office to provide an authoritative interpretation of provisions of Conventions adopted by the International Labour Conference.

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## 1. Introduction

The Work in Fishing Convention, 2007 (No. 188) was adopted by the International Labour Conference in June 2007. The objective of the Convention, as set out in its Preamble, is “to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security”. As provided in Article 2(1), “Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.” The definition of ‘fisher’<sup>1</sup> is broad, generally covering every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel. The definition of “commercial fishing” is also broad, and only subsistence fishing and recreational fishing are explicitly excluded from its scope.

Convention No. 188 therefore addresses all categories and sizes of commercial fishing vessels, with the purpose of protecting as great a number of the world’s fishers as possible, including those working on smaller, coastal fishing vessels.<sup>2</sup> However, when developing the Convention, the ILO’s tripartite constituents recognized that the wide range of types of fishing vessels and fishing operations, and the differences among countries, called for some flexibility in its application by member States. Thus, the Convention includes a number “flexibility clauses”.

The use of “flexibility” and flexibility clauses is not unique to Convention No. 188. Most ILO Conventions contain provisions that allow for progressive implementation of certain requirements, permit exceptions from the material or personal scope of application or afford the possibility of accepting only certain parts of a Convention. These allow for member States to adapt the application of the Convention to national circumstances, as may be necessary, and gradually achieve the goal of universal coverage. As in many other Conventions, member States are required to indicate in their first report on the application of the Convention, and after due consultations with the social partners, whether they intend to avail themselves of specific flexibility clauses, as may be expressly prescribed by relevant provisions of the Convention.

Flexibility clauses are included in several articles of Convention No. 188. They enable member States to implement certain parts of the Convention in a manner that meets the requirements and takes sufficiently into account the specificities of their fishing sector at the time of ratification. This flexibility is intended, in particular, to support States which may require a period of transition before they are able to fully implement certain provisions of the Convention. Flexibility clauses in the Convention include the possibility of: exclusions, in whole or in part, of certain fishing vessels or fishers; the option of “progressive

<sup>1</sup> Defined in the Convention as “every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers”.

<sup>2</sup> Previous instruments revised by the Work in Fishing Convention are, 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).

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implementation” of certain provisions; the possibility of exemptions from certain provisions; “substantial equivalence” for certain, specific requirements; and different means of measuring vessels in order to determine the application of certain requirements. These flexibility devices can overlap.<sup>3</sup> Member States have recourse to use any flexibility device, use of which will later be controlled by the ILOs supervisory bodies.

A number of articles within the Convention also provide for requirements for protection in accordance with national laws, regulations, practices or other measures. This is not a flexibility provision, per se, but provides for discretion in implementing measures. When a member State does not have implementing measures in place, the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR)<sup>4</sup> may request it to adopt them. In some countries, ratified conventions become part of national law; in this case, depending on the nature of the provisions of the Convention, an implementing measure may not be needed.

Many of the flexibility clauses may only be applied after the competent government authorities concerned have consulted with representative organizations of employers and workers, in particular with representative organizations of the fishing vessel owners and fishers concerned. It is therefore beneficial that the social partners also have a good understanding of the flexibility clauses in the Convention before engaging in these consultations.

This document outlines the flexibility clauses of Convention No. 188 in order to explain their scope and limits to member States, and social partners in member States, who are intent on ratifying and implementing the Convention. Flexibility aims at facilitating widespread acceptance of the Convention by permitting to adapt, where necessary and under specific conditions, the level of protection afforded by the Convention to particular national practices and circumstances. “Where necessary” is a reminder that the aim of the Convention is to enhance the protection of the living and working conditions of fishers and not simply to retain the status quo. Flexibility clauses are not meant to be used with the long-term intent of offering fishers a lower level of protection than that provided for in the Convention but rather as temporary arrangements. Member States who use them should take measures to fully implement the provisions of the Convention over time.

Chapter 2 of this document contains an overview of the ILO’s system to supervise the application of ratified Conventions. An awareness of the functioning of the supervisory system may help constituents understand how to apply flexibility clauses and how the system may guide States in their implementation of the Convention and in turn aims to help overcome hesitation or resistance to ratification. Any State ratifying the Convention will have to periodically report on the use of any flexibility clauses through the submission of a report on the application of the Convention, based on the constitutional reporting obligation provided for in article 22 of the ILO Constitution.

Chapter 3 details the various flexibility clauses in the Convention. These are indicated under each article of the Convention and are explained by using examples and by addressing queries that have been raised by ILO constituents. At the end of the chapter, the flexibility

<sup>3</sup> For example, Article 10, of the Convention, on medical certificates, allows for certain exemptions for vessels under 24 metres in length. Additionally, Article 4 allows for “progressive implementation” of the provisions of Article 10, paragraph 3, for vessels which are less than 24 metres in length and over and do not remain at sea for more than seven days.

<sup>4</sup> See description of ILO supervisory system, including the CEACR, in Chapter 2.

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clauses are summarised in a table to help in understanding the process of applying and reporting them.

Finally, Chapter 4 provides additional information and guidance regarding flexibility clauses. Section 4.1 provides guidance on completing the article 22 report form on the application of the Convention when making use of flexibility clauses. Section 4.2 clarifies the use of flexibility clauses in the context of inspection by ratifying States, in their capacity as flag States and as port States.

### **1.1. No lowering of the national protection of fishers**

When examining the use of flexibility devices built into Convention No. 188, member States and social partners should bear in mind that in no case should the ratification of the Convention result in the lowering of any existing protection for fishers.

Article 19, paragraph 8 of the ILO Constitution provides that

In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.

In line with the ILO Constitution, Article 6 of Convention No. 188 provides that

1. Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.
2. Nothing in this Convention shall affect any law, award or custom, or any agreement between fishing vessel owners and fishers, which ensures more favourable conditions than those provided for in this Convention.

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## 2. Convention No. 188 and the ILO Supervisory System

Like all of the ILO's labour standards, Convention No. 188 is backed by a supervisory system that is unique at the international level and helps to ensure that member States implement the conventions that they have ratified. The ILO's supervisory bodies examine the application of Conventions by member States and draws attention to areas where further action is needed in terms of legislative conformity or practical application. Where member States face problems in the application of Conventions, the ILO then seeks to assist them through social dialogue and technical assistance.

Article 22 of the ILO Constitution provides:

Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.

Under article 22 of the Constitution, States are required to report regularly to the ILO on the implementation of each Convention, indicating whether national laws are in conformity with the Convention in question and also informing the ILO with regards to what has been achieved to ensure that the Convention has had an impact on a practical level.

In the framework of Convention No. 188, the exclusions and progressive implementation measures set out in Articles 3 and 4 should be indicated in the first article 22 report submitted on the application of the Convention by any member State. If a State wishes to avail itself of these flexibility arrangements, it is essential for the first report to indicate these limitations to the Convention, as this right cannot be exercised at a later stage. Certain Articles of the Convention may call for additional information to be included in subsequent article 22 reports to indicate the extent to which effect is given to these aspects of the Convention. This may include reporting on flexibility clauses and any plans to extend full protection of the Convention where it may have been limited as a result of their application. Further guidance on submitting an article 22 report form with regards to flexibility is in the report form itself, and summarised here in Chapter 4.

### 2.1. The regular monitoring of ILO Conventions

Once a member State has ratified Convention No. 188, it shall submit a first detailed report within one year after the entry into force of the Convention, and then at five-year intervals, explaining the legislative or other measures taken to ensure the implementation of the Convention, as well the manner in which the Convention is applied in practice. Copies of the reports must be communicated to workers' and employers' organisations, who may in turn comment on their government report and submit—separately or through the government—comments on the application of the Convention.

#### 2.1.1. *The Committee of Experts on the Application of Conventions and Recommendations*

As indicated above, reporting on ratified conventions is regulated by article 22 of the ILO Constitution. The ILO body examining the application of ratified Conventions is the



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Committee of Experts on the Application of Conventions and Recommendations (CEACR)<sup>5</sup>. The Committee's role is to provide impartial and technical evaluation of a member States' implementation of a Convention. The CEACR engages in a process of ongoing dialogue with governments on the application of ratified Conventions, and this regular supervision can be effective in identifying implementation and information gaps and suggesting measures and mechanisms for improved implementation.

The CEACR makes two types of comments on the implementation of international labour standards: *observations* and *direct requests*. *Observations*, are public comments on the application of ILO conventions. They are published in CEACR's annual report and raise questions of compliance with specific requirements of a Convention by a particular State. *Direct requests* address technical questions or requests for further information from States. These are directly communicated to governments and are not published in the annual report.<sup>6</sup>

### **2.1.2. The Conference Committee on the Application of Standards**

The annual report of the CEACR, adopted in December, is submitted to the International Labour Conference the following June. At the Conference, the report is examined by the Conference Committee on the Application of Standards, a standing committee of the Conference, consisting of government, employer and worker delegates. The report is examined by the tripartite constituents who then select a limited number of cases for discussion. The governments concerned are invited to respond to the observations and provide information to the Conference Committee members. The Conference Committee may recommend that governments take specific steps to address a problem and may propose ILO missions or technical assistance programmes. The discussions of the Committee are published in its report and situations of special concern are highlighted in therein.

## **2.2. Special procedures**

There are also complaint-based procedures to deal with alleged non-observance of a ratified convention, namely representations and complaints. The representation procedure is governed by articles 24 and 25 of the ILO Constitution. These articles grant workers' and employers' organizations the right to submit a representation to the ILO's Governing Body against any member State which, in their view, "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party"<sup>7</sup>. As a result of a representation, a three-member tripartite committee of the Governing Body may be established to examine the merits of the case and the government's response to the representation. The committee submits a report to the Governing Body containing an analysis of the legal and practical aspects of the case, together with conclusions and

<sup>5</sup> CEACR members are listed on the ILO website, in particular: [http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/WCMS\\_192093/lang--en/index.htm](http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/WCMS_192093/lang--en/index.htm)

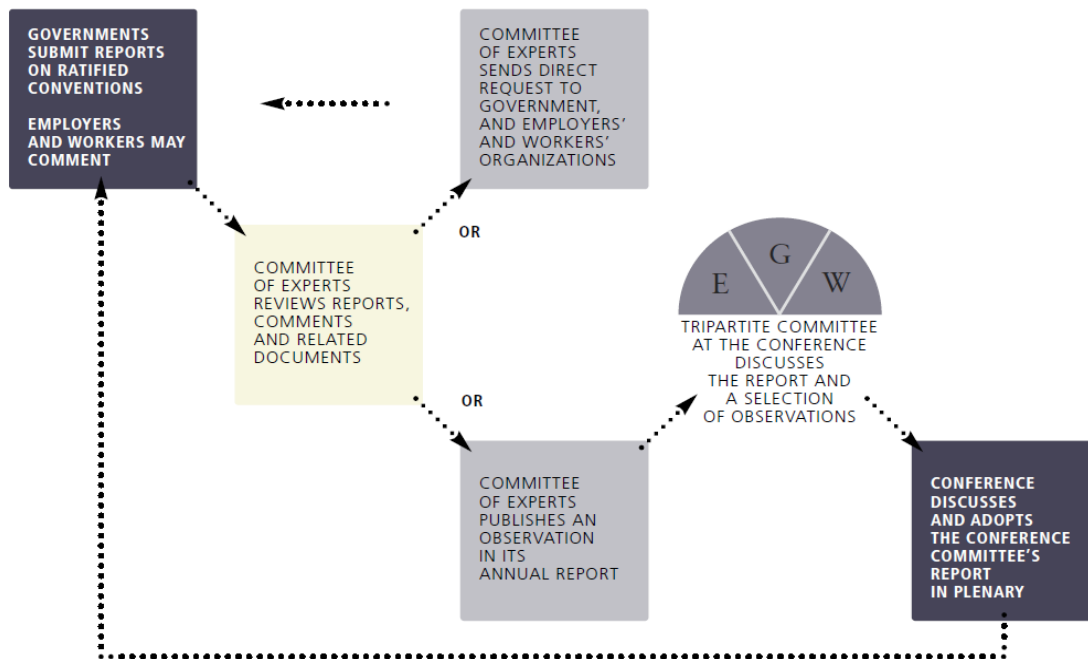
<sup>6</sup> CEACR comments, observations and direct requests, are made available and searchable online using NORMLEX at <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20010>

<sup>7</sup> ILO: *Constitution of the International Labour Organisation and Selected Texts* (Geneva, 2009).

recommendations. If the government’s response is not deemed satisfactory, the Governing Body may publish the representation and response.

The complaints procedure is governed by articles 26 to 34 of the ILO Constitution. Complaints may be filed against a member State for not complying with a ratified Convention by another member State which has ratified the same Convention, by a delegate to the International Labour Conference, or by the Governing Body. Upon receiving a complaint, the Governing Body may form a Commission of Inquiry, which is then responsible for investigating the complaint. The Commission ascertains the facts of the case and makes recommendations on measures to be taken to address the issues raised by the complaint. The Commission of Inquiry is the ILO’s highest-level investigative procedure and is usually set up to address persistent and serious violations by a member State. If a country refuses to fulfil the recommendations of a Commission of Inquiry, the Governing Body can take action under article 33 of the ILO Constitution. Article 33 states that, in this case, “the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.”<sup>8</sup>

Figure 1.1. The regular supervisory process<sup>9</sup>



<sup>8</sup> ILO: *Rules of the Game: A brief introduction to International Labour Standards. Revised edition* (Geneva, 2014), p.108.

<sup>9</sup> ILO: *Rules of the Game: A brief introduction to International Labour Standards. Revised edition* (Geneva, 2009), p.80.

Figure 1.2. The representation process<sup>10</sup>

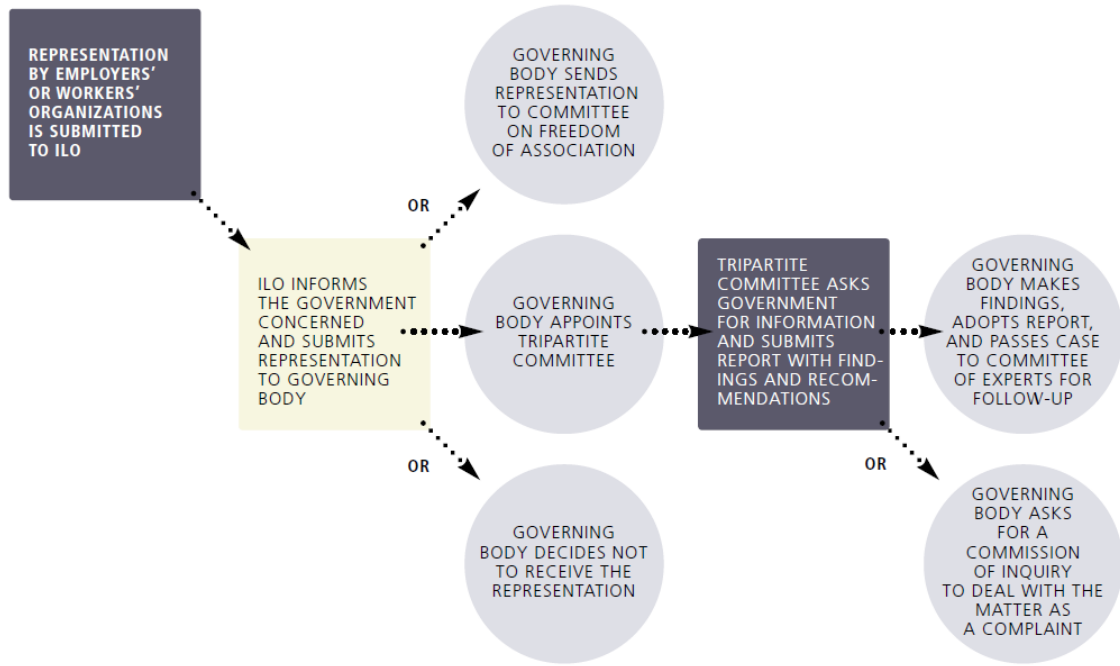
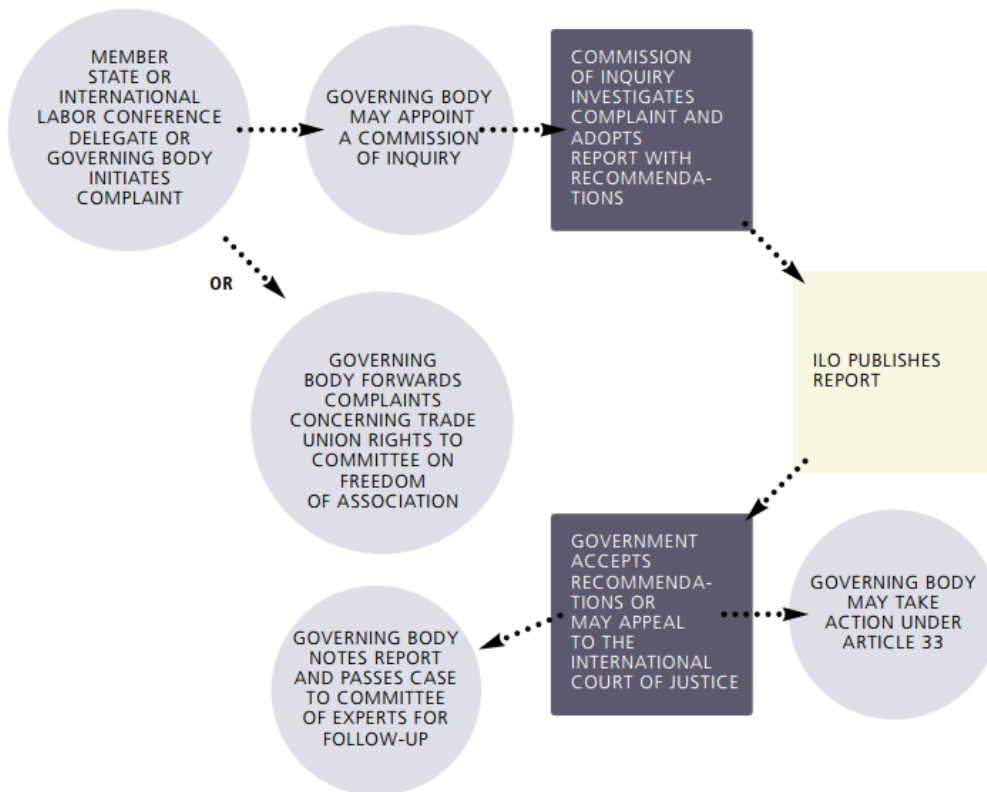


Figure 1.3. The complaints process<sup>11</sup>



<sup>10</sup> Ibid, p.85.

<sup>11</sup> Ibid, p.87.

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### 3. The Flexibility clauses of Convention No. 188

This chapter summarises the different uses of “flexibility” to which member States may have recourse when applying the Convention. Certain Articles contain specific flexibility clauses – subject to prior tripartite consultations – including options for exclusions and exemptions from the Convention and for “substantially equivalent” alternative requirements, the latter provided for in Articles 14, paragraph 3, and Article 28, paragraph 2.

The Government may have recourse to Article 3 of the Convention and exclude, after consultations, limited categories of fishers or fishing vessels from any or all provisions of the Articles of the Convention. However, exclusions under Article 3 can only be made when the application of the Convention to a category of fishers or fishing vessels raises “special problems of a substantial nature”.

Several Articles of the Convention (10, paragraph 1; 10, paragraph 3; 15; 20; 33; and 38) may be progressively implemented under the circumstances and subject to the specific conditions provided for in Article 4.

Chapter 3 concludes with a table (Table 3.1) summarising the flexibility clauses.

#### 3.1. Article 2: Scope

Article 2
1. Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.
2. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.
3. Any Member, after consultation, may extend, in whole or in part, to fishers working on smaller vessels the protection provided in this Convention for fishers working on vessels of 24 metres in length and over.

Article 2, paragraph 2 of the Convention provides that, “in the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.” The Convention therefore recognizes that there may be situations where it is not clear whether specific fishing operations would qualify as commercial fishing operations, and therefore, whether vessels engaged in such operations would fall within the scope of application of the Convention. In such cases, the Convention leaves it to the competent authority to determine, after having duly consulted its social partners, whether the vessel or vessels in question would be covered by the Convention.

Commercial fishing, under Article 1 of the Convention “means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing”. Vessels not engaged in commercial fishing operations (i.e. engaged only in subsistence and/or recreational fishing) may be excluded. In response to a request for clarifications on this point by the Government of the Republic of Korea and the International Transport Workers’ Federation, the Office provided the informal opinion that:

The issue of the definition of “subsistence fishing” was raised on certain occasions during the Conference discussions that preceded the adoption of the Convention. The Office indicated that the FAO Fisheries Glossary defines “subsistence fishery” as “a fishery where the fish caught are shared and consumed directly by the families and kin of the fishers rather than being brought my middle-(wo)men and sold at the next larger market” (see International Labour Conference, 93rd session, 2005, report V(2A), p. 77). The FAO Glossary adds that pure subsistence fisheries are rare as part of the products are often sold or exchanged for other goods or services. [...] this

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question was not raised by the constituents following these explanations, and it may therefore be concluded that for the drafters of the Work in Fishing Convention, the FAO Fisheries Glossary provided sufficient guidance on the ordinary meaning of the term “subsistence fishing” so that no separate definition was warranted. Accordingly, by the term “subsistence fishing” – as opposed to “commercial fishing” – in Article 1 of the Convention is to be understood [as] any fishing operations aimed at satisfying the subsistence needs of the fisher and his/her family and not at obtaining economic gain.

Therefore [...] the sole criterion for determining what constitutes subsistence fishing should be a functional one, i.e. the use and purpose of the catch (direct consumption by the fisher and his/her family). Elements such as the number of fishers on board, the average amount of income arising from fishing operations, or the existence of an employment relationship would appear to bear limited relevance to the concept of subsistence fishing as understood for the purposes of Convention No. 188. Therefore, any provision in national law using such criteria to define subsistence fishing could lead to results that would not be compatible with the Convention.

This is, of course, without prejudice to the possibility offered by Article 3(1) of the Convention to exclude, under some well-defined conditions, limited categories of fisher or fishing vessels from all or certain of its provisions.

### 3.2. Article 3: Scope

#### Article 3

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

- (a) fishing vessels engaged in fishing operations in rivers, lakes or canals;
- (b) limited categories of fishers or fishing vessels.

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

3. Each Member which ratifies this Convention shall:

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

- (i) list any categories of fishers or fishing vessels excluded under paragraph 1;
- (ii) give the reasons for any such exclusions, stating the respective positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
- (iii) describe any measures taken to provide equivalent protection to the excluded categories; and

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

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Article 3, paragraph 1, of the Convention provides that “fishing vessels engaged in fishing operations in rivers, lakes or canals” and limited categories of fishers or fishing vessels” may be excluded by member States, after consultation, from “the requirements of this Convention, or from certain of its provisions” [emphasis added]. The words “from certain of its provisions” means that the exclusion can be with respect to certain provisions (for example, specific Articles or even parts of Articles) that present problems as opposed to excluding such fishing vessels or fishers from the entire Convention.

The possibility to exclude “limited categories” of workers from the Convention is not unique to Convention No.188. ILO Conventions, for instance, including the Minimum Age Convention, 1973 (No. 138) in Article 4, paragraph 1, and the Termination of Employment Convention, 1982 (No. 158) in Article 2, paragraph 5, also provide for the exclusion of “limited categories” of workers from all or certain provisions of the Convention. Similarly, the Seafarers' Annual Leave with Pay Convention, 1976 (No. 146) in Article 2, paragraph 7, contains a provision for excluding “limited categories of persons employed on board sea-going ships” from the Convention. In the instance of Article 2, paragraph 2 of the Night Work Convention, 1990 (No. 171), ratifying States may exclude wholly or partly from its scope “limited categories of workers when the application of the Convention to them would raise special problems of a substantial nature”. The Conference discussion of the Part-Time Work Convention, 1994 (No. 175) - which provides for the possibility of excluding “particular categories of workers or of establishments” from the scope of the Convention - gave consideration to terms such as “limited” categories and “special” problems. During the discussion, the issue of the meaning of limited arose as follows:

In reply to a question concerning the meaning of the word “limited” which had been used in the Office’s text to qualify the categories of workers or of establishments which it was possible to exclude from the scope of the proposed Convention, the representative of the Secretary-General indicated that the word meant that the number of workers or establishments excluded should not be high. The objective of provisions of this type was to eliminate obstacles which the competent authorities might encounter when they were examining the possibility of ratifying a new ILO Convention.<sup>12</sup>

In accordance with Article 3, paragraph 3, member States in the first detailed report on the application of the Convention must give the reasons for any exclusions, provide information on the consultations that took place in determining them and detail the views expressed during those consultations, and describe any measures taken to provide equivalent protection to the excluded categories. The CEACR may ask a Government for further information on these elements if it deems the information provided to be insufficient. The Committee of Experts may also question the justification of the use of the exclusion possibility if, in practice, it results in depriving a disproportionately large part of fishers or fishing vessels from the protective coverage of the Convention.

Application of the provisions of Convention No. 188, Article 3:

- may be made after consultation by the competent authority with the representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist; and

<sup>12</sup> See: International Labour Conference, 80th session, 1993, *Record of Proceedings*, pp. 27/11-27/13.

- may concern all the requirements of this Convention, or only certain of its provisions.<sup>13</sup>

Where exclusions are permitted under Article 3, the competent authority shall, where practicable, take appropriate measures to extend progressively the requirements under the Convention to the categories of fishers and fishing vessels which are affected by the exclusion. The position in respect of these categories should be also specified in subsequent reports. The final objective should be that all fishing vessels and fishers are eventually covered by the Convention.

Exclusions should only be made when problems of a substantial nature arose which meant that no alternative solutions could be found to meet the requirements of the Convention.<sup>14</sup>

### 3.3. Article 4: Scope

#### Article 4

1. Where it is not immediately possible for a Member to implement all of the measures provided for in this Convention owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, the Member may, in accordance with a plan drawn up in consultation, progressively implement all or some of the following provisions:

- (a) Article 10, paragraph 1;
- (b) Article 10, paragraph 3, in so far as it applies to vessels remaining at sea for more than three days;
- (c) Article 15;
- (d) Article 20;
- (e) Article 33; and
- (f) Article 38.

2. Paragraph 1 does not apply to fishing vessels which:

- (a) are 24 metres in length and over; or
- (b) remain at sea for more than seven days; or
- (c) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater; or
- (d) are subject to port State control as provided for in Article 43 of this Convention, except where port State control arises through a situation of force majeure, nor to fishers working on such vessels.

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

- (a) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organization:
  - (i) indicate the provisions of the Convention to be progressively implemented;
  - (ii) explain the reasons and state the respective positions of representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
  - (iii) describe the plan for progressive implementation; and
- (b) in subsequent reports on the application of this Convention, describe measures taken with a view to giving effect to all of the provisions of the Convention.

<sup>13</sup> See the explanation on the use of the terms “in consultation” and “after consultation” in Convention No. 188 in section 3.4.

<sup>14</sup> ILC, 81st Session, 1994, *Record of Proceedings*, paragraph 61, page 23/18.

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Article 4 is intended to help ensure that, in particular, developing countries will be able to ratify and implement gradually the full range of protective measures provided for in the Convention. Progressive implementation allows for the partial application of specific provisions of the Convention on a temporary basis and under the clear understanding that the necessary steps are taken or planned for the full implementation of those provisions in the foreseeable future.

The provisions Article 4 refers to are:

- a) Article 10, paragraph 1 (concerning medical examination);
- b) Article 10, paragraph 3, in so far as it applies to vessels remaining at sea for more than three days (also concerning medical examination);
- c) Article 15 (concerning crew lists);
- d) Article 20 (concerning fisher's work agreements);
- e) Article 33 (concerning risk evaluation with respect to occupational safety and health and accident prevention); and
- f) Article 38 (concerning Protection in the case of work-related sickness, injury or death)

Progressive implementation of provisions under Article 4 may be used when the application of the Convention to a category of fishers or fishing vessels raises "special problems of a substantial nature" in the light of insufficiently developed infrastructure or institutions. The "progressive implementation" of these provisions can only be decided on the basis of a plan drawn up in consultation with the employers and workers organisations concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist.

Flexibility under Article 4 is, therefore, limited in scope and in time. It has to be exercised in good faith subject to the eventual comments of the ILO supervisory bodies. It is essentially a grace period, during which member States have to actively pursue the improvement and development of existing infrastructure or available institutions, so as to permit the full application of the Convention. For example, due to a scarcity of medical practitioners, it may not, in the short term, be possible for a member State to insist on fishers obtaining a medical certificate. The plan which justifies the member State's actions would include assessing the needs and the time that would reasonably be required to put the necessary resources in place for achieving full compliance.

Progressive implementation under Article 4 may not be applied to fishing vessels which fall under any of the following categories:

- are 24 metres in length and over; or
- remain at sea for more than seven days; or
- normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater; or
- are subject to port State control as provided for in Article 43 of this Convention, except where port State control arises through a situation of force majeure, nor to fishers working on such vessels.



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As noted above, a member State which avails itself of the flexibility clauses of Article 4 must indicate the provisions to be progressively implemented in its first report on the application of the Convention. In subsequent reports on the application of the Convention, member States should describe measures taken with a view to giving effect to all of the provisions of the Convention.

The plan provided for in Article 4 must be drawn up *in consultation* with representative employers' and workers' organizations whereas other limitations or determinations provided for in Articles 2 and 3 may be decided *after consultation* with the representative employers' and workers' organizations. The distinction, which also appears in many provisions of the Maritime Labour Convention, 2006 (MLC, 2006) (e.g. Article II(3), (6)), relates to the extent and scope of the consultation process. The *Manual for drafting ILO instruments* clarifies this as follows:

The expression "after consultation" implies that consultation must take place before the implementation of the provisions envisaged by the clause, but that there is no obligation to continue this consultation into the later stages of implementation unless the text of the instrument gives some indication to the contrary. The expression "in consultation", on the other hand, implies continuity of consultation, a "continuing dialogue".<sup>15</sup>

Reference to progressive implementation or "application in stages" is made in numerous other ILO Conventions. A list of similar provisions is given in appendix 9 of the *ILO Manual for drafting ILO instruments*, p. 134.

### 3.4. Article 5: Scope

#### Article 5

1. For the purpose of this Convention, the competent authority, after consultation, may decide to use length overall (LOA) in place of length (L) as the basis for measurement, in accordance with the equivalence set out in Annex I. In addition, for the purpose of the paragraphs specified in Annex III of this Convention, the competent authority, after consultation, may decide to use gross tonnage in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in Annex III.
2. In the reports submitted under article 22 of the Constitution, the Member shall communicate the reasons for the decision taken under this Article and any comments arising from the consultation.

Article 5 offers the option for the competent authority, after consultation, to use length overall (LOA) in place of length (L) on the basis of equivalence set out in Annex I. The intention of including this flexibility in the Convention was to take into account different practices and varying designs of traditional fishing vessels in different countries. Using LOA as an equivalent measure may help reduce the costs of measuring vessels where LOA has already been established (as measuring LOA may be easier to do than measuring L).

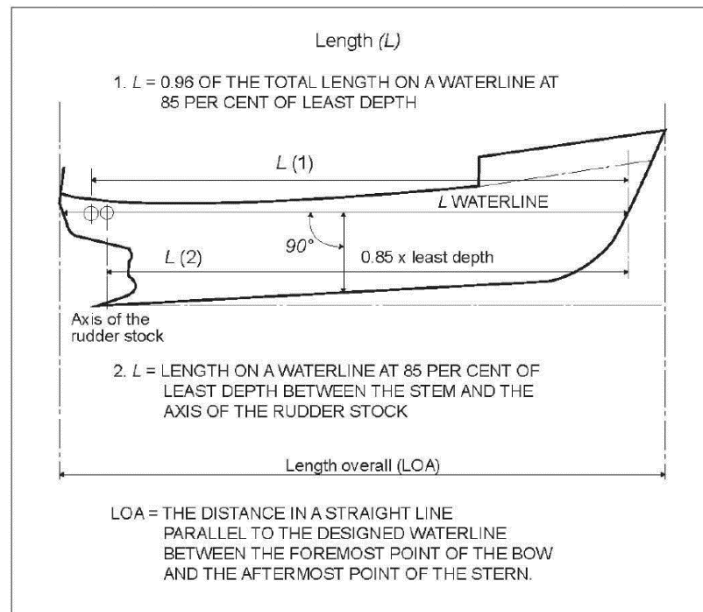
Where the competent authority, after consultation, decides to use length overall (LOA) rather than length (L) as the basis of measurement, equivalences are as follows:

- a) a length overall (LOA) of 16.5 metres shall be considered equivalent to a length (L) of 15 metres;
- b) a length overall (LOA) of 26.5 metres shall be considered equivalent to a length (L) of 24 metres;

<sup>15</sup> ILO: *Manual for drafting ILO instruments* (Geneva, 2006), paragraph 105, p. 37.

- c) a length overall (LOA) of 50 metres shall be considered equivalent to a length (L) of 45 metres.

Fig 3.1. Length (L) and length overall (LOA)<sup>16</sup>



Additionally, Article 5 provides that “for the purpose of the paragraphs specified in Annex III of this Convention, the competent authority, after consultation, may decide to use gross tonnage in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in Annex III”. For the specific provisions in Annex III that Article 5 relates to, see section 3.18 below.

Paragraph 2 of Article 5 provides that the member State is required to communicate, in its reports submitted under Article 22 of the Constitution, the reasons for adopting an alternative measurement (LOA or gt), together with the comments from the social partners arising from the consultation process. The inclusion of these flexibility options is derived from the need to find acceptable common standards for the measurement of different types of fishing vessels, in order for the requirements to be equally applied. An example of national differences that exist, and would possibly justify the adoption of gross tonnage over length or length overall, may be when in a country there is a tradition of building fishing vessels that are long in length but narrow in breadth, hence with relatively low gross tonnage (a measure of internal volume). If L or LOA is used as the basis for measurement, the vessel may be subject to the more stringent accommodation requirements (e.g. those concerning vessels of a length (L) of 24 metres or a length overall (LOA) of 26.5 metres) set out in Annex III, but if gt was used as a basis for measurement, the vessel may come under less stringent requirements for such matters as headroom, sleeping rooms, etc.).

Gross tonnage equivalences are as follows:

Gross tonnage	Length	Length overall
75 gt	15 metres or	16.5 metres
300 gt	24 metres or	26.5 metres
950 gt	45 metres or	50 metres

<sup>16</sup> ILO: *Guidelines on flag State inspection of working and living conditions on board fishing vessels*. (Geneva, 2015), p. 10.

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### 3.5. Article 6: Implementation

#### Article 6

1. Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.
2. Nothing in this Convention shall affect any law, award or custom, or any agreement between fishing vessel owners and fishers, which ensures more favourable conditions than those provided for in this Convention.

Article 6, paragraph 1, provides that “Each Member shall implement and enforce laws, regulations or other measures that it has adopted to fulfil its commitments under this Convention with respect to fishers and fishing vessels under its jurisdiction. Other measures may include collective agreements, court decisions, arbitration awards, or other means consistent with national law and practice.” The possibility of using “other measures” provides some degree of flexibility, as it provides for alternatives to laws and regulations. What is important is that the other measures are of a binding character.

The *Manual for drafting ILO instruments* discusses what is meant by “consistent with national law and practice” in ILO conventions:

In cases in which Conventions refer to national practice to determine the institutions or mechanisms by which they can be applied, provision should be made to ensure that, where the institutions on which national practice normally relies are absent, the Members are required to enact the legislation needed to ensure full observance of ratified Conventions. Some Conventions make express provision for legislative safeguards of this kind. In concrete terms, this may mean that Conventions envisage implementation through legislation, collective agreements, arbitration awards, court rulings, or through a combination of such means, or in any other manner consistent with national conditions and practice. Nevertheless, they should be made effective by legislation in so far as they are not given effect in an appropriate and timely manner by other means in accordance with national practice.<sup>17</sup>

<sup>17</sup> ILO: *Manual for drafting ILO instruments* (Geneva, 2006), paragraph 162, p. 52.

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### 3.6. Article 9: Minimum Age

#### Article 9

1. The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.

2. The competent authority, in accordance with national laws and practice, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required.

3. The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.

4. The types of activities to which paragraph 3 of this Article applies shall be determined by national laws or regulations, or by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards.

5. The performance of the activities referred to in paragraph 3 of this Article as from the age of 16 may be authorized by national laws or regulations, or by decision of the competent authority, after consultation, on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training and have completed basic pre-sea safety training.

6. The engagement of fishers under the age of 18 for work at night shall be prohibited. For the purpose of this Article, "night" shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m. An exception to strict compliance with the night work restriction may be made by the competent authority when:

(a) the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or

(b) the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being.

7. Nothing in this Article shall affect any obligations assumed by the Member arising from the ratification of any other international labour Convention.

Article 9, paragraph 1, provides that the minimum on board a fishing vessel shall be 16 years. However, persons of a minimum of 15 years of age may be authorized, by the competent authority under the condition that they are no longer subject to compulsory schooling as provided by national legislation, and are engaged in vocational training in fishing. This exception has been considered consistent with the provisions of Minimum Age Convention, 1973 (No. 138)<sup>18</sup>.

<sup>18</sup> See ILO: *Work in the fishing sector* Report IV (Part 2A), International Labour Conference, 96th Session, Geneva, 2007, p.70.

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### 3.7. Article 10: Medical examination

#### Article 10

1. No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.
2. The competent authority, after consultation, may grant exemptions from the application of paragraph 1 of this Article, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation.
3. The exemptions in paragraph 2 of this Article shall not apply to a fisher working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.

Article 10, concerning medical certificates, provides that the competent authority, after consultation, may grant exemptions, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation. However, the exemption shall not apply to fishers working on a vessel of 24 metres in length and over or which normally remains at sea for more than three days.

Article 4 paragraph 1 also provides that member States may, in accordance with a plan drawn up in consultation, “progressively implement” the provisions of Article 10, paragraph 1 and Article 10, paragraph 3. See section 3.3. above, on Article 4, for more information on implementing and reporting progressive implementation under the Convention.

### 3.8. Article 14: Manning and hours of rest

#### Article 14

1. In addition to the requirements set out in Article 13, the competent authority shall:
  - a. for vessels of 24 metres in length and over, establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishers required;
  - b. for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than:
    - i. ten hours in any 24-hour period; and
    - ii. 77 hours in any seven-day period.
2. The competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established in paragraph 1(b) of this Article. However, in such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable.
3. The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers.
4. Nothing in this Article shall be deemed to impair the right of the skipper of a vessel to require a fisher to perform any hours of work necessary for the immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or ships or persons in distress at sea. Accordingly, the skipper may suspend the schedule of hours of rest and require a fisher to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the skipper shall ensure that any fishers who have performed work in a scheduled rest period are provided with an adequate period of rest.

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## Article 14, paragraph 2

Article 14, paragraph 1 requires the competent authority to establish minimum levels of manning and minimum hours of rest.<sup>19</sup> Some flexibility is provided in Article 14, paragraph 2, which provides that “The competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established in paragraph 1(b) of this Article. However, in such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable.”

## Article 14, paragraph 3

Further to the exemptions and temporary exceptions provided for in paragraphs 1 and 2, Article 14, paragraph 3, provides that, with respect to manning and hours of rest: “The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers.”

The understanding of substantial equivalence is explained in the Guidelines on flag State inspection of working and living conditions on board fishing vessels:

“Substantial equivalence”, as it has been understood in the framework of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), where it was first used, means that there may be differences or deviations in detail as between the requisite national laws, regulations or other measures and the prescriptions of the Convention, but that the States should engage themselves to ensure that the general goals intended by the provisions of the Convention are respected. Thus, where there is not full conformity with the detailed prescriptions of the Convention, the test to be applied involves first determining what the general goal or goals of the Convention is or are, i.e. its object or objects and purpose or purposes. These may present themselves as one main general goal and several subordinate goals. The test for substantial equivalence may then be, first, whether the State has demonstrated its respect for, or acceptance of, the main general goal of the Convention and enacted laws or regulations that lead to its realization; and, if so, secondly, whether the effect of such laws or regulations is to ensure that in all material respects the subordinate goals of the Convention are achieved (see ILO: Labour standards on merchant ships, General Survey by the Committee of Experts on the application of Conventions and Recommendations, 1990, paras 65–79).<sup>20</sup>

Furthermore, in the preparatory work for Convention No.188, the Deputy Legal Advisor offered the following informal interpretation, referring to the General Survey on labour standards on merchant ships (1990):

The Deputy Legal Adviser, in response to a question raised concerning the application of substantial equivalence as regards numerical parameters in the jurisprudence of the Committee

<sup>19</sup> “As concerns the request in one of the replies seeking clarification as to whether sleeping hours and mealtimes are included in the minimum hours of rest set out in Article 14(1)(b), the Office observes that neither the proposed Convention nor the proposed Recommendation includes a definition of “hours of rest” or provides additional guidance on this matter. However, the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180), provides, in Article 2(b), that: the term ‘hours of work’ means time during which a seafarer is required to do work on account of the ship; and in Article 2(c) that: the term ‘hours of rest’ means time outside hours of work; this term does not include short breaks; These definitions are reproduced in the Maritime Labour Convention, 2006, in Standard A2.3.” Source: ILO: *Report IV (2A) Work in the fishing sector*, ILC, 96th Session 2007, Geneva, p.44.

<sup>20</sup> ILO: *Guidelines on flag State inspection of working and living conditions on board fishing vessels*. (Geneva, 2015), p. 8. See also, the discussion on “substantially equivalent” provisions in the MLC, 2006 in ILO: *Maritime Labour Convention, 2006 (MLC, 2006) Frequently Asked Questions (FAQ)*, Fourth edition (ILO, 2015), p. 9, paragraph A11.

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

The substantially equivalent value for hours of rest is flexible and for constituents to determine, subject to any comments they may receive from the ILO supervisory bodies, but should be in conducive to the full achievement of the general object and purpose of the provision, and give effect to that provision. Ultimately, the Committee of Experts on the Application of Conventions and Recommendations will assess if the measures adopted are substantially equivalent to the relevant provisions of the Convention.

### **3.9. Article 15: Crew list**

#### **Article 15**

Every fishing vessel shall carry a crew list, a copy of which shall be provided to authorized persons ashore prior to departure of the vessel, or communicated ashore immediately after departure of the vessel. The competent authority shall determine to whom and when such information shall be provided and for what purpose or purposes.

Article 4, paragraph 1, provides that a Member may, in accordance with a plan drawn up in consultation, "progressively implement" the provisions of Article 15, concerning crew lists for certain vessels.

See section 3.3. above, on Article 4, for more information on implementing and reporting progressive implementation under the Convention.

### **3.10. Article 20: Fisher's work agreement**

#### **Article 20**

It shall be the responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements) providing decent work and living conditions on board the vessel as required by this Convention.

Article 4, paragraph 1, provides that a Member may, in accordance with a plan drawn up in consultation, "progressively implement" the provisions of Article 20, concerning fisher's work agreements for certain vessels.

Article 4, paragraph 1 does not, however, apply to the earlier Articles in the Convention concerning the fisher's work agreement, which also concern the fisher's work agreement.

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Article 4, paragraph 1 does not apply to vessels which:

- are 24 metres in length and over; or
- remain at sea for more than seven days; or
- normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater; or
- are subject to port State control as provided for in Article 43 of this Convention, except where port State control arises through a situation of force majeure.

Consequently, Article 4 can be applied to Article 20, only for certain vessels which are less than 24 metres in length, remain at sea for no more than seven days, do not normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf and are not subject to port State control as provided for in Article 43.

Please see the above text on Article 4 for more information on implementing and reporting progressive implementation under the Convention.

Article 20 also provides that “where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements”.



### 3.11. Article 22: Recruitment and placement

#### Article 22

##### RECRUITMENT AND PLACEMENT OF FISHERS

1. Each Member that operates a public service providing recruitment and placement for fishers shall ensure that the service forms part of, or is coordinated with, a public employment service for all workers and employers.
2. Any private service providing recruitment and placement for fishers which operates in the territory of a Member shall do so in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.
3. Each Member shall, by means of laws, regulations or other measures:
  - (a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;
  - (b) require that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and
  - (c) determine the conditions under which any licence, certificate or similar authorization of a private recruitment or placement service may be suspended or withdrawn in case of violation of relevant laws or regulations; and specify the conditions under which private recruitment and placement services can operate.

##### PRIVATE EMPLOYMENT AGENCIES

4. A Member which has ratified the Private Employment Agencies Convention, 1997 (No. 181), may allocate certain responsibilities under this Convention to private employment agencies that provide the services referred to in paragraph 1(b) of Article 1 of that Convention. The respective responsibilities of any such private employment agencies and of the fishing vessel owners, who shall be the "user enterprise" for the purpose of that Convention, shall be determined and allocated, as provided for in Article 12 of that Convention. Such a Member shall adopt laws, regulations or other measures to ensure that no allocation of the respective responsibilities or obligations to the private employment agencies providing the service and to the "user enterprise" pursuant to this Convention shall preclude the fisher from asserting a right to a lien arising against the fishing vessel.
5. Notwithstanding the provisions of paragraph 4, the fishing vessel owner shall be liable in the event that the private employment agency defaults on its obligations to a fisher for whom, in the context of the Private Employment Agencies Convention, 1997 (No. 181), the fishing vessel owner is the "user enterprise".
6. Nothing in this Convention shall be deemed to impose on a Member the obligation to allow the operation in its fishing sector of private employment agencies as referred to in paragraph 4 of this Article.

Article 22 of Convention No. 188 contains provisions for the recruitment and placement of fishers. Paragraphs 4, 5 and 6 of Article 22 provide the possibility that certain responsibilities under the Convention can be allocated to private employment agencies as referred to in Article 1, paragraph 1(b) of the Private Employment Agencies Convention, 1997 (No. 181). This is conditional to the member State having ratified Convention No. 181.

### 3.12. Article 28: Accommodation and food

#### Article 28

1. The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25 to 27 shall give full effect to Annex III concerning fishing vessel accommodation. Annex III may be amended in the manner provided for in Article 45.
2. A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27.

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With respect to accommodation, Article 28, paragraph 2, provides for Members to adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III. For more information on substantial equivalence see the discussion of Article 15, in section 3.8. above.

### **3.13. Article 33: Occupational safety and health and accident prevention**

#### **Article 33**

Risk evaluation in relation to fishing shall be conducted, as appropriate, with the participation of fishers or their representatives.

Article 4, paragraph 1, provides that a Member may, in accordance with a plan drawn up in consultation, “progressively implement” the provisions of Article 33, concerning occupational safety and health and accident prevention, for certain vessels, in conducting risk evaluation in relation fishing with the participation of fishers or their representatives.

See the above text on Article 4, in section 3.3, for more information on implementing and reporting progressive implementation under the Convention.

### **3.14. Article 37: Social security**

#### **Article 37**

Notwithstanding the attribution of responsibilities in Articles 34, 35 and 36, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation to which fishers are subject.

Articles 34, 35 and 36 of Convention No. 188 make provisions for social security protection of fishers. Article 37 if the Convention allows Members to determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning social security legislation for fishers.

### **3.15. Article 38: Protection in the case of work-related sickness, injury or death**

#### **Article 38**

1. Each Member shall take measures to provide fishers with protection, in accordance with national laws, regulations or practice, for work-related sickness, injury or death.
2. In the event of injury due to occupational accident or disease, the fisher shall have access to:
  - (a) appropriate medical care; and
  - (b) the corresponding compensation in accordance with national laws and regulations.
3. Taking into account the characteristics within the fishing sector, the protection referred to in paragraph 1 of this Article may be ensured through:
  - (a) a system for fishing vessel owners' liability; or
  - (b) compulsory insurance, workers' compensation or other schemes.

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Article 4, paragraph 1, provides that a Member may, in accordance with a plan drawn up in consultation, “progressively implement” the provisions of Article 38, concerning protection in the case of work-related sickness, injury or death. Article 38, paragraph 1, provides for Members to take measures to protect fishers in this regard in accordance with national laws, regulations or practice.

See the above text on Article 4, in section 3.3. for more information on implementing and reporting progressive implementation under the Convention.

### **3.16. Annex I: Equivalence in measurement**

<p style="text-align: center;"><b>Annex I</b></p> <p style="text-align: center;"><b>Equivalence in measurement</b></p> <p>For the purpose of this Convention, where the competent authority, after consultation, decides to use length overall (LOA) rather than length (L) as the basis of measurement:</p> <ul style="list-style-type: none"><li>(a) a length overall (LOA) of 16.5 metres shall be considered equivalent to a length (L) of 15 metres;</li><li>(b) a length overall (LOA) of 26.5 metres shall be considered equivalent to a length (L) of 24 metres;</li><li>(c) a length overall (LOA) of 50 metres shall be considered equivalent to a length (L) of 45 metres.</li></ul>
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Annex I of the Convention details the equivalence in measurement provided for by Article 5 (see section 3.4 above).

### 3.17. Annex II: Fisher's work agreement

#### Annex II

#### Fisher's work agreement

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

- (a) the fisher's family name and other names, date of birth or age, and birthplace;
- (b) the place at which and date on which the agreement was concluded;
- (c) the name of the fishing vessel or vessels and the registration number of the vessel or vessels on board which the fisher undertakes to work;
- (d) the name of the employer, or fishing vessel owner, or other party to the agreement with the fisher;
- (e) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;
- (f) the capacity in which the fisher is to be employed or engaged;
- (g) if possible, the place at which and date on which the fisher is required to report on board for service;
- (h) the provisions to be supplied to the fisher, unless some alternative system is provided for by national law or regulation;
- (i) the amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage;
- (j) the termination of the agreement and the conditions thereof, namely:
  - (i) if the agreement has been made for a definite period, the date fixed for its expiry;
  - (ii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisher shall be discharged;
  - (iii) if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission, provided that such period shall not be less for the employer, or fishing vessel owner or other party to the agreement with the fisher;
- (k) the protection that will cover the fisher in the event of sickness, injury or death in connection with service;
- (l) the amount of paid annual leave or the formula used for calculating leave, where applicable;
- (m) the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work agreement, as applicable;
- (n) the fisher's entitlement to repatriation;
- (o) a reference to the collective bargaining agreement, where applicable;
- (p) the minimum periods of rest, in accordance with national laws, regulations or other measures; and
- (q) any other particulars which national law or regulation may require.

Annex II of the Convention provides for the contents of a fisher's work agreement. The annex gives member States the flexibility to regulate the contents of the fisher's work agreement in another manner where national laws and regulations, or a collective bargaining agreement are in place.

This possibility was included in the Convention following an intervention from the Government member of Denmark, in which the member noted that in Denmark there was no need to include the fisher's birthplace in a fisher's work agreement (as set out in Annex II, paragraph (a)), as this Denmark had a system for uniquely identifying each fisher, without needing to specify the fisher's birthplace.

Annex II paragraphs (h), (p) and (q) make further provision for measures in accordance with national laws and regulations.

### 3.18. Annex III: Fishing vessel accommodation

**Annex III**  
**Fishing vessel accommodation**  
**General provisions**

1. For the purposes of this Annex:
  - (a) "new fishing vessel" means a vessel for which:
    - (i) the building or major conversion contract has been placed on or after the date of the entry into force of the Convention for the Member concerned; or
    - (ii) the building or major conversion contract has been placed before the date of the entry into force of the Convention for the Member concerned, and which is delivered three years or more after that date; or
    - (iii) in the absence of a building contract, on or after the date of the entry into force of the Convention for the Member concerned:
      - the keel is laid, or
      - construction identifiable with a specific vessel begins, or
      - assembly has commenced comprising at least 50 tonnes or 1 per cent of the estimated mass of all structural material, whichever is less;
  - (b) "existing vessel" means a vessel that is not a new fishing vessel.
2. The following shall apply to all new, decked fishing vessels, subject to any exclusions provided for in accordance with Article 3 of the Convention. The competent authority may, after consultation, also apply the requirements of this Annex to existing vessels, when and in so far as it determines that this is reasonable and practicable.
3. The competent authority, after consultation, may permit variations to the provisions of this Annex for fishing vessels normally remaining at sea for less than 24 hours where the fishers do not live on board the vessel in port. In the case of such vessels, the competent authority shall ensure that the fishers concerned have adequate facilities for resting, eating and sanitation purposes.
4. Any variations made by a Member under paragraph 3 of this Annex shall be reported to the International Labour Office under article 22 of the Constitution of the International Labour Organization.
5. The requirements for vessels of 24 metres in length and over may be applied to vessels between 15 and 24 metres in length where the competent authority determines, after consultation, that this is reasonable and practicable.
6. Fishers working on board feeder vessels which do not have appropriate accommodation and sanitary facilities shall be provided with such accommodation and facilities on board the mother vessel.
7. Members may extend the requirements of this Annex regarding noise and vibration, ventilation, heating and air conditioning, and lighting to enclosed working spaces and spaces used for storage if, after consultation, such application is considered appropriate and will not have a negative influence on the function of the process or working conditions or the quality of the catches.
8. The use of gross tonnage as referred to in Article 5 of the Convention is limited to the following specified paragraphs of this Annex: 14, 37, 38, 41, 43, 46, 49, 53, 55, 61, 64, 65 and 67. For these purposes, where the competent authority, after consultation, decides to use gross tonnage (gt) as the basis of measurement:
  - (a) a gross tonnage of 75 gt shall be considered equivalent to a length (L) of 15 metres or a length overall (LOA) of 16.5 metres;
  - (b) a gross tonnage of 300 gt shall be considered equivalent to a length (L) of 24 metres or a length overall (LOA) of 26.5 metres;
  - (c) a gross tonnage of 950 gt shall be considered equivalent to a length (L) of 45 metres or a length overall (LOA) of 50 metres.

See Convention No. 188 for the full provisions of Annex III (paragraphs 9 to 84).

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### **Flexibility with respect to vessels at sea less than 24 hours where fishers do not live on board**

In accordance with paragraph 3 of Annex III: “The competent authority, after consultation, may permit variations to the provisions of this Annex for fishing vessels normally remaining at sea for less than 24 hours where the fishers do not live on board the vessel in port. In the case of such vessels, the competent authority shall ensure that the fishers concerned have adequate facilities for resting, eating and sanitation purposes.”

Paragraph 3 permits mere variations, which is different from outright exclusions. Also note, in paragraph 4, that such variations must be reported to the ILO.

### **Flexibility with respect to using gross tonnage instead of Length (L) or Length Overall (LOA) for certain provisions of Annex III**

Provisions for using gross tonnage instead of Length (L) or Length Overall (LOA) are cited in Annex III, paragraph 8, and concern the following paragraphs of this Annex:

- paragraph 14 (headroom)
- paragraphs 37, 38 (floor area in sleeping rooms)
- paragraph 41 and 43 (persons in sleeping rooms)
- paragraph 46 (minimum inside dimensions of the berths)
- paragraph 49 (desk suitable for writing, with a chair, in sleeping rooms)
- paragraph 53 (mess-room accommodation shall be separate from sleeping quarters)
- paragraph 55 (a refrigerator of sufficient capacity and facilities for making hot and cold drinks shall be available and accessible to fishers at all times)
- paragraph 61 (number of tubs or showers or both, number of toilets, and number of washbasins for fishers)
- paragraph 64 (facilities for washing, drying and ironing clothes)
- paragraph 65 (facilities for washing, drying and ironing clothes with respect to vessels 45 metres in length and over)
- paragraph 67 (separate sick bay with respect to vessels 45 metres in length and over)

### **Flexibility with respect to differing and distinctive religious and social practices concerning accommodation**

Paragraph 84 of Annex III provides that: “The competent authority, after consultation, may permit derogations from the provisions in this Annex to take into account, without discrimination, the interests of fishers having differing and distinctive religious and social practices, on condition that such derogations do not result in overall conditions less favourable than those which would result from the application of this Annex.”

**Box 3.1.**  
**Applying Annex III: An example.**

Mr Flores is the owner of a “pole and line” fishing vessel. The State whose flag the vessel flies is considering ratifying Convention No. 188. Mr Flores is concerned about the accommodation provisions for vessels in Annex III of the Convention and that his vessel and any future vessels he builds will not meet the requirements. In his country, vessel size is most commonly measured in gross tonnage (gt). Mr Flores’s vessel measures at 240 gt.

Annex III only applies to new, decked fishing vessels. The full explanation of a “new fishing vessel” is listed in the general provisions of Annex III, meaning that in practice only vessels built or majorly converted on or after the entry into force of the Convention for the Member concerned will be subject to Annex III. Therefore Annex III would not apply to Mr Flores’ existing vessel.

For any new vessels he may wish to build after the Convention enters into force for the State, if the vessel is less than 300 gt, and national requirements are not higher than those set out in the Convention, the vessel would need to comply with the requirements of Annex III but would not need to comply with certain higher requirements set out in the following paragraphs of that Annex. Consequently, many of the provisions in Annex III would not apply to Mr Flores’s vessel. These provisions are listed below (paragraphs to which substantial equivalence applies highlighted in bold, other provisions use length (L) or length overall (LOA)):

- Paragraphs 10 and 11 (on planning and control)
- Paragraphs **14** and 17 (on design and construction)
- Paragraph 22 (on noise and vibration)
- Paragraph 25 (on ventilation)
- Paragraphs 27 and 28 (on heating and air conditioning)
- Paragraph 34 (on lighting)
- Paragraphs **37, 38, 41, 43, 46 and 49** (on sleeping rooms)
- Paragraph **53 and 55** (on mess rooms)
- Paragraph **61** (on tubs or showers, toilets and washbasins)
- Paragraph **64 and 65** (on laundry facilities)
- Paragraph **67** (on Facilities for sick and injured fishers)
- Paragraph 70 (on recreational facilities)
- Paragraphs 74 and 77 (on galley and food storage facilities)
- Paragraph 83 (on inspections by the skipper or under the authority of the skipper)

A further example, using a Thai purse seiner, is attached at Appendix I.

**Table 3.1. Table summarising the flexibility clauses of the Convention, by Article**

<b>C188 Articles/Annexes</b>	<b>Flexibility clauses within the Article</b>	<b>Application of Article 4 on Progressive implementation</b>	<b>Application of Article 3 on Limited vessel/fisher exclusions</b>
Article 1 Definitions	None	No	Yes
Article 2 Scope	Determination of whether vessel is engaged in commercial fishing.	No	Yes
Article 3 Limited exclusions	Limited vessel/fisher exclusion of entire or part(s) of C188.	No	Yes
Article 4 Progressive implementation	Progressive implementation. <i>Not</i> with respect to vessels: of 24 m L and over; or remaining at sea for more than 7 days; or normally navigate > 200 nm from coastline of flag State; or are subject to port State control.	No	Yes
Article 5 Measurement	Usage of Length Overall or, with regard to Annex III, Gross Tonnage instead of Length.	No	Yes
Article 6 Implementation	Flexibility on instruments of implementation.	No	Yes
Article 7 Competent authority and coordination	None	No	Yes
Article 8 Responsibilities of fishing vessel owners, skippers and fishers	None	No	Yes
Article 9 Minimum age	Competent authority may permit 15 year olds to work on fishing vessels, no longer in compulsory schooling and engaged in vocational training.	No	Yes
Article 10 Medical examination	Exemptions possible for vessels < 24 m L, or at sea not more than 3 days.	Yes	Yes
Article 11 Medical examination	None	No	Yes
Article 12 Medical examination	None	No	Yes
Article 13 Manning and hours of rest General	None	No	Yes



<b>C188 Articles/Annexes</b>	<b>Flexibility clauses within the Article</b>	<b>Application of Article 4 on Progressive implementation</b>	<b>Application of Article 3 on Limited vessel/fisher exclusions</b>
Article 14 Manning and hours of rest Additional	Alternative but substantially equivalent requirements with regard to manning and hours of rest. Temporary exceptions for limited and specified reasons with regard to hours of rest.	No	Yes
Article 15 Crew list	None	Yes	Yes
Article 16 Fisher's work agreement	None; see Annex II.	No	Yes
Article 17 Fisher's work agreement	None	No	Yes
Article 18 Fisher's work agreement	None	No	Yes
Article 19 Fisher's work agreement	None	No	Yes
Article 20 Fisher's work agreement	Possibility to have the fisher's work agreement signed by a different party than the fishing vessel owner or his authorized representative.	Yes	Yes
Article 21 Repatriation	None	No	Yes
Article 22 Labour market services	Conditional possibility to have certain fishing vessel owner responsibilities allocated to private employment agencies as referred to in C181, Article 1, paragraph 1(b).	No	Yes
Article 23 Payment of fishers	None	No	Yes
Article 24 Payment of fishers	None	No	Yes
Article 25 Accommodation and food	None	No	Yes
Article 26 Accommodation	None	No	Yes
Article 27 Food and potable water	None	No	Yes
Article 28 Accommodation and food	Substantially equivalent alternative requirements with regard to Annex III.	No	Yes
Article 29 Medical care	None	No	Yes
Article 30 Medical care Additional	None	No	Yes

<b>C188 Articles/Annexes</b>	<b>Flexibility clauses within the Article</b>	<b>Application of Article 4 on Progressive implementation</b>	<b>Application of Article 3 on Limited vessel/fisher exclusions</b>
Article 31 Occupational safety and health	None	No	Yes
Article 32 Occupational safety and health Additional	None	No	Yes
Article 33 Risk assessment	None	Yes	Yes
Article 34 Social security	None	No	Yes
Article 35 Social security	None	No	Yes
Article 36 Social security	None	No	Yes
Article 37 Social security	Other rules concerning applicable social security legislation.	No	Yes
Article 38 Protection in the case of work-related sickness, injury or death	None	Yes	Yes
Article 39 Fishing vessel owner liability	None	No	Yes
Article 40 Compliance and enforcement	None	No	Yes
Article 41 Valid document	None	No	Yes
Article 42 Inspectors and inspection	None	No	Yes
Article 43 Flag State and port State control	None	No	Yes
Article 44 Port State control No more favourable treatment	None	No	Yes
Article 45 Amendment of Annexes	None	No	Yes
Article 46 Revised earlier Conventions on fishing	None	No	Yes
Article 47	None	No	Yes
Article 48	None	No	Yes
Article 49	None	No	Yes
Article 50	None	No	Yes
Article 51	None	No	Yes
Article 52	None	No	Yes

<b>C188 Articles/Annexes</b>	<b>Flexibility clauses within the Article</b>	<b>Application of Article 4 on Progressive implementation</b>	<b>Application of Article 3 on Limited vessel/fisher exclusions</b>
Article 53	None	No	Yes
Article 54 Authoritative languages	None	No	Yes
Annex I Equivalence in measurement	Flexibility instrument of Article 5	No	Yes
Annex II Fisher's work agreement	Allows to regulate content of fisher's work agreement in another manner by national laws or regulations or a collective bargaining agreement.	No	Yes
Annex III Fishing vessel accommodation	Flexibility with regard to: (a) existing and undecked fishing vessels (item 2); (b) vessels at sea < 24 hours (item 3); (c) substantial equivalence except for food and potable water (see Article 28); use of GT instead of L or LOA (see Article 5 and item 8); religious and social practices (item 84).	No	Yes

Refer to text on the relevant Article in Chapter 3 and Chapter 4 for requirements for use and reporting requirements.

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## 4. Additional information and guidance regarding flexibility clauses

### 4.1. Form for reports on the application of the ratified Convention

Article 22 of the ILO Constitution states<sup>21</sup>:

**Article 22**  
**Annual reports on ratified Conventions**

1. Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.

Article 22 of the ILO Constitution requires member States who have ratified Convention No. 188 to complete the report form on the application of the Convention. According to the guidance on the report form, “the matters with which this Convention deals may be beyond the immediate competence of the ministry responsible for labour questions, so that the preparation of a full report of the Convention may necessitate consultation of other interested ministries or government agencies.” The Convention, and this document, clearly stipulate where flexibility clauses should be subject to consultation with social partners. This Chapter highlights the relevant guidance in the form for reporting on application of flexibility clauses.

#### 4.1.1. Completing the form for reports on the application of the ratified Convention in the context of flexibility clauses

Section II of the article 22 form on the application of the Convention states that it is necessary to provide details of any modifications to the laws and regulations that have been enacted in order to permit ratification or as a result of ratification.

The form specifically requests certain information on various Articles of the Convention. For each Article of the Convention that contains flexibility clauses, the form requires that ratifying States specify the exemptions, exclusions, substantial equivalences or variations to the Convention that have been enacted. The Articles to which flexibility clauses apply are listed in detail in Chapter 2 of this document.

The text below contains excerpts from the article 22 report form on the application of the ratified Convention. The full report form is available on the ILO website.<sup>22</sup>

#### Article 2

*Paragraph 2. Please indicate whether cases of doubt have arisen as to whether any vessels are to be regarded as engaged in commercial fishing for the purposes of this Convention, the procedure used for determination of the question and the consultations which have taken place to this effect.*

<sup>21</sup> International Labour Organization. 2007. *Constitution of the International Labour Organisation and selected texts*. (Geneva). p. 17.

<sup>22</sup> See <http://www.ilo.org/dyn/normlex/en/f?p=1000:14002:::NO:::>

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*Paragraph 3. Please indicate whether the protective coverage of the provisions of the Convention which are applicable to vessels of 24 metres in length and over has been extended, in whole or in part, to fishers working on smaller vessels and provide information on the consultations which have been held in this respect.*

### **Article 3**

*If recourse has been had to the provisions of paragraph 1 of this Article:*

*(a) please specify the categories of fishers or fishing vessels which have been excluded, in whole or in part, from the scope of application of the Convention;*

*(b) give the reasons for such exclusions and provide information on the consultations which have been held prior to such exclusions, stating in particular the positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist;*

*(c) describe any measures taken to ensure equivalent protection, and subsequently, any measures taken to extend progressively the requirements of the Convention to the excluded categories.*

### **Article 4**

*Where it has been deemed necessary to progressively implement all or some of the provisions specified in paragraph 1 of this Article:*

*(a) please specify the provisions to be progressively implemented;*

*(b) explain the reasons and state the respective views expressed by representative organizations of employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist;*

*(c) provide details about the plan for the progressive implementation and the consultations which have taken place in this connection;*

*(d) describe in subsequent reports the measures taken with a view to giving effect to all of the provisions of the Convention.*

### **Article 5**

*Please indicate whether for the purpose of the application of this Convention the length overall (LOA) is used in place of length (L) as the basis of measurement in accordance with the equivalence set out in Annex I. Please also indicate whether for the purpose of the paragraphs specified in Annex III, gross tonnage is used in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in paragraph 8 of Annex III. In either case, please explain the reasons for such decision and provide information on the consultations which have taken place.*

### **Article 6**

*Please specify the means by which the provisions of the Convention are implemented.*

### **Article 9**

*Paragraphs 1 and 2. Please confirm that the minimum age for work on board a fishing vessel is 16 years. Please indicate whether a minimum age of 15 is authorized for persons who are no longer subject to compulsory schooling and who are engaged in vocational training in fishing. Please also indicate whether persons of 15 years of age are authorized to perform light work during school holidays, and if so, specify the kinds and conditions of work permitted, including the periods of rest required, and provide information on the consultations which have taken place in this connection.*

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## Article 10

*Paragraphs 1 and 2. Please confirm that fishers are not allowed to work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties. Please also indicate whether any exemptions may be granted by the competent authority, after consultation, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation and type of fishing operation. In answering this question, please also refer to any use of the progressive implementation provision in Article 4(1).*

*Paragraph 3. Please confirm that any such exemptions do not apply to fishers working on fishing vessels of 24 metres in length and over or which normally remain at sea for more than three days. Please indicate whether in urgent cases, a fisher is permitted to work on such a vessel for a limited and specified duration until a medical certificate can be obtained provided that the fisher is in possession of an expired medical certificate of a recent date. In answering this question, please also refer to any use of the progressive implementation provision in Article 4(1)*

## Article 14

*Paragraph 1. Please specify the minimum level of manning, i.e. the number and qualifications of fishers, which has been established for the safe navigation of vessels of 24 metres in length and over. Please also specify the minimum hours of rest to be provided to fishers working on vessels regardless of size that remain at sea for more than three days, which have been established after consultation and in accordance with the limits set out in subparagraph (b).*

*Paragraph 2. Please indicate whether temporary exceptions to the minimum hours of rest specified in paragraph 1, subparagraph (b) are permitted for limited and specified reasons, and if so, please confirm that in such circumstances fishers are provided with compensatory periods of rest as soon as practicable.*

*Paragraph 3. Please indicate whether any alternative requirements to those set out in paragraphs 1 and 2 are established after consultation, and if so, please show in what manner these requirements are substantially equivalent and do not jeopardize the safety and health of the fishers.*

*Paragraph 4. Please indicate whether under the laws and regulations in force the skipper of a fishing vessel is entitled to suspend the schedule of hours of rest and require a fisher to perform any hours of work if the immediate safety of the vessel, the persons on board, or the catch so requires, or in case assistance needs to be given to other boats, or ships or persons in distress at sea. If so, please confirm that fishers who have performed work in a scheduled rest period must be granted an adequate period of rest as soon as practicable after the normal situation has been restored.*

## Article 15

*Please describe the procedures for establishing a crew list on board every fishing vessel and for communicating a copy of it to authorized persons ashore prior to or immediately after departure of the vessel. Please also specify to whom, when and for what purpose such information is to be provided. Please provide a specimen copy of any standard crew list form that may be in use. [In answering this question, please also refer to any use of the progressive implementation provision in Article 4(1).]*

## Article 20

*Please confirm that it is the responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner. Where fishers are not employed or engaged by the fishing vessel owner, please confirm that the fishing vessel owner is required to have evidence of contractual or similar arrangements. In answering this question, please also refer to any use of the progressive implementation provision in Article 4(1).*

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**Article 22**

*Paragraphs 4 and 5. If your country has ratified the Private Employment Agencies Convention, 1997 (No. 181), please indicate whether any responsibilities under this Convention have been allocated to private employment agencies that provide the services referred to in paragraph 1(b) of Article 1 of that Convention, and if so, please explain how the respective responsibilities of any such private employment agencies and of the fishing vessel owners have been determined and allocated in conformity with Article 12 of Convention No. 181.*

**Article 28**

*In so far as recourse has been had to the provisions of paragraph 2 of this Article, please show in what manner the provisions adopted in the laws and regulations or other measures, with the exception of provisions related to Article 27, are substantially equivalent to the provisions of Annex III and provide information on the consultations which have been held in this regard.*

**Article 33**

*Please indicate the measures taken to give effect to this Article. [In answering this question, please also refer to any use of the progressive implementation provision in Article 4(1).]*

**Article 37**

*Please describe any rules concerning the social security legislation to which fishers are subject that may have been determined through bilateral and multilateral agreements or through provisions adopted in the framework of regional economic integration organizations.*

**Article 38**

*Please give particulars of the national laws, regulations or other measures which give effect to this Article. [In answering this question, please also refer to any use of the progressive implementation provision in Article 4(1).]*

**Annex I**

Annex I refers to the equivalence in measurement provided for by Article 5.

**Annex II**

Reporting requirements for Annex II are covered in the form under Article 16.

**Annex III**

The reporting requirements for the Annex III are covered in the form under Article 5, Article 26, Article 27 and Article 28.

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## 4.2. Valid documents

Article 41 of the Convention provides:

**Article 41**

1. Members shall require that fishing vessels remaining at sea for more than three days, which:
  - a. are 24 metres in length and over; or
  - b. normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater,
  - c. carry a valid document issued by the competent authority stating that the vessel has been inspected by the competent authority or on its behalf, for compliance with the provisions of this Convention concerning living and working conditions.
2. The period of validity of such document may coincide with the period of validity of a national or an international fishing vessel safety certificate, but in no case shall such period of validity exceed five years.

For ships that are 24 metres in length or over, or navigating at distances exceeding 200 nautical miles of the flag State or beyond the edge of its continental shelf, the valid documentation carried on vessels, provided for in Article 41, should detail the relevant exemptions, exclusions, substantial equivalences or variations which have been agreed upon, by consultation, when the flag state ratified the Convention. The *ILO Guidelines on flag State inspection of working and living conditions on board fishing vessels* lists details of variations among the recommended contents of the valid document (see 4.2.1 below).

For example, where a Member state decides, in accordance with Article 3 of the Convention to exclude limited categories of fishers or fishing vessels from certain provisions of the Convention, fishers or vessels in this category will not have to comply with the requirements of these provisions. Therefore inspectors would not be required to inspect a this kind of vessel's compliance with these provisions. Ships which engage in activity in international ports should carry this information on board to inform the relevant authorities of any exemptions, exclusions, substantial equivalences or variations to avoid issues and/or delays when the vessels are inspected.

### **4.2.1. List of matters to be inspected before a valid document is issued**

The *Guidelines on flag State inspection of working and living conditions on board fishing vessels*, adopted by an ILO tripartite meeting of experts in 2015, though not binding, list the following as minimum contents of a valid document. Details of variations on the basis of exemptions, exclusions, substantial equivalencies or variations are information which is recommended to be included in the document.

List of matters to be inspected:

- Responsibilities of fishing vessel owners, skippers and fishers;
- minimum age;
- medical certification;
- manning, including qualifications of the skipper;
- hours of rest;



- 
- crew list;
  - fisher's work agreement, this includes, inter alia, social security and protection in cases of work-related sickness, injury or death, as set out in Annex II to the Convention;
  - repatriation;
  - recruitment and placement of fishers, including private employment agencies;
  - payment of fishers;
  - accommodation;
  - food and water;
  - medical care; and
  - occupational safety and health.

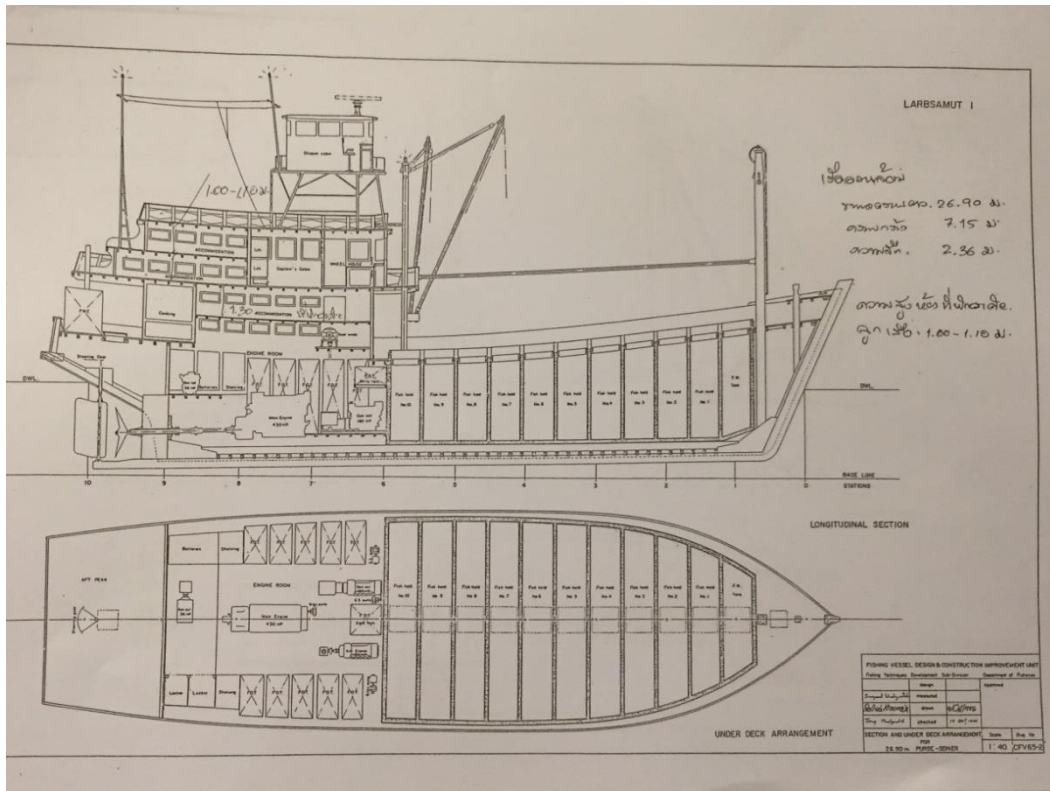
Some of the above may be affected by the application of flexibility clauses in the Convention.

#### **4.2.2. Minimum contents of a valid document**

The *Guidelines on flag State inspection of working and living conditions on board fishing vessels* list the minimum contents of a valid document. While not required by the Convention it is recommended that the valid document should contain any exemptions, exclusions, substantial equivalencies or variations that apply to the vessel as permitted by the competent authority of the flag State.

## Appendix –Vessel Example

Purse seiner: 26.9 metres. 151.20 gross tons. Remains at sea more than 3 days.



### Convention No. 188 main requirements

- No fishers under minimum age, those under 18 protected.
- Medical certificates.
- Competent skipper (captain).
- Minimum hours of rest (at least 10 hours in 24 hours and 77 hours in 7 days).
- Crew list.
- Written work agreements.
- Repatriation from foreign ports paid by fishing vessel owner.
- Fisher does not pay for job.
- If paid a wage (in part or whole), paid regularly.
- Accommodation, food, water meeting standard.
- Appropriate medical equipment, supplies, instructions, communications, fisher trained in first aid on board/right of treatment ashore in serious illness/injury.
- Safety and health training, risk assessment, accidents reported (safety committees sea/shore).
- Social security protection (same as comparable workers).
- Protection in case of work-related sickness, injury or death – at least until repatriation.

**Accommodation requirements: Existing vessel**

- Laws, regulations, measures requiring accommodation be sufficient size, quality and equipped.
- Competent authority MAY, after consultation, apply requirements that are reasonable and practicable.

**Accommodation requirements: New vessel**

<b>Headroom</b>	<b>Adequate in all accommodation.</b>  <b>Where fishers stand, minimum headroom set by competent authority (paragraph 13)</b>
Opening to sleeping rooms from machinery spaces, etc.	No direct openings.  Avoid direct openings to galleys, etc., where reasonable and practicable (para. 16).
Insulation	Adequate... (para. 18).
Insects	Practicable protection against insects, flies (para. 19).
Noise and vibration	Limit excessive noise, vibration, as practicable (para. 21).
Lighting	Adequate lighting, reading light for berths (paras. 29 and 31).
Sleeping spaces	Located to minimize motion (para. 35).  Adequate space and comfort for service of vessel (para. 36).  No more than 6 people per sleeping room (para. 40).  If practicable, separate space for officers (para. 42).
Tub, showers, toilets, sinks	Toilets, showers, sinks, appropriate for persons on board and service of vessel (para. 56), Healthy and hygienic (para. 56).  Avoid contamination, reasonable privacy (para. 57).  Cold and hot water for washing (para. 58).  Ventilated (para. 59), Easy to clean (para. 60).



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