

**On behalf of the Fisheries Governance Project**

**Gaps and Opportunities in Global Fisheries  
Governance to Provide Adequate Protection of  
Fishers' Labour and Human Rights on Board  
Fishing Vessels**

**Study (Part 1)**

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## Abbreviations and acronyms

AIS	Automatic Identification System
BLA	Bilateral Labour Agreement
CC CIF	Command Centre for Combating Illegal Fishing (Thailand)
CCRF	Code of Conduct for Responsible Fisheries
CDS	Catch Documentation Scheme
CMM	Conservation and Management Measure
CTA	Cape Town Agreement
EC	European Commission
EEZ	Economic Exclusive Zone
EU	European Union
FAO	Food and Agriculture Organization
FOC	Flag of Convenience
HRT	Human Rights Team
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Labour Conference
ILO	Internal Labour Organization
IMO	International Maritime Organization
IOMOU	Memorandum of Understanding on Port State Control for the Indian Ocean Region
IOTC	Indian Ocean Tuna Commission
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
IRSFV	International Regulations for the Safety of Fishing Vessels
ITF	International Transport Workers' Federation
IUU	Illegal Unreported and Unregulated
JWG	Joint Working Group
MCS	Monitoring Control and Surveillance
MC 12	12 <sup>th</sup> Ministerial Conference
MLC	Maritime Labour Convention
MMAF	Ministry of Marine Affairs and Fisheries
MOU	Memorandum of Understanding
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MSC	Marine Stewardship Council
MTCs	Minimum Terms and Conditions
NGO	Non-Governmental Organization
PIPO	Port In Port Out (Thailand)
PNA	Parties to the Nauru Agreement
PSC	Port State Control
PSMA	Port State Measures Agreement
RFB	Regional Fisheries Body
RFMO	Regional Fisheries Management Organization
RFVS	Responsible Fishing Vessel Standard
SIMP	Seafood Import Monitoring Program
STCW-F	International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel
SWIOFC	Southwest Indian Ocean Fisheries Commission
TAC	Total Allowable Catch
TIP	Trafficking In Persons

TVPA	Trafficking Victims Protection Act (USA)
TVPRA	Trafficking Victims Protection Reauthorization Act (USA)
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNCLOS	United Nations Convention on the Law of Sea
UNCTOC	United Nations Convention against Transnational Organized Crime
UNFSA	United Nations Fish Stocks Agreement
UNGA	United Nations General Assembly
UNGPs	United Nations Guiding Principles on Business and Human Rights
USDOL	United States Department of Labour
VGCDS	Voluntary Guidelines for Catch Documentation Scheme
VGFSP	Voluntary Guidelines for Flag State Performance
VMS	Vessel Monitoring System
WCPFC	Western and Central Pacific Fisheries Commission
WTO	World Trade Organization

## Introduction

This study aims to assess key instruments underpinning global fisheries governance and related instruments with a view to identifying gaps and opportunities to ensure adequate protection of fishers' labour and human rights on fishing vessels. To this end, fundamental international legally binding and voluntary instruments relating to fisheries, labour, vessel safety, human rights and transnational organized crimes have been examined to extract relevant provisions and determine whether, when put together, they form a comprehensive and sufficiently rigorous global governance system that provide suitable protection of fishers' labour and human rights on fishing vessels. At this point, it is important to stress that human rights are not the main thrust of this study and that its primary focus is on decent work and protection of labour rights on fishing vessels. However, since human rights abuses on fishing vessels, in particular use of forced labour and human trafficking for the purpose of forced labour, have been reported and exposed in recent years, one cannot ignore occurrences of such violations. Hence, core international human rights instruments and international instruments on transnational organized crimes relating to human trafficking have been incorporated in this review for sake of completeness. Inclusion of these instruments also provides some background for national initiatives and mechanisms designed to identify and address labour and human rights abuses, such as national legislation on modern slavery and human rights due diligence processes in private business, that are covered by this study.

This study examines the fundamental internationally binding and non-binding instruments relating to fisheries, labour, human rights, fishing vessels' safety, transnational organized crimes and corruption (Parts 1, 2, 3 and 5). It also reviews regional and national mechanisms and initiatives that are designed or can be used for identifying and addressing labour and human rights abuses in the fisheries sector (Part 4). It goes on to provide a brief description of the relationship between the key treaties that form part of global fisheries governance (Part 6). Finally, it outlines the main gaps in treaty law underpinning global fisheries governance and pinpoint opportunities to address some of these gaps. Seven annexes have been appended to this study to provide a more detailed analysis of key treaties.

## 1. Review of main international fisheries instruments

### 1.1 United Convention on the Law of the Sea (UNCLOS), 1982

UNCLOS, which is often referred to as the constitution of the oceans, establishes the key principles underpinning ocean governance, and provides the legal foundations for global fisheries governance.

It asserts the sovereignty of coastal States over the territorial sea, which can extend up to 12 nautical-miles measured from the baselines determined in accordance with the Convention.<sup>1</sup> In other words, it is an extension of the coastal State's territory at sea where the laws and regulations of the coastal State equally apply. It also introduces the concept of economic exclusive zone (EEZ), which confers sovereign rights on coastal States, for the purpose, among other things, of exploring and exploiting, conserving and managing the living marine resources within the bounds of the EEZ,<sup>2</sup> that is within an area that may not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.<sup>3</sup>

The core principles underlying fisheries management in the EEZ are found in Articles 61 and 62, which, *inter alia*, require coastal States to: (a) determine the total allowable catch (TAC); (b) take the appropriate measures to ensure that living marine resources are not over-exploited; (c) maintain or

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<sup>1</sup> See Articles 2 and 3 of UNCLOS

<sup>2</sup> See Article 56(1)(a) of UNCLOS

<sup>3</sup> See Article 57 of UNCLOS

restore populations of harvested species at levels which can produce the maximum sustainable yield; (d) promote the objective of optimum utilization of living marine resources; (e) determine the capacity of the national fishing fleet to harvest the living marine resources occurring in its EEZ and where it does not have the capacity to harvest the entire TAC, enter into agreements or other arrangements to give access to other States; and (f) develop fisheries conservation and management measures and put in place appropriate enforcement mechanisms.

For the purpose of this study, the most important principle enshrined in UNCLOS is the recognition of the primacy of the flag State's sovereignty on the high seas. This means that in areas beyond national jurisdiction it is the law of the flag State that applies on board any vessels, including fishing and supply vessels, and thus that it is the responsibility of the flag State to ensure compliance with any applicable national laws and regulations and international standards (e.g., labour standards, safety standards) as well as with any applicable fisheries conservation and management measures that may have been adopted by a relevant Regional Fisheries Management Organization (RFMO) or any other regional arrangement.

The most relevant provisions for the purpose of this study are highlighted and commented upon in Table 1 in Annex 1 of this report. They relate to: (a) nationality and registration of ships; (b) status of ships; (c) duties of flag State; (d) prohibition of the transport of slaves; and (e) right of visit and raise important issues such as use of flag of convenience and flag hopping to evade oversight and control, failure of flag States to fulfil their flag States' duties including ensuring adequate labour conditions on board ships and obligation to inquire any marine casualty or incident having caused loss of life or serious injury, and trafficking in persons.

## **1.2 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement), 1993**

As highlighted in the preamble, the main purpose of the Compliance Agreement is to fight the practice of flagging or reflagging of fishing vessels as a way of avoiding compliance with international conservation and management measures and more generally as a means of evading any oversight and control by the competent authorities of responsible flag States, and the failure of flag States to fulfil their responsibilities with respect to fishing vessels entitled to fly their flag. In order to realize this objective, the Compliance Agreement specifies the extent of flag States' responsibility in respect of national fishing vessels operating on the high seas, including the authorization by the flag State of such operations, urges strengthened international cooperation and promotes increased transparency through the exchange of information on high seas fishing operations.

The most relevant provisions of the Compliance Agreement for the purpose of this study are underscored and commented upon in Table 2 in Annex 2 of this report.

## **1.3 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (United Nations Fish Stocks Agreement (UNFSA), 1995**

As mentioned in the preamble, the UNFSA seeks to address in particular the problems identified in chapter 17, programme area C, of Agenda 21 adopted by the United Nations Conference on Environment and Development, namely, that the management of high seas fisheries is inadequate in

many areas and that resources are overutilized; noting that there are problems of over-capitalization, excessive fishing capacity, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States. Furthermore, it calls for more effective enforcement by flag States, port States and coastal States of the international conservation and management measures adopted for straddling fish stocks and highly migratory fish stocks.

While this Agreement applies primarily on the high seas, Articles 6 and 7 apply also to the conservation and management of straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction. These Articles deal with the application of the precautionary approach and the compatibility of conservation and management measures, respectively. In line with UNCLOS, the UNFSA urges coastal States and States whose vessels fish on the high seas to pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements.<sup>4</sup> In this regard, it spells out the functions of such subregional and regional organizations or arrangements.<sup>5</sup> Furthermore, it restates the duties of the flag State whose vessels operate on the high seas that were spelled out in the Compliance Agreement.<sup>6</sup> It also includes an entire part on compliance and enforcement which specifies the responsibilities of the flag State<sup>7</sup> and the port State<sup>8</sup> in terms of enforcement and gives substance to the concept of cooperation in enforcement at the subregional, regional and international levels,<sup>9</sup> including basic procedures for boarding and inspection on the high seas.<sup>10</sup>

The most relevant provisions of the UNFSA for the purpose of this study are examined and commented upon in Table 3 of Annex 3 of this report.

#### **1.4 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA), 2009**

The PSMA is the first and hitherto sole binding instrument adopted by the international community to address the issue of illegal, unreported and unregulated (IUU) fishing. The use of port State measures was included as a core element in the International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA-IUU). Further recognizing that port State measures constitute an efficient and cost-effective tool to combat IUU fishing, FAO members developed a Model Scheme on Port States measures in 2005. These two instruments formed the basis for the technical discussions and negotiations leading up to the adoption of the PSMA.

The agreement lays down a minimum set of standard measures for port States measures to apply when foreign vessels seek entry into their ports or while they are in their ports. Through the implementation of defined procedures to verify that such vessels have not engaged in IUU fishing and other inspection and enforcement measures, fish caught from IUU fishing operations could be blocked from reaching national and international markets, thereby reducing the incentive for perpetrators to continue to operate.

The most relevant provisions of the PSMA for the purpose of this study are underlined and discussed in Table 4 of Annex 4 of this report.

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<sup>4</sup> See Article 8.1 of UNFSA

<sup>5</sup> See Article 10 of UNFSA

<sup>6</sup> See Article 18 of UNFSA

<sup>7</sup> See Article 19 of UNFSA

<sup>8</sup> See Article 23 of UNFSA

<sup>9</sup> See Articles 20 and 21 of UNFSA

<sup>10</sup> See Article 22 of UNFSA

## 1.5 Draft WTO Agreement on Fisheries Subsidies

World Trade Organization (WTO) negotiations on fisheries subsidies were launched in 2001 at the Doha Ministerial Conference with a mandate to clarify and improve WTO disciplines on fisheries subsidies. SDG 14.6 provides for the prohibition of certain forms of fisheries subsidies which contribute to overcapacity and overfishing and the elimination of subsidies that contribute to IUU fishing by 2020. Because of the COVID-19 pandemic, negotiations on an agreement to curb harmful fisheries subsidies were delayed. Negotiations restarted in April 2021 with WTO Director-General calling on members to reach an agreement by July 2021. To this end, a new draft consolidated text was circulated in May 2021. Up to that point, the negotiations focused on harmful “financial” subsidies not addressing the issue of forced labour as a means of trade distortion.

On 26 May 2021, the U.S. Trade Representative proposed new measures to address forced labour as part of the WTO agreement on curbing harmful fisheries subsidies and submitted amendments to the May 2021 draft consolidated text.

Ministers in a virtual meeting on 15 July 2021 reaffirmed their commitment to conclude negotiations as a priority for the 12<sup>th</sup> Ministerial Conference (MC12) scheduled to take place in December 2021. However, on 26 November 2021, WTO members decided to further postpone MC12 to an undetermined date in 2022.

## 1.6 Code of Conduct for Responsible Fisheries

The Code of Conduct for Responsible Fisheries (CCRF) was adopted on 31 October 1995 by the FAO Conference. It provides a necessary framework for national and international efforts to ensure sustainable exploitation of aquatic resources in harmony with the environment and promote responsible fishing practices. The CCRF recognizes the importance of taking into account social factors in the management of fisheries resources. In Article 6, setting out the general principles underlying the Code, it stipulates that “States should ensure that their policies, programmes and practices related to trade in fish and fishery products do not result in obstacles to this trade, ... or negative social... impacts.”<sup>11</sup> It also mentions that “States should ensure that fishing facilities and equipment as well as all fisheries activities allow for safe, healthy and fair working and living conditions and meet internationally agreed standards adopted by relevant international organizations.”<sup>12</sup>

## 1.7 International Plan of Action to Prevent, Deter and Eliminate IUU Fishing, 2001

Recognizing the ineffectiveness of existing international instruments addressing IUU fishing due to a lack of political will, priority, capacity and resources to ratify or accede to and implement them, FAO members, gathered at a FAO Ministerial Meeting on Fisheries in March 1999, declared that, without prejudice to the rights and obligations of the States under international law, FAO will develop a global plan of action to deal effectively with all forms of IUU fishing including fishing vessels flying “flags of convenience” through coordinated effort by States, FAO, relevant RFMOs and other international agencies such as the International Maritime Organization (IMO).

The IPOA-IUU provides a definition of the concept of IUU fishing that is widely recognized as the definition of reference, although States may adopt different definitions in their national policy and legal

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<sup>11</sup> See Article 6.14 of the CCRF

<sup>12</sup> See Article 6.17 of the CCRF

instruments. The stated objective of the international plan is “to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law”. The basic structure of the IPOA-IUU is built around the following core elements: (a) all State responsibilities; (b) flag State responsibilities; (c) coastal State measures; (d) port State measures; (e) internationally agreed market-related measures; (f) research; and (g) RFMOs.

The most relevant provisions of the IPOA-IUU for the purpose of this study are highlighted and discussed in Table 5 of Annex 5 of this report.

## 1.8 Voluntary Guidelines for Flag State Performance (VGFSP), 2015

The VGFSP were adopted in 2015 to provide a tool for States to assess their performance in discharging their obligations as a flag State under international law. All flag States are encouraged to carry out self-assessments periodically through a transparent process including competent authorities and internal consultations.<sup>13</sup> In light of the assessment’s results States are expected to take corrective actions to improve their capacity and ability at fulfilling their flag State’s responsibilities.<sup>14</sup> These Guidelines are voluntary. However, they are based on rules of international law (hard and soft) as reflected in UNCLOS, the Compliance Agreement, the UNFSA, the PSMA, the CCRF and the IPOA-IUU.<sup>15</sup>

The VGFSP were primarily designed to apply in maritime areas beyond national jurisdiction and to fishing and support vessels. They reproduce the definition of the concept of “fishing related activities” introduced by Article 1(d) of the PSMA, including the provisioning of personnel.

Even though these Guidelines were adopted eight years after the ILO Work in Fishing Convention (C.188), they do not make a single reference nor provide a single provision related to the working conditions and well-being of crew on board fishing vessels.

Key criteria for the performance assessment reflect those provided in the international fisheries instruments mentioned above, in particular the establishment of: (a) an appropriate framework for fisheries management (institutional, legal and technical);<sup>16</sup> (b) a sound and cooperative registration system of fishing and supply vessels to avoid the flagging of non-compliant vessels owned by unscrupulous owners or operators and a comprehensive record of fishing vessels;<sup>17</sup> (c) an adequate authorization system to monitor and control the activities of national vessels on the high seas;<sup>18</sup> and (d) a robust MCS and enforcement system.<sup>19</sup>

## 1.9 Voluntary Guidelines for Catch Documentation Scheme (VGCDS), 2017

The objective of the VGCDS is to provide assistance to States, RFMOs and other intergovernmental organizations in the development and implementation of new catch documentation schemes (CDS), or in the harmonisation or review of existing CDS.<sup>20</sup> A CDS refers to “a system with the primary purpose of helping determine throughout the supply chain whether fish originate from catches taken consistent

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<sup>13</sup> See paragraphs 44 and 45

<sup>14</sup> See paragraph 47 of the VGFSP

<sup>15</sup> See paragraph 1 of the VGFSP. All of these instruments contain provisions on the duties, responsibilities or role of the flag State.

<sup>16</sup> See paragraphs 11 to 13 of the VGFSP

<sup>17</sup> See paragraphs 14 to 28 of the VGFSP

<sup>18</sup> See paragraphs 29 to 30 of the VGFSP

<sup>19</sup> See paragraphs 31 to 38 of the VGFSP

<sup>20</sup> See paragraph 1.3 of the VGCDS

with applicable national, regional or international conservation and management measures, established in accordance with relevant international obligations".<sup>21</sup> Among the basic principles underlying the Guidelines are that CDS should be in conformity with the provisions of relevant international law and be risk-based.<sup>22</sup> The VGCDS do not include any provision related to the fair and safe treatment of fishers at sea and the protection of labour and human rights on board fishing vessels. The risk-based analysis underlying the CDS focuses exclusively on ensuring compliance with conservation and management measures, which, hitherto, do not extend to the fair and safe treatment of crew.

## 2. Review of core human rights instruments

The main universally applicable features of international human rights law are contained in the Universal Declaration of Human Rights and such conventional law as is found in the two 1966 covenants, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the other specific conventional law instruments such as the 1984 Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 1990 Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

For the purposes of this study, this section will focus on the International Bill of Rights, which is formed by the Universal Declaration of Human Rights and the two 1966 international covenants and briefly review the United Nations Guiding Principles on Business and Human Rights.

### 2.1 International Bill of Human Rights

The **Universal Declaration of Human Rights** (UDHR), conceived as a common standard of achievement for all peoples and all nations, is generally agreed to be the foundation of international human rights law. Adopted in 1948, the UDHR has inspired a rich body of legally binding international human rights treaties. It comprises a preamble and 30 articles, setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination. It is based on the philosophy that all human beings are born free and equal in dignity and rights (Article 1). Article 2, which sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms, forbids "distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 3, the first cornerstone of the UDHR, proclaims the right to life, liberty and security of person, a right essential to the enjoyment of all other rights. This article introduces articles 4 to 21, in which other civil and political rights are set out, including: freedom from slavery and servitude; freedom from torture or cruel, inhuman or degrading treatment or punishment; the right to an effective judicial remedy; freedom of movement and residence; and the right to peaceful assembly and association. Article 22, the second cornerstone of the UDHR, introduces articles 23 to 27 in which economic, social and cultural rights – the rights to which everyone is entitled as a member of society – are set out. These rights are indispensable for human dignity and the free development of personality. They include the right to social security; the right to work; the right to equal pay for equal work; the right to join and form trade unions; the right to rest and leisure, including the reasonable limitation of working hours and periodic holidays with pay; the right to a standard of living adequate for health and well-being and the right to education. The concluding articles recognize that everyone is entitled to a social and international order in which the human rights and fundamental freedoms set forth in the UDHR may be fully realized, and stress the duties and responsibilities which each individual owes to

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<sup>21</sup> See paragraph 2.1 of the VGCDS

<sup>22</sup> See paragraphs 3.1 and 3.4 of the VGCDS

his or her community (articles 28 to 30). Article 29 states that “in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Building on the achievements of the UDHR, the International Covenant on Economic, Social and Cultural Rights,<sup>23</sup> and the International Covenant on Civil and Political Rights<sup>24</sup> and its two Optional Protocols were devised and entered into force in 1976. The two Covenants have developed most of the rights already enshrined in the UDHR, making them effectively binding on States that have ratified them. They set forth everyday rights such as the right to life, equality before the law, freedom of expression and the rights to work, social security and education.

Articles 6 to 9 of the **International Covenant on Economic, Social and Cultural Rights** (ICESCR) recognize the rights to work (Article 6), to the enjoyment of just and favourable conditions of work (Article 7), to form and join trade unions (Article 8), and to social security, including social insurance (Article 9).

The States Parties to the ICESCR recognize the right to work, including the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts, and have the duty to take appropriate measures to safeguard this right. Measures to be taken to achieve the full realization of this right include: (a) technical and vocational guidance and training programmes; (b) policies and techniques to achieve steady economic, social and cultural development; and (c) full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual (Article 6).

The States Parties to the ICESCR recognize the right to the enjoyment of just and favourable conditions of work which should ensure, in particular (Article 7):

- (a) remuneration which provides for all workers, as a minimum, with:
  - (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work,
  - (ii) a decent living for themselves and their families;
- (b) safe and healthy working conditions;
- (c) equal opportunity for everyone to be promoted in his or her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) rest, leisure and reasonable limitations of working hours and periodic holidays with pay, as well as remuneration for public holidays.

The States Parties to the ICESCR undertake to ensure (Article 8):

- (a) the right of everyone to form trade unions and join the trade union of his or her choice, subject only to the rules of the organization concerned, for the promotion and protection of his or her economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

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<sup>23</sup> The International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. It entered into force on 3 January 1976.

<sup>24</sup> The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. It entered into force on 23 March 1976.

- (b) the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organizations;
- (c) the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) the right to strike, provided that it is exercised in conformity with the laws of the concerned country.

The States Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12). The steps to be taken by the States Parties to achieve the full realization of this right must include those necessary for, *inter alia*: (a) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and (b) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The **International Covenant on Civil and Political Rights** (ICCPR) states that no one is to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7) and that no one is to be held in slavery and that slavery and the slave-trade in all their forms are to be prohibited (Article 8).

Furthermore, Article 8 of the ICCPR stipulates that:

- (a) no one is to be held in servitude;
- (b) no one is to be required to perform forced or compulsory labour.

It is specified that prohibition of forced or compulsory labour does not preclude the performance of hard labour as a punishment for a crime in countries where such a punishment may be imposed by law. It also clarifies the scope of application of the term “forced or compulsory labour” by excluding from it the following circumstances:

- (a) any work or service normally required of a person who is under detention in consequence of a lawful court order, or of a person during conditional release from such detention;
- (b) any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (c) any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civil obligations.

Article 22 of the ICCPR recognizes the right to freedom of association with others, including the right to form and join trade unions for the protection of his or her interests.

Article 28 of the ICCPR provides for the establishment of a Human Rights Committee responsible for supervising implementation of the rights set out in the Covenant.

## 2.2 United Nations Guiding Principles on Business and Human Rights<sup>25</sup>

The UN Guiding Principles on Business and Human Rights (hereinafter in this section “the Guiding Principles”) set out the responsibilities of business enterprises to respect human rights, understood, at a minimum, as those set out in the International Bill of Rights and the ILO’s Fundamental Principles and Rights at Work.<sup>26</sup>

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<sup>25</sup> The Guiding Principles on Business and Human Rights were developed by the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises and were endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011.

<sup>26</sup> See Section 12 of the Guiding Principles

The responsibility of business enterprises to respect human rights:

- (a) applies to all enterprises regardless of their size, sector, operational context, ownership and structure;<sup>27</sup> and
- (b) requires that business enterprises:
  - (i) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
  - (ii) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.<sup>28</sup>

In order to meet their responsibility to respect human rights, the Guiding Principles call on business enterprises to develop and put in place policies and processes appropriate to their size and circumstances, including:

- (a) a policy commitment to meet their responsibility to respect human rights;
- (b) a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and
- (c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.<sup>29</sup>

### **3. Review of relevant labour conventions, protocols and other relevant instruments**

#### **3.1 Forced and compulsory labour**

The **Forced Labour Convention, 1930 (C29)** introduced a definition of the notion of “forced or compulsory labour” which reads as follows: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.<sup>30</sup> Additional language was inserted in C29 to exclude certain types of work or service from the scope of that definition.<sup>31</sup> It includes:

- (a) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;<sup>32</sup>
- (b) any work or service exacted from any person pursuant to a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and the said person is not hired to or placed at the disposal of private individuals, companies or associations.<sup>33</sup>

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<sup>27</sup> See Section 14 of the Guiding Principles

<sup>28</sup> See Section 13 of the Guiding Principles

<sup>29</sup> See Section 15 of the Guiding Principles

<sup>30</sup> See Article 2.1 of C29

<sup>31</sup> See Article 2.2 of C29

<sup>32</sup> See Article 2.2(d) of C29

<sup>33</sup> See Article 2.2(c) of C29

Given the conditions for the fulfilment of the proviso laid down in paragraph (b), it would seem that any work or service which is carried out by a convicted person under the supervision and control of a public authority (e.g., fisheries administration) and where the said person is hired to or placed at the disposal of a public entity or company (e.g., state-owned fishing company) would satisfy the realization of this proviso and thus such work or service would be excluded from the purview of the internationally recognized definition of forced or compulsory labour.

The Convention affirms that any illegal exaction of forced or compulsory labour shall constitute a penal offense under national laws. Furthermore, member States have an obligation to ensure that the penalties imposed by law are adequate and strictly enforced.<sup>34</sup>

Noting that certain forms of forced or compulsory labour constitute a violation of the rights of man enunciated in the UDHR, ILO members decided, as a complement to C29, to devise a new convention designed to abolish certain forms of forced and compulsory labour. This approach led to the adoption of the **Abolition of Forced Labour Convention (C105)** in 1957. It is a short text whereby each State that ratifies C105 commits to undertaking to:

- (a) suppress and not make use of any form of forced or compulsory labour:
  - (i) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
  - (ii) as a method of mobilising and using labour for purposes of economic development;
  - (iii) as a means of labour discipline;
  - (iv) as a punishment for having participated in strikes;
  - (v) as a means of racial, social, national or religious discrimination,
- (b) take effective measures to secure immediate and complete abolition of forced and compulsory labour as specified in paragraph (a) above.

Moreover, C29 was amended in 2014 by a Protocol, known as the **Protocol to the Forced Labour Convention, 1930 (P29)**. The two main reasons that led to the modification of C29 were:

- (a) the recognition that the context and forms of forced or compulsory labour have changed over time (e.g., recent development of national legislation on modern slavery) and that trafficking in persons for the purposes of forced or compulsory labour is subject of growing international concern and requires urgent action for its effective elimination (e.g., the TIP report published by the U.S. Department of State), and
- (b) the acknowledgment that, even though C29 and the Abolition of Forced Labour Convention, 1957 (C105) played a crucial role in the fight against all forms of forced and compulsory labour, there are gaps in their implementation and that therefore there was a need to call for additional measures.

P29 also emphasizes the fact that there is an increased number of workers who are in forced or compulsory labour in the private economy, that certain sectors of the economy are particularly vulnerable (e.g., the seafood industry) and that certain groups of workers have a higher risk of becoming victims of forced or compulsory labour, especially migrants. This is definitely a high risk in countries suffering from a chronic shortage of national workers to crew their fishing vessels, irrespective of whether these vessels operate on the high seas or in waters under national jurisdiction (e.g., Thailand, Malaysia).

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<sup>34</sup> See Article 25 of C29

The amendments introduced by P29 were substantial as they repealed all transitional provisions contained in C29, which represented the bulk of its provisions.<sup>35</sup> P29 reaffirms the definition of the notion of “forced and compulsory labour” and stipulates that therefore the measures referred to in the Protocol should include specific action against trafficking in persons for the purposes of forced and compulsory labour.<sup>36</sup>

In giving effect to their obligations under C29 to suppress forced and compulsory labour, Parties are required to:

- (a) take effective measures to prevent and eliminate its use, to provide victims protection and access to appropriate and effective remedies;<sup>37</sup>
- (b) develop, in a participatory manner, a national policy and plan of action for the effective and sustained suppression of forced and compulsory labour;<sup>38</sup>
- (c) take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced and compulsory labour, as well as the provision of other form of assistance and support;<sup>39</sup>
- (d) ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation;<sup>40</sup>
- (e) take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour (e.g., IUU fishing activities conducted by fish workers or crew members in condition of forced or compulsory labour);<sup>41</sup> and
- (f) cooperate with each other to ensure the prevention and elimination of all forms of forced and compulsory labour.<sup>42</sup> In the context of fisheries, these issues are starting to emerge in the discussions of RFMOs and may lead to the adoption of binding measures (see section 4.2 of this report).

P29 stresses the need for Parties to take effective measures for the prevention of forced and compulsory labour and provides a non-exhaustive list of such measures. It includes:

- (a) educating and informing people, especially those considered to be particularly vulnerable, in order to prevent their becoming victims of forced or compulsory labour;
- (b) educating and informing employers, in order to prevent their becoming involved in forced or compulsory labour practices;
- (c) undertaking efforts to ensure that:

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<sup>35</sup> See Article 7 of P 29 which provides that Articles 3 to 24, as well as Article 1, paragraphs 2 and 3, are abrogated. C29 consisted of 33 Articles.

<sup>36</sup> See Article 1.3 of P29

<sup>37</sup> See Article 1.1 of P29

<sup>38</sup> See Article 1.2 of P29

<sup>39</sup> See Article 3 of P29

<sup>40</sup> See Article 4.1 of P29

<sup>41</sup> See Article 4.2 of P29

<sup>42</sup> See Article 5 of P29

- (i) the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour, including labour law as appropriate, apply to all workers and all sectors of the economy; and
- (ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened;
- (d) protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process;
- (e) supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour; and
- (f) addressing the root causes and factors that heighten the risks of forced or compulsory labour.<sup>43</sup>

The **Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)** supplements both C29 and P29. It provides non-binding practical guidance in the areas of prevention, protection of victims and ensuring their access to justice and remedies, enforcement and international cooperation.

### 3.2 Freedom of association and right to collective bargaining

In 1948, the ILO General Conference adopted the **Freedom of Association and Protection of the Right to Organize Convention (C87)**. This Convention recognizes that all workers and all employers have the right to freely form and join groups for the support and advancement of their occupational interests.<sup>44</sup> This basic human right goes together with freedom of expression and is a basis of democratic representation and governance.

Freedom of association means that workers and employers can set up, join and run their own organizations without interference from public authorities or one another.<sup>45</sup> Along with this right is the responsibility of people to respect the law of the land. However, the law of the land, in turn, must respect the principle of freedom of association.<sup>46</sup> Worker's and employer's organizations can independently determine how they best wish to promote and defend their occupational interests.<sup>47</sup> This covers both long-term strategies and action in specific circumstances, including recourse to strike or lockout. They can independently affiliate with international organizations and work with them in pursuit of their mutual interests.<sup>48</sup>

The **Right to Organize and Collective Bargaining Convention (C98)** was adopted in 1949. It aims at protecting the right of workers to organize against any acts of anti-union discrimination, such as making employment of a worker subject to the condition that he or she should not join a union or relinquish trade union membership,<sup>49</sup> and the right of workers' and employers' organizations against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.<sup>50</sup>

The Convention requires that Parties take appropriate measures to facilitate voluntary negotiation of collective agreements.<sup>51</sup> Voluntary collective bargaining is a process through which employers, or their organizations, and trade unions or, in their absence, representatives designated by the workers discuss

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<sup>43</sup> See Article 2 of P29

<sup>44</sup> See Article 2 of C87

<sup>45</sup> See Articles 2 and 3 of C87

<sup>46</sup> See Article 8 of C87

<sup>47</sup> See Article 3.1 of C87

<sup>48</sup> See Article 5 of C87

<sup>49</sup> See Article 1 of C98

<sup>50</sup> See Article 2 of C98

<sup>51</sup> See Article 4 of C98

and negotiate their relations, in particular terms and conditions of work. Such bargaining in good faith aims at reaching mutually acceptable agreements.

### 3.3 Work in the fishing sector

The ILO's first international labour standard for the fishing sector was adopted in 1920. Additional standards were adopted in 1959 and 1966. In 2002, the ILO Governing Body, acknowledging the need to update these instruments, started the process of developing a comprehensive standard on work in the fishing sector, by placing this item on the International Labour Conference (ILC)'s agenda. Though many fishers in the past had received protection through other ILO maritime standards aimed at seafarers on merchant ships (standards that applied, or could be applied, to fishing), it had been decided that the new consolidated Convention concerning working and living conditions of seafarers (Maritime Labour Convention, 2006) would exclude fishing vessels from its scope. This decision prompted the ILC to adopt, in 2007, a new comprehensive standard for the fishing sector that would reflect the specificities of commercial fishing. The Convention concerning work in the fishing sector, known as the **Work in Fishing Convention, 2007 (C188)**,<sup>52</sup> provides a global legal standard that is relevant to all fishers whether on large vessels on the high seas and on international voyages or in smaller boats operating in coastal waters close to shore. It is accompanied by the **Work in Fishing Recommendation, 2007 (No.199)**, which provides guidance to States on the implementation of the provisions of C188.<sup>53</sup>

C188 revises the Minimum Age (Fishermen) Convention, 1959 (C112); the Medical Examination (Fishermen) Convention, 1959 (C113); the Fishermen's Articles of Agreement Convention, 1959 (C114); and the Accommodation of Crews (Fishermen) Convention, 1966 (C126). It also covers other important issues such as health and safety at work, assignment and hours of rest, crew list, repatriation, recruitment and placement, and social security.

The ILC also adopted four resolutions intended to facilitate and support the promotion, ratification and effective implementation of C188. It includes the Resolution concerning promotion of the C188 ratification and the Resolution concerning port State control. The former provides, *inter alia*, for the funding of technical cooperation programmes to promote the ratification of the Convention and to assist members requesting assistance in its implementation in areas such as: (a) capacity building for national administrations as well as representative organizations of fishing vessel owners and fishers, and the drafting of national legislation to meet the requirements of the Convention; (b) the development of training materials for inspectors and other staff; and (c) the training of inspectors. The latter was intended to develop suitable guidance for port State control officers concerning the implementation and enforcement of the relevant provisions of C188.<sup>54</sup> In complement, Guidelines on flag State inspection of working and living conditions on board fishing vessels were also drawn up in 2017.<sup>55</sup>

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

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<sup>52</sup> See [Convention C188 - Work in Fishing Convention, 2007 \(No. 188\) \(ilo.org\)](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/normativeinstrument/wcms_177245.pdf)

<sup>53</sup> Action Plan 2011-2016 to improve the conditions of work of fishers through the widespread ratification and effective implementation of the Work in Fishing Convention, 2007 (No. 188), and the effect given to the Work in Fishing Recommendation, 2007 (No. 199), 2-3

<sup>54</sup> See Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188).

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/normativeinstrument/wcms\\_177245.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/normativeinstrument/wcms_177245.pdf)

<sup>55</sup> See [wcms\\_428592.pdf \(ilo.org\)](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/normativeinstrument/wcms_428592.pdf)

and social security”. C188 consists of a preamble, 54 Articles and 3 annexes. The most relevant provisions of C188 are highlighted and commented upon in Table 6 of Annex 6 of this report.

### 3.4 Work in the shipping industry

The **Maritime Labour Convention, 2006** (MLC, 2006) was adopted by governments, employers and workers’ representatives at a special ILO Conference in February 2006. The MLC, 2006 aims both to achieve decent work for seafarers and to secure economic interests through fair competition for quality ship owners. Widely known as the “seafarers’ bill of rights”, the Convention is comprehensive and sets out, in one single instrument, seafarers’ rights to decent working conditions. It covers almost every aspect of their work and life on board including: (a) minimum age; (b) seafarers’ employment agreements; (c) hours of work or rest; (d) payment of wages; (e) paid annual leave; (f) repatriation at the end of contract; (g) onboard medical care; (h) use of licensed private recruitment and placement services; (i) accommodation, food and catering; (j) health and safety protection and accident prevention; and (k) seafarers’ complaint handling.

The Convention was designed to be applicable globally, easy to understand, readily updatable and uniformly enforced to become the fourth pillar of the international regulatory regime for quality shipping, complementing the key conventions of the IMO dealing with safety and security of ships and protection of the marine environment.

The MLC, 2006 does not apply to “ships engaged in fishing or in similar pursuits”.<sup>56</sup> However, at the national level, this may not be necessarily the case as the legal regime applicable to seafarers in countries that have ratified this Convention may also apply to fishers, depending on the definition of the terms “seafarer” and “ship” that have been retained by lawmakers in the merchant shipping law. Indeed, it is not uncommon that the term “seafarer” encompasses any person who is employed or engaged or works in any capacity on board a ship, including a fishing vessel.

### 3.5 Supervisory system of international labour standards

International labour standards are backed by a supervisory system that is unique at the international level and that helps to ensure that countries implement the conventions they have ratified. The ILO regularly examines the application of standards in member States and points out areas where they could be better applied. If there are any problems in the application of standards, the ILO seeks to assist countries through social dialogue and technical assistance.

The ILO has developed various means of supervising the application of conventions and recommendations in law and practice following their adoption by the ILC and their ratifications by States.

There are two kinds of supervisory mechanisms, namely, the regular system of supervision and special procedures.

The **regular system of supervision** consists of examination by two ILO bodies of reports on the application in law and practice sent by member States and on observations in this regard sent by workers’ and employers’ organizations. Once a country has ratified an ILO Convention, it is required to report regularly on the measures it has taken for its implementation. Every three years, governments have to provide reports detailing the steps they have taken in law and practice to apply any of the eight fundamental Conventions that they have ratified. For all other ILO Conventions, including C188,

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<sup>56</sup> See Article II. 4 of the MLC, 2006

reports have to be provided every six years. Governments are required to submit copies of their reports to employers' and workers' organizations. These organizations may comment on the government reports, or send comments directly to the ILO.

The **Committee of Experts on the Application of Conventions and Recommendations** (hereinafter in this section referred to as "the Committee of Experts") was set up in 1926 to examine the growing number of government reports on ratified Conventions. To date, it is composed of 20 eminent jurists appointed by the ILO Governing Body for three-year terms. The experts are selected from different geographic areas, legal systems and cultures. The role of the Committee of Experts is to provide an impartial and technical evaluation of the application of international labour standards in ILO member States. When examining the application of international labour standards, the Committee of Experts makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular Convention by a State. These observations are published in the annual report of the Committee of Experts. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned.<sup>57</sup>

The annual report of the Committee of Experts, usually adopted in December, is submitted to the ILC the following June, where it is examined by the **Conference Committee on the Application of Standards**. A standing committee of the Conference, the Conference Committee is made up of government, employer and worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these observations are invited to respond before the Conference Committee and to provide information on the situation in question. In many cases the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance.

Unlike the regular system of supervision, **special procedures** are based on the submission of a representation or a complaint. There are three distinct procedures: (a) procedure for representation on the application of ratified Conventions; (b) procedure for complaints over the application of ratified Conventions; and (c) procedure for complaints regarding freedom of association (Committee on Freedom of Association).

The **representation procedure** is governed by Articles 24 and 25 of the ILO Constitution, under which an industrial association of employers or of workers has the right to present to the ILO Governing Body a representation against any member State which, in its view, "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party".<sup>58</sup>

The **complaint procedure** is governed by articles 26 to 34 of the ILO Constitution, under which a complaint may be filed against a member State for not complying with a ratified Convention by another member State which has ratified the same Convention.<sup>59</sup>

Soon after the adoption of C87 and C98 on freedom of association and collective bargaining, the ILO came to the conclusion that the principle of freedom of association needed a further supervisory

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<sup>57</sup> See Handbook of procedures relating to international labour Conventions and Recommendations at: [https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS\\_697949/lang--en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_697949/lang--en/index.htm)

<sup>58</sup> For further information on the representation procedure, see the ILO website at: <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/representations/lang--en/index.htm>

<sup>59</sup> For further information on the complaint procedure, see the ILO website at: <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/lang--en/index.htm>

procedure to ensure compliance with it in countries that had not ratified the relevant Conventions. As a result, in 1951, the ILO set up the **Committee on Freedom of Association** for the purpose of examining complaints of violations of freedom of association, whether or not the country concerned had ratified the relevant Conventions. Complaints may be brought against an ILO member State by employers' and workers' organizations.<sup>60</sup>

### 3.6 Bilateral labour agreements to protect migrant fishers

In 2017, the ILO held a tripartite meeting on issues relating to migrant fishers as part of the follow-up to the Resolution concerning the promotion of welfare for fishers adopted at the 96<sup>th</sup> Session (2007) of the ILC.<sup>61</sup>

In its Conclusions,<sup>62</sup> the Meeting emphasized that migrant fishers were particularly vulnerable to the risk of forced labour and serious decent work deficits such as: abusive and fraudulent recruitment and placement practices, isolation and abuse of vulnerability, abandonment, absence of a written fisher's work agreement, underpayment and withholding of wages, retention of identity documents, blacklisting when asserting rights, violence and intimidation, illicit transfer of fishers at sea, excessively long hours and other abusive working and living conditions.

Importantly, the Meeting stressed the need to ensure the adequate regulation of national and international recruitment and placement services and to investigate and regulate informal labour brokers. It also recognized that there is insufficient guidance available on international recruitment of fishers.

Furthermore, the Meeting highlighted bilateral and multilateral agreements on labour migration as an important means of addressing issues concerning migrant fishers, provided they are consistent with internationally recognized human rights – including fundamental principles and rights at work and other relevant international labour standards. The Conclusions state that these agreements need to be negotiated and concluded between countries of origin, transit and destination and be based on tripartite social dialogue, implemented effectively and subject to monitoring. They also recognize that there is an absence of fishing sector-specific guidance on such agreements, though lessons could be drawn from the ILO's broader experience advising States on this matter.

The ILO has long recognized bilateral agreements as a good practice in the governance of labour migration flows and in contributing to the protection of migrant workers. In this regard, the ILO Migration for Employment Convention (Revised), 1949 (No. 97) recommends "whenever necessary or desirable, conclusion of agreement to regulate migration for employment in cases where numbers of migrants are sufficiently large." The accompanying ILO Recommendation, 1949 (No. 86) contains a Model Agreement on Temporary and Permanent Employment in its annex. While no worldwide model for bilateral labour agreements (BLAs) has been adopted, this instrument has influenced the development of bilateral labour arrangements across the globe over the years, and its principles remain valid.

Bilateral agreements can help to improve governance of labour migration by:

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<sup>60</sup> For further information on the Committee on Freedom of Association, see the ILO website at: <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang--en/index.htm>

<sup>61</sup> See [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/normativeinstrument/wcms\\_177291.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/normativeinstrument/wcms_177291.pdf)

<sup>62</sup> See [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/meetingdocument/wcms\\_576895.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_576895.pdf)

- (a) formalising the responsibilities of concerned parties;
- (b) adding transparency;
- (c) reducing incentives for irregular migration;
- (d) encouraging social dialogue;
- (e) helping to change laws, policies, practices and adherence to international standards; and
- (f) contributing to regular migration.

Most frequently, bilateral agreements relating to labour migration take the form of bilateral labour agreements or memoranda of understanding (MOUs). There has been a proliferation in the number of BLAs aimed at ensuring organization of migration for employment and regulation of the conditions of transfer and employment of migrants in recent years. Most generic BLAs or MOUs governing labour migration apply to all migrant workers, without excluding the fishing sector. However, it raises the issue of whether these BLAs and MOUs are adapted to adequately protect migrant workers at sea.

To date, there appear to be very few BLAs or MOUs containing specific provisions for the protection of migrant fishers or dedicated specifically and exclusively to migrant fishers. In May 2021, Indonesia and South Korea signed a MOU on Cooperation in the Fields of Employment and Labour Affairs for Fishermen Working on Korean Coastal Fishing Vessels.<sup>63</sup> The purpose of this MOU is “to promote and strengthen cooperation between the two countries in the fields of employment and labour affairs for Indonesian fishermen who work legally in the Republic of Korea under the foreign seafarer system on board coastal fishing vessels to which the Seafarers’ Act applies in order to guarantee and improve their basic rights as well as protect Indonesian fishermen pursuant to the respective laws and regulations of both countries.”<sup>64</sup> The MOU sets out the framework of cooperation between the two countries and makes provisions for the development of an Implementing Arrangement that will specify the details related to the placement and protection of Indonesian fishermen working on board Korean coastal fishing vessels, including local recruitment, pre-departure and post-arrival training, qualification assessment and repatriation.<sup>65</sup> Both countries are required, among others, to manage and supervise recruitment agencies in their respective countries to eradicate illicit recruitment-related fees and guarantee deposit.<sup>66</sup> The Korean side is required to make efforts to improve working conditions and protect Indonesian fishers’ human rights and to carry out supervision regarding compliance of ship owners with applicable laws and regulations.<sup>67</sup> It is unclear how many fishers are covered by this MOU and why its application is limited to coastal fishing vessels.

## 4. Mechanisms for identifying and addressing labour and human rights abuses on fishing vessels and in seafood supply chains

### 4.1 National legislation and European law

#### 4.1.1 United Kingdom (UK)

The UK **Modern Slavery Act** came into force in 2015. At the time, it was the first Act of its kind globally to seek to comprehensively address both the definition and enforcement of modern slavery

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<sup>63</sup> Article 41 (2) of the South Korean Fisheries Act stipulates that “coastal fishery business” is “any fishery business which uses a non-powered fishing vessel or a powered fishing vessel with a gross tonnage of less than 10 tons.”

<sup>64</sup> Paragraph 1 of the MOU

<sup>65</sup> Paragraph 2.2 of the MOU

<sup>66</sup> Paragraphs 3(b) and 4(b) of the MOU

<sup>67</sup> Paragraph 3(e) of the MOU

crimes,<sup>68</sup> but also to address the predicament of victims of crimes. Another novel feature was the attempt to address the role that complex supply chains can play in concealing the linkage of global business to modern slavery around the world. This involved placing an express obligation on commercial organizations doing business in the UK that have an annual turnover of more than £36 million<sup>69</sup> to report annually on the steps, if any, taken to ensure that modern slavery is not taking place in their organization and supply chain or alternatively to state that no steps have been taken (“the transparency statement”).<sup>70</sup> Inspired by a similar reporting requirement introduced in California in 2012 under the California Transparency in Supply Chains Act, the reporting requirement seeks to increase transparency of corporate efforts to address the scourge of modern slavery in their own business and throughout their supply chains.<sup>71</sup>

Outside of the general requirement that all relevant measures be included, the precise content of the transparency statement is not prescribed. The statute, however, outlines six areas in relation to which the company may report:

- details of the organization’s structure, business and its supply chains;
- the organization’s policies in relation to slavery and human trafficking;
- the organization’s due diligence process in relation to slavery and human trafficking in its business and supply chains;
- an assessment of the parts of the organization’s business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- the organization’s effectiveness in ensuring that slavery and human trafficking are not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and
- the training about slavery and human trafficking provided to its staff.<sup>72</sup>

Moreover, the Modern Slavery Act 2015 provides for the appointment of an Independent Anti-slavery Commissioner whose general functions are to encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences and in the identification of victims.<sup>73</sup>

On 22 May 2019, the Final Report of an independent review of the Modern Slavery Act 2015 was laid before Parliament.<sup>74</sup> It made 80 recommendations, a number of which addressed the reporting requirement. In this respect, the report recognized that as the first national legislation on modern slavery,

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<sup>68</sup> It should be noted that the UK Modern Slavery Act does not provide, *per se*, a definition of the concept of “modern slavery”. Instead, Section 1(1) states that a person commits an offence if –

- (a) The person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or
- (b) The person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.

In addition, Section 1(2) specifies that the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (Universal Declaration of Human Rights).

<sup>69</sup> The prescribed amount of total turnover was introduced by Section 2 of the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015 of 28 October 2015.

<sup>70</sup> See Section 54 of the Modern Slavery Act on transparency in supply chains etc.

<sup>71</sup> See <https://www.cliffordchance.com/insights/resources/blogs/business-and-human-rights-insights/the-uk-modern-slavery-act-recent-developments.html>

<sup>72</sup> See Section 54 (5) of the Modern Slavery Act 2015

<sup>73</sup> See Sections 40 and 41 of the Modern Slavery Act 2015

<sup>74</sup> See [https://media.business-humanrights.org/media/documents/files/documents/Independent\\_review\\_of\\_the\\_Modern\\_Slavery\\_Act\\_-\\_final\\_report.pdf](https://media.business-humanrights.org/media/documents/files/documents/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf)

Section 54 of the Modern Slavery Act was ground-breaking legislation. It has contributed to raising awareness of slavery and human trafficking in supply chains and has encouraged many companies to start considering and addressing the issue. However, it found that, at the time of writing, the impact of the Section had been quite limited. Furthermore, it mentioned that there was a general agreement between the businesses and civil society that a lack of enforcement and penalties, as well as confusion surrounding reporting obligations, were core reasons for poor quality statements and the estimated lack of compliance from over a third of eligible firms. The report recommended that the six areas in relation to which a company should report (see above) should be made mandatory, consistent with the approach taken in the Australian Modern Slavery Act 2018.<sup>75</sup>

#### 4.1.2 France

In 2017, France enacted **Law No 2017-399 of 27 March 2017 on Corporate Due Diligence Duty**. This law places an express obligation on commercial businesses, whose headquarters are established on the French territory, and which employ at least five thousand persons including the parent company and its direct or indirect subsidiaries or whose headquarters are established on the French territory or abroad, and which employ at least ten thousand persons including the parent company and its direct or indirect subsidiaries, to devise and implement an effective corporate due diligence plan. The purpose of such a plan is to identify the risks and prevent serious violations of human rights and fundamental freedoms and harm to individuals' health and security, as well as damages to the environment, that may result from the activities of the dominant company or its subsidiaries throughout the supply chains.

The due diligence plan should, in principle, be elaborated in association with all the corporation stakeholders including trade unions, but it is not a legal obligation. It consists of the following measures:

- mapping of the risks so as to identify and analyse them with a view to providing a hierarchical ordering in terms of priority;
- devising of procedures to conduct regular assessments of the situation in the dominant company and its subsidiaries;
- taking appropriate actions to mitigate identified risks and prevent serious infringements;
- putting in place an alert mechanism, in consultation with trade unions, to detect and report signs of existing risks or realisation of such risks;
- establishing a monitoring system designed to ensure the proper implementation of the plan's measures and to assess their effectiveness and efficiency.<sup>76</sup>

Companies subject to this law are required to make the due diligence plan public and to incorporate that plan in the company's annual management report.<sup>77</sup>

The Corporate Due Diligence Duty Law expressly provides that any eligible company that fails to comply with its obligations under the law, is liable for any injury or harm that would have been prevented by the execution of these obligations. It is noteworthy that the original text adopted by the French Parliament provided that a company should be liable on conviction to a civil fine not exceeding €10 million. This provision, however, was struck out by the Constitutional Council, which found that the terminology used by lawmakers to define the violation was too vague and imprecise (contrary to the principle of legality), in particular with respect to human rights and fundamental freedoms, to warrant a fine of this magnitude.<sup>78</sup>

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<sup>75</sup> See Section 16 of the Australian Modern Slavery Act 2018

<sup>76</sup> Article L.225-102-4 I of the Code of Commerce

<sup>77</sup> *Ibid*

<sup>78</sup> See Constitutional Council Decision No 2017-750 DC of 23 March 2017

In January 2020, the General Council of Economy published a first evaluation of the implementation of the Corporate Due Diligence Duty Law in France.<sup>79</sup> Its core findings were as follows:

- Limited understanding of the concept of due diligence by corporations which tend to use it as a tool to protect their own interests rather than advance and protect human rights, protection of the environment, and protection of employees' health and security;
- Lack of clarity on the level of details to be provided in the due diligence plan. There is a tendency by corporations to disclose as little information as possible. As a result, due diligence plans are quite sketchy;
- Inappropriateness of the alert mechanism, which most of the time was built on existing mechanisms that were designed for different purposes;
- Need to strengthen the dialogue with stakeholders, both internal and external. This issue was seen as the main impediment to the effective implementation of the law. In particular, it was emphasized that too many companies have yet to integrate the culture of dialogue with external stakeholders, notably non-governmental organizations (NGOs).

#### **4.1.3 European Directive on Corporate Due Diligence**

On 10 March 2021, the European Parliament published a resolution providing recommendations to the Commission on corporate due diligence and corporate accountability.<sup>80</sup> The purpose of this resolution is to lay the ground for the adoption of a binding EU law that ensures companies, irrespective of size and sector, are held accountable and liable when they harm, or contribute to harming, human rights, the environment and good governance. This law would also guarantee that victims can access legal remedies.

Binding EU due diligence rules would oblige companies to identify, address and remedy aspects of their value chain (all operations, direct or indirect business relations, investment chains) that could or do infringe on human rights (including social, trade union and labour rights), the environment (contributing to climate change or deforestation, for example) and good governance (such as corruption and bribery).

The concept of human rights due diligence is rooted in the United Nations (UN) Guiding Principles on Business and Human Rights (UNGPs),<sup>81</sup> which describes it as a process aimed at operationalizing corporate responsibility to respect to human rights (see section 2.2. above). The UNGPs' approach provides that business enterprises, irrespective of size and sector, should have in place a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.<sup>82</sup>

#### **4.1.4 Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate IUU fishing (EU IUU Regulation)**

The EU IUU Regulation introduced a CDS to stop the flow of illegally-caught seafood products from entering the EU market. The approach is supported by a system of warning (known as "yellow cards") and trade sanctions ("red cards") that can be imposed on third countries that are deemed to neither comply with international standards for fisheries management nor cooperate in the fight against IUU fishing, following the assessment process laid down in Article 31 of the Regulation. Through this

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<sup>79</sup> See [https://www.economie.gouv.fr/files/files/directions\\_services/cge/devoirs-vigilances-entreprises.pdf](https://www.economie.gouv.fr/files/files/directions_services/cge/devoirs-vigilances-entreprises.pdf)

<sup>80</sup> European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)). P9\_TA(2021)0073.

See [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.pdf)

<sup>81</sup> See [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>82</sup> See UNGPs Principle 15 and Principle 17

scheme, EU has engaged in dialogue with a wide range of countries in an attempt to address and reduce IUU fishing. While the Regulation helped prompt the review of fisheries policies and legislation in a number of countries, it failed to address the labour and human rights issues throughout the supply chain as its scope is narrowly focused on fighting IUU fishing.

#### 4.1.5 United States seafood import requirements

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), a rule was adopted to establish permitting, reporting and recordkeeping procedures relating to the importation of certain fish and fish products, identified as being at particular risk of IUU fishing or seafood fraud,<sup>83</sup> in order to implement the MSA's prohibition on the import and trade, in interstate or foreign commerce, of fish taken, possessed, transported or sold in violation of any foreign law or regulation or in contravention of a treaty or a binding conservation and management measure of a regional fishery organization to which the United States is a party. It is known as the Seafood Import Monitoring Program (SIMP). It is a risk-based traceability program requiring the U.S. importer of record to provide and report key data, from the point of harvest to the point of entry into U.S. commerce, on thirteen imported fish and fish products identified as vulnerable to IUU fishing and/or seafood fraud.<sup>84</sup> The National Marine Fisheries Service confirmed that the program was not designed to combat forced labour and unfair labour practices in the fishing and fish processing sectors.

Other tools are available under US law to address the issue of human trafficking in global supply chains, including in the seafood supply chain:

- The Trafficking Victims Protection Act (TVPA) of 2000 requires the Secretary of State to submit an annual report to Congress that ranks governments' efforts to combat trafficking in persons, known as the Trafficking in Persons report or TIP Report. The original three-tier ranking system was created to indicate how well other governments complied with the minimum standards for the elimination of trafficking laid out in the law. The country's tier ranking is based on the government's efforts to combat trafficking as measured against the TVPA minimum standards and compared to its efforts in the preceding year. The TIP Report provides a narrative for each country including a trafficking profile identifying the economic sectors vulnerable to human trafficking. In June 2020, the US Department of State published its 20<sup>th</sup> TIP Report.<sup>85</sup>
- In 2020, the US Department of Labour (USDOL) produced the ninth edition of the List of Goods Produced by Child Labour or Forced Labour<sup>86</sup> in accordance with the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005, as amended. The TVPRA requires the USDOL's Bureau of International Labour Affairs to develop and make available to the public a list of goods from the countries that the Bureau of International Labour Affairs has reasons to believe are produced by forced labour or child labour in violation of international law and standards. It requires submission of the TVPRA List to the US Congress every two years.

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<sup>83</sup> See 50 CFR § 300.324 – Seafood Traceability Program

<sup>84</sup> While it is the goal of the US government to eventually expand the SIMP to all seafood at first point of sale or import, it initially focuses on the thirteen most at risk species, namely, abalone, Atlantic cod, blue crab (Atlantic), dolphin fish (Mahi Mahi), grouper, king crab (red), Pacific cod, red snapper, sea cucumber, sharks, shrimp, swordfish, and tuna (yellowfin, albacore, skipjack, bigeye, bluefin).

<sup>85</sup> U.S. Department of State. Trafficking in Persons Report - 2020. Washington, DC, June 2020.

<https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

<sup>86</sup> U.S. Department of Labour. List of Goods Produced by Child Labor or Forced Labor – 2020. Washington, DC, October 2020.

[https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2019/2020\\_TVPRA\\_List\\_Online\\_Final.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRA_List_Online_Final.pdf)

- In addition, the National Defense Authorization Act for Fiscal Year 2020<sup>87</sup> directed the Departments of Commerce and State to draft a report to Congress addressing the issue of human trafficking in the seafood supply chain. The Report lists 29 countries that are most at risk for human trafficking in the seafood sector, documenting the quantity and value of seafood imports from each listed country, and discusses seafood traceability programs in each listed country. The Report also discusses current U.S. government efforts to combat human trafficking in the seafood industry, including enforcement mechanisms and provides ten recommendations for legislative and administrative action to combat human trafficking in this sector. Recommendations include outreach to listed countries, promoting global traceability efforts and international initiatives to address human trafficking, and strengthening collaboration with industry to address human trafficking in the seafood supply chain.

The countries or territories listed below have fisheries or related seafood industries that are at particular risk for human trafficking, including forced labour, reflecting the vulnerabilities described above. The list is derived from seminal reports on human trafficking, including forced labour, across all sectors: the Department of State's 2020 TIP Report and the Department of Labour's 2020 List of Goods Produced by Child Labour or Forced Labour. The countries or territories most at risk for human trafficking, including forced labour, in their seafood sector are: Bangladesh, Burma, Cambodia, Cameroon, Ecuador, Fiji, Gabon, Ghana, Guinea, Honduras, Indonesia, Ireland, Kenya, Madagascar, Mauritania, North Korea, Pakistan, Papua New Guinea, the People's Republic of China, Philippines, Seychelles, Sierra Leone, South Africa, South Korea, Taiwan, Tanzania, Thailand, Vanuatu, and Vietnam.

On 11 May 2021, U.S. Representatives Jared Huffman and Garret Graves introduced a Bill to address seafood slavery and combat IUU fishing, and for other purposes. If enacted into law, the Act, to be known as the *Illegal Fishing and Forced Labour Prevention Act*, would represent a significant step forward in explicitly linking illegal fishing to forced labour in the seafood industry, recognizing that fishing operations that engage in human trafficking and forced labour are often the same ones that ignore fisheries management laws and regulations (illegal fishing). Salient features of the legislation are the following:

- a) Expand the SIMP to all species. This would make seafood supply chains more traceable as the current programme applies only to 40 percent of imported seafood. It would increase data requirements, including consideration of labour conditions; improve detection of imports at risk of IUU fishing and labour violations; and increase interagency coordination and data sharing. Most importantly, expanding the SIMP to all seafood would allow U.S. Customs and Border Protection (CBP) to use the Tariff Act, a law prohibiting imports produced by forced labour, to block or seize all seafood imports that have been produced in this way.<sup>88</sup> This law has been used by CBP to issue, on 31 December 2020, a Withhold Release Order against Lien Yi Hsing No. 12, a Taiwanese-flagged and owned distant water fishing vessel, stating that CBP personnel at all U.S. Ports of entry will detain tuna and other seafood harvested by that vessel based on information that reasonably indicates the use of forced labour.
- b) Strengthen international fisheries management, including expanding U.S. authority to revoke port privileges for fishing vessels associated with IUU fishing and expanding IUU determination criteria to include human trafficking, forced labour and other labour rights violations.

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<sup>87</sup> See Public Law 116-92, Section 3563

<sup>88</sup> See Federal Statute U.S.C. 1307.

<https://www.govinfo.gov/content/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap4-subtitleII-partI-sec1307.pdf>

- c) Reinterpret the concept of IUU fishing to include violations of fundamental labour rights. While the new legislation would not modify the definition of the term “IUU fishing” as stated in the IPOA-IUU, it would introduce a so-called “rule of construction” provision stipulating that the term “IUU fishing” for the purpose of the MSA and the High Seas Driftnet Fishing Moratorium Protection Act should be construed in light of internationally recognized labour rights stated in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998), including: (1) freedom of association; (2) elimination of all forms of forced or compulsory labour; (3) the effective abolition of oppressive child labour; (4) elimination of discrimination in respect of employment and occupation; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.<sup>89</sup>
- d) Improve interagency cooperation by updating the responsibilities of the IUU Interagency Working Group, established by Section 3551 of the National Defense Authorization Act of 2020. The Working Group is tasked by this legislation to develop a whole-of-government approach for federal agencies to work more cohesively and collaborate with state agencies to investigate IUU fishing and seafood fraud.
- e) Authorize funding for new Automatic Identification Systems (AIS) on vessels and amend requirements for where AIS must be used by US vessels in federal waters and on the high seas.

#### 4.1.6 Thailand

In 2015, the EC gave Thailand a so-called “yellow card” under the framework of the EU IUU regulation,<sup>90</sup> a warning from the EU that the country was not doing enough to tackle IUU fishing. Pursuant to the issuance of the yellow card, the EC and the Thai government engaged in a process of cooperation and dialogue that led to a profound reform of the Thai fisheries governance system. It included:

- Adoption of Royal Ordinance on Fisheries 2015,<sup>91</sup> which provided Thailand with a comprehensive fisheries legal framework in line with international law as reflected in international fisheries agreements. Protection of seamen’s welfare and prevention of all forms of forced labour in the fisheries sector are part of the major objectives of the Royal Ordinance.<sup>92</sup> It also makes provisions for the establishment of Port-in Port-out (PIPO) centres which play a central role in the inspection of fishing vessels, both domestic and foreign, on the basis of a risk-assessment approach. Labour inspectors imbedded in PIPO teams verify crew lists using biometric data, workers interviews and vessel inspection in an effort to detect forced labour and substandard working and living conditions on board fishing vessels;
- Establishment of a Command Centre for Combating Illegal Fishing (CCCIF). In 2019, the Thai government transferred the authority of the CCCIF, which operated 32 PIPO centres and 19 additional forward inspection points (FIP), to the Department of Fisheries, while the newly established Thai Maritime Enforcement Command Centre oversaw PIPO and FIP operations;<sup>93</sup>
- Adoption of a fisheries management plan, a NPOA-IUU, a National Plan of Control and Inspection.

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<sup>89</sup> See Section 303 (c) of the Illegal Fishing and Forced Labour Prevention Bill

<sup>90</sup> See Section 3.1.4 of this study

<sup>91</sup> B.E. 2558 (2015). See <http://extwprlegs1.fao.org/docs/pdf/tha159730.pdf>

<sup>92</sup> See Section 4 of the Royal Ordinance on Fisheries of 2015

<sup>93</sup> See 2020 TIP report, p. 487

Acknowledging that Thailand had successfully addressed the shortcomings in its fisheries legal and administrative systems, the EC lifted the yellow card in January 2019.

During the same period, reports from NGOs and media outlets denounced widespread occurrence of forced labour and other human rights abuses in Thailand's fishing fleets. This led the USA to downgrade Thailand to Tier 3 in its 2014 and 2015 TIP reports. This meant that Thailand was in the midst of a serious crisis of human trafficking; did not fully comply with the minimum standards of the TVPA; and made no significant effort to combat human trafficking in its fishing industry. Under pressure from the international community to take measures to remedy the situation, the Thai government adopted Ministerial Regulation on Labour Protection Sea Fishery Work in 2014,<sup>94</sup> which provides a national labour standard for the marine fisheries sector, including:

- prescribing a minimum age for any person to be employed on board any Thai-flagged fishing vessel (18 years of age);
- requiring a written employment contract for any fisher hired to work on board a Thai-flagged fishing vessel;
- regulating wages and overtime; and
- providing a grievance mechanism.

Thailand became the first Asian country to ratify the 2014 Protocol to the Forced Labour Convention in June 2018 and the Work in Fishing Convention in January 2019.

While Thailand has made tremendous efforts to reform and bring its fisheries and labour governance system in line with international standards, there are still concerns about the Thai Government's political will to strictly implement the new laws and policies and about certain restrictions such as labour laws preventing migrant workers from forming unions. In 2020, Thailand was ranked in Tier 2 of the 2020 TIP Report. According to this appraisal, Thailand did not fully meet the minimum standards for the elimination of trafficking but was making significant efforts to do so.

## 4.2 Regional Fisheries Management Organization and Regional Fisheries Body (RFB)

Up until recently, the issue of forced labour and human rights at sea had not been discussed in any of the RFMOs or RFBs. However, this started to change with the disappearance of several observers at sea in the Pacific Ocean. This string of incidents was reported in the media and drew public attention to the often challenging and solitary working conditions for observers at sea. This, in turn, led the Contracting Parties<sup>95</sup> of the **Western and Central Pacific Fisheries Commission (WCPFC)** to adopt a Conservation and Management Measure (CMM) for the protection of WCPFC Regional Observer Programme (CMM 2017-03).<sup>96</sup> In 2019, *Islands Business* magazine published a table of reported deaths of Pacific Islanders at sea compiled by the NGO Pacific Dialogue Ltd, Fiji, which includes 5 observers, 25 crew men, 3 captains, 2 chief engineers, and 1 deckhand.<sup>97</sup> Causes of death range from murder, assault, "fell overboard", suicide and drowning to sickness, accident and unknown. There is also a case

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<sup>94</sup> B.E. 2557 (2014)

<sup>95</sup> In this Section the term "Contracting Parties" is used to refer collectively to both Contracting Parties and Cooperating Non-Contracting Parties.

<sup>96</sup> See comments in Table 1 of Annex 1 with respect to Article 94.7 of UNCLOS

<sup>97</sup> See Table 2 Known Fisheries Observers fatalities, Pacific Islands region, since 2010 in Fisheries Deaths at Sea, Human Rights & the Role & Responsibilities of Fisheries Organizations, Human Rights at Sea, (1 July 2020). The table was updated by Human Rights at Sea on 15 June 2020.

[https://www.humanrightsatsea.org/wp-content/uploads/2020/07/HRAS\\_Abuse\\_of\\_Fisheries\\_Observers\\_REPORT\\_JULY-2020\\_SP\\_LOCKED-1.pdf](https://www.humanrightsatsea.org/wp-content/uploads/2020/07/HRAS_Abuse_of_Fisheries_Observers_REPORT_JULY-2020_SP_LOCKED-1.pdf)

where the reported cause of death is “went berserk” showing the mental stress that isolation at sea exerts on observers and crews.

In the WCPFC, while, following these incidents, the need to protect observers had received considerable attention, labour issues only recently emerged as an important topic to be addressed. At the 15<sup>th</sup> Commission meeting in 2018, the Commission adopted a Resolution on labour standards for crew on fishing vessels (Resolution 2018-01).<sup>98</sup> This measure, which is non-binding on Contracting Parties, encourages members to implement internationally recognized minimum labour standards for crew on fishing vessels (as reflected in the ILO C188 Work in Fishing Convention) and to strengthen their national laws concerning this issue.

At the 16<sup>th</sup> Commission meeting in 2019, one Contracting Party (Indonesia) provided information on the issue of unpaid salaries for crews and other members expressed their concerns and highlighted the importance of this topic. Even though no further actions had been taken at this meeting, the importance of labour standards and crew welfare was emphasised and high on the Commission’s agenda.

In December 2020, at the 17<sup>th</sup> Commission meeting, the issues of crew welfare and observer safety received considerable attention.

Indonesia submitted a proposal for a CMM on labour standards for crews on fishing vessels<sup>99</sup> and Human Rights at Sea proposed a model CMM on human rights and labour rights protections for fisheries observers’ safety, security, and wellbeing.

The CMM proposal on labour standards by Indonesia aims to promote safe and decent employment for fishing crew. This proposal outlines the need for Contracting Parties to extend their relevant national legislation so that they cover all crews working on fishing vessels flying their flag in the WCPFC Convention Area. Moreover, this proposed CMM requires Contracting Parties to implement measures consistent with international minimum standards for crew welfare as well as measures if a crew member got injured, assaulted, missing or dies. As outlined by Indonesia, responsible fisheries management requires to address issues of labour rights abuse.

The proposed CMM on labour standards followed the same objectives as the respective resolution. The main difference being that the requirements thereof would become binding on Contracting Parties. However, due to time constraints, it was proposed to establish an intersessional working group on this topic and to negotiate the CMM at the next Commission meeting in 2021. Overall, this suggestion received support from most of the Contracting Parties and Contracting Parties expressed their support to address crew welfare and labour standards. One member, however, expressed concerns that these labour standards were outside of the mandate of the WCPFC. As a counter-argument, it was noted that Article 22.1 of the WCPFC Convention requires the Commission to “cooperate, as appropriate, with the Food and Agriculture Organization of the United Nations and with other specialised agencies and bodies of the United Nations on matters of mutual interest”. This would include the International Labour Organization (ILO). How this legal argument will be play out in the intersessional working group is critical as it will create a precedent. Indeed, should Contracting Parties agree that crew welfare and labour standards are within the mandate of the WCPFC, then it will be much more difficult for Contracting Parties in other RFMOs to use that very same argument to dismiss any measure on labour standards and crew welfare, unless there is very clear language in the conventions and agreements establishing any of these organizations.

The intersessional working group, co-chaired by Indonesia and New Zealand, continued its consultations through several rounds of feedback in 2021. The latest draft CMM on crew labour standards was presented at the WCPFC 18<sup>th</sup> Regular Session that was held remotely from 29 November

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<sup>98</sup> See <https://www.wcpfc.int/doc/resolution-2018-01/resolution-labour-standards-crew-fishing-vessels>

<sup>99</sup> See <https://www.wcpfc.int/node/49177>

to 7 December 2021. The Commission noted the report of the crew labour standards intersessional work as presented in a joint Delegation Paper (WCPFC 18-2021-DP07)<sup>100</sup> by Indonesia and New Zealand and supported the continuation of this work in 2022.

In May 2019, the Forum Fisheries Committee of the Pacific Islands **Forum Fisheries Agency (FFA)** amended the Harmonized Minimum Terms and Conditions for Access by Fishing Vessels (MTCs) to introduce, among other things, a Part V on labour and employment condition.<sup>101</sup> The MTCs constitute one of the FFA Members key strategic tools to regulate access to their waters. They are a fundamental mechanism for setting leading standards for FFA Members to protect, as well as maximize their benefits from, their fisheries resources.

Part V of the MTCs consists of one single paragraph setting out the minimum standards for crew employment conditions. It is the responsibility of the operator<sup>102</sup> of the vessel to ensure implementation of, and compliance with, these minimum labour standards. They include the following conditions:

- (a) the operator of the vessel shall be responsible for the health, welfare and safety of any crew member while he or she is on board the vessel throughout the duration of the contract;
- (b) the operator shall ensure that a written contract is executed and signed between the operator or his or her representative and the crew member before the commencement of employment. The work contract shall contain the particulars that are annexed to the MTCs;
- (c) the operator is required to observe and respect any form of basic human rights of any crew member in accordance with accepted international human rights standards;
- (d) the operator is required to take all reasonable steps to ensure that crew members are not assaulted or subjected to torture, cruel, inhuman or degrading treatment and shall treat all crew with fairness and dignity;
- (e) the operator shall be responsible for the provision to crew for health protection and management for sickness, injury or death while employed or engaged or working on a vessel at sea or in a foreign port. In the event of injury or sickness, medical care shall be provided free of charge to the crew;
- (f) the operator shall in the event of death notify relevant authority as soon as practicable and ensure that the body is well preserved for the purposes of an autopsy, investigation, and shall undertake immediate repatriation of the body to the nearest appropriate available port;
- (g) the operator shall be responsible for advising the crew's next of kin in the event of an emergency;
- (h) the operator shall provide a decent and regular remuneration to the crew;
- (i) the operator shall provide repatriation of any crew member to his or her point of hire and all related cost where the contract is terminated as follows: (i) the contract is expired while the crew is still abroad; (ii) the crew member cannot perform his or her duty due to sickness or other medical reasons; and (iii) where the contract is terminated in accordance with the terms and conditions of the signed contract;
- (j) the operator shall ensure that crew are given regular periods of rest of sufficient length to ensure safety and health in accordance with international standards;
- (k) the operator is required to ensure: (i) that the vessel is safe in accordance with accepted international standards on safety of vessels; and (ii) the safety of crews on board and the safe operation of the vessel and to provide onboard occupational safety and health awareness training;

<sup>100</sup> See <file:///C:/Users/pcaca/Downloads/WCPFC18-2021-DP07%20Indonesia%20and%20New%20Zealand%20update%20on%20intersessional%20work%20on%20labour%20standards.pdf>

<sup>101</sup> See [https://www.ffa.int/system/files/HMTC\\_as\\_revised\\_by\\_FFC110\\_May\\_2019 - FINAL 0.pdf](https://www.ffa.int/system/files/HMTC_as_revised_by_FFC110_May_2019 - FINAL 0.pdf)

<sup>102</sup> The term “operator” means “any person who is in charge of, directs or controls a vessel, including the owner, charter and master” (Paragraph 1(h) of the MTCs).

- (l) the operator is required to provide the following at no cost to the crew: (i) full travel costs from the point of hire to and from the vessel; (ii) full insurance coverage, to and from, and on, the vessel throughout the duration of the contract; (iii) appropriate and adequate safety equipment and tools; (iv) appropriate accommodation; (v) appropriate sanitary facilities; and (vi) an adequate amount of suitable food and water;
- (m) the operator should prohibit deduction from crew wages by any party for any expenses related to work.

Following FFA's approach, the **Southwest Indian Ocean Commission (SWIOFC)**, in 2019, adopted Guidelines for Minimum Terms and Conditions (MTCs) for Foreign Fisheries Access in the SWIOFC region. These Guidelines, which are not binding on SWIOFC Member States, apply to foreign fishing, supply and transport vessels seeking access to tuna and tuna-like species, including by-catch, of the SWIOFC Region.

The objective of these Guidelines is to establish a common access regime for the foreign fishing of tuna and tuna-like species in the SWIOFC Region.

It is worth noting that prior to granting a license to fish for tuna or tuna-like species or operate a supply or transport vessel, a SWIOFC Member State is required to ensure that the applying foreign vessel has no connection to IUU fishing or other fisheries related crime activities.<sup>103</sup> The latter may include use of forced labour or human trafficking for the purpose of forced labour.

To promote the employment of national crews on board licensed foreign fishing vessels operating within waters under national jurisdiction, SWIOFC Member States are encouraged to require at least 10% employment of regional crews on these vessels and that terms and conditions for employment of crews be in line with the relevant ILO standards and be applied without any discrimination and regardless of the nationality of crew members.<sup>104</sup>

In order to combat human rights violations and human trafficking, the Guidelines calls for SWIOFC Member States to require all licensed foreign fishing, supply or transport vessels, and all vessels authorized to call into one of their designated ports to comply with the minimum international labour standards, as reflected in the ILO Work in Fishing Convention, 2007 (No. 188). It should be noted that C188 does not address the issue of forced labour or any other forms of human rights violations and that no mention of C29/P29 on forced labour and of any relevant human rights instruments is made in Paragraph 24 of the Guidelines. It is also unclear how this condition will be implemented and enforced in practice.

In November 2021, the **International Commission for the Conservation of Atlantic Tunas (ICCAT)** adopted a resolution establishing an Ad Hoc Committee to examine and address the issue of labour standards in ICCAT fisheries.

At the 13<sup>th</sup> **Fisheries Committee for the West Central Gulf of Guinea (FCWC)** Conference of Ministers in December 2021, the issue of decent work in the fisheries sector was, for the first time, discussed in this forum with the participation of the ILO Regional Director for West Africa.

#### 4.3 Fisheries access agreements

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<sup>103</sup> See Paragraph 6.1.d of the MTCs

<sup>104</sup> See Paragraphs 23.1 and 23.2 of the MTCs

The European Commission is mandated to negotiate and conclude Sustainable Fisheries Partnership Agreements (SFPA) with non-EU countries on behalf of the EU. These agreements aim to secure access for the fishing and supply vessels authorized to fly the flag of EU Member States to fisheries in the waters under the national jurisdiction of third countries. These agreements focus, among other things, on resource conservation and environmental sustainability, ensuring that EU vessels are subject to the same rules of control and transparency. At the same time, a clause concerning respect for human rights has been included in all protocols to fisheries agreements.

The EU has currently 13 SFPA protocols in force with third countries. They are all built on the same model and contain a chapter providing for the embarkment of local seamen. It is in this chapter that the human rights clause can be found. It provides that the ILO Declaration on Fundamental Principles and Rights at Work and other relevant ILO conventions shall apply as of right to the third country's seamen signed on by Union vessels and specifies that it concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, the elimination of discrimination in respect of employment and occupation and the working and living conditions onboard fishing vessels. They also include additional provisions on employment contracts and wages.<sup>105</sup>

It could not be ascertained whether similar clauses related to the protection of human rights and crew welfare are included in other bilateral fisheries access agreements between distant-water fishing nations and coastal States as these agreements are not published and not accessible by the public.

## **4.4 Voluntary standards and private compliance initiatives**

There has been a proliferation of voluntary standards and private compliance initiatives in the recent years. Many are focused on the sustainability of seafood but have incrementally introduced social accountability standards including prohibition on child and forced labour. Some examples of such standards and initiatives are highlighted below.

### **4.4.1 Certification schemes**

#### ***4.4.1.1 The Fairness, Integrity, Safety and Health (FISH) Standard for Crew***

It is an accredited, third-party certification programme seeking to ensure that fish sold around the world are harvested by crews who are ethically hired, treated with respect, paid properly, and allowed fair access to address grievances. The FISH standard was open for public comment until 8 March 2021. It drew strong criticism from the Seafood Working Group, which released a statement on 20 April 2021 stipulating, among other things, that the FISH Standard for Crew contains “significant weaknesses in design, application and monitoring” and thereby “will not provide buyers with credible assurances that the fishers who produce their seafood are treated fairly or have safe and decent conditions of work”. It is unclear what the next steps in the process will be.

#### ***4.4.1.2 Indonesian fisheries human rights certification system***

Together, the Ministry of Marine Affairs and Fisheries (MMAF) Regulation 35/2015 and MMAF Regulation 2/2017 form the Indonesian fisheries human rights certification system. The latter requires “fisheries entrepreneurs” to implement an enterprise-level compliance scheme consisting of three elements: (a) the establishment of a broad human rights policy; (2) mechanism to facilitate due

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<sup>105</sup> See for instance Chapter IV of the Protocol of 2020 annexed to the SFPA with Seychelles.

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A0228\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22020A0228(01)&from=EN)

diligence; and (3) a remediation mechanism. The former sets out the process and mechanism of certification and outlines the responsibilities of the implementing stakeholders to be established: the Human Rights Team (HRT), the accredited assessment agency and the training institute. The HRT is appointed to accredit the assessment agency and the training institute. Once the human rights system is in place, fisheries entrepreneurs are to engage and pay an accredited assessment agency for an assessment of their compliance. The accredited assessment agency will then make a recommendation to the HRT or the MMAF on whether the enterprise should be certified. The failure to certify can result in the suspension or cancellation of fishing permits issued by MMAF, as well as recommendation to the Ministry of Manpower to revoke any labour use permits.

As of the end of 2018, the certification system had yet to be fully implemented. The incentives for certification in Indonesia are weak. The delayed implementation and poor industry understanding of the system mean there is no persuasive market incentive to certify as the system is not widely recognised and does not procure commercial advantages nor create economic incentives for enterprises. Furthermore, despite the link between certification and the denial of fishing permits or labour use permits, the coercive incentive to certify is also limited in practice as only a small fraction of the fleet is required to be licensed. Most importantly, there is no referral mechanism to the labour inspectorate even if violations of labour laws are found during the assessment and certification process.<sup>106</sup>

#### ***4.4.1.3 Responsible Fishing Vessel Standard (RFVS)***

In June 2020, Global Seafood Assurances adopted the RFVS. The stated overall objective of the RFVS is to enable fishing operations to provide assurance of decent working conditions and operational best practice from the catch to the shore. Only vessels that meet the eligibility criteria can access the RFVS. They include, *inter alia*:

- a) compliance with fishing vessel's registration and licensing requirements of the flag State to which it is registered;
- b) compliance with the legal requirements for vessel crew and safety for the fishery they fish in;
- c) meet or exceed the human rights requirements of the Universal Declaration of Human Rights;
- d) do not use forced labour, persons under age of 16 years old or prisoners as crew; and
- e) if operated by a lone fisher, does not remain continually at sea for more than 24 hours without breaks from fishing activities.

Considering that the length of time at sea is a critical factor in determining the crew health, safety and wellbeing, the RFVS categorizes fishing vessels according to the average duration of fishing trips. On this basis, four categories of crewed vessels were identified, whereas single-person operated vessels were set apart to form a category of their own. Each clause of the RFVS has been assessed to determine whether it constitutes an essential or supplementary requirement. The former should be met at the time of audit certification and the latter within a specified period of time from the initial certification. Certification of a group or fleet of vessels will require that all vessels are subject to continuous monitoring and internal audits by the company or organization making the application. The internal audits and monitoring systems must be robust and credible as they will replace the need for a certification body to assess the status of every vessel in the group prior to certification being awarded. In its current form the RFVS does not specify how and against which benchmark these internal and audit systems will be evaluated. In this regard, it is important to note that the certification process is currently in development.

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<sup>106</sup> See Indonesia's fisheries human rights certification system: assessment, commentary, and recommendations, Working Paper, ILO Southeast Asia Fisheries Project (2019).

[https://www.ilo.org/jakarta/whatwedo/publications/WCMS\\_713924/lang--en/index.htm](https://www.ilo.org/jakarta/whatwedo/publications/WCMS_713924/lang--en/index.htm)

The international conventions and agreements underpinning the RFVS include the eight fundamental ILO conventions and the Work in Fishing Convention, 2007 (C188), as well as the PSMA, the International Convention on Standards and Training, Certification and Watchkeeping for Fishing Vessels Personnel (STCW-F) 1995 and the Cape Town Agreement (CTA) 2012. Curiously, there is no mention of UNCLOS, the Compliance Agreement and the UNFSA.

The RFVS features two core principles, namely, the vessel management and safety systems and the crew rights, safety and wellbeing. The first core principle focuses on the management policies, procedures and systems to be put in place to comply with relevant international standards and rules as reflected in the relevant international treaties. It includes the devising and implementation of adequate operational policies and practices covering, among other things, crew welfare and wellbeing, crew recruitment process and health and safety. It also requires the vessel owner to: (i) conduct a health and safety risk assessment designed to provide a safe working environment for the crew (e.g., crew working practices, vessel manning levels and work hours, crew galleys and accommodation areas); (ii) provide adequate training to ensure crew safety; (iii) keep an accurate and up-to-date record of all crew; (iv) show evidence that it has purchased adequate insurance to cover each member of the crew; and (v) keep a record of all crew accidents and injuries. The second core principle centres on crew rights, safety and wellbeing. It is based on the minimum standards set forth in the Work in Fishing Convention, 2007. It addresses, *inter alia*, the following issues: (i) recruitment process (development of a policy and procedure for hiring of crew, each crew member must have a written work agreement in a language he or she understands); (ii) crew contracts, agreements and terms and conditions (e.g., all crew members must have received a copy of their work agreement, no deductions from their remuneration for any reason including for food, accommodation, personal protective equipment or to cover medical expenses should be allowed); (iii) crew remuneration and working hours (e.g., adequate wages must be paid in accordance with the crew member's work agreement, remuneration should not less than the minimum wage requirements in the vessel's flag State); (iv) crew grievances and disciplinary measures (an active, effective and confidential crew grievance mechanism should be put in place, crew members must be informed of their contractual rights and of the procedure to raise a grievance or lodge a complaint, a policy and procedure must be adopted by the owner or skipper to prohibit any form of bullying or physical abuses of crew members and provide disciplinary measures, a fair and non-discriminatory repatriation policy must be drawn up and reflected in work agreements); (v) crew freedom of movement and no forced labour; (vi) crew freedom of association; (vii) child labour; (viii) safety at sea; (ix) crew living conditions (e.g., accommodation, food, washing and sanitation requirements, crew communications).

#### **4.4.2 Seafood traceability systems**

##### ***4.4.2.1 Global Dialogue Seafood Traceability***

The Global Dialogue on Seafood Traceability (GDST) is an international business-to-business platform established to advance a unified framework for interoperable and verifiable seafood traceability practices. The GDST brings together a broad spectrum of seafood industry stakeholders from around the globe and across different parts of the seafood supply chain, as well as relevant civil society experts from diverse regions.

In March 2020, after a multi-year industry-led drafting process, the GDST released the first-ever global standards (known as GDST 1.0) governing information content and data formats specifically for seafood traceability systems. These interoperable industry standards were developed to: (a) improve the reliability of seafood information; (b) reduce the cost of seafood traceability; (c) contribute to supply chain risk reduction; and (d) contribute to securing the long-term social and environmental sustainability of the sector.

The GDST aimed to produce an aligned global framework for seafood traceability based on four pillars:

1. Internationally agreed key data elements to be routinely associated with seafood products;
2. Technical specifications for interoperable traceability systems, along with standard legal and business formats facilitating business-to-business information exchange;
3. Internationally agreed benchmarks for verifying data validity;
4. Harmonization of business-smart national regulations to help reduce compliance burdens.

These four pillars are similar to those that have helped create interoperable business-to-business traceability and information systems within other globalized industries, such as banking, telecommunications, and pharmaceuticals. A number of market factors have increased the need for both standardizing business practices and harmonizing regulations to promote interoperable traceability within the seafood sector. These include:

- (a) growing consumer and regulatory demands for more information about the origins of seafood products;
- (b) rising concerns about the marketing of seafood that is sourced from illegal, unsustainable, or socially irresponsible practices, including forced labour and slavery at sea;
- (c) increased business interest in improving transparency within seafood supply chains.

Today, the GDST is one of the largest and most diverse business-to-business seafood industry forums, including some of the most important retailers, brands, and mid-supply chain processors in the sector.<sup>107</sup> The GDST was convened and supported by two leading international NGOs: WWF and the Institute of Food Technologists (Global Food Traceability Center).

The GDST standards consist of two main parts:<sup>108</sup>

1. Standards identifying the minimum data elements that need to be documented and transmitted within GDST-compliant seafood supply chains. These are described in technical detail in the GDST's "Basic Universal List of Key Data Elements," covering both wild-capture and aquaculture products.
2. Standards governing the technical formats and nomenclature for sharing data among interoperable traceability systems.

In technical terms, GDST 1.0 is built as an extension of the international traceability standard known as GS1 EPCIS, which is widely used by major retailers, brands, and supply chains across food and non-food product classes (e.g., heavily used in the pharmaceutical industry). The GDST has refined and adapted the EPCIS standard to be "fit for purpose" for the seafood industry and to include innovations that allow companies to integrate with GS1-based systems without making commercial commitments to use proprietary GS1 traceability solution products.

The GDST standards are designed to meet operational business needs while helping ensure that products entering the seafood supply chain originate with legal production practices. They enable companies to have visibility into their supply chains while allowing them to maintain data access controls to protect business-sensitive information. The standards are also adapted to facilitate regulatory compliance with import controls such as the U.S. Seafood Import Monitoring Program and the EU IUU Regulation.

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<sup>107</sup> It includes companies such as Bumble Bee Seafoods, Nueva Pescanova, Pacifical, Sainsbury's Supermarkets Ltd, Thai Union, Tesco, Tri Marine, and Vietnam Tuna Association, to name a few.

<sup>108</sup> See [https://traceability-dialogue.org/wp-content/uploads/2020/03/2020.03.11\\_GDST1.0CoreNormativeStandardsfinalMAR13.pdf](https://traceability-dialogue.org/wp-content/uploads/2020/03/2020.03.11_GDST1.0CoreNormativeStandardsfinalMAR13.pdf)

Importantly, the GDST does not impose a one-size-fits-all solution. GDST 1.0 provides design standards that can be flexibly implemented in multiple proprietary (and even competitive) systems, including cutting-edge technologies like blockchain. It is also understood that implementation of the standards will take time and may involve a phased approach for some companies based on their own business decisions and conditions.

#### **4.4.2.2 Non-Governmental Organizations**

#### **PAS 1550: 2017 Exercising due diligence in establishing the legal origin of seafood products and marine ingredients – Importing and processing – Code of practice<sup>109</sup>**

This code of practice gives recommendations for exercising due diligence in relation to the EU IUU Regulation, and to ensure robust traceability and decent working conditions<sup>110</sup> in the seafood industry. Recognizing the close relationship between IUU fishing and a lack of decent working conditions for workers in seafood supply chain, it incorporates labour issues and considers illegal treatment of crew on fishing vessels to be linked with illegal fishing. It also stresses the need for businesses to undertake a due diligence process to address human rights risks in line with the United Nations Guiding Principles on Business and Human Rights (UNGPs). The code's target users are the importers and processors of seafood that have an obligation to meet the requirements of the EU IUU regulation. It outlines the due diligence process to be undertaken by processors and importers and sets out information that is to be requested at each step in the process.

### **5. Review of relevant international instruments related to fishing vessel safety**

#### **5.1IMO Conventions**

The **2012 Cape Town Agreement on the Implementation of the Provisions of the 1993 Torremolinos Protocol relating to the 1977 International Convention for the Safety of Fishing Vessels (Cape Town Agreement)** was adopted on 11 October 2012 in Cape Town, South Africa. In 1977, IMO adopted the Torremolinos International Convention for the Safety of Fishing Vessels, which was later modified by the 1993 Torremolinos Protocol. As both of these instruments had failed to come into force, due to difficulties in their implementation by a number of States having substantial fishing vessels under their flags, IMO later adopted the Cape Town Agreement (CTA) to bring into effect the provisions of these earlier instruments and implement the regulations annexed to them. Pursuant to Conference Resolution 4, a consolidated text of the International Regulations for the Safety of Fishing Vessels was prepared by the IMO Secretary-General.<sup>111</sup> The treaty will enter into force 12 months after at least 22 States, with an aggregate 3,600 fishing vessels of 24 m in length and over operating on the high seas, have expressed their consent to be bound by it. In October 2019, IMO and the Government of Spain organized a Ministerial Conference on Fishing Vessel Safety and IUU Fishing. During the Conference, 48 States signed the Torremolinos Declaration whereby signatories recognized that the entry into force of the CTA will fill a critical gap in the global regulatory framework and that increased

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<sup>109</sup> PAS 1550:2017 was developed by Oceana, Environmental Justice Foundation, the Pew Charitable Trusts and the World Wide Fund for Nature.

<sup>110</sup> Decent conditions are defined as those that comply with the eight fundamental ILO Conventions and ILO Work in Fishing Convention (C188).

<sup>111</sup> See

<https://www.cdn.imo.org/localresources/en/About/Conventions/Documents/Consolidated%20text%20of%20the%20Agreement.pdf>

safety standards will positively impact on the working conditions, welfare and wellbeing of fishers and assist in combatting IUU fishing. It sets the target date of 11 October 2022 for States to meet the entry-into-force criteria of the Agreement. One year after the Conference, IMO launched a series of regional webinars in a renewed push to encourage ratification of the CTA. To date, 16 States have ratified the CTA, including a few major fishing nations such as Peru and Spain.<sup>112</sup>

The CTA updates and amends the 1993 Torremolinos Protocol. The Agreement sets the minimum requirements on the design, construction, equipment, and inspection of fishing vessels 24 metres in length or greater that operate on the high seas. The International Regulations for the Safety of Fishing Vessels (IRSFV), contained in the consolidated text of the regulations annexed to the 1993 Torremolinos Protocol as modified by the CTA, are built around 10 chapters dealing, respectively, with: (I) General provisions, (II) Construction, watertight integrity and equipment; (III) Stability and associated seaworthiness; (IV) Machinery and electrical installations and periodically unattended machinery spaces; (V) Fire protection, fire detection, fire extinction and fire fighting; (VI) Protection of the crew; (VII) Life-saving appliances and arrangements; (VIII) Emergency procedures, musters and drills; (IX) Radiocommunications; and (X) Shipborne navigational equipment and arrangements.

The Agreement applies to commercial fishing vessels of 24 metres in length and greater or equivalent in gross tons.<sup>113</sup> It provides flexibility for the implementation of certain provisions within a specified time frame for those Parties that have difficulties in complying with the 1977 Torremolinos Convention and the 1993 Torremolinos Protocol. Consequently, States may, in accordance with a plan, opt to progressively implement the provisions of the chapters to which the flexibility clause is applicable.<sup>114</sup>

The CTA allows for any Party to exempt any vessel entitled to fly its flag from any requirements of the IRSFV, if it considers that the application is unreasonable and impracticable in view of the type of vessel, the weather conditions and the absence of general navigational hazards, provided:

- (a) the vessel complies with safety requirements which, in the opinion of that Administration, are adequate for the service for which it is intended and are such as to ensure the overall safety of the vessel and persons on board;
- (b) the vessel is operating solely in the EEZ of the flag State or in the EEZ or a marine area under the jurisdiction of a third State or in a common fishing zone.<sup>115</sup>

To ensure that vessels are safe, their design, construction and equipment must be inspected and surveyed. This may be carried out by a flag State agency, or by a delegated authority such as a surveyor or a classification society.<sup>116</sup> The CTA stipulates that vessel's lifesaving appliances, radio installations, structure, machinery, and equipment must be inspected before it is put into service and at intervals not exceeding five years. Details will be made available in an International Fishing Vessel Safety Certificate.<sup>117</sup>

**The International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F)**, entered into force on 29 September 2012. It is a binding treaty that sets certification and minimum training requirements for crews of seagoing fishing vessels with the aim to promote the safety of life at sea, taking into account the unique nature of the fishing

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<sup>112</sup> The IMO website was last consulted on 17 May 2021.

<sup>113</sup> See Regulation 1(2) of the IRSFV.

<sup>114</sup> This gradual approach can be used for the implementation of Chapters VII to X. States have 5 years to implement, in whole, the provisions of Chapters VII, VIII and X and 10 years to implement the provisions of Chapter IX. Regulation 1(5) of IRSFV.

<sup>115</sup> See Regulation 3(3) of the IRSFV

<sup>116</sup> See Regulation 6 of the IRSFV

<sup>117</sup> See Regulations 7, 8 and 9 of the IRSFV

industry. The STCW-F is a key building block in the promotion of safety of life at sea by setting the necessary framework to ensure the provision of fully skilled personnel in the fisheries sector. It is expected that better skilled and trained personnel will decrease the likelihood of fatal accidents and will therefore decrease the loss of lives at sea and improve general safety of fishing operations. It also supports harmonization of qualifications by introducing a minimum level of training for everyone working on fishing vessels to which the Convention applies. This, in turn, facilitate free mobility of workers between countries that have ratified and implemented the Convention and creates a level playing field in the sector.

The STCW-F consists of 15 Articles, one annex containing technical regulations and three appendices. The annex is divided into 4 chapters dealing, respectively, with: (a) general provisions (Chapter I); (b) certification of skippers, officers, engineer officers and radio operators (Chapter II); (c) basic safety training for all fishing vessel personnel (Chapter III); and (d) watchkeeping (Chapter IV). It generally applies to personnel serving on board seagoing fishing vessels entitled to fly the flag of a Contracting Party<sup>118</sup> and, in particular, to skippers and officers in the deck department of fishing vessels of 24 m in length and over, and officers in the engine department of fishing vessels powered by main propulsion machinery of 750 KW propulsion power or more. If it considers it is unreasonable or impracticable to apply the full requirements of regulations II/3, II/4 and II/5 and the requirement of the use of the English language, a Contracting Party may opt not to apply these requirements, wholly or in part, to personnel of fishing vessels less than 45 m in length operating solely from its ports and fishing within its limited waters.<sup>119</sup> With respect to the provisions of Chapter III of the annex providing for basic safety training, it is the duty of each Contracting Party to determine whether and, if so, to what extent, the provisions of this Chapter should apply to personnel of small fishing vessels or personnel already employed on fishing vessels.

It is also worth mentioning that in December 2017, the **IMO Assembly adopted Resolution A.1117(30)**. The purpose of this resolution was to revise the IMO Ship Identification Number Scheme to allow its application to ships of 100 gross tonnage and above, including fishing vessels of steel and non-steel hull construction and all motorized inboard fishing vessels of less than 100 gross tonnage down to a size limit of 12 metres in length overall. This was done in the context of developing a unique identifier for fishing vessels in the fight against IUU fishing.

## 5.2 Port State Control Regimes

**Port State Control (PSC)** is the inspection of foreign ships in national ports to verify that the condition of ships and their equipment comply with the requirements of international regulations and that ships are manned and operated in compliance with these rules. Many of IMO's most important technical conventions contain provisions for ships to be inspected when visiting foreign ports to ensure that they comply with IMO requirements, in particular with the International Convention on Load Lines, 1966, the International Convention for the Safety of Life at Sea, 1974 (SOLAS), the International Convention for the Prevention of the Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78). These inspections were originally intended to be a back up to flag State implementation – adequate implementation and effective enforcement of maritime safety and marine pollution prevention standards is considered primarily as the responsibility of the flag State – but experience has shown that they can be extremely effective. As a result, IMO adopted resolution A.682(17) on Regional Co-operation in the Control of Ships and Discharges promoting the conclusion

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<sup>118</sup> See Article 3 of the STCW-F

<sup>119</sup> See Regulation 2 of Annex

of regional agreements.<sup>120</sup> The purpose of these agreements is to improve and harmonize systems of PSC and strengthen regional co-operation and exchange of information. The rationale being that it is more efficient to coordinate inspections at the regional level in order to focus on substandard ships and avoid multiple inspections.

To date, nine regional agreements or MOUs on PSC have been signed: (a) Europe and the North Atlantic (Paris MOU); (b) Asia and the Pacific (Tokyo MOU); (c) Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MOU); West and Central Africa (Abuja MOU); the Black Sea region (Black Sea MOU); the Mediterranean (Mediterranean MOU); the Indian Ocean (Indian Ocean MOU); and Arab States of the Gulf (Riyadh MOU). In addition to these MOUs, the United States Coast Guards also operates its own PSC regime.

While MOUs were primarily designed to ensure compliance with IMO standards relating to maritime safety and marine pollution prevention, they are also used to monitor compliance with ILO standards relating to seafarers' rights to decent working and living conditions laid down in MLC, 2006 (see Section 3.4 above). To date, however, PSC regimes focus on merchant ships only and thus do not apply to fishing vessels. PSC regime for the latter is governed by the PSMA (see Section 1.4 above) and is implemented and coordinated at the regional level through resolutions or CMMs adopted by RFMOs or MTCs for access adopted by RFBs (see section 4.2 above).

In November 2015, the Third Session of the Joint FAO/IMO Ad Hoc Working Group on IUU Fishing and Related Matters (JWG) recommended that the FAO, in cooperation with the IMO and ILO, and if appropriate, PSC regimes and RFMOs, encourage the coordinated implementation of the PSMA, with other types of inspections that may be carried out.

The Fourth Session of the JWG, which included ILO as a formal partner, was held in October 2019 and recommended that:

- (a) FAO, ILO and IMO promote and support the development of ways to increase coordination and information sharing for inspection and control procedures at national level with a view to increasing efficiency and effectively supporting the implementation of respective instruments (including PSMA, C188 and C29/P29);
- (b) various regional PSC regimes consider opportunities to coordinate their activities and to share information about various inspections under FAO, IMO and ILO instruments; and
- (c) FAO and IMO, together with ILO and relevant organizations and regimes, as appropriate, consider developing guidance to facilitate cooperation, coordination and information-sharing between authorities carrying out inspections in ports of the merchant and fishing sectors, in line with relevant international instruments related to safety and security of fishing vessels and fishing vessel personnel, the protection of the marine environment and fishing operations.

Furthermore, the JWG welcome the initiative of the Indian Ocean MOU (IOMOU)<sup>121</sup> to explore a collaborative programme with the Indian Ocean Tuna Commission (IOTC). This resulted in the signing, in January 2021, by the Secretariats of the IOTC and IOMOU of a Letter of Understanding. The purpose of this Letter is to raise awareness of national inspectors under the different regimes of IOTC<sup>122</sup> and

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<sup>120</sup> IMO Resolution A.682(17) was adopted on 6 November 1991. See [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.682\(17\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.682(17).pdf)

<sup>121</sup> See [https://www.iomou.org/HOMEPAGE/pdf/IO\\_MOU\\_Revised.pdf](https://www.iomou.org/HOMEPAGE/pdf/IO_MOU_Revised.pdf)

<sup>122</sup> In 2010, IOTC adopted its first Port State Measures Resolution, mirroring relevant provisions of the PSMA and making them binding on its members. Since 2010, the Commission has continued to strengthen its port State measures and take advantage of new technologies. The latest provision was adopted in 2016 (Resolution 16/11). In 2019, it introduced e-PSM, an innovative electronic system of reporting port State information to the Secretariat and communicating information between IOTC Members.

IOMOU to improve the coordination and efficiency of implementation of port State measures. To date, there are twenty Indian Ocean State authorities – including 19 IOTC members – that are parties to the IOMOU. The IOTC and IOMOU have agreed to cooperate with each other, and with the support of FAO, ILO and IMO, as may be found necessary by members of IOTC and IOMOU, to:

- (a) raise awareness of inspectors under the different inspection regimes of each other's work to improve the coordination and efficiency of the implementation of the respective inspection instruments;
- (b) exchange views on IOMOU procedures and IOTC CMM requirements to identify commonalities and/or potential obstacles in their consistent application;
- (c) determine shared information opportunities and support information exchange between the IOTC and IOMOU inspection regimes;
- (d) support capacity development initiatives relevant to the IOTC and IOMOU inspection regimes;
- (e) exchange views on the legal framework applicable to fishing vessels with the aim of identifying elements for coordination of inspections in the overall context of avoiding unnecessary hindrance to vessels and strengthening efficiency in the inspection process, while taking into account the different objectives of inspection regimes; and
- (f) support the entry into force and implementation of relevant FAO, ILO and IMO instruments.

## 6. Review of relevant international instruments relating to transnational organized crimes and corruption

The **United Nations Convention against Transnational Organized Crime (UNCTOC)**, adopted by General Assembly 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime. It entered into force on 29 September 2003. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.<sup>123</sup>

One of the initial challenges faced by the Ad Hoc Committee<sup>124</sup> during the negotiations of the UNCTOC was whether the concept of “transnational organized crime” could be defined in an appropriate manner, from both the legal and political perspectives. After considerable debate, it was agreed that it would make more sense to define actors rather than activities, as organized criminal groups are known to shift from activity to activity and from commodity to commodity and among geographical locations as often as needed. In this context, UNCTOC provides a definition of “organized criminal group” which reads as follows “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”<sup>125</sup>

One of the purposes of UNCTOC was to generate a certain level of standardization in terms of offences as they are codified in national laws, as a prerequisite of international cooperation. This triggered discussion on the concept of “serious crime” and on the appropriateness of introducing a definition of

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<sup>123</sup> Information in this Section is drawn, to a large extent, from the paper written by Mr. Dimitri Vlassis, who was the Secretary of the Ad Hoc Committee for the Elaboration of the UNCTOC (1998-2003). See Vlassis, Dimitri. *Overview of the Provisions of United Nations Convention against Transnational Organized Crime and its Protocols* in UNFAEI Annual Report for 2000 and Resource Material Series No. 59, p. 452-474 (October 2002).

<sup>124</sup> In December 1998, the United Nations General Assembly (UNGA) established an Ad Hoc Committee for the elaboration of UNCTOC and three additional Protocols. See UNGA resolution 53/11 of 9 December 1998.

<sup>125</sup> See Article 2(a) of UNCTOC. Article 2 also contains a definition of the notion of “structured group” as being “a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.”

this concept in the Convention. Pursuant to a review aimed at determining how this concept was understood and incorporated in national criminal legislation, it was finally agreed to provide a definition of this term in the Convention. Serious crime is defined as “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”.<sup>126</sup>

UNCTOC establishes four offences: (a) participation in an organized criminal group;<sup>127</sup> (b) money laundering;<sup>128</sup> (c) corruption;<sup>129</sup> and (d) obstruction of justice.<sup>130</sup> In view of the fact that corruption is one of the methods used, and activities engaged in by organized criminal groups, it was agreed to recognize corruption as an offence under the Convention. But this was done on the understanding that this Convention could not cover the issue of corruption in a comprehensive manner and that a separate convention would be needed for that purpose. One of the most important obligations under the Convention, for each State Party, is to adopt such legislative and other measures as may be necessary to establish these four offences as criminal offences under their domestic law.

In the realm of international cooperation, the Convention includes articles on extradition,<sup>131</sup> mutual legal assistance,<sup>132</sup> transfer of criminal proceedings<sup>133</sup> and law enforcement cooperation.<sup>134</sup> It provides detailed provisions on mutual legal assistance and makes it one of the primary tools of international cooperation against transnational crime. With respect to law enforcement cooperation, the Convention contains provisions on exchange of intelligence and other operational information and on the use of modern investigative methods, with the appropriate safeguards.

The Convention also entails provisions for the protection of witnesses, which is a key component of any successful action against organized crime.<sup>135</sup> Furthermore, the Convention includes an article on the protection of, and assistance to, victims.<sup>136</sup>

Recognizing the need to strengthen the capacity of developing countries, the Convention includes two articles on technical cooperation, one intended to cover cooperation to develop specific training programmes for law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, as well as other personnel charged with the prevention, detection and control of the offences covered by this Convention, and the other to provide technical assistance in the more traditional sense of the term.<sup>137</sup>

In order to ensure an appropriate level of implementation, the Convention establishes a Conference of the Parties with the dual tasks of improving the capacity of Parties to combat transnational organized crime and promote and review the implementation of the Convention.<sup>138</sup>

Recognizing that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect

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<sup>126</sup> See Article 2(b) of UNCTOC

<sup>127</sup> See Article 5 of UNCTOC

<sup>128</sup> See Article 6 of UNCTOC

<sup>129</sup> See Article 8 of UNCTOC

<sup>130</sup> See Article 23 of UNCTOC

<sup>131</sup> See Articles 16 and 17 of UNCTOC

<sup>132</sup> See Article 18 of UNCTOC

<sup>133</sup> See Article 21 of UNCTOC

<sup>134</sup> See Articles 19, 20, 26 and 27 of UNCTOC

<sup>135</sup> See Article 24 of UNCTOC

<sup>136</sup> See Article 25 of UNCTOC

<sup>137</sup> See Articles 29 and 30 of UNCTOC

<sup>138</sup> See Article 32 of UNCTOC

the victims of such trafficking and taking into account that there was no universal instrument to address all aspects of trafficking in persons, the international community adopted, in 2000, the **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**.

This Protocol supplements the UNCTOC and provisions of the two should be interpreted together. The provisions of the Convention apply, *mutatis mutandis*, to the Protocol unless otherwise specified therein.<sup>139</sup> The Protocol consists of 20 articles divided into 4 Chapters on General provisions (Chapter I), Protection of victims of trafficking in persons (Chapter II), Prevention, cooperation and other measures (Chapter III), and Final provisions (Chapter IV). The purpose of the Protocol is threefold: (a) prevent and combat trafficking in persons; (b) protect and assist the victims of such trafficking, with full respect of their human rights; and (c) promote international cooperation against such trafficking.<sup>140</sup> It applies to the prevention, investigation and prosecution of Protocol offences, but only where these are transnational in nature and involve an organized criminal group, as those terms are defined by the Convention, as well as to the protection of victims of such offences.<sup>141</sup>

The term “trafficking in persons”, which is being defined for the first time in international instruments, means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments, or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”<sup>142</sup> The definition is built around three groups of elements: criminal acts (recruitment, transport, transfer, harbouring or receipt of persons), the means used to commit these acts (the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person) and the goals (different forms of exploitation). At least one element from each of these groups is required before the definition applies.

The question of whether a victim could consent to trafficking was a major issue in the negotiations. It was recognized that in many trafficking cases, there is initial consent or cooperation between victims and traffickers followed later by more coercive, abusive and exploitative circumstances. To resolve this issue, language was inserted in the definition to clarify that consent becomes irrelevant whenever any of the means of trafficking has been used.<sup>143</sup>

Each State Party has a duty to adopt national legislative and other measures as may be necessary to establish as criminal offences the conducts laid down in the definition of the concept of “trafficking in persons”. It should cover any attempt to commit an offence, any accomplice participating in the commission of the offence and any person organizing or directing other persons to commit an offence.<sup>144</sup>

The Protocol contains a series of general protection and support measures for victims.<sup>145</sup> These provisions require any State Party to take basic measures, which include protecting the privacy and identity of victims of trafficking in persons and providing access and legal representation in legal proceedings.<sup>146</sup> While the physical safety of victims cannot be absolutely guaranteed, Parties are required to endeavour to do so.<sup>147</sup> Further measures of the Protocol are subject to the discretion of the

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<sup>139</sup> See Article 1 of Protocol

<sup>140</sup> See Article 2 of Protocol

<sup>141</sup> See Article 4 of Protocol

<sup>142</sup> See Article 3(a) of Protocol

<sup>143</sup> Article 3(b) of Protocol

<sup>144</sup> See Article 5 of Protocol

<sup>145</sup> See Article 6 of Protocol

<sup>146</sup> See Article 6(1) and (2), of Protocol

<sup>147</sup> See Article 6(5) of Protocol

Parties.<sup>148</sup> These include a list of social support benefits such as counselling, housing, education, employment, medical and psychological assistance<sup>149</sup> and an opportunity to obtain legal status to remain, temporarily or permanently, in the territory of the receiving State Party.<sup>150</sup>

The Protocol addresses the key issue of repatriation of victims of trafficking to their countries of origin.<sup>151</sup> A major concern with the repatriation of victims of trafficking is that it may leave them vulnerable to being trafficked all over again or, in some cases, vulnerable to retaliation from traffickers for having cooperated with law enforcement or prosecution authorities. To respond to those concerns, the Protocol requires that all Parties involved should have due regard for the safety of the victim and for the status of any ongoing legal proceedings.<sup>152</sup> It also states that repatriation should preferably be voluntary.<sup>153</sup> Countries of origin are obliged to accept, without undue or unreasonable delay, the return of any person who is a national at the time of repatriation or who had a right of permanent residence at the time of entry into the territory of the receiving State.<sup>154</sup>

Generally, the law enforcement agencies of Parties are required to cooperate with one another on such matters as the identification of offenders and trafficked persons, sharing information about the means and methods used by offenders, and the training of law enforcement and immigration officers and other officials in the prevention of trafficking in persons.<sup>155</sup> Parties are also required to implement security and border controls to detect and prevent trafficking in persons.<sup>156</sup>

As was stated by the U4 Anti-Corruption Resource Centre in 2013, there is little research on the relationship between IUU fishing and corruption and research on illegal financial flows related to fisheries is even scarcer. Despite the fact that there is limited publicly available information on **corruption** and IUU fishing, it is known that IUU fishing is most likely to happen in countries where governance is weak and corruption is widespread. There is evidence that corruption takes many forms and facilitates IUU fishing throughout the fisheries supply chain.<sup>157</sup> A recent paper published in 2021 by the U4 Anti-Corruption Centre focusing on the East African region provides further evidence suggesting that corruption facilitates IUU fishing.<sup>158</sup> Among the main points that were highlighted is the role played by fishery agents “in orchestrating corrupt practices across the region”. It goes on to say that these agents “link up corrupt players, offering them protection, and pay bribes and arrange kickbacks”. While no specific evidence is provided, it is likely that these practices also facilitate violations of labour and human rights in the fisheries industry, in particular on fishing vessels.

As mentioned above in this part, the UNCTOC recognizes corruption as an offence, but on the understanding that this Convention could not cover the issue of corruption in a comprehensive manner and that a separate convention would be needed for that purpose. This led to the adoption of the **United**

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<sup>148</sup> See Article 6, paragraphs (3) and 7, of Protocol

<sup>149</sup> See Article 6(3) of Protocol

<sup>150</sup> See Article 7 of Protocol

<sup>151</sup> See Article 8 of Protocol

<sup>152</sup> See Article 8, paragraphs (1) and (2), of Protocol

<sup>153</sup> See Article 8(2) of Protocol

<sup>154</sup> See Article 8(1) of Protocol

<sup>155</sup> See Article 10 of Protocol

<sup>156</sup> See Articles 11, 12 and 13 of Protocol

<sup>157</sup> U4 Anti-Corruption Centre, Transparency International, CMI CHR Michelsen Institute. 2013. *Illegal, unreported and unregulated fishing and corruption*. U4 Expert Answer. See [file:///C:/Users/pcaca/Downloads/\\_publication\\_illegal-unreported-and-unregulated-fishing-and-corruption.pdf](file:///C:/Users/pcaca/Downloads/_publication_illegal-unreported-and-unregulated-fishing-and-corruption.pdf)

<sup>158</sup> U4 Anti-Corruption Centre, CMI CHR Michelsen Institute. 2021. *Corruption as a facilitator of illegal fishing – Insights from East Africa*. See <https://www.u4.no/publications/corruption-as-a-facilitator-of-illegal-fishing.pdf>

**Nations Convention against Corruption** (UNCAC) by the UNGA in 2003.<sup>159</sup> It is the only legally-binding universal anti-corruption instrument.

The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem. The Convention is unique not only for its worldwide coverage but also for the scope of its provisions, recognizing the importance of both preventive and punitive measures. It also addresses the cross-border nature of corruption with provisions on international cooperation and on the return of the proceeds of corruption (asset recovery). States Parties are expected to cooperate in criminal matters, to assist each other in investigations of and proceedings in corruption-related civil and administrative matters and to consider providing technical assistance to others. The Convention promotes integrity, accountability and proper management of public affairs and public property. The Convention further calls for the participation of civil society and NGOs in accountability processes and underlines the importance of citizens' access to information.

The UNCAC does not define the concept of "corruption" as such. It rather lists and defines a series of offences that States Parties must criminalise, including bribery of national and foreign public officials as well as embezzlement by a public official. Furthermore, the Convention addresses acts carried out in support of corruption, illicit enrichment, abuse of functions, obstruction of justice, trading in influence and concealment, money laundering, and bribery in the private sector. Concerning the agents of corrupt practices, Article 2 of UNCAC uses a functional definition of the term "public official": it covers anyone who holds a legislative, administrative, executive or judicial office, performs a public function or provides a public service (as defined in the domestic law of the country).

## **7. Relationship between key treaties relating to fisheries, fishing vessel's safety and the protection of labour rights on board fishing vessels**

The conventions and agreements relating to fisheries, labour, safety at sea and human trafficking in the context of transnational organized crimes that have been reviewed and analysed in this document form the global legal framework in which fishing vessels operate. One should bear in mind that, unlike for fisheries,<sup>160</sup> the regime of the high seas applies from the outer limits of the territorial sea, that is from the 12 nautical mile line measured from the baselines, with respect to labour issues and navigation.

For the purpose of this study, it is important to differentiate between two types of treaties, those that are not sector specific and thus of global application (UNCLOS, ILO fundamental conventions on forced labour, freedom of association and collective bargaining, UNCTOC and its protocol on trafficking in persons, UNCAC) on the one hand and those that are sector specific (Compliance agreement, UNFSA, PSMA, Work in Fishing Convention, CTA and WTO Convention on Fisheries Subsidies) on the other. The former require the devising and adoption of particular legislation or regulations to be adapted and fully applicable to the fisheries sector, in particular with respect to at-sea activities, that is fishing operations, within waters under national sovereignty or jurisdiction and on the high seas. This is particularly true for labour standards on board fishing vessels and protection of labour and human rights at sea (forced labour, human trafficking). The latter, which were designed to apply to the fisheries sector, simply require the enactment of legislation to be transposed into the domestic legal framework in countries with a dualist system of law or apply directly in countries with a monist system of law.

The conventions and agreements covered by this document have been devised under the auspices of UN specialized agencies and the WTO by different sets of negotiators to address particular issues related

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<sup>159</sup> UNGA resolution 58/4 of 31 October 2003. See

[https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>160</sup> See Section 56(1)(a) of UNCLOS

to the fisheries sector within the limits of their specific mandate. Hence, there is a lack of linkage between the different legal instruments, including among those dedicated to the fisheries sector that have been negotiated under the umbrella of different UN agencies (FAO, ILO, and IMO). This fragmented and disjointed approach has also resulted in the construct of a global fisheries governance system that is not sufficiently comprehensive and integrated.

UNCLOS is the fundamental instrument for ocean governance. It recognizes the primacy of the flag State's sovereignty on the high seas and outlines the duties of the flag State in these areas, which include jurisdiction and control in social matters over vessels authorized to fly its flag and its master, officers and crews, including decent working and living conditions on board the vessel and respect of human rights (See Annex 1 below). The UNFSA is directly connected to UNCLOS as it was devised to implement Articles 63 and 64 of UNCLOS on straddling fish stocks and highly migratory species respectively. The PSMA came later and was adopted in the context of the fight against IUU fishing in an attempt to close ports to illegally taken fish and preclude their entry into national and international markets.

Despite the fact that the issue of flag State responsibilities or duties is central to major international fisheries conventions and agreements (Compliance Agreement, UNFSA and PSMA), these instruments do not address the issues of labour standards and protection of labour and human rights. The scope of flag State responsibilities or duties on the high seas under these instruments focuses exclusively on fisheries management, sustainable use of fisheries resources and compliance with international conservation and management measures. In the context of the PSMA, the role of the flag State concentrates on the duty to cooperate with the port State in instances of IUU fishing or suspicion of such fishing and the obligation to investigate and take measures against vessels authorized to fly its flag that have engaged in IUU fishing. The PSMA, which was adopted in 2009, does not make any specific reference to the Work in Fishing Convention adopted two years earlier, even though it refers to it indirectly by stating that application and interpretation of the Agreement should be consistent with international law taking into account applicable rules and standards.<sup>161</sup> It contains provisions on the conduct of port inspections, but does not provide for the control of applicable labour standards or include language supporting the detection of forced labour.<sup>162</sup>

While the Work in Fishing Convention makes a broad reference to UNCLOS in one of its recitals, it does not make mention of any international fisheries conventions or agreements nor does it contain any provision to give substance to flag State duties or responsibilities on the high seas with respect to the protection of labour rights to complement the flag State's provisions of the Compliance agreement and the UNFSA. In particular, it does not address critical issues such as conditions for the crewing of fishing vessels operating on the high seas, change of crew at sea (conditions, reporting requirements, oversight), validity of work agreement and applicable law in the event of change of flag in the course of a fishing trip, and definition of an international standard with respect to the maximum period of time that can humanly be spent at sea by any fisher in one single stretch. C188 was developed once it became clear that the new consolidated Maritime Law Convention 2006 would exclude fishing vessels and fishers from its scope as a recognition of the specificities of the fishing sector and with a view to providing improved protection to fishers. Up to this point, ILO maritime standards aimed at seafarers on merchant ships were applied or could also be applied to fishers. Considering the low number of countries that have ratified C188 and the lack of clear legal regime for fishers in domestic legislation in many countries, one may wonder whether this approach has improved fishers' working and living conditions and been instrumental in strengthening protection of labour rights on board fishing vessels.

In the last decade, abuse of human rights at sea on board fishing vessels, notably through the use of fishers in condition of forced labour, have been exposed and documented by NGOs, civil society

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<sup>161</sup> Article 4(4) of the PSMA which specifies the relationship of the PSMA with international law and other international instruments.

<sup>162</sup> See comments on Article 13 in Annex 4.

organizations and media outlets through the publication of articles, reports and films. Increasing media exposure forced the international fisheries community to recognize that forced labour was an issue in the fishing industry that needed to be addressed and receive more attention. As seen above in this study, there are four international instruments that can be used to address the issue of forced labour, namely: the Forced Labour Convention and its 2014 Protocol, the Abolition of Forced Labour Convention and the UNCTOC and its Protocol to Prevent, Suppress and Punish Trafficking in Persons (in the context transnational organized crimes). These conventions and protocols are of general application and thus require signatory countries to develop and enact specific legislation to address forced labour and human trafficking for the purpose of forced labour in the fisheries sector effectively, including the issues of access to justice, remediation and compensation for victims of forced labour/human trafficking. From the outset, the ongoing negotiations on fisheries subsidies under the aegis of the WTO ruled out the inclusion of forced labour as a form of harmful subsidy. This approach was recently challenged by the United States of America which introduced proposals to amend the draft consolidated text to address the issue of forced labour.<sup>163</sup>

The CTA, the STCW-F and the C188 contain complementary provisions, as appropriate fishing vessels' safety, including adequate training and manning of skippers and other key personnel, and decent working and living conditions are closely related (e.g., Articles 8 and 13 of C188). Indeed, it is impossible to provide decent working and living conditions on board unsafe and poorly maintained vessels.

## 8. Gaps and opportunities

In light of the above and of the findings in the annexes (see comments for each analysed treaty below), this section outlines the gaps in global fisheries governance and related instruments to safeguard decent working and living conditions and ensure adequate protection of fishers' labour rights on fishing vessels and identify some opportunities to remedy these gaps.

### 8.1 Gaps

Importantly, it should be underscored that there is no established benchmark against which global fisheries governance and protection of labour rights on fishing vessels can be assessed. Consequently, gaps in the context of this study refer to gaps in coverage within or between treaties, gaps in terms of ratification and more specific gaps that have been identified during the treaty review and analysis. Another important gap that is not covered in this first part of the study, as it would require further research, is the gap in treaty implementation. It is well-known that States that have ratified treaties do not always have the human and financial means nor the political will to take the necessary measures to ensure their appropriate implementation.

Since treaties underlying global fisheries governance were developed separately and by different sets of negotiators, as well as under the auspices of different international organizations with specific mandates, they do not form a comprehensive governance system and lack complementarity as illustrated by the absence of linkages and cross-references between them. This has resulted in gaps in coverage between and within treaties including the following:

- (a) international fisheries instruments focus exclusively on the management of fisheries resources, including conservation of marine ecosystems and management of fishing fleets' capacity, but fail to address the issue of decent work and protection of labour rights on fishing vessels;

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<sup>163</sup> See Section 1.5 of this document

- (b) C188 sets out a minimum international labour standard for fishing vessels, but do not address the issue of forced labour which is covered by C29 and P29. The latter are global instruments which do not contain sectoral provisions and thus will require the devising of specific regulations for their effective implementation in the fisheries sector;
- (c) the CTA is primarily designed to apply to fishing vessels 24 m in length overall or greater, which represents a tiny fraction of the world fishing fleet - approximately 3% according to FAO's data<sup>164</sup> – leaving a whopping 97% of the world fishing fleet unregulated insofar as vessel safety is concerned.

In terms of ratification, treaties dealing with fishing vessels' safety and labour standards on fishing vessels have a very low rate of ratification, whereas international fisheries instruments have been ratified by a much larger number of countries. To date, C188 has been ratified by 19 countries and the CTA by 16 countries.<sup>165</sup> The latter, which contains international regulations for the safety of fishing vessels, has not entered into force yet.<sup>166</sup> By comparison the UNFSA and PSMA have been ratified by 91 and 70 countries respectively. These discrepancies in treaty ratification reflect a deficit of cooperation between the FAO, IMO and ILO to promote jointly their respective fisheries instruments and exemplify the fragmented approach that has been pursued so far in the construct of a global fisheries governance system.

Other gaps include:

- (a) While at the international level, MLC, 2006 and C188 have established clear definitions of the terms “seafarer”<sup>167</sup> and “fisher”,<sup>168</sup> this is not always the case at the national level where there is uncertainty about the legal status of fishers in many countries. In countries where fishers are regarded as seafarers by law, they benefit, in principle, from the same legal regime. However, in countries where fishers are not considered to be a subgroup of seafarers, their legal status is often not clearly established and thus make them more vulnerable to exploitation.
- (b) As was highlighted in Part 7 above, UNCLOS has recognized the primacy of flag State's jurisdiction on the high seas and outlined flag State's duties in high seas areas over vessels authorized to fly its flag (Article 94). UNCLOS, however, does not provide any enforcement mechanism or process in the event a flag State fails to discharge its international obligations or duties. The absence of such an enforcement mechanism or process has profoundly undermined the effectiveness and efficiency of the high seas governance regime as little can be done by other States or any international institution or tribunal when a flag State does not discharge its international obligations or is not willing to do so.
- (c) The main objective of the 1993 Compliance Agreement was to fight against and deter the practice of flagging or reflagging of fishing vessels as a way to avoid compliance with international CMMs for living marine resources and to ensure that flag States fulfil their responsibilities under international law with respect to fishing vessels flying their flag. This agreement, which has been ratified by 42 countries, has proved to be ineffective to curb the practice of flag hopping as the use of flags of convenience (FOC) by rogue fishing vessels' operators is still a major issue undermining global fisheries governance. This issue has been

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<sup>164</sup> FAO. 2020. *The State of World Fisheries and Aquaculture*, at p. 44.

<sup>165</sup> As of 10 January 2022

<sup>166</sup> The CTA will enter into force 12 months after the date on which not less than 22 States, the aggregate number of whose fishing vessels of 24 m in length and over operating on the high seas is not less than 3,600, have expressed their consent to be bound by it (Article 4 of the CTA).

<sup>167</sup> Article II 1(f) stipulates that the term “seafarer” means “any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.”

<sup>168</sup> See Article 1(e) of C188 in Annex 6 of this study

discussed in many international forums, but, so far, no appropriate measures or mechanisms to eradicate this phenomenon have been agreed upon. The International Transport Workers' Federation (ITF) has warned about the possible consequences for workers employed on board FOC vessels, stating that this may mean very low wages, poor on-board working and living conditions, inadequate food and clean water, and long working hours without proper resting time. ITF has stressed the need for the international community to act upon FOC by establishing a list of FOC countries that is published on its website. This list, however, has currently no legal standing as it has not been officially recognized by the international community. It can be used, though, as an indicator to identify high-risk vessels at the national level and lead to more stringent measures with respect to these vessels (e.g., frequent inspections, ground for denying licences).

- (d) The issue of stateless vessels or vessels without nationality, which is closely linked to the practice of flag hopping and the use of flag of convenience, has been discussed in the context of the fight against IUU fishing. It has been acknowledged that these vessels are high-risk vessels as they operate without governance and oversight. This recognition led to the adoption of binding measures on vessels without nationality by RFMOs. They provide that these vessels undermine international CMMs and thus are presumed to have carried out IUU fishing activities. These measures encourage member States to take effective actions against stateless vessels that are engaging, or have engaged, in fishing or fishing-related activities in the relevant RFMO's area of competence, and, where appropriate, enforcement action, and to prohibit the landing and transhipment of fish or fish products in their ports and access to port services. As a result, many States have modified their fisheries legislation to give effect to these measures. However, few coastal States have enacted appropriate laws to authorize national courts of competent jurisdiction to prosecute stateless vessels.
- (e) The issue of whether the concept of IUU fishing, defined in Section 3 of the IPOA-IUU, should be broadened to encompass breach of labour standards has been raised and discussed in various forums. Up until now, no consensus has been reached. Some organizations, like ITF, have supported such an inclusion, but others, like FAO, IMO and ILO have argued for the *status quo*. As reported in sections 4.1.5 and 4.2 of this study, discussions on the protection of crew and promotion of decent work on board fishing vessels have recently taken place in RFBs and RFMOs and resulted in the introduction of specific clauses on labour rights in regional MTCs regulating access to coastal States' fisheries (FFA and SWIOFC), the adoption of a resolution on crew protection in WCPFC and the setting up of an ad hoc working group tasked to examine this issue in ICCAT. At the same, US lawmakers have introduced legislation in Congress pushing for the reinterpretation of the concept of IUU fishing to include violations of fundamental labour rights. While these new developments may not necessarily lead to a modification of the IUU fishing definition in the IPOA-IUU, it certainly marks a change in approach by States and a recognition that decent work and protection of labour rights are part of fisheries management and should therefore be discussed in fisheries forums. At the national level, this may prompt some States to mainstream social matters into their national fisheries policy and reconsider the scope of the definition of the concept of IUU fishing in their national legislation.
- (f) Currently, very little is known about fishers' recruitment processes to crew fishing vessels operating in EEZs or on the high seas. This issue has received very little attention by policy makers at the international, regional and national levels. No comprehensive study has been conducted to examine the different steps in the recruitment processes (which often involve the hiring of migrant fishers), study the role of recruitment and placements services (e.g., private manning and recruitment agencies) and assess the adequacy of the regulatory framework governing their operation (e.g., licensing of manning and recruitment agencies, reporting

requirements, responsibilities). Likewise, few information is available with respect to changes of crew either in-port or at sea as such information is generally not required to be reported under fisheries law. In this regard, one should bear in mind that the definition of the concept of “fishing related activities” as defined in the PSMA includes the “provision of personnel”.

## 8.2 Opportunities

Opportunities to remedy some of the gaps that were identified in section 8.1 above include the following:

- (a) The extension of the Joint FAO/IMO Ad Hoc Working Group on IUU fishing and related matters to ILO in 2019 provided an opportunity to strengthen cooperation between the three UN agencies and address labour rights issues and the use of forced labour on fishing vessels (protection of crew and observers) in a comprehensive manner. While the three UN agencies have agreed to join forces to promote the ratification of their respective fisheries instruments at the global level, they still need to reinforce their cooperation at the regional and national levels to advance labour rights in the fisheries sector, including on fishing vessels.
- (b) Up to now, PSC regimes for fishing vessels have been too weak to prevent illegally sourced fishery products from entering national and international markets and have not been designed to detect substandard labour conditions and forced labour on fishing vessels. The need to establish more robust and effective PSC regimes for fishing and support vessels is widely recognized. To achieve this goal, improved coordination and cooperation between relevant national enforcement agencies, including labour inspectorates, at the national level and enhanced cooperation between States through existing regional mechanisms or agreements are required.

At the national level, this can be done by extending the scope of existing cooperative enforcement arrangements designed to fight IUU fishing to labour issues in countries where such arrangements exist or by acting upon the relevant provisions of the PSMA and/or C188 to set up such arrangements in countries where they have not been put in place yet. These arrangements should provide a framework for the coordination of fishing vessels’ inspection with respect to labour standards and the detection of forced labour. It may also make provisions for the training of fisheries inspectors and other relevant enforcement officers to support the work of labour inspectorates.

At the regional level, the IOMOU initiative to explore a collaborative programme with IOTC will provide valuable information on whether enhanced cooperation between regional PSC regimes and RFMOs can be conducive to improving PSC regimes for merchant and fishing vessels alike and on whether such arrangements should be duplicated in other oceans of the world.

- (c) Recent developments in RFBs and RFMOs have shown that these regional fisheries organizations have a role to play in the promotion of, and compliance with, international labour standards on fishing vessels and can be instrumental in improving flag State responsibility with respect to social matters. To support global recognition of these standards, Contracting Parties of RFMOs, which have not addressed the issue of labour rights on fishing vessels yet, should be encouraged to submit binding measures on this issue. Likewise, RFBs’ member States should be encouraged to devise practical measures to ensure that fishing vessels operating within their EEZs or calling into their ports comply with international labour standards.

- (d) In order to fight IUU fishing, most RFMOs have established a list of IUU fishing vessels, following procedures that are often not very rigorous. Interestingly, most of the vessels that have been blacklisted are reported of being of “unknown” flags indicating that these vessels are either stateless or have not been claimed by any country. This well-established practice has had very limited impact on IUU fishing. Consequently, one may reassess this practice and examine whether it would not be more effective to move away from blacklisting “rogue” fishing vessels to focus on “rogue” vessels’ operators (including skippers, owners and beneficial owners). Criteria to be used for the determination of non-compliant vessels’ operators should include breach of labour standards, use of illegal brokers to crew their vessels, and/or use of forced labour.
- (e) While it may take time before a significant number of countries ratify C188, one may use the promotion of this Convention to urge and support countries to develop a national labour standard for all classes of fishing vessels based on ILO minimum labour standards for fishing vessels.
- (f) The recent media exposure of poor working and living conditions and abusive work practices in the fishing industry has increased demand by consumers for “slavery or forced labour free” seafood products and led a number of countries to review and strengthen their seafood import requirements to ensure that seafood products entering their markets are sourced from fishing operations that are legal and respectful of labour and human rights. This new public demand has created an opportunity for countries to develop and put in place sound and comprehensive traceability systems enabling government agencies to track seafood products every step along the way throughout the supply chains.

## Annex 1 – United Convention on the Law of the Sea (UNCLOS, 1982)

**Table 1 – Relevant provisions of UNCLOS**

Article	Title	Relevant provisions	Comments
<b>Part VII – High Seas</b> <b>Section 1 – General Provisions</b>			
91	Nationality of ships	<p>1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.</p> <p>2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.</p>	<ul style="list-style-type: none"> <li>The conditions to be met by a ship to be granted the nationality of a State are generally set out in the Merchant Shipping Law of every State. They apply to both merchant ships (including fish carrier vessels, supply vessels and container ships) and fishing vessels, that is vessels designed and equipped to catch fish.</li> <li>The nationality of a ship is critical as it is the laws of the flag State, including labour law and standards and any other law protecting crew members against forced labour or any other abuses of human rights, that apply on board the ship wherever it is located (high seas, waters under the jurisdiction of a third State, foreign port).</li> <li>The existence of a <i>genuine link</i> between a State and a ship is crucial as it enables the State to exercise effectively its responsibilities under national and international laws in respect of such a ship. Note that this notion is not well defined in international law. By contrast, absence of a genuine link undermines the ability of a State to exercise effectively its authority over a ship. As a consequence, many rogue vessels, managed by unscrupulous owners, are registered in flag of convenience countries with no or a tenuous link with the country of registration to avoid any control on their activities.</li> <li>It is common practice in national fisheries legislation to define the concept of “national fishing vessel” as opposed to “foreign fishing vessel” to introduce separate legal regimes. The definition of “national fishing vessel” generally rests on two criteria, registration in the Ship Register administered by the Maritime Authority and ownership, or on</li> </ul>

Article	Title	Relevant provisions	Comments
			<p>a sole criterion (registration). Registration of any fishing vessel in the ship register of a country is a critical point to avoid the flagging and registration of rogue fishing vessels both in terms of IUU fishing or non-compliance with labour standards and human rights. Indeed, it is at this point that information on the past history of the vessel and past behaviour of the owner(s) (including beneficial owners) can be examined to determine whether the vessel should be authorized to register in a country's ship register and then be accorded a fishing licence or authorization. Since registration of vessels, including fishing vessels, generally falls within the purview of the Maritime Authority, it is crucial that cooperative mechanisms between the Maritime Authority and the Fisheries Administration or Agency are put in place to avoid that rogue fishing vessels are registered without the Fisheries Administration or Agency knowing about it. To address this issue, a number of recently adopted fisheries legislation contain provisions making the registration of fishing vessels by the Maritime Authority contingent upon prior approval by the Fisheries Administration or Agency.<sup>169</sup> This process enables the Fisheries Administration or Agency to run background checks on the vessel and its owners. However, the focus of this process is on IUU fishing and does not necessarily include assessment of whether or not owners of the vessel in respect of which registration is sought have complied with international labour standards and human rights.</p>
92	Status of ships	<p>1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a</p>	<ul style="list-style-type: none"> <li>It is not uncommon for rogue fishing vessels to sail under the flag of two or more States according to convenience or to change flag during a voyage or several times in a short period of time (flag hopping).</li> <li>The issue of vessels without nationality was discussed in the framework of the fight against IUU fishing. It was acknowledged that</li> </ul>

<sup>169</sup> See for instance Article 11-1 of the Law No. 19-05/AU of 1 April 2020 revising the Fisheries and Aquaculture Code of Comoros. It should be noted that the Directorate General of Maritime Affairs and Fisheries of the European Commission is pushing for the inclusion of such provisions in fisheries legislation of third countries wishing to export fish and fisheries products to the EU market through the implementation of the EU IUU Regulation (through the yellow and red carding mechanism). This mechanism, however, does not cover compliance with labour laws and respect of human rights.

Article	Title	Relevant provisions	Comments
		<p>port of call, save in the case of a real transfer of ownership or change of registry.</p> <p>2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.</p>	<p>vessels without nationality were high-risk vessels as they operate without governance and oversight. This recognition led to the adoption of resolutions or recommendations on vessels without nationality by RFMOs. They provide that these vessels undermine international conservation and management measures and thus are presumed to have carried out IUU fishing. These measures encourage contracting parties and cooperating non-contracting parties to take effective action against vessels without nationality that are engaging, or have engaged, in fishing or fishing-related activities in the relevant RFMO's area of competence, and, where appropriate, enforcement action, and to prohibit the landing and transhipment of fish or fish products in their ports and access to port services.<sup>170</sup> As a result, many States have modified their fisheries legislation to give effect to these measures. However, few coastal States have enacted appropriate laws to authorize national courts of competent jurisdiction to prosecute stateless vessels.</p> <ul style="list-style-type: none"> <li>The issues of flag hopping (frequent change of flag or nationality) and vessel without nationality are likely to have an adverse impact on the protection of the master and crew on board fishing vessels as it creates confusion as to which labour laws should apply on board the vessel. The new flag State is unlikely to recognise the validity of the original work agreements signed by the master and crew members.</li> </ul>
94	Duties of flag State	<p>1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.</p> <p>2. In particular every State shall:</p> <p>a) maintain a register of ships containing the names and particulars of ships</p>	<ul style="list-style-type: none"> <li>Article 94 of UNCLOS recognises the primacy of the flag State's jurisdiction on the high seas over vessels, including fishing vessels, authorized to fly its flag. The scope of its jurisdiction and control extends not only to administrative and technical matters, but also to social matters (including decent working and living conditions on board the vessel, respect of human rights). Furthermore, flag States are required to assume jurisdiction under internal or national laws over each ship flying its flag and any master, officer and crew in respect of social matters (art. 94.2). It is a broad formulation covering any master,</li> </ul>

<sup>170</sup> See for instance IOTC Resolution 16/05 on vessels without nationality and WCPFC Conservation and Management Measure 2009-09 for vessels without nationality.

Article	Title	Relevant provisions	Comments
		<p>flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and</p> <p>b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.</p> <p>3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, <i>inter alia</i>, to:</p> <p>a) ... ;</p> <p>b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;</p> <p>4. Such measures shall include those necessary to ensure:</p> <p>a) ... ;</p> <p>b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship.</p> <p>5. In taking measures called for in paragraphs 3 and 4 each State is required to conform to</p>	<p>officer and crew on board, irrespective of nationality, thus including migrant workers.</p> <ul style="list-style-type: none"> <li>It is the responsibility of the flag State to ensure the safety of the vessel at sea and any persons on board. To do so, flag States are required to take such measures as are necessary, including appropriate labour conditions and training of crews (art. 94.3b)).</li> <li>Flag States have a general obligation to apply generally accepted standards, procedures and practices to ensure safety at sea, including adequate labour conditions and training of crews (art. 94.5). This will include application of minimum labour standards set out in the Work in Fishing Convention (C188).</li> <li>Any State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State has a duty to investigate the matter and, if appropriate, to take any action necessary to remedy the situation. This notification procedure may be used to report any abuse of human rights or non-compliance with international labour standards to the flag State. However, no enforcement mechanism is provided for under Article 94.6 if the flag State fails to act upon notification of the facts.</li> <li>In the event of loss of life or serious injury to nationals of another State on board a vessel flying its flag, the flag State has a legal obligation to inquire any such marine casualty and to co-operate with the country of nationality of the victim. Article 94.7 is quoted in the preamble of the WCPFC Conservation and Management Measure (CMM) for the protection of regional observer programme observers which provides the measures to be taken by the flag State in the event that: (1) an observer dies, goes missing or is presumed to have fallen overboard; (2) an observer suffers from serious illness or injury that threatens his or her health or safety; and (3) there is reasonable grounds to believe</li> </ul>

Article	Title	Relevant provisions	Comments
		<p>generally accepted international regulations, procedures and practices to take any steps which may be necessary to secure their observance.</p> <p>6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.</p> <p>7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.</p>	<p>that an observer has been assaulted, intimidated, threatened or harassed such that his or her health or safety is endangered.<sup>171</sup></p>
99	Prohibition of the transport of slaves	<p>Every State shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall <i>ipso facto</i> be free.</p>	<p>This provision, which is intended to combat the exploitation of persons in condition of slavery through the prevention and punishment of transport of slaves in ships, should be linked to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. This Protocol is the universal agreement providing a comprehensive framework addressing all aspects of trafficking in persons (See definition of this concept in Part 6 of this study above).</p>

<sup>171</sup> See CMM 2017-03

Article	Title	Relevant provisions	Comments
110	Right of visit	<p>1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, ..., is not justified in boarding it unless there is reasonable ground for suspecting that:</p> <p>...</p> <p>(d) the ship is without nationality;</p>	<p>Interestingly, the scope of this provision is limited to the “transport” of slaves. It does not entail the “use” of slaves in any form of labour on board ships.</p> <p>This provision applies to any ship and thus may be used to board fishing vessels suspected of being without nationality on the high seas.</p>

## Annex 2 – Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement, 1993)

Table 2 – Relevant provisions of the Compliance Agreement

Article	Title	Relevant provisions	Comments
I	Definitions	(a) “fishing vessel” means any vessel used or intended for use for the purposes of the commercial exploitation of living marine resources, including mother ships and any other vessels directly engaged in such fishing operations.	<ul style="list-style-type: none"> <li>The Compliance Agreement provides a broad definition of the notion of “fishing vessel” which includes not only vessels harvesting the marine living resources but also mother ships and “any other vessels directly engaged in such fishing operations”. While not define, the latter expression seems to entail any vessels supporting fishing operations such as supply vessels. It is unclear though whether it covers fish carrier vessels.</li> <li>The Compliance Agreement does not provide any definition of the term “fishing”.</li> </ul>
III	Flag State responsibility	<ol style="list-style-type: none"> <li>(a) Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag does not engage in any activity that undermines the effectiveness of international conservation and management measures.</li> <li>In particular, no Party shall allow any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless it has been authorised to be so used by the appropriate authority or authorities of that Party. A fishing vessel so authorised shall fish in accordance with the conditions of the authorisation.</li> <li>No Party shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.</li> </ol>	<ul style="list-style-type: none"> <li>In line with Article 87 (freedom of the high seas) and Article 117 of UNCLOS (duty of States to adopt with respect to their nationals measures for the conservation of the living resources on the high seas), the provisions of paragraph 2 subordinates the freedom of fishing on the high seas to the grant of an authorisation by the competent authority of the flag State. In addition, the latter may subject the use of the authorisation to certain conditions. It is important to note that this requirement has been introduced in conservation and management measures adopted by most RFMOs and has become a standard provision of fisheries legislation in countries operating a high seas fishing fleet. In practice, conditions that may be attached to the authorisation are generally technical in nature (e.g., gear restrictions, target species, allowed percentage of bycatch, closed season, etc.). However, nothing prevents competent authorities to extend these conditions to other aspects of fishing</li> </ul>

Article	Title	Relevant provisions	Comments
		<p>4. Where a fishing vessel that has been authorized to be used for fishing on the high seas by a Party ceases to be entitled to fly the flag of that Party, the authorization to fish on the high seas shall be deemed to have been cancelled.</p> <p>5. (a) No Party shall authorize any fishing vessel previously registered in the territory of another Party that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that:</p> <ul style="list-style-type: none"> <li>(i) any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and</li> <li>(ii) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years.</li> </ul> <p>(b) The provisions of subparagraph (a) above shall also apply in respect of fishing vessels previously registered in the territory of a State which is not a Party to this Agreement, provided that sufficient information is available to the Party concerned on the circumstances in which the authorization to fish was suspended or withdrawn.</p> <p>(c) The provisions of subparagraphs (a) and (b) shall not apply where the ownership of the fishing vessel has subsequently changed, and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the fishing vessel.</p> <p>(d) Notwithstanding the provisions of subparagraphs (a) and (b) above, a Party may authorize a fishing vessel, to which those subparagraphs would otherwise apply, to be used for fishing on the high seas, where the Party concerned, after having taken into account all relevant facts, including the</p>	<p>activities, including labour standards and safety of life at sea.</p> <ul style="list-style-type: none"> <li>• Most recently adopted fisheries legislation require that no authorisation to fish on the high seas be issued to any vessel that has been involved in IUU fishing operations unless a change in ownership can be demonstrated or is listed on the list of IUU fishing vessels established by a RFMO or any other recognized authority. However, few contain provisions warranting the refusal to grant or renew an authorisation to a vessel for non-compliance with national or international labour standards or for involvement of the registered owner, operator or master of the vessel in the use of forced labour or in any other human rights abuses.</li> <li>• Paragraph 3 reiterates the need to ensure that a genuine link exists between the vessel in respect of which an authorisation to fish on the high seas is sought and the flag State (see Article 91.1 of UNCLOS) and stresses that this should be a key consideration in determining whether the flag State is able to exercise effectively its responsibility under the Agreement in respect of such a vessel. What constitute a genuine link or sufficient link is left to the appreciation of each flag State.</li> <li>• The main objective of the Compliance Agreement is to fight and deter the practice of flagging or reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources and to ensure that flag States fulfil their responsibilities under international law with respect to fishing vessels entitled to fly their flag. Paragraph 5 prohibits any Party to the Agreement to authorise any fishing vessel previously registered in the</li> </ul>

Article	Title	Relevant provisions	Comments
		<p>circumstances in which the fishing authorization has been withdrawn by the other Party or State, has determined that to grant an authorization to use the vessel for fishing on the high seas would not undermine the object and purpose of this Agreement.</p> <p>6. Each Party shall ensure that all fishing vessels entitled to fly its flag that it has entered in the record maintained under Article IV are marked in such a way that they can be readily identified in accordance with generally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.</p> <p>7. Each Party shall ensure that each fishing vessel entitled to fly its flag shall provide it with such information on its operations as may be necessary to enable the Party to fulfil its obligations under this Agreement, including in particular information pertaining to the area of its fishing operations and to its catches and landings.</p> <p>8. Each Party shall take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provisions of this Agreement, including, where appropriate, making the contravention of such provisions an offence under national legislation. Sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Agreement and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorization to fish on the high seas.</p>	<p>territory of another Party that has undermined the effectiveness of international conservation and management measures to fish on the high seas unless conditions set out in subparagraphs (a), (c), and (d) are met. It should be noted that the exemption provided for under subsection (d) does not contain any safeguard and left the door open to arbitrary decisions by flag States.</p> <ul style="list-style-type: none"> <li>While the provisions of paragraph 5 do not make any express reference to labour standards or violation of human rights, they are worded in such a way that the provisions of this paragraph may, in the future, apply to fishing vessels not complying with decent working conditions or labour standards for crew or to vessel owners, operators or masters associated with use of forced labour or violation of human rights on board a fishing vessel, provided the scope of certain international conservation and management measures adopted by RFMOs extends to such issues as is already the case in the Pacific through the adoption of WCPFC Resolution 2018-01.</li> <li>Adequate marking of fishing vessels is crucial to ensure identification and ownership of the vessel. This is particularly important in the event of any breach of national or international law, including non-compliance with applicable labour standards, and of any violation of human rights on board the vessel. Unscrupulous vessel owners involved in IUU fishing and other associated crimes (e.g., use of forced labour and other human rights abuses) have used a range of ploys, such as frequent change of vessels' names, repainting, and modification of vessel's structure, in an attempt to hide vessel's identity. To address this issue, the international</li> </ul>

Article	Title	Relevant provisions	Comments
			<p>community, in the framework of the Global Record, has agreed to assign fishing vessels with a Unique Vessel Identifier (UVI), which remains unchanged throughout the vessel's lifetime, regardless of change of name, ownership or flag, and to use the IMO number as fishing vessels' UVI.<sup>172</sup></p> <ul style="list-style-type: none"> <li>• The obligation for fishing vessels to provide information to the flag State under paragraph 7 may be extended in national legislation to include information pertaining to working and living conditions on board the vessel.</li> <li>• Recently adopted fisheries legislation generally make it an offence for a fishing vessel authorised to fly its flag to fish on the high seas without an authorisation or operate in contravention of any applicable international conservation and management measures. The purpose of paragraph 8 is to ensure that sanctions against illegal fishing activities on the high seas are sufficiently severe to deprive offenders of the benefits accruing from their illegal activities and to act as a deterrent. Although these provisions were not intended to fight against non-compliance with labour standards or use of forced labour on board fishing vessels on the high seas, they may apply to such offences through the breach of any international and conservation and management measures dealing with these issues.</li> </ul>
IV	Records of fishing vessels	Each Party shall, for the purposes of this Agreement, maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing on the high seas, and shall take such measures	This requirement has become a standard provision of modern fisheries legislation in countries operating high-seas fishing fleets. The keeping of records of fishing vessels authorized to operate in areas beyond national jurisdiction, that is on the

<sup>172</sup> See IMO Resolution A. 1117(30) on IMO Ship Identification Number Scheme adopted on 6 December 2017. <https://wwwcdn.imo.org/localresources/en/OurWork/IIS/Documents/A%202030-Res.1117%20-%20Imo%20Ship%20Identification%20Number%20Scheme.pdf>

Article	Title	Relevant provisions	Comments
		as may be necessary to ensure that all such fishing vessels are entered in that record.	high seas and/or in waters under the jurisdiction of a third country, is also a requirement under international conservation and management measures adopted by RFMOs and thus should be transposed into domestic legislation of contracting parties and cooperating non-contracting parties. The range of information to be kept in these records may vary from one country to the next and may include the history of infringements of fisheries laws and regulations for each recorded vessel, including breaches of international conservation and management measures. <sup>173</sup>
V	International cooperation	<ol style="list-style-type: none"> <li data-bbox="496 568 1275 838">The Parties shall cooperate as appropriate in the implementation of this Agreement, and shall, in particular, exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures, so as to fulfil its obligations under Article III.</li> <li data-bbox="496 870 1275 1208">When a fishing vessel is voluntarily in the port of a Party other than its flag State, that Party, where it has reasonable grounds for believing that the fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures, shall promptly notify the flag State accordingly. Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions of this Agreement.</li> </ol>	<ul style="list-style-type: none"> <li data-bbox="1275 568 2048 806">Provisions of paragraph 1 may be used to exchange information, including evidentiary material, relating to any activity in breach of any international conservation and management measures pertaining to non-compliance with labour standards for crew or observers and/or violation of human rights on board fishing or supply/support vessels.</li> <li data-bbox="1275 838 2048 949">Paragraph 2 dealing with the role of Port State in the fight against IUU fishing is obsolete as it has been “superseded” by the Port State Measures Agreement.</li> </ul>
VI	Exchange of information	8. (a) Each Party shall report promptly to FAO all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international	

<sup>173</sup> See also, Section 42.5 of the IPOA-IUU in Annex 5

Article	Title	Relevant provisions	Comments
		<p>conservation and management measures, including the identity of the fishing vessel or vessels involved and measures imposed by the Party in respect of such activities. Reports on measures imposed by a Party may be subject to such limitations as may be required by national legislation with respect to confidentiality, including, in particular, confidentiality regarding measures that are not yet final.</p> <p>(b) Each Party, where it has reasonable grounds to believe that a fishing vessel not entitled to fly its flag has engaged in any activity that undermines the effectiveness of international conservation and management measures, shall draw this to the attention of the flag State concerned and may, as appropriate, draw it to the attention of FAO. It shall provide the flag State with full supporting evidence and may provide FAO with a summary of such evidence. FAO shall not circulate such information until such time as the flag State has had an opportunity to comment on the allegation and evidence submitted, or to object as the case may be.</p>	

## Annex 3 – Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA, 1995)

**Table 3 – Relevant provisions of the UNFSA**

Article	Title	Relevant provisions	Comments
<b>Part V – Duties of the flag State</b>			
18	Duties of the flag State	<p>1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.</p> <p>2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.</p> <p>3. Measures to be taken by a State in respect of vessels flying its flag shall include:</p> <p>(a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;</p> <p>(b) establishment of regulations:</p> <p>(i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;</p> <p>(ii) to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels</p>	<ul style="list-style-type: none"> <li>• Paragraphs 1, 2 and 3(a) reaffirm the critical role of the flag State in exercising jurisdiction and control over the activities of fishing vessels authorized to fly its flag on the high seas and in ensuring compliance with international conservation and management measures by reiterating the obligations provided for in paragraphs 1(a) and 2 of Article III of the Compliance Agreement (see table in Annex 2 above) and more broadly in Article 94.1 of UNCLOS (See table in Annex 1 above).</li> <li>• While paragraph 3 echoes the measures required to be taken by flag States to exercise control over their national fishing vessels under the Compliance Agreement (e.g., creation of a national record of fishing vessels, requirements for marking of fishing vessels), it also provides for the establishment of monitoring, control and surveillance (MCS) systems through the implementation of national inspection schemes and national and regional observer programmes and the development and implementation of national and regional vessel monitoring systems (VMS) as well as for the regulation of transhipping operations on the high seas. Although provisions of paragraph 3 were not designed to ensure compliance with labour standards and respect of human rights on board fishing vessels, they offer opportunities for enforcement officers during at-sea or import inspections and observers, while on duty on board the fishing vessels they have been assigned to, to detect and</li> </ul>

Article	Title	Relevant provisions	Comments
		<p>otherwise than in accordance with the terms and conditions of a licence, authorization or permit;</p> <p>(c) establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;</p> <p>(d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;</p> <p>(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, inter alia:</p> <ul style="list-style-type: none"> <li>(i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to Articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;</li> <li>(ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers</li> </ul>	<p>report any suspected breach of labour standards or violation of human rights.</p> <ul style="list-style-type: none"> <li>• At-sea transhipments are widely recognised as high-risk operations that are used to launder illegally taken fish by transferring these catches from IUU fishing vessels to duly licensed fishing vessels. These operations result in the mixing of illegally and legally taken fish rendering the former untraceable. To tackle this issue, a number of RFMOs have put in place regional schemes to monitor transhipments at sea, including the presence of a regionally certified observer on board the receiving vessel (carrier vessel).<sup>174</sup> As above, these schemes could be used to detect and report suspected breach of labour standards or violation of human rights.</li> </ul>

<sup>174</sup> See for instance IOTC Resolution 19/06 on establishing a programme for transhipment by large-scale fishing vessels

Article	Title	Relevant provisions	Comments
		<p>from other States to carry out the functions agreed under the programmes; and</p> <p>(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;</p> <p>(h) regulation of transhipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined.</p>	
<b>Part VI – Compliance and Enforcement</b>			
19	Compliance and enforcement by the flag State	<p>1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:</p> <ul style="list-style-type: none"> <li>(a) enforce such measures irrespective of where violations occur;</li> <li>(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;</li> <li>(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;</li> <li>(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings</li> </ul>	<p>1. As indicated above, if, in the future, some international conservation and management measures adopted by RFMOs address the issues of labour standards for crew on fishing vessels and more generally of the protection of human rights thereupon, the provisions of Article 19 could thus be used to enforce these standards and rights by requiring flag States to:</p> <ul style="list-style-type: none"> <li>(a) enforce such measures irrespective of where violations occur;</li> <li>(b) investigate immediately and fully any alleged violation of such measures;</li> <li>(c) require the master, owner or operator of any vessel flying its flag to give information to the investigating authority;</li> <li>(d) if sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting judicial proceedings.</li> </ul> <p>2. Sanctions applicable for breach of labour standards or for violation of human rights on board fishing vessels are established in the flag State's labour law and any other specialised legislation on human trafficking, forced labour</p>

Article	Title	Relevant provisions	Comments
		<p>without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and</p> <p>(e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.</p> <p>2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.</p>	<p>and possibly modern slavery. To ensure consistency between the various national laws, lawmakers could introduce cross-references to such relevant labour and other laws in the fisheries legislation. Moreover, since some States may not have developed national labour standards applicable to fishing vessels/fishers (in particular in countries where fishers are not falling within the definition of seafarers), it might be advisable to make breach of international labour standards (minimum standards) as reflected in the ILO Work in Fishing Convention an offence under the Fisheries Law with the sanction to be applied for such a breach under the relevant labour law (cross-reference to the relevant Section of the Act).</p>
20	International cooperation in enforcement	<p>1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.</p> <p>2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet</p>	<ul style="list-style-type: none"> <li>States have a duty to cooperate, either directly or through RFMOs or other arrangements, to ensure compliance with and enforcement of any regional conservation and management measures, including any future measures on labour standards and protection of human rights.</li> <li>Assistance of any other State in the conduct of an investigation of an alleged violation of a conservation and management measure may be requested, in particular where it is the authorities of that State, through inspection of the vessel, which have detected and reported the suspected violation to the flag State. As provided under paragraph 5, States, in particular those operating a high seas fishing fleet,</li> </ul>

Article	Title	Relevant provisions	Comments
		<p>reasonable requests made by a flag State in connection with such investigations.</p> <p>3. A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.</p> <p>5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.</p>	<p>may seek to negotiate bilateral arrangements on mutual assistance in criminal matters with other States for making available to prosecuting authorities in other States evidence relating to the alleged violation. This may be even more relevant in the case of an alleged violation of human rights, considering the nature of the violation and the sensitivity of the matter.</p> <ul style="list-style-type: none"> <li>It is worth noting that information on the progress and outcome of investigations relating to infringement of labour standards or protection of human rights to all States that have an interest in, or are affected by, the alleged violation is important as crew members on board fishing vessels on the high seas are often of different nationalities.</li> </ul>
21	Subregional and regional cooperation in enforcement	<p>1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.</p> <p>5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence</p>	<ul style="list-style-type: none"> <li>In line with the provisions of Article 92.1 of UNCLOS, paragraph 1 makes provision to qualify the principle of exclusive jurisdiction of the flag State on the high seas by authorizing a State Party, which is a member of a RFMO, through its duly authorised inspectors, to board and inspect a fishing vessel flying the flag of another State Party to the UNFSA which operates in the RFMO's area of competence for the purpose of compliance with applicable conservation and management measures. While noteworthy, these provisions are insufficient to fight IUU fishing, non-compliance with labour standards and violation of human rights on the high seas effectively as rogue operators are unlikely to flag their vessels in a country participating to such organizations or arrangements.</li> <li>The procedure laid down in Article 21 applies to any breach of international conservation and management measures and should thus apply to any such measures relating to labour standards or protection of human rights adopted by a RFMO</li> </ul>

Article	Title	Relevant provisions	Comments
		<p>and shall promptly notify the flag State of the alleged violation.</p> <p>6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:</p> <ul style="list-style-type: none"> <li>(a) fulfil, without delay, its obligations under Article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or</li> <li>(b) authorize the inspecting State to investigate.</li> </ul> <p>7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.</p> <p>8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to</p>	<p>or a regional arrangement, provided any violation of such standards or rights are recognized as constituting a serious violation under paragraph 11(i). To do so, such other violations should be specified in procedures established by the relevant subregional or RFMO or arrangement. In practice, this means that any violation of labour standards for crew or of human rights on board any fishing vessel should be included in the definition of IUU fishing activities as provided for under the relevant conservation and management measure (CMM) of any RFMO.<sup>175</sup> Alternatively, any specific CMM may contain language expressly stating that any violation of labour standards or human rights constitutes a serious violation under Article 21.11(i) of the UNFSA. It can be argued that, by their nature, any violation of fundamental human rights should be regarded as a serious violation, irrespective of whether or not it is listed under paragraph 11(i).</p> <ul style="list-style-type: none"> <li>• In the event the flag State fails to respond or to take action upon notice by the inspecting State that there are clear grounds for believing that the vessel has committed a serious violation, the enforcement officers may remain on board and secure evidence and may require the master to assist in further investigation, including, where appropriate, bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in the agreed boarding and inspection procedures. Where decision to bring a vessel to a designated port has been taken, the inspecting State and the flag State as well as the port State, as appropriate, share the responsibility of ensuring the well-being of the crew regardless of their nationalities (paragraph 8).</li> </ul>

<sup>175</sup> See for instance IOTC Resolution 18/03 on establishing a list of vessels presumed to have carried out IUU fishing in the IOTC to establish a list of vessels presumed to have carried out IUU fishing in the WCPFC (CMM 2019-07)

Article	Title	Relevant provisions	Comments
		<p>respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.</p> <p>9. The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.</p> <p>10. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.</p> <p>11. For the purposes of this Article, a serious violation means:</p> <p>(a) ...</p> <p>(i) such other violations as may be specified in procedures established by the relevant subregional or</p>	<p>In practice, it is quite unclear what the concept of well-being entails in the context of the fishing industry? The Work in Fishing Convention does not bring much clarity on this issue. It makes only one reference to the well-being of fishers under Article 9.6(b) on minimum age in the context of night work. One should probably look at best practice derived from maritime law with respect to seafarers.</p> <p>The issues of human health, safety and well-being as well as abandonment of seafarers and fishers have been exacerbated and have come to the fore with the COVID-19 pandemic.</p> <ul style="list-style-type: none"> <li>Enforcement officers of the inspecting State are required to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew (paragraph 10) and should comply with basic procedures for boarding and inspection reflected in Article 22.</li> </ul>

Article	Title	Relevant provisions	Comments
		<p>regional fisheries management organization or arrangement.</p> <p>12. Notwithstanding the other provisions of this Article, the flag State may, at any time, take action to fulfil its obligations under Article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.</p> <p>13. This Article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.</p> <p>14. This Article applies <u>mutatis mutandis</u> to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.</p> <p>17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence</p>	

Article	Title	Relevant provisions	Comments
		so warrants, the State may take such action as may be appropriate in accordance with international law.	
22	Basic procedures for boarding and inspection pursuant to Article 21	<p>1. The inspecting State shall ensure that its duly authorized inspectors:</p> <ul style="list-style-type: none"> <li>(a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;</li> <li>(b) initiate notice to the flag State at the time of the boarding and inspection;</li> <li>(c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;</li> <li>(d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;</li> <li>(e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and</li> <li>(f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.</li> </ul> <p>2. The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products</p>	<ul style="list-style-type: none"> <li>• This Article sets out the basic procedures for boarding and inspection: (1) the duties of the inspecting State (par. 1); (2) the scope of enforcement officers' authority to carry out their mission. The focus of the inspection is exclusively on the vessel's fishing operations (par. 2); (3) the obligations of vessel masters (par. 3); and (4) the duties of the flag state (par. 4).</li> <li>• Certain RFMOs have adopted their own boarding and inspection procedures (e.g., WCPFC).<sup>176</sup></li> <li>• Should CMMs apply to labour standards and protection of human rights, these procedures could be used to ensure compliance with these standards and rights.</li> </ul>

<sup>176</sup> See WCPFC CMM on boarding and inspection procedures (CMM 2006-08). These procedures implement Article 26 of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

Article	Title	Relevant provisions	Comments
		<p>and any relevant documents necessary to verify compliance with the relevant conservation and management measures.</p> <p>3. The flag State shall ensure that vessel masters:</p> <ul style="list-style-type: none"> <li>(a) accept and facilitate prompt and safe boarding by the inspectors;</li> <li>(b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;</li> <li>(c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;</li> <li>(d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;</li> <li>(e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and</li> <li>(f) facilitate safe disembarkation by the inspectors.</li> </ul> <p>4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this Article and Article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.</p>	

<b>Article</b>	<b>Title</b>	<b>Relevant provisions</b>	<b>Comments</b>
23	Measures taken by a port State		The provisions of these measures are not reproduced in this table since they are obsolete with the adoption of the PSMA.
Annex I – Article 4	Vessel data and information		Annex 1 sets forth the standard requirements for the collection and sharing of data. Most of these data are related to fishing operations (e.g., total catch in number, discard statistics, etc.). The only information in relation to the crew required to be collected is the crew size of the vessel.

## Annex 4 – Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA, 2009)

Table 4 – Relevant provisions of the PSMA

Article	Title	Relevant provisions	Comments
<b>Part 1 – General Provisions</b>			
1	Use of terms	<p>(c) “fishing” means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;</p> <p>(d) “fishing related activities” means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transhipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;</p> <p>(e) “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;</p> <p>(g) “port” includes offshore terminals and other installations for landing, transhipping, packaging, processing, refuelling or resupplying;</p> <p>(j) “vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.</p>	<ul style="list-style-type: none"> <li>• The PSMA introduced the concept of “fishing related activities” in international law to denote any operation in support of, or in preparation for, fishing and provided a non-exhaustive list of such operations. It is noteworthy for this study that it includes “<b>the provisioning of personnel</b>” at sea. In other words, the <b>change of crew at sea</b> is entailed in this broad concept. Concurrently, the PSMA provides a narrower definition of the notion of “fishing” limiting it to the harvesting or taking of fish and any activity intended to search for, attract or locate fish (e.g., deploying drifting FADs). This approach has, in turn, been reflected in national fisheries legislation and more attention has been given to fishing related activities and support or supply vessels in fisheries policy instruments and legislation.</li> <li>• The PSMA does not contain a definition of the notion of “fishing vessel” but provides a broad definition of the term “vessel” instead. It covers both fishing and other vessels (support, supply or auxiliary vessels) involved in fishing related activities. It is similar in scope to the definition of “fishing vessel” provided for in the Compliance Agreement (see Annex 2 above).</li> <li>• The definition of the concept of “IUU fishing” contained in the PSMA refers to that enshrined in the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU).</li> </ul>

Article	Title	Relevant provisions	Comments
4	Relationship with international law and other international instruments	<p>1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of Parties under international law. In particular, nothing in this Agreement shall be construed to affect:</p> <p>(a) ...</p> <p>(b) the exercise by Parties of their sovereignty over ports in their territory in accordance with international law, including their right to deny entry thereto as well as to adopt more stringent port State measures than those provided for in this Agreement, including such measures adopted pursuant to a decision of a regional fisheries management organization.</p> <p>4. This Agreement shall be interpreted and applied in conformity with international law taking into account applicable international rules and standards, including those established through the International Maritime Organization, as well as other international instruments.</p>	<ul style="list-style-type: none"> <li>The PSMA sets out minimum standards for port State measures. Therefore, since Parties exercise full sovereignty over ports in their territory, they are entitled to adopt more stringent measures than those contained in the PSMA, including measures adopted pursuant to a decision of a relevant RFMO. This may include measures designed to discriminate against vessel operators who have a history or record of non-compliance with international labour standards or of violation of human rights.</li> <li>Application and interpretation of the PSMA should be consistent with international law taking into account any applicable international rules and standards. Although they are not expressly mentioned, these standards include those provided in the Work in Fishing Convention and any other applicable rules devised by the ILO.</li> </ul>
5	Integration and coordination at the national level	<p>Each Party shall, to the greatest extent possible:</p> <p>(a) integrate or coordinate fisheries related port State measures with the broader system of port State controls;</p> <p>(b) ...; and</p> <p>(c) take measures to exchange information among relevant national agencies and to coordinate the activities of such agencies in the implementation of this Agreement.</p>	<ul style="list-style-type: none"> <li>Cooperation between national agencies involved in the system of port controls (e.g., immigration, customs, port authority, fisheries, and labour) and coordination of their actions are key elements to ensure effective implementation of the PSMA and detection of IUU fishing activities. Such cooperative mechanisms could also be used to detect infringements of international labour standards and violations of human rights and would thus require the participation of representatives of the labour department in these mechanisms (e.g., Memorandums of Understanding (MOUs) or other arrangements) and training of officers from other agencies or departments by the labour department or ILO officers or experts. In this regard, it is important to note that Guidelines for port State control</li> </ul>

Article	Title	Relevant provisions	Comments
			officers to implement the Work in Fishing Convention have been developed by ILO. <sup>177</sup>
6	Cooperation and exchange of information	1. In order to promote the effective implementation of this Agreement and with due regard to appropriate confidentiality requirements, Parties shall cooperate and exchange information with relevant States, FAO, other international organizations and regional fisheries management organizations, including on the measures adopted by such regional fisheries management organizations in relation to the objective of this Agreement.	Exchange of information between Parties has become a standard provision of most international agreements and may include information related to CMMs on labour standards or protection of human rights adopted by RFMOs.
<b>Part 2 – Entry into port</b>			
7	Designation of ports	2. Each Party shall, to the greatest extent possible, ensure that every port designated and publicized in accordance with paragraph 1 of this Article has sufficient capacity to conduct inspections pursuant to this Agreement.	In mobilizing adequate capacity to control and inspect fishing and support vessels in designated ports, port States should ensure participation of labour inspectors. Should the labour department not have sufficient inspectors to carry out port inspections, then enforcement officers from other agencies or administrations that have been adequately trained in labour and human rights matters should be included.
8	Advance request for port entry	1. Each Party shall require, as a minimum standard, the information requested in Annex A to be provided before granting entry to a vessel to its port.  2. Each Party shall require the information referred to in paragraph 1 of this Article to be provided sufficiently in advance to allow adequate time for the port State to examine such information.	Information to be provided in advance by vessels requesting port entry laid down in Annex A does not include any information on the crew and other persons on board the vessel apart from the vessel master's name and nationality. However, nothing prevents any Party from extending the scope of information to be provided and from requesting additional information on the crew (e.g., crew size, list of crew members with names and nationalities, copy of work agreements).
9	Port entry, authorization or denial	1. After receiving the relevant information required pursuant to Article 8, as well as such other information as it may require to determine whether the vessel requesting entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, each Party	<ul style="list-style-type: none"> <li>• There is no language in Article 9 preventing it from applying to any vessel suspected of not complying with any CMM relating to labour standards or protection of human rights adopted by a relevant RFMO. However, considering the nature and seriousness of the suspected violations, one</li> </ul>

<sup>177</sup> See Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188), Geneva, ILO, 2011.

Article	Title	Relevant provisions	Comments
		<p>shall decide whether to authorize or deny the entry of the vessel into its port and shall communicate this decision to the vessel or to its representative.</p> <p>4. Without prejudice to paragraph 1 of this Article, when a Party has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a relevant regional fisheries management organization in accordance with the rules and procedures of such organization and in conformity with international law, the Party shall deny that vessel entry into its ports, taking into due account paragraphs 2 and 3 of Article 4.</p> <p>5. Notwithstanding paragraphs 3 and 4 of this Article, a Party may allow entry into its ports of a vessel referred to in those paragraphs exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing.</p>	<p>may wonder whether, in these circumstances, a port State should not be obligated to let the vessel enter into its ports for the exclusive purpose of inspecting it as provided for under paragraph 5.</p>
<b>Part 3 – Use of ports</b>			
11	Use of ports	<p>1. Where a vessel has entered one of its ports, a Party shall deny, pursuant to its laws and regulations and consistent with international law, including this Agreement, that vessel the use of the port for landing, transhipping, packaging and processing of fish that have not been previously landed and for other port services, including, <i>inter alia</i>, refuelling and resupplying, maintenance and drydocking, if:</p>	<p>Since breach of a CMM adopted by a RFMO is a IUU fishing activity, the provisions of this Article can be used in respect of any fishing or support vessel having contravened a CMM related to labour standards or protection of human rights.</p>

Article	Title	Relevant provisions	Comments
		<p>(e) the Party has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of such fishing, including in support of a vessel referred to in paragraph 4 of Article 9, unless the vessel can establish:</p> <ul style="list-style-type: none"> <li>(i) that it was acting in a manner consistent with relevant conservation and management measures; or</li> <li>(ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel referred to in paragraph 4 of Article 9.</li> </ul> <p>3. Where a Party has denied the use of its port in accordance with this Article, it shall promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision.</p>	
<b>Part 4 – Inspection and follow-up actions</b>			
12	Levels and priorities for inspection	<ol style="list-style-type: none"> <li>1. Each Party shall inspect the number of vessels in its ports required to reach an annual level of inspections sufficient to achieve the objective of this Agreement.</li> <li>2. Parties shall seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organizations, FAO or otherwise.</li> <li>3. In determining which vessels to inspect, a Party shall give priority to: <ul style="list-style-type: none"> <li>(a) vessels that have been denied entry or use of a port in accordance with this Agreement;</li> <li>(b) requests from other relevant Parties, States or regional fisheries management organizations that</li> </ul> </li> </ol>	<p>In order to fight IUU fishing more effectively, Parties are required to agree on the minimum levels of inspection of vessels to be carried out in their ports (par. 2). At the national level, each Party should determine which vessels should be regarded as high-risk vessels and thus be given priority for inspection. Nothing in this Agreement prevents Parties from extending the list of high-risk vessels provided in paragraph 3 to vessels suspected of not complying with international labour standards and/or of violating human rights.</p>

Article	Title	Relevant provisions	Comments
		<p>particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and</p> <p>(c) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing.</p>	
13	Conduct of inspections	<ol style="list-style-type: none"> <li>1. Each Party shall ensure that its inspectors carry out the functions set forth in Annex B as a minimum standard.</li> <li>2. Each Party shall, in carrying out inspections in its ports: <ol style="list-style-type: none"> <li>(a) ensure that inspections are carried out by properly qualified inspectors authorized for that purpose, having regard in particular to Article 17;</li> <li>(c) ensure that inspectors examine all relevant areas of the vessel, ... and any document or record on board that is relevant to verifying compliance with relevant conservation and management measures;</li> <li>(d) require the master of the vessel to give inspectors all necessary assistance and information, and to present relevant material and documents as may be required, or certified copies thereof;</li> <li>(e) make all possible efforts to facilitate communication with the master or senior crew members of the vessel, including where possible and where needed that the inspector is accompanied by an interpreter.</li> </ol> </li> </ol>	<ul style="list-style-type: none"> <li>• Annex B sets out the minimum standard for port State inspection procedures. It does not make any reference to working conditions or labour standards on board and only makes provision for the review of crew lists.<sup>178</sup> Annex B has been conceived as a minimum standard. Therefore, Parties may require inspectors to verify whether working and living conditions on board meet international minimum labour standards as reflected in the Work in Fishing Convention and may, for that purpose, require the master of any vessel to produce crew members' work agreements and any other relevant documentation for examination.</li> <li>• Inspectors should have the authority to access and inspect all relevant areas of the vessel. This should include resting areas and crew accommodations (paragraph 2(c)), which, in turn, offers an opportunity for inspectors to detect issues of non-compliance with labour standards and/or forced labour.</li> <li>• Communication with crew members is also critical to assess whether labour standards have been complied with and whether there might be use of forced labour on the vessel.</li> </ul>
14	Results of inspections	Each Party shall, as a minimum standard, include the information set out in Annex C in the written report of the results of each inspection.	Inspection reports may also include information on crew members (list of crew members with name and nationalities) and more fields related to working conditions on board the

<sup>178</sup> See Annex B, paragraph d)

Article	Title	Relevant provisions	Comments
			vessel (e.g., production of work agreements for crew members, last crew change). Additionally, inspectors should be encouraged to make comments in the inspection report if they found evidence of poor working and living conditions on board.
16	Electronic exchange of information	2. To the extent possible and with due regard to appropriate confidentiality requirements, Parties should cooperate to establish an information-sharing mechanism, preferably coordinated by FAO, in conjunction with other relevant multilateral and intergovernmental initiatives, and to facilitate the exchange of information with existing databases relevant to this Agreement.	This provision could be used to strengthen cooperation between FAO and ILO in the implementation of both the PSMA and the Work in Fishing Convention through the sharing of inspection reports that include comments or observations relating to working conditions on board inspected fishing and support vessels.
17	Training of inspectors	Each Party shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex E. Parties shall seek to cooperate in this regard.	It is noteworthy that the guidelines for the training of inspectors in Annex E, which list the areas to be covered by the training programme, does not comprise labour standards/rights issues (ILO Conventions) whereas it encompasses health, safety and security issues (IMO Conventions).
18	Port State actions following inspection	1. Where, following an inspection, there are clear grounds for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the inspecting Party shall: <ol style="list-style-type: none"> <li data-bbox="579 906 1253 1076">promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel's master is a national of its findings; and</li> <li data-bbox="579 1076 1253 1335">deny the vessel the use of its port for landing, transhipping, packaging and processing of fish that have not been previously landed and for other port services, including, <i>inter alia</i>, refuelling and resupplying, maintenance and drydocking, if these actions have not already been taken in respect of the vessel, in a manner consistent with this Agreement, including Article 4.</li> </ol>	Since breach of a CMM adopted by a RFMO is a IUU fishing activity, the provisions of this Article can be used in respect of any fishing or support vessel having contravened a CMM related to labour standards or protection of human rights.

Article	Title	Relevant provisions	Comments
		<p>2. Notwithstanding paragraph 1 of this Article, a Party shall not deny a vessel referred to in that paragraph the use of port services essential for the safety or health of the crew or the safety of the vessel.</p> <p>3. Nothing in this Agreement prevents a Party from taking measures that are in conformity with international law in addition to those specified in paragraphs 1 and 2 of this Article, including such measures as the flag State of the vessel has expressly requested or to which it has consented.</p>	
<b>Part 5 – Role of flag States</b>			
20	Role of flag State	<p>1. Each Party shall require the vessels entitled to fly its flag to cooperate with the port State in inspections carried out pursuant to this Agreement.</p> <p>2. When a Party has clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, it shall, as appropriate, request that State to inspect the vessel or to take other measures consistent with this Agreement.</p> <p>4. Where, following port State inspection, a flag State Party receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations.</p> <p>5. Each Party shall, in its capacity as a flag State, report to other Parties, relevant port States and, as appropriate,</p>	<ul style="list-style-type: none"> <li>• In complement to flag State's duties and responsibility under the UNFSA and the Compliance Agreement respectively, flag States are required to ensure that vessels entitled to fly their flags cooperate with the port State authorities during inspections (paragraph 1).</li> <li>• Provisions of paragraph 4 reiterates flag State' duties under Article 19 (b) of the UNFSA.</li> </ul>

<b>Article</b>	<b>Title</b>	<b>Relevant provisions</b>	<b>Comments</b>
		other relevant States, regional fisheries management organizations and FAO on actions it has taken in respect of vessels entitled to fly its flag that, as a result of port State measures taken pursuant to this Agreement, have been determined to have engaged in IUU fishing or fishing related activities in support of such fishing.	

## Annex 5 – International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO, 2001)

**Table 5 – Relevant provisions of the IPOA-IUU**

Paragraph	Relevant provisions	Comments
<b>II – Nature and scope of IUU Fishing and the International Plan of Action</b>		
3.1	<p>Illegal fishing refers to activities:</p> <p>3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;</p> <p>3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or</p> <p>3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.</p>	<ul style="list-style-type: none"> <li>The definition of the concept of “IUU fishing” provided in Section 3 of the IPOA-IUU and endorsed by the international community is widely recognized as the definition of reference. Some sort of “gold standard” definition against which other definitions of its type may be compared. While it was not intended to constitute a legal definition, it has been given some legal status by Article 1 of the PSMA, which does not provide a separate definition of IUU fishing nor reproduce the definition provided for in the IPOA-IUU but merely specifies that “IUU fishing” refers to the activities set out in Section 3 of the IPOA-IUU. By doing so, any modification of the definition of IUU fishing in the IPOA-IUU will automatically apply to the PSMA. At the national level, many States have adopted a similar approach and simply refers to the definition of the IPOA-IUU in their fisheries legislation or reproduce the definition therein. Lawmakers often do it to avoid any discussions on this issue as nothing prevents States from adopting their own definition of IUU or illegal fishing in domestic legislation. For instance, a State may decide to extend the definition of “illegal fishing” to violation of national or internationally recognised labour standards on board fishing vessels. It is important to note that some States do not wish to refer to the definition of IUU fishing provided in the IPOA-IUU in their domestic legislation as they do not want to be tied up by a definition that may change over time and the modifications of which they may not agree with.</li> <li>Most RFMOs have adopted resolutions or recommendations spelling out the activities that are regarded as IUU fishing activities.<sup>179</sup></li> </ul>

<sup>179</sup> See, for instance, ICCAT Recommendation on establishing a list of vessels presumed to have carried out IUU fishing activities (Recommendation 18-08)

Paragraph	Relevant provisions	Comments
		Hitherto, none has included breach of international labour standards on board a fishing or supply vessel in the list of IUU fishing activities.
3.2	<p>Unreported fishing refers to fishing activities:</p> <p>3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or</p> <p>3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.</p>	<ul style="list-style-type: none"> <li>It is important to note that if the notion of “illegal fishing” is well understood throughout the world, it may not be necessarily the case for the associated notions of “unreported fishing” and “unregulated fishing”.</li> <li>One may argue that “unreported fishing” should fall within the scope of the broader notion of “illegal fishing”, as failure to report or misreport information is clearly a breach of national laws and regulations or/and of international CMMs, and thus should not have been dealt with separately. Apparently, it was singled out to stress the importance of collecting and reporting adequate and accurate information on catch and fishing effort to ensure appropriate management decisions.</li> <li>In Viet Nam, for instance, the Fisheries Law of 2017 refers to the concept of “illegal commercial fishing” which is defined as “failure to report and comply with regulations of law”.<sup>180</sup></li> </ul>
3.3	<p>Unregulated fishing refers to fishing activities:</p> <p>3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or</p> <p>3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where</p>	The notion of “unregulated fishing” is probably the least well understood notion. Nonetheless, many States have included it in their fisheries legislation. It is usually formulated in the form of a presumption in national fisheries legislation. As a consequence, the burden of proof is shifted on to the operator of the concerned vessel who should demonstrate that fishing activities were conducted in a responsible manner or in a manner that is consistent with any applicable CMMs.

<sup>180</sup> See Section 7.6 of the Law on Fisheries (Law No. 18/2017/QH14)

Paragraph	Relevant provisions	Comments
	such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.	
<b>III – Objective and principles</b>		
9.1	<u>Participation and coordination</u> : To be fully effective, the IPOA should be implemented by all States either directly, in cooperation with other States, or indirectly through relevant regional fisheries management organizations or through FAO and other appropriate international organizations. An important element in successful implementation will be close and effective coordination and consultation, and the sharing of information to reduce the incidence of IUU fishing, among States and relevant regional and global organizations. The full participation of stakeholders in combating IUU fishing, including industry, fishing communities, and non-governmental organizations, should be encouraged.	Part III of the IPOA-IUU reiterates the need to enhance cooperation among all States, either directly or indirectly through RFMOs or other arrangements, to ensure effective implementation of the international plan. This is a constant element of all international fisheries instruments, whether binding or not.
9.3	<u>Comprehensive and integrated approach</u> : Measures to prevent, deter and eliminate IUU fishing should address factors affecting all capture fisheries. In taking such an approach, States should embrace measures building on the primary responsibility of the flag State and using all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market-related measures and measures to ensure that nationals do not support or engage in IUU fishing. States are encouraged to use all these measures, where appropriate, and to cooperate in order to ensure that measures are applied in an integrated manner. The action plan should address all economic, social and environmental impacts of IUU fishing.	Another common strategic element in international fisheries instruments is the development of comprehensive and integrated approaches.
<b>IV – Implementation of measures to prevent, deter and eliminate IUU fishing</b>		
<b>All States responsibilities</b>		
<b>International instruments</b>		
10	States should give full effect to relevant norms of international law, in particular as reflected in the 1982 UN Convention, in order to prevent, deter and eliminate IUU fishing.	Paragraphs 10 and 12 stress the need for States to give full effect to the international fisheries instruments that they have ratified, accepted or acceded to. This is a critical issue as there is a lot of pressure by the

Paragraph	Relevant provisions	Comments
		international community for States, in particular developing States, to ratify all international fisheries instruments, including those for which they may not have an obvious advantage or reason to do so (e.g., ratification of the PSMA for countries with no fishing ports equipped to receive foreign industrial fishing vessels).
11	States are encouraged, as a matter of priority, to ratify, accept or accede to, as appropriate, the 1982 UN Convention, the 1995 UN Fish Stocks Agreement and the 1993 FAO Compliance Agreement. Those States that have not ratified, accepted or acceded to these relevant international instruments should not act in a manner inconsistent with these instruments.	The IPOA-IUU was adopted prior to the devising of the Work in Fishing Convention (2007) and the Cape Town Agreement (2012) as thus could not have made a reference to these instruments.
12	States should implement fully and effectively all relevant international fisheries instruments which they have ratified, accepted or acceded to.	
<b>National legislation</b> <b>Legislation</b>		
16	National legislation should address in an effective manner all aspects of IUU fishing.	Should the concept of IUU fishing be extended to breach of internationally recognized labour standards as reflected in the Work in Fishing Convention or applicable national labour standards (in respect of national-flagged fishing vessels) through national fisheries legislation, such legislation should make provisions to support the implementation of these standards and any relevant labour laws, including laws on forced labour.
<b>National legislation</b> <b>State control over nationals</b>		
18	In the light of relevant provisions of the 1982 UN Convention, and without prejudice to the primary responsibility of the flag State on the high seas, each State should, to the greatest extent possible, take measures or cooperate to ensure that nationals subject to their jurisdiction do not support or engage in IUU fishing. All States should cooperate to identify those nationals who are the operators or beneficial owners of vessels involved in IUU fishing.	Use of front companies by beneficial owners or operators to evade identification, control and taxes is a well-known and documented scheme in the fishing industry. However, identification of these beneficial owners or operators require financial resources. With the development of artificial intelligence, private companies such as Ocean Mind or Trygg Mat Tracking have augmented their capability at processing and analysing huge quantity of data and are offering their services to governments, fisheries authorities and RFMOs around the world to strengthen their MCS systems (e.g., Thai Government with Ocean Mind).

Paragraph	Relevant provisions	Comments
19.	States should discourage their nationals from flagging fishing vessels under the jurisdiction of a State that does not meet its flag State responsibilities. <sup>181</sup>	One may explore whether partnership with such companies may be struck to identify the beneficial ownership of high-risk fishing vessels.
<b>National legislation</b>		
20.	States should take measures consistent with international law in relation to vessels without nationality on the high seas involved in IUU fishing.	The issue of vessels without nationality is closely linked to the use of flag of convenience and the practice of “flag hopping”, that is repeated and quick changes of a vessel’s flag. These issues should be dealt with together. It is important to note that the current flag of most vessels on the lists of IUU vessels established by RFMOs is unknown or unclassified. Many of these vessels have a history of flag hopping (see record of previous flags). While recently adopted fisheries legislation generally addresses the issue of vessels without nationality to implement applicable CMMs and international treaties, few make provisions with regard to the practice of flag hopping even though vessels having a history of frequent changes of flag may be classified as high-risk vessels in fisheries policy instruments and MCS strategies. <sup>183</sup> Frequent changes of flag is likely to

<sup>181</sup> To be read together with Section 39 below

<sup>182</sup> See [https://news.mongabay.com/2021/04/red-flag-predatory-european-ships-help-push-indian-ocean-tuna-to-the-brink/?utm\\_campaign=2021-04-16+ION&utm\\_medium=email&utm\\_source=Pew](https://news.mongabay.com/2021/04/red-flag-predatory-european-ships-help-push-indian-ocean-tuna-to-the-brink/?utm_campaign=2021-04-16+ION&utm_medium=email&utm_source=Pew)

<sup>183</sup> There are some exceptions. See for instance, the provisions of Article 27 (f) of the Law No. 19-05/AU of 1 April 2020 revising the Fisheries and Aquaculture Code of Comoros which provides that no fishing licence or authorisation to fish on the high seas should be granted to a vessel which, in the past three years, has changed flags more

Paragraph	Relevant provisions	Comments
		have implications on the working conditions on board the concerned fishing vessels and on the work agreements signed by crew members as it is the labour law of the flag State that applies on board the vessel. One will have to ensure that such work agreements include appropriate provisions dealing with this issue.
<b>National legislation</b> <b>Sanctions</b>		
21	States should ensure that sanctions for IUU fishing by vessels and, to the greatest extent possible, nationals under its jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such fishing. This may include the adoption of a civil sanction regime based on an administrative penalty scheme. States should ensure the consistent and transparent application of sanctions.	This Section reiterates in similar language the need for flag States to work out an appropriate penalty scheme in their fisheries legislation designed to effectively prevent, deter and eliminate IUU fishing and deprive offenders of the benefits accruing from such fishing as provided for in Article III.8 of the Compliance Agreement and Article 19.2 of the UNFSA. Sanctions for breach of applicable working conditions on board fishing and support vessels are established under other laws (e.g., labour law, shipping law, law on forced labour).
<b>National legislation</b> <b>Monitoring, control and surveillance</b>		
24 (24.1 to 24.10)		These paragraphs reaffirm the importance for States to develop a robust MCS system and restate the requirements set out in Article 18 of the UNFSA.
<b>National legislation</b> <b>National plans of action</b>		
25	States should develop and implement, as soon as possible but not later than three years after the adoption of the IPOA, national plans of action to further achieve the objectives of the IPOA and give full effect to its provisions as an integral part of their fisheries management programmes and budgets. These plans should also include, as appropriate, actions to implement initiatives adopted by relevant regional fisheries management organizations to prevent, deter and eliminate IUU fishing. In doing so, States should encourage the full participation and	Pursuant to the adoption of the IPOA-IUU and with the technical assistance of FAO, where requested, many States developed a National Plan of Action on IUU fishing (NPOA-IUU). These plans have, for the most part, been modelled after the IPOA-IUU. They do not address issues related to labour standards and the well-being of crew nor human rights abuses on board fishing and supply vessels, including in the risk-based analysis underpinning the plans.

than twice unless the operator or owner of the vessel can demonstrate that these changes were legitimate and were not related, in any manner, to IUU fishing operations or any activity in support of such activities.

Paragraph	Relevant provisions	Comments
	engagement of all interested stakeholders, including industry, fishing communities and non-governmental organizations.	
26	At least every four years after the adoption of their national plans of action, States should review the implementation of these plans for the purpose of identifying cost-effective strategies to increase their effectiveness and to take into account their reporting obligations to FAO under Part VI of the IPOA.	While many NPOAs-IUU have been drafted, a significant number of them, in particular in developing countries, have never been officially approved nor implemented.
27	States should ensure that national efforts to prevent, deter and eliminate IUU fishing are internally coordinated.	The IPOA-IUU reasserts the need to put in place coordinating mechanisms between national agencies involved in MCS to fight IUU fishing effectively. As mentioned above, States should ensure the participation of labour departments therein.
<b>National legislation</b> <b>Cooperation between States</b>		
28 to 31		Provisions of paragraphs 28 to 31 restate the importance of cooperation between States in the fight against IUU fishing in line with the relevant provisions of UNCLOS, UNFSA and the Compliance Agreement (see annexes above).
<b>Flag States Responsibilities</b> <b>Fishing vessel registration</b>		
34 to 36		These provisions repeat the requirements provided for in the Compliance Agreement and the UNFSA. One may want to look into China's national policy. It would seem that China encourages its fishing vessels' owners to reflag their vessels in other countries (excess fishing capacity) to have access to fisheries resources in third countries' economic exclusive zones (EEZs). It should be noted that China has never been yellow or red carded by the European Commission under the EU IUU regulations.
37	All States involved in a chartering arrangement, including flag States and other States that accept such an arrangement, should, within the limits of their respective jurisdictions, take measures to ensure that chartered vessels do not engage in IUU fishing.	Chartering of fishing vessels has been regulated by several RFMOs to prevent chartering arrangements from being used as a means to circumvent CMMs. <sup>184</sup> Resolutions adopted by RFMOs define, among other things, the responsibilities of the flag and chartering States under such arrangements. The responsibility for ensuring compliance with

<sup>184</sup> See for instance ICCAT Recommendation on vessel chartering (Recommendation 13-14) and IOTC Resolution 19/07 on vessel chartering in the IOTC area of competence

Paragraph	Relevant provisions	Comments
		labour standards on board charter vessels (without change of flag) remains with the flag State.
39	States should take all practicable steps, including denial to a vessel of an authorization to fish and the entitlement to fly that State's flag, to prevent "flag hopping".	See comments with respect to paragraphs 19 and 20 above.
40	Although the functions of registration of a vessel and issuing of an authorization to fish are separate, flag States should consider conducting these functions in a manner which ensures each gives appropriate consideration to the other. Flag States should ensure appropriate links between the operation of their vessel registers and the record those States keep of their fishing vessels. Where such functions are not undertaken by one agency, States should ensure sufficient cooperation and information sharing between the agencies responsible for those functions.	<ul style="list-style-type: none"> <li>See comments in respect of Article 91 of UNCLOS in Annex 1, fourth bullet point.</li> <li>To facilitate the monitoring of fishing vessels' registration and the sharing of information on these vessels between the Maritime Authority and the Fisheries Administration, some countries have established a fishing vessels book, listing all registered fishing vessels under the national ship register. In addition, one should ensure that duly authorized fisheries officers have an easy access to information entered into the ship register with regard to fishing and supply vessels.</li> <li>In practice cooperation between the Maritime Authority and the Fisheries Administration may not be easy in particular with respect to the registration of supply vessels, as these vessels are merchant ships. Cooperation may also face some resistance from the Maritime Authority in countries running open registers, especially in places where the administration of such registers has been outsourced to a third party through agreements.</li> </ul>
<b>Flag State responsibilities</b> <b>Record of fishing vessels</b>		
42.5	Each flag State's record of fishing vessels ... may also include, <i>inter alia</i> : name and ownership history of the vessel, and, where this is known, the history of non-compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level;	Many flag States require the inclusion of the history of non-compliance for every fishing vessel entered into the national record of fishing vessels. The scope of such history is generally restricted to violations of the fisheries laws and regulations and applicable international CMMs. However, nothing prevents the flag State to extend it to any breach of labour laws and any violation of human rights.
<b>Flag State responsibilities</b> <b>Authorization to fish</b>		

Paragraph	Relevant provisions	Comments
47.7	Conditions under which an authorization is issued may also include, where required: ... compliance with applicable international conventions and national laws and regulations in relation to maritime safety, protection of the marine environment, and conservation and management measures or provisions adopted at a national, regional or global level;	<ul style="list-style-type: none"> <li>Flag States are required to ensure that each of the vessels entitled to fly their flags fishing in waters beyond national jurisdiction holds a valid authorization issued by them. This reiterates the obligation provided under Article III.2 of the Compliance Agreement and Article 18.2 of the UNFSA.</li> <li>It is interesting to note that conditions, which may be attached to the authorization, include maritime safety and protection of the marine environment, but omit to mention decent working conditions or the well-being of the crew.</li> </ul>
48	Flag States should ensure that their fishing, transport and support vessels do not support or engage in IUU fishing. To this end, flag States should ensure that none of their vessels re-supply fishing vessels engaged in such activities or tranship fish to or from these vessels	This prohibition should be extended to vessels known or suspected not to comply with internationally recognized labour standards or for using forced labour.
<b>Coastal State measures</b>		
51.8	Among the measures that a coastal should consider are: ... avoiding licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing, taking into account the provisions of paragraph 36.	This measure should be extended to vessels with a record of non-compliance with internationally recognized labour standards or national labour standards on board fishing vessels or of using of/employing forced labour.
<b>Port State measures</b>		
52 to 64		Paragraphs 52 to 64 have, for the most part, been incorporated in the PSMA.
<b>Internationally agreed market-related measures</b>		
66	States should take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant regional fisheries management organization to have been engaged in IUU fishing from being traded or imported into their territories.	This measure should also be applied to fishing vessels that have used forced labour to catch fisheries resources.
69	Trade-related measures to reduce or eliminate trade in fish and fish products derived from IUU fishing could include the adoption of multilateral catch documentation and certification requirements, as well as other appropriate multilaterally-agreed measures such as import and export controls or prohibitions.	Use of catch documentation and certification requirements could be used to attest that fish to be traded on national and international markets were caught by fishers who were employed in a manner consistent with internationally recognized labour standards and were treated in a manner respectful of human rights. In this regard, one should examine

Paragraph	Relevant provisions	Comments
		Indonesia's attempt to develop and implement a fisheries human rights certification system. <sup>185</sup>
73	<p>States should take measures to ensure that their importers, transhippers, buyers, consumers, equipment suppliers, bankers, insurers, other services suppliers and the public are aware of the detrimental effects of doing business with vessels identified as engaged in IUU fishing, whether by the State under whose jurisdiction the vessel is operating or by the relevant regional fisheries management organizations in accordance with its agreed procedures, and should consider measures to deter such business. Such measures could include, to the extent possible under national law, legislation that makes it a violation to conduct such business or to trade in fish or fish products derived from IUU fishing.</p>	<p>Market-related measures should be extended to vessels known for ill-treatment of their crew, for not complying with internationally recognized labour standards, for using forced labour or for any other violation of human rights.</p>
<b>Regional fisheries management organizations</b>		
78 to 84		This part restates the importance of regional cooperation between coastal and fishing States, through RFMOs, in the fight against IUU fishing in line with UNCLOS, the Compliance Agreement and UNFSA.
80.11	<p>States, acting through relevant regional fisheries management organizations, should take action to strengthen and develop innovative ways, in conformity with international law, to prevent, deter, and eliminate IUU fishing. Consideration should be given to including the following measures:</p> <p>...</p> <p>definition of circumstances in which vessels will be presumed to have engaged in or to have supported IUU fishing.</p>	<p>As was mentioned above, most RFMOs have adopted resolutions or recommendations spelling out the activities that are regarded as IUU fishing activities in their area of competence. Should resolutions on working conditions for crew be adopted by RFMOs in the near future, it would create an opportunity for Contracting Parties to review the list of IUU fishing activities with a view to including violations of working conditions therein.</p>

<sup>185</sup> See Indonesia's fisheries human rights certification system: assessment, commentary, and recommendations, Working Paper, ILO Southeast Asia Fisheries Project (2019). [https://www.ilo.org/jakarta/whatwedo/publications/WCMS\\_713924/lang--en/index.htm](https://www.ilo.org/jakarta/whatwedo/publications/WCMS_713924/lang--en/index.htm)



## Annex 6 – Work in Fishing Convention, 2007 (C188)

Table 6 – Relevant provisions of C188

Article	Title	Relevant provisions	Comments
<b>Part I – Definitions and scope</b>			
1(a)	Definitions	“commercial fishing” means all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing.	<ul style="list-style-type: none"> <li>The definition of “commercial fishing” is broad and only subsistence fishing and recreational fishing are explicitly excluded from its scope. The notion of “subsistence fishing” is not defined in the Convention. Therefore, it is assumed that it has a similar meaning as the term “subsistence fishery” provided in the FAO Fisheries Glossary, which reads as follows: “a fishery where the fish caught are shared and consumed directly by the families and kin of the fishers rather than being bought by middle-(wo)men and sold at the next larger market”. In practice, excess catches are often sold or exchanged for other goods or services and this reality is often reflected in the definition of “subsistence fishing” in national fisheries legislation.</li> <li>Interestingly, C188 applies not only to maritime areas but also to freshwater bodies.</li> </ul>
1(d)	Definitions	“fishing vessel owner” means the owner of the fishing vessel or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organization or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner.	This definition does not expressly make reference to the beneficial owner(s). This definition is similar to that of “operator” under fisheries law.
1(e)	Definitions	“fisher” means every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who	The definition of “fisher” is broad, generally covering every person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, regardless of the legal or

Article	Title	Relevant provisions	Comments
		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.	social status of that person (e.g., professional fisher, occasional fisher). This raises the issue of the legal status of fishers under national legislation. In countries where “fishers” are not considered as a subgroup of the broader concept of “seafarer”, fishers may not have a clearly established legal status.
1(f)	Definitions	“fisher’s work agreement” means a contract of employment, Articles of agreement or other similar arrangements, or any other contract governing a fisher’s living and working conditions on board a vessel.	A fisher’s work agreement can take any form. Although it is not expressly mentioned in the definition, these agreements should be in writing. <sup>186</sup>
1(g)	Definitions	“fishing vessel” or “vessel” means any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing.	This definition covers all types of vessels, irrespective of size, tonnage or means of propulsion, used or intended to be used for the purpose of commercial fishing. Therefore, it applies to any crafts used for commercial fishing activities, ranging from small-scale fishing vessels to large seiners, long liners or trawlers. The objective of C188 is to protect as great a number of the world’s fishers as possible, including those working on smaller, coastal fishing vessels.
2	Scope	<ol style="list-style-type: none"> <li>1. Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.</li> <li>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.</li> <li>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.</li> </ol>	<ul style="list-style-type: none"> <li>• C188 applies to all fishers and all categories of fishing vessels engaged in commercial fishing. 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 of “flexibility clauses” (e.g., Articles 3 and 4 below). 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.</li> <li>• The requirements for the protection provided in C188 for fishers working on vessels of 24 meters in length and over are more stringent and not directly applicable to smaller vessels.</li> </ul>

<sup>186</sup> See Article 20 of C188

Article	Title	Relevant provisions	Comments
			However, Parties are encouraged to extend, in whole or in part, the same level of protection to fishers working on smaller fishing vessels. One should bear in mind that the bulk of the world's commercial fishing fleet consists of fishing vessels less than 24 meters in length.
3	Scope	<p>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:</p> <ul style="list-style-type: none"> <li>(a) fishing vessels engaged in fishing operations in rivers, lakes or canals;</li> <li>(b) limited categories of fishers or fishing vessels.</li> </ul> <p>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.</p> <p>3. Each Member which ratifies this Convention shall:</p> <ul style="list-style-type: none"> <li>(a) in its first report on the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation: <ul style="list-style-type: none"> <li>(i) list any categories of fishers or fishing vessels excluded under paragraph 1;</li> <li>(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</li> </ul> </li> </ul>	Any Party may exclude any fishing vessels engaged in inland fishing operations and/or any limited categories of fishers or fishing vessels from the requirements of the Convention should the implementation of the Convention raise special problems of a substantial nature. It is unclear what constitutes "a special problem of a substantial nature" under C188. However, these exclusions should be of a temporary nature, as Parties are encouraged to take measures, as appropriate, to extend progressively the requirements under C188 to the categories of fishers and fishing vessels concerned. They are also required to provide the reasons justifying such exclusions.

Article	Title	Relevant provisions	Comments
		<p>(iii) describe any measures taken to provide equivalent protection to the excluded categories; and</p> <p>(b) in subsequent reports on the application of the Convention, describe any measures taken in accordance with paragraph 2.</p>	
4	Scope	<p>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:</p> <ul style="list-style-type: none"> <li>(a) Article 10, paragraph 1;</li> <li>(b) Article 10, paragraph 3, in so far as it applies to vessels remaining at sea for more than three days;</li> <li>(c) Article 15;</li> <li>(d) Article 20;</li> <li>(e) Article 33; and</li> <li>(f) Article 38.</li> </ul> <p>2. Paragraph 1 does not apply to fishing vessels which:</p> <ul style="list-style-type: none"> <li>(a) are 24 metres in length and over; or</li> <li>(b) remain at sea for more than seven days; or</li> <li>(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</li> <li>(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.</li> </ul>	<p>In line with the flexibility approach underlying the implementation of C188, Article 4 allows for the progressive implementation of all or part of the provisions listed in paragraph 1, for any Party facing special problems of a substantive nature in light of insufficiently developed infrastructure or institutions. Such an approach, however, must not apply to larger fishing vessels (24 metres in length and over) or vessels operating on the high seas nor to fishers working on such vessels. Any Party wishing to differ the implementation, or apply only part, of certain provisions listed in paragraph 1 is required to draw up a plan indicating which provisions of the Convention are to be progressively implemented and explain the rationale behind it. Parties are also required to consult and state the respective positions of representative organizations of employers and workers concerned.</p>

Article	Title	Relevant provisions	Comments
		<p>3. Each Member which avails itself of the possibility afforded in paragraph 1 shall:</p> <ul style="list-style-type: none"> <li>(a) in its first report on the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation: <ul style="list-style-type: none"> <li>(i) indicate the provisions of the Convention to be progressively implemented;</li> <li>(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</li> <li>(iii) describe the plan for progressive implementation; and</li> </ul> </li> <li>(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.</li> </ul>	
<b>Part II – General principles</b> <b>Competent authority and coordination</b>			
7	Competent authority and coordination	<p>Each Member shall:</p> <ul style="list-style-type: none"> <li>(a) designate the competent authority or authorities; and</li> <li>(b) establish mechanisms for coordination among relevant authorities for the fishing sector at the national and local levels, as appropriate, and define their functions and responsibilities, taking into account their complementarities and national conditions and practice.</li> </ul>	<p>Each Party is required to designate the competent authority or authorities that is/are responsible for the implementation of the Convention at the national level and to establish mechanisms for coordination among relevant authorities for the fishing sector at the national and local levels. The putting in place of appropriate coordinating and cooperative mechanisms between the relevant authorities or agencies is critical as, in many countries, experience shows that labour departments or agencies and fisheries administrations have no tradition of working together.</p>
<b>Part II – General principles</b> <b>Responsibilities of fishing vessel owners, skippers and fishers</b>			

Article	Title	Relevant provisions	Comments
8	Responsibilities of fishing vessel owners, skippers and fishers	<p>1. The fishing vessel owner has the overall responsibility to ensure that the skipper is provided with the necessary resources and facilities to comply with the obligations of this Convention.</p> <p>2. The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including but not limited to the following areas:</p> <ul style="list-style-type: none"> <li>(a) providing such supervision as will ensure that, as far as possible, fishers perform their work in the best conditions of safety and health;</li> <li>(b) managing the fishers in a manner which respects safety and health, including prevention of fatigue;</li> <li>(c) facilitating on-board occupational safety and health awareness training; and</li> <li>(d) ensuring compliance with safety of navigation, watchkeeping and associated good seamanship standards.</li> </ul> <p>3. The skipper shall not be constrained by the fishing vessel owner from taking any decision which, in the professional judgement of the skipper, is necessary for the safety of the vessel and its safe navigation and safe operation, or the safety of the fishers on board.</p> <p>4. Fishers shall comply with the lawful orders of the skipper and applicable safety and health measures.</p>	<ul style="list-style-type: none"> <li>• Article 8 establishes the responsibilities of fishing vessel owners, skippers and fishers. It is the overall responsibility of the fishing vessel owner to ensure that the skipper of the vessel is provided with the necessary resources (financial, human) and facilities (on board occupational safety and health awareness training) to comply with the requirements of C188. The skipper, in turn, has the responsibility for the safety and health of the fishers on board and the safe operation of the vessel. This means that the skipper should not be constrained by the fishing vessel owner from taking any decision which, in his/her professional judgment, is warranted to ensure the safety of the vessel and the crew on board. It also means that in case of ill-treatment of fishers on board the vessel, the skipper will not be able to escape his/her responsibility by claiming that he/she acted on the orders of the fishing vessel owner.</li> <li>• As for the fishers, they have an obligation to comply with the skipper's orders, as long as these orders are lawful, and with applicable safety and health measures.</li> </ul>

### Part III – Minimum requirements for work on board fishing vessels

#### Minimum age

9	Minimum age	<p>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.</p> <p>3. The minimum age for assignment to activities on board fishing vessels, which by their nature or the</p>	<ul style="list-style-type: none"> <li>• As a general rule, the minimum age for work on board a fishing vessel must be 16 years. However, exemption may be granted by the competent authority to any 15 years old persons, who satisfy the following two cumulative requirements: (1) are no longer subject to compulsory schooling as provided by national law; and (2) are engaged in vocational training in fishing. In practice, this rule might be difficult to enforce in the context of small-scale coastal</li> </ul>
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Article	Title	Relevant provisions	Comments
		<p>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.</p> <p>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.</p> <p>6. The engagement of fishers under the age of 18 for work at night shall be prohibited.</p>	<p>fisheries where it is not uncommon for a fisher to bring his underage child along on board fishing vessels to teach him/her how to fish.</p> <ul style="list-style-type: none"> <li>• In order to ensure adequate protection of youngsters on board fishing vessels, the required minimum age may vary according to the types of activities to be performed. In this regard, C188 prohibits the assignment of any person less than 18 years to any activity, which by their nature or the circumstances in which they are carried out (e.g., at night, during stormy weather) are likely to jeopardize the health, safety or morals of young persons.</li> </ul>
<b>Part III – Minimum requirements for work on board fishing vessels</b>			
<b>Medical examination</b>			
10	Medical examination	<p>1. No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.</p> <p>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.</p> <p>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.</p>	<p>The general rule is that no fishers should be entitled to work on board a fishing vessel without a valid medical certificate. However, exemptions from this requirement may be granted, taking into account a number of parameters, including the size of the vessel and the type of fishing operation. This provision will enable the competent authority to exempt fishers working on board small-scale fishing vessels from this obligation in countries where implementation of such a measure might be difficult to achieve. However, no exemption must be granted for a fisher working on board a fishing vessel of 24 metres in length or greater or which normally remains at sea for more than 3 days. Consideration of the duration of the fishing trip is an important factor that allows the extension of this requirement to a large range of fishing vessels.</p>
<b>Part IV – Conditions of service</b>			
<b>Manning and hours of rest</b>			
13	Manning and hours of rest	Each Member shall adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that:	These two requirements are essential for ensuring the safe navigation and operation of the vessel as well as the safety and health of fishers. However, these obligations are rarely fulfilled

Article	Title	Relevant provisions	Comments
		<ul style="list-style-type: none"> <li>(a) their vessels are sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper; and</li> <li>(b) fishers are given regular periods of rest of sufficient length to ensure safety and health.</li> </ul>	by fishing vessels involved in IUU fishing activities and/or flying a flag of convenience.
14	Manning and hours of rest	<p>1. In addition to the requirements set out in Article 13, the competent authority shall:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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: <ul style="list-style-type: none"> <li>(i) ten hours in any 24-hour period; and</li> <li>(ii) 77 hours in any seven-day period.</li> </ul> </li> </ul> <p>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.</p>	<p>Article 14 sets a minimum standard with respect to hours of rest on board fishing vessels of any size staying at sea for more than three days. Minimum hours of rest must not be less than: (a) 10 hours in any 24-hour period; and (b) 77 hours in any 7-day period.</p> <p>As for vessels of 24 metres in length and greater, it is the responsibility of the competent authority to establish a minimum level of manning for the safe navigation of the vessel, including specification of the number and qualifications of the fishers required.</p>

**Part IV – Conditions of service**  
**Crew list**

Article	Title	Relevant provisions	Comments
15	Crew list	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.	<ul style="list-style-type: none"> <li>The requirement of carrying a crew list applies across the board to any fishing vessel engaged in commercial fishing, regardless of size or time spent at sea. In practice, it is likely to be a challenge, for many countries, to apply this requirement in small-scale fisheries. Furthermore, there is no indication whatsoever on the type of information that should be included in the crew list as a minimum standard.</li> <li>While a copy of the crew list should be submitted to the competent authority prior to departure, or communicated to it immediately after departure of the vessel, Article 15 fails to address the issue of change of crew at sea, in particular for vessels remaining at sea for long periods of time, notably tuna long liners.</li> </ul>
<b>Part IV – Conditions of service</b> <b>Fisher's work agreement</b>			
16	Fisher's work agreement	<p>Each Member shall adopt laws, regulations or other measures:</p> <ul style="list-style-type: none"> <li>(a) requiring that fishers working on vessels flying its flag have the protection of a fisher's work agreement that is comprehensible to them and is consistent with the provisions of this Convention; and</li> <li>(b) specifying the minimum particulars to be included in fishers' work agreements in accordance with the provisions contained in Annex II.</li> </ul>	It is the responsibility of the flag State to adopt laws and regulations requiring that any fishers working on fishing vessels flying its flag should be protected by a work agreement that is in a language comprehensible to them and consistent with the minimum standard set by C188, notably with Annex II which provides the minimum particulars to be included in such a work agreement.
17	Fisher's work agreement	<p>Each Member shall adopt laws, regulations or other measures regarding:</p> <ul style="list-style-type: none"> <li>(a) procedures for ensuring that a fisher has an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded;</li> </ul>	<p>In addition to the requirements under Article 16, the flag State has the responsibility to:</p> <ul style="list-style-type: none"> <li>(a) develop appropriate procedures to ensure that the fisher has the opportunity to review and seek advice on the terms of the work agreement before signing it. This requirement is particularly important in countries hiring migrant workers to crew their fishing vessels.</li> </ul>

Article	Title	Relevant provisions	Comments
		<p>(b) where applicable, the maintenance of records concerning the fisher's work under such an agreement; and</p> <p>(c) the means of settling disputes in connection with a fisher's work agreement.</p>	(b) put in place appropriate mechanisms to settle any dispute arising from a fisher's work agreement.
18	Fisher's work agreement	The fisher's work agreement, a copy of which shall be provided to the fisher, shall be carried on board and be available to the fisher and, in accordance with national law and practice, to other concerned parties on request.	It is the responsibility of the vessel owner and of the skipper to ensure that the work agreement of every fisher on the crew list is carried on board the vessel and be made available to the fisher. In addition, the fisher should be provided with a copy of the agreement. Overall, it should be the responsibility of the competent authority of the flag State to ensure that this requirement is complied with by any vessel owners and skippers. These agreements should also be made available, upon request, to authorized officers during inspection of the vessel.
20	Fisher's work agreement	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 20 states very clearly that it is the responsibility of the fishing vessel owner to ensure that each fisher has a written work agreement, signed by both parties, providing decent work and living conditions on board the vessel.
<b>Part IV – Conditions of service</b> <b>Repatriation</b>			
21	Repatriation	<p>1. Members shall ensure that fishers on a fishing vessel that flies their flag and that enters a foreign port are entitled to repatriation in the event that the fisher's work agreement has expired or has been terminated for justified reasons by the fisher or by the fishing vessel owner, or the fisher is no longer able to carry out the duties required under the work agreement or</p>	<ul style="list-style-type: none"> <li>The issue of repatriation is very important in particular for crew working on board fishing vessels operating on the high seas or in the waters under the national jurisdiction of another State. It is the responsibility of the flag State to ensure that any fisher working on board a fishing vessel flying its flag and that enters a foreign port is entitled to repatriation in the circumstances spelled out in paragraph 1: (a) the work</li> </ul>

Article	Title	Relevant provisions	Comments
		<p>cannot be expected to carry them out in the specific circumstances. This also applies to fishers from that vessel who are transferred for the same reasons from the vessel to the foreign port.</p> <ol style="list-style-type: none"> <li>2. The cost of the repatriation referred to in paragraph 1 of this Article shall be borne by the fishing vessel owner, except where the fisher has been found, in accordance with national laws, regulations or other measures, to be in serious default of his or her work agreement obligations.</li> <li>3. Members shall prescribe, by means of laws, regulations or other measures, the precise circumstances entitling a fisher covered by paragraph 1 of this Article to repatriation, the maximum duration of service periods on board following which a fisher is entitled to repatriation, and the destinations to which fishers may be repatriated.</li> <li>4. If a fishing vessel owner fails to provide for the repatriation referred to in this Article, the Member whose flag the vessel flies shall arrange for the repatriation of the fisher concerned and shall be entitled to recover the cost from the fishing vessel owner.</li> <li>5. National laws and regulations shall not prejudice any right of the fishing vessel owner to recover the cost of repatriation under third party contractual agreements.</li> </ol>	<p>agreement has expired; (b) the work agreement has been terminated for justified reasons; (c) the fisher is no longer able to carry out the duties required under the work agreement (e.g., for cause of injury or illness); or (d) the fisher cannot be expected to carry out the duties in the specific circumstances. It is assumed that the “specific circumstances” referred to under (d) above include cases whereby a fishing vessel has been arrested and brought into a foreign port for violation of the fisheries law of a third country or applicable CMMs. If there is no genuine link between the vessel and the flag State, there is a high risk that the fishers and other crew members will be stranded in that foreign port. If such is the case, then it is the responsibility of the flag State to arrange for repatriation as provided under paragraph 4. This example stresses the need for States to adopt laws and regulations prescribing precisely the circumstances entitling a fisher to repatriation as provided under paragraph 3. In this regard, it should be noted that if repatriation clauses are commonly found in merchant shipping laws, they may not always apply to fishers and fishing vessels. This issue is rarely dealt with under the fisheries legislation.</p> <ul style="list-style-type: none"> <li>• The cost of the repatriation should be borne by the fishing vessel owner, except where the fisher has been found in serious default of his/her work agreement.</li> </ul>

**Part IV – Conditions of service**  
**Recruitment and placement**

22	Recruitment and placement	<ol style="list-style-type: none"> <li>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.</li> </ol>	<p>It has been reported and documented that recruitment is a high-risk phase for migrant workers, especially illegal migrants, to fall prey to unscrupulous fishing vessel owners using the services of deceitful recruitment and placement agencies. Therefore, it is critical that States exercise oversight over any private service providing recruitment and placement for fishers which operates in</p>
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Article	Title	Relevant provisions	Comments
		<p>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.</p> <p>3. Each Member shall, by means of laws, regulations or other measures:</p> <ul style="list-style-type: none"> <li>(a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;</li> <li>(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</li> <li>(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.</li> </ul>	their territory, through the establishment of a standardized system of licensing or certification or other form of regulation. Among the measures to be adopted by States is the requirement that no fees or charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher. The purpose of this measure is to avoid that fishers are placed in a condition of debt bondage.
<b>Part IV – Conditions of service</b>			
<b>Payment of fishers</b>			
23	Payment of fishers	Each Member, after consultation, shall adopt laws, regulations or other measures providing that fishers who are paid a wage are ensured a monthly or other regular payment.	Regular payment of wages is another measure to prevent fishers from being held in debt bondage.
24	Payment of fishers	Each Member shall require that all fishers working on board fishing vessels shall be given a means to transmit all or part of their payments received, including advances, to their families at no cost.	States must ensure that fishers working on board fishing vessels have access to a means of money transfer to send any part of their wages or salary to their families and that no deduction on their wages or salary is made to pay for such service.
<b>Part V- Accommodation and food</b>			

Article	Title	Relevant provisions	Comments
26	Accommodation	Each Member shall adopt laws, regulations or other measures requiring that accommodation on board fishing vessels that fly its flag shall be of sufficient size and quality and appropriately equipped for the service of the vessel and the length of time fishers live on board.	Flag States have the responsibility to adopt laws and regulations requiring that adequate accommodation be provided to fishers on board fishing vessels and setting out a minimum standard to be met by such accommodation in line with the provisions of Annex III of C188.
27	Food and potable water	Each Member shall adopt laws, regulations or other measures requiring that: <ul style="list-style-type: none"> <li>(a) the food carried and served on board be of a sufficient nutritional value, quality and quantity;</li> <li>(b) potable water be of sufficient quality and quantity; and</li> <li>(c) the food and water shall be provided by the fishing vessel owner at no cost to the fisher. However, in accordance with national laws and regulations, the cost can be recovered as an operational cost if the collective agreement governing a share system or a fisher's work agreement so provides.</li> </ul>	Like for accommodation, flag States have the responsibility to adopt adequate legislation and measures to ensure that fishers on board fishing vessels flying their flag are provided with food and potable water of sufficient quality and quantity and at no extra cost to fishers.
<b>Part VI – Medical care, health protection and social security</b>			
29	Medical care	Each Member shall adopt laws, regulations or other measures requiring that: <ul style="list-style-type: none"> <li>(a) fishing vessels carry appropriate medical equipment and medical supplies for the service of the vessel, taking into account the number of fishers on board, the area of operation and the length of the voyage;</li> <li>...</li> <li>(e) fishers have the right to medical treatment ashore and the right to be taken ashore in a timely manner for treatment in the event of serious injury or illness.</li> </ul>	Flag States have the responsibility to adopt laws and regulations to ensure appropriate medical care on board their fishing vessels, including the requirements to carry adequate medical equipment and medical supplies.
31	Occupational safety and	Each Member shall adopt laws, regulations or other measures concerning:	Flag States have the responsibility to adopt laws and regulations concerning the prevention of occupational accidents, diseases and

Article	Title	Relevant provisions	Comments
	health and accident prevention	<ul style="list-style-type: none"> <li>(a) the prevention of occupational accidents, occupational diseases and work-related risks on board fishing vessels, including risk evaluation and management, training and on-board instruction of fishers;</li> <li>(b) training for fishers in the handling of types of fishing gear they will use and in the knowledge of the fishing operations in which they will be engaged;</li> <li>(c) the obligations of fishing vessel owners, fishers and others concerned, due account being taken of the safety and health of fishers under the age of 18;</li> <li>(d) the reporting and investigation of accidents on board fishing vessels flying its flag; and</li> <li>(e) the setting up of joint committees on occupational safety and health or, after consultation, of other appropriate bodies.</li> </ul>	any work-related risks on board fishing vessels, the training of fishers in the handling of various types of fishing gear, and the reporting and investigation of accidents on board fishing vessels.
35	Social security	Each Member shall undertake to take steps, according to national circumstances, to achieve progressively comprehensive social security protection for all fishers who are ordinarily resident in its territory.	The issue of social benefits for fishers raises the issue of fishers' legal status. In many developing countries, the status of professional fisher is not well established. Fishers working on board fishing vessels of 24 metres in length and greater often benefit from a legal regime that is closely associated to that applicable to seafarers, as they are often considered as a subcategory of seafarers.
38	Protection in the case of work-related sickness, injury or death	<ol style="list-style-type: none"> <li>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.</li> <li>2. In the event of injury due to occupational accident or disease, the fisher shall have access to: <ul style="list-style-type: none"> <li>(a) appropriate medical care; and</li> <li>(b) the corresponding compensation in accordance with national laws and regulations.</li> </ul> </li> </ol>	Flag States have a general responsibility to ensure the protection of fishers on board their fishing vessels for work-related sickness, injury or death. In this regard, fisheries law could be instrumental in ensuring compliance with this obligation by making the issuance or renewal of any fishing licenses or authorizations contingent upon the fulfilment with any requirement related to health protection and medical care (e.g., insurance).

Article	Title	Relevant provisions	Comments
		<p>3. Taking into account the characteristics within the fishing sector, the protection referred to in paragraph 1 of this Article may be ensured through:</p> <p>(a) a system for fishing vessel owners' liability; or</p> <p>(b) compulsory insurance, workers' compensation or other schemes.</p>	
<b>Part VII – Compliance and enforcement</b>			
40	Compliance and enforcement	Each Member shall effectively exercise its jurisdiction and control over vessels that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention including, as appropriate, inspections, reporting, monitoring, complaint procedures, appropriate penalties and corrective measures, in accordance with national laws or regulations.	Any flag State has an overall responsibility to exercise jurisdiction and control over vessels entitled to fly its flag with a view to ensuring compliance with C188 requirements. It includes the devising and putting in place of adequate complaint procedures and the introduction of appropriate penalties in the national laws. This will require the review of labour and immigration laws to ensure that the specificities of the fisheries sector, in particular the protection of labour and human rights at sea, are taken into account by lawmakers and reflected in the relevant laws and regulations.
41	Compliance and enforcement	<p>1. Members shall require that fishing vessels remaining at sea for more than three days, which:</p> <p>(a) are 24 metres in length and over; or</p> <p>(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, 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.</p>	Provisions of Article 41 require that all vessels remaining at sea for more than three days, which are either more than 24 metres in length and greater or normally operate in areas beyond the outer limits of the EEZ or the continental shelf of the flag State, carry a valid document (e.g., a certificate or authorization) issued by the competent authority (e.g., labour department) stating that the vessel has been inspected by the competent authority and complies with the minimum living and working standards set forth in C188. At this stage in the process, it is unclear whether any States, having ratified C188, have implemented and enforced this requirement. As of writing, only 19 countries have ratified C188, which is a very low number considering that it was adopted in 2007.
42	Compliance and enforcement	<p>1. The competent authority shall appoint a sufficient number of qualified inspectors to fulfil its responsibilities under Article 41.</p>	In case of shortage of inspectors, the labour department may train authorized officers from other departments or agencies, such as the fisheries department or the maritime authority, to carry out the inspections on its behalf. This raises the wider issue of effective

Article	Title	Relevant provisions	Comments
		<p>2. In establishing an effective system for the inspection of living and working conditions on board fishing vessels, a Member, where appropriate, may authorize public institutions or other organizations that it recognizes as competent and independent to carry out inspections and issue documents. In all cases, the Member shall remain fully responsible for the inspection and issuance of the related documents concerning the living and working conditions of the fishers on fishing vessels that fly its flag.</p>	<p>cooperation between national agencies involved in vessel controls both at sea and in port.</p>
43	Compliance and enforcement	<p>1. A Member which receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.</p> <p>2. If a Member, in whose port a fishing vessel calls in the normal course of its business or for operational reasons, receives a complaint or obtains evidence that such vessel does not conform to the requirements of this Convention, it may prepare a report addressed to the government of the flag State of the vessel, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.</p>	<ul style="list-style-type: none"> <li>Like for IUU fishing, flag States have an obligation to investigate any matter related to the non-compliance with the minimum living and working standards set forth by C188 by a fishing vessel flying its flag and take appropriate action to right any wrongdoing, pursuant to the lodging of a complaint or the finding of evidence supporting such a claim.</li> <li>Port State control is also critical in the detection of breach of C188 minimum standards. In the event that sufficient evidence is found to suspect that the living and working conditions on board the vessel are substandard, the port State may notify the flag State of the vessel of its findings through the sending of a report and take necessary measures to rectify any substandard conditions on board. Contrary to the provisions of Article 18 of the PSMA, notification of the flag State is not mandatory under C188. In addition, incidents may be reported to the ILO Director-General.</li> </ul>

## Annex 7 – Overlaps, conflicting provisions, gaps and synergies in global fisheries governance with respect to the protection of labour and human rights on board fishing vessels across FAO/ILO/IMO treaties

Since international instruments adopted by FAO, ILO and IMO were developed independently, no specific and significant overlaps or conflicting provisions were identified.

**Table 7 – Gaps in international fisheries and labour instruments**

Gaps	Comments
<b>International fisheries instruments</b>	
<p>International fisheries instruments (hard and soft law) underpinning global fisheries governance hardly address the issues of labour standards, forced labour or human trafficking for the purposes of forced labour at sea nor protection of human rights.</p>	<ul style="list-style-type: none"> <li>International fisheries instruments do not make any mention of the ILO fundamental conventions (e.g., 1930 Forced Labour Convention).</li> <li>UNCLOS, which is not <i>per se</i> a fisheries instrument, contains language referring to social matters, labour conditions and training of crew in Article 94 on duties of flag State on the high seas (see Annex 1).</li> <li>The issues of crew welfare, working and living conditions on board fishing vessels and protection of crew against human right abuses are first and foremost a national matter to be dealt with under domestic law.</li> </ul>
<ul style="list-style-type: none"> <li>One of the major and constant issue highlighted and discussed in international fora by the international community since the adoption of UNCLOS and the recognition of the primacy of flag State's sovereignty on the high seas (Article 94) is the failure of States to discharge their international obligations in their capacity as a flag State. Additional provisions have been introduced to define and give substance to the flag State responsibilities or duties in binding and non-binding international instruments alike, in particular in the 1993 Compliance Agreement, the 1995 UNFSA, the 2009 PSMA and the 2001 IPOA-IUU and guidelines have been developed to assist States in assessing their performance as flag States (VGFSP).</li> <li>The scope of flag State responsibilities or duties under those instruments focuses exclusively on fisheries management and sustainable use of fisheries resources (e.g., authorization to fish, reporting requirements,</li> </ul>	<ul style="list-style-type: none"> <li>The issue of flag State responsibility is central to the Compliance Agreement and the UNFSA and is also addressed, to some extent, in the PSMA. To date, the provisions of these instruments have had little impact in practice on improving certain flag States' behaviour on the high seas. In particular, these instruments have been unable to put an end to the use of FOC and the practice of flag hopping. It is well known and has been well documented that unscrupulous fishing vessel owners and operators register their vessels in FOC countries to avoid oversight and control of their fishing activities. These vessels are often breaking all types of rules, including vessel and crew safety regulations as well as crew welfare regulations and labour standards. This issue has been discussed in many international fora, but, to this date, no satisfactory measure or mechanism to eliminate this phenomenon has been agreed upon. While a number of IUU fishing vessel lists have been established (e.g., RFMOs, EU), no official list of FOC countries has been approved</li> </ul>

Gaps	Comments
<p>compliance with international conservation and management measures etc.). These instruments do not address the issues of crew welfare, labour rights and protection against human rights abuses on board fishing vessels.</p> <ul style="list-style-type: none"> <li>These instruments do not have much teeth as they do not include any sanction mechanism against States not discharging their flag State duties or responsibilities under international law. However, some States or integrated economic organizations, have adopted measures to preclude entry of illegally caught fish on their national markets.</li> </ul>	<p>by the international fisheries community. It is important to note, however, that the ITF has, through its Fair Practices Committee (a joint Committee of ITF seafarers' and dockers' unions) declared a list of FOC countries. Furthermore, it is quite striking that most of the vessels on the internationally recognized lists of IUU fishing vessels are of "unknown" flags.</p> <ul style="list-style-type: none"> <li>Regional initiatives, such as that led by the European Commission (EC) through the implementation of the EU IUU regulations, have attempted to block the entry of fish or fishery products from illegal fishing operations into the EU market. One of the main tools of this regulation is the identification of non-cooperating third countries, that is countries, which according to the EC assessment process under the regulations, do not discharge their obligations as a flag State under international law satisfactorily. The EC has used this process to give countries, such as Cambodia and Comoros, a red card on the basis of their lax fishing vessel' registration processes and their inability to exercise effective jurisdiction and controls over their national fishing vessels. One of the consequences of being listed as a non-cooperating third country is the prohibition to export any fish or fishery products to the EU market. It should be noted that despite strong evidence of IUU fishing by Chinese-flagged vessels in various seas and oceans, the EC has not given China any warning (yellow card) or red card.</li> </ul>
<p>The definition of the concept of IUU fishing in the IPOA-IUU is restricted to the conduct of fishing operations and compliance with national fisheries legislation and international conservation and management measures. It does not address the issues of crew welfare, labour standards, forced labour and more generally respect of human rights as these issues fall within the purview of ILO.</p>	<ul style="list-style-type: none"> <li>Whether the concept of IUU fishing should be modified to include a human dimension dealing with crew welfare, protection of labour standards and respect of human rights at sea has been discussed by representatives of FAO, ILO and IMO at high level meetings. While it was recognized that vessels involved in IUU fishing operations were probably more likely to also violate labour standards and vessel safety regulations, FAO, ILO and IMO representatives were also of the view that there was no compelling evidence to establish a clear and substantial link between IUU fishing operations and use of forced labour or abuse of human rights. Consequently, the three UN agencies committed to strengthening their cooperation in the fight against IUU</li> </ul>

Gaps	Comments
<ul style="list-style-type: none"> <li>In line with the provisions of UNCLOS, the Compliance Agreement and the UNFSA, coastal States and distant water fishing nations have established RFMOs and other arrangements to cooperate in the conservation and management of marine living resources in areas of the high seas. This cooperative approach has resulted in the adoption of a slew of conservation and management measures by RFMOs or other arrangements. Until recently, these measures have been focusing exclusively on the conservation and management of specific fish stocks on the high seas.</li> <li>In order to fight IUU fishing, most RFMOs have established a list of IUU fishing vessels, that is a black list of vessels that have been reported to have undermined or breached conservation and management measures or national fisheries legislation. Interestingly, most of the vessels included in such lists are reported of being of “unknown” nationality. While well-established, this practice does not seem particularly effective in fighting IUU fishing.</li> </ul>	<p>fishing, notably by holding joint events aiming at promoting the ratification of the PSMA, CTA and C188, but did not think it was necessary to modify the definition of IUU fishing enshrined in the IPOA-IUU.</p> <ul style="list-style-type: none"> <li>As was flagged in the comments column in Table 5 above with respect to paragraph 3.1 of the IPOA-IUU, any country can adopt its own definition of the notion of “IUU fishing” or “illegal fishing” in its domestic fisheries legislation. While few countries have done so until now, this may change in the near future pursuant to the recognition of a clear link between IUU fishing and forced labour in the USA and the submission of the <i>Illegal Fishing and Forced Labour Prevention Bill</i> for examination to the U.S. Congress. Enactment of this bill into law would certainly prompt other countries to reassess their policy and strategy in the fight against IUU fishing which may lead them to broaden the scope of these policies and strategies to encompass labour and human rights related issues.</li> <li>As was mentioned in Section 3.2 of this report, for the first time, in 2018, a RFMO, the WCPFC, adopted a non-binding resolution on labour standards for crew on fishing vessels. Following-up on this initiative, Indonesia submitted a proposal for a CMM on labour standards for crews on fishing vessels (binding measure) to promote safe and decent employment for fishing crew. This marks a departure from a strict conservation and management approach focusing exclusively on fish stocks and their ecosystems to a more holistic approach to fisheries governance on the high seas, which includes a human dimension and takes into consideration crew welfare and labour rights. This is an important step towards the integration of crew welfare and labour rights in fisheries governance on the high seas as the Pacific region, through the WCPFC and the Fisheries Forum Agency, is often the standard setting region in terms of fisheries management. Should the WCPFC adopt the CMM proposed by Indonesia at its next annual meeting in December 2021, it is very likely that similar proposals will soon be submitted and discussed in other RFMOs.</li> </ul>

Gaps	Comments
<ul style="list-style-type: none"> <li>There is a lack of a clear legal regime for vessels used or intended to be used for fishing related activities under international fisheries law. The concept of “fishing related activities” was introduced by the PSMA (see Table 4 above). This gave rise to the emergence of a new category of vessels under international fisheries law, vessels used or intended to be used for fishing related activities. A variety of terminologies has been used in international CMMs, fisheries agreements and national fisheries legislation to designate these vessels, including supply vessel, support vessel, auxiliary vessel, and tender vessel.</li> <li>The concept of “fishing related activities”, as defined in Article 1(d) of the PSMA, includes “the provisioning of personnel”. However, there is no other provision in the Agreement making reference to the provisioning or change of crew whether at sea or in port (see comments on C188 below).</li> </ul>	<ul style="list-style-type: none"> <li>Considering the limited impact of IUU fishing vessels blacklisting on the reduction of IUU fishing, one may re-assess this practice and examine whether it would not be more effective to move away from “rogue” fishing vessels to focus on “rogue” vessels’ operators and owners (including beneficial owners). Criteria to be included in the determination of non-compliant vessel’s operators or owners would be the breach of labour standards and/or the use of forced labour.</li> <li>Supply or support vessels are merchant ships subject to IMO rules or regulations. The workforce on board these vessels are seafarers. Minimum labour standards for seafarers are defined in the 2006 ILO Maritime Labour Convention (MLC).</li> <li>The terms most often used are supply or support vessel. Depending on the jurisdiction, they may be used interchangeably or denote different types of vessels. Therefore, there is a need for harmonizing the definitions and terminologies used to designate these vessels at the global level.</li> <li>At the national level, fishing vessels and support or supply vessels are often subject to a similar legal regime in the main fisheries legislation (e.g., authorization, VMS). However, few countries have adopted specific measures to regulate the use of support or supply vessels within the waters under their sovereignty or national jurisdiction or on the high seas. Development of such measures could be used, among other things, to regulate and monitor the changing of crew at sea.</li> <li>A set of provisions regulating the activities of supply vessels has been included in the annex setting out the conditions for the exercise of fishing activities by Union fishing vessels attached to recently adopted protocols of EU bilateral fisheries agreements. Interestingly, these provisions may specify the activities that a supply vessel may not undertake. For instance, Section 4 of the Annex appended to the 2017 Protocol to the Fisheries Partnership Agreement with Mauritius</li> </ul>

Gaps	Comments
	stipulates that the support provided by supply vessels must not include refuelling or transhipment of catches.
<p style="text-align: center;"><b>International labour instruments</b></p> <p>As was seen in Table 6 above, the definition of the term “fisher” is defined broadly and applies to any person employed or engaged in any capacity or carrying out an occupation on board any fishing vessel, irrespective of size, tonnage or means of propulsion. This raises the issue of the legal status of fishers under national legislation.</p>	<p>While in many countries, fishers working on board fishing vessels more than 24 meters in length are often regarded as a subgroup of seafarers, and thus benefit from the same legal regime, this is not necessarily the case, in particular in developing countries, for fishers working on smaller vessels, including semi-industrial fishing vessels (less than 24 m in length) and small-scale fishing vessels. In these countries, the status of “fisher” is often defined in the national fisheries legislation and used as a management tool to regulate access to fisheries and control fishing effort through the issuance of fisher ID or cards, but does not confer any social status or benefit on these fishers. Typically, the term “fisher” covers all types of persons engaged in commercial fishing operations, including professional and occasional fishers.</p>
<p>As of writing,<sup>187</sup> C118, which came into force on 16 November 2017, has been ratified by 18 countries only. This reflects the fact that labour issues have not been mainstreamed in global fisheries governance and that crew welfare on board fishing vessels is not seen as a priority by many governments. This, in turn, means that few countries have developed a minimum national labour standard for fishing vessels. By contrast, the issue of safety at sea on board small-scale fishing vessels has been considered as a priority in many countries and integrated in fisheries policy frameworks and national fisheries management plans and addressed through development projects.</p>	<ul style="list-style-type: none"> <li>Interestingly, the PSMA, which was adopted in 2009 and came into force on 5 June 2016, has, to this date, been ratified by 73 countries.<sup>188</sup> The discrepancy in the number of ratifications for these two treaties shows the lack of effective cooperation between ILO and IMO in the promotion of these complementary agreements and underscores the need for UN agencies to work closer together not only at the highest level but also on the ground at the national and regional levels.</li> <li>Not enough countries have ratified C188 yet to assess whether it has had a positive impact on the working and living conditions on board fishing vessels.</li> </ul>
<p>C188 is limited in scope as it does not address the issue of forced labour and human trafficking for the purpose of forced labour on board fishing vessels.</p>	<ul style="list-style-type: none"> <li>It is assumed that this issue is covered by the Forced Labour Convention and its 2014 Protocol as well as the UNCTOC and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The problem, however, is that the Forced Labour Convention and its 2014 Protocol, unlike C188, are not sector specific but of global application. This means that to ensure global coverage of</li> </ul>

<sup>187</sup> ILO website was last consulted on 25 May 2021. See [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::p11300\\_instrument\\_id:312333](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::p11300_instrument_id:312333)

<sup>188</sup> FAO website was last consulted on 25 May 2021. See <http://www.fao.org/treaties/results/details/en/c/TRE-000003/>

Gaps	Comments
	<p>the issue of forced labour on board fishing vessels, this issue should be addressed specifically under the flag State's domestic law.</p> <ul style="list-style-type: none"> <li>As a result of the point above, the requirement under the 2014 Protocol to provide victims of forced labour protection and access to appropriate and effective remedies has not been addressed in the fisheries governance framework.</li> </ul>
<p>The situation in the field is that there is very little interaction, if any at all, between the fisheries administration or agency and the labour department in many countries. This lack of cooperation or even mere dialogue has resulted in fisheries laws being mostly silent on labour issues and in labour laws not taking into account the specificities of the fisheries sector, in particular with respect to at-sea activities. In this respect, C188 requires every Party to designate the authority responsible for administering and implementing the Convention at the national level and to establish mechanisms for coordination among relevant national agencies for the fishing sector.</p>	<ul style="list-style-type: none"> <li>Setting up coordinating mechanisms between fisheries and labour institutions at the national level is critical. It will provide a forum of discussion that will contribute to improving understanding of the issues by both institutions and to mainstreaming labour issues in fisheries governance.</li> <li>Coordinating mechanisms should also include other agencies such as port authorities, immigration, maritime authority and any other administrations or agencies whose agents go on board fishing vessels to perform their duties.</li> </ul>
<ul style="list-style-type: none"> <li>C188 does not address the issue of change of crew at sea nor does it regulate the maximum period of time that can humanely be spent at sea by any crew member in one stretch without setting foot onshore.</li> <li>Article 15 of C188 only requires every fishing vessel to carry a crew list, a copy of which must be submitted to the competent authorities prior to, or immediately after, departure of the vessel (see comments in Table 6 above).</li> </ul>	<ul style="list-style-type: none"> <li>It has been well documented that a number of IUU fishing vessels operating on the high seas spend long periods of time at sea that may last months at a time and even years in some cases. These fishing operations involve at-sea transhipments of catches when the fish holds are full, refuelling at sea, provisioning of gears, food and other supplies at sea and also change of crew. Little is known about the change of crew at sea as this information is not required to be reported by domestic fisheries or labour legislation or international CMMs adopted by RFMOs or other arrangements.</li> <li>Linked to the issue of change of crew at sea is the issue of the maximum period of time that any fisher should be allowed to humanely spend at sea in one stretch without setting foot onshore. Interviews of victims of forced labour, whether as a result of human trafficking or not, have shown that isolation on board fishing vessels for long periods of time are detrimental to the physical and mental health of fishers.</li> </ul>

Gaps	Comments
	<ul style="list-style-type: none"> <li>In addition to the above, appropriate immigration regulations should be developed by port States to permit foreign crew on board foreign fishing vessels to disembark and spend time onshore while the catch is being offloaded or the vessel is being refuelled or is undergoing repair or stays in port for any other services.</li> </ul>
While C188 makes provisions requiring that fishers on board fishing vessels should be protected by work agreements that are consistent with the minimum standard set out in Annex II of the Convention, it does not address the issue of the validity of fishers' work agreements where the vessel on which fishers have been assigned changes nationality.	Considering the common practice of flag hopping by rogue vessels, it might be advisable to reinforce the basic particulars to be included in any fisher's work agreement by adding a clause dealing with the validity of the agreement in the event the vessel changes nationality and specifying which law should apply if the change of flag occurs during a fishing trip.
Bilateral agreements on migrant workers often do not cover the fisheries sector and, if they do, they generally do not address the issue of fish workers to be recruited for crewing fishing vessels of another State.	
Provisions of Article 21 of C188 on repatriation does not require signatories to report any abandonment of fishers in foreign ports to ILO or IMO so as to ensure that incidences of abandoned seafarers are entered on the Database on reported incidents of abandonment of seafarers and fishers hosted by ILO.	Nothing prevents any party to the C188 to reflect this requirement in its domestic law as C188 provides a minimum standard. The urgent need to take more effective measures to address the issue of repatriation of stranded crew in foreign ports has been highlighted with the COVID-19 crisis and will require enhanced cooperation between ILO and IMO and between the flag State and the countries of origin of crew members.
International instruments on the safety of fishing vessels	
The IRSFV, as consolidated and modified by the CTA, applies to commercial fishing vessels of 24 metres in length and greater or equivalent in gross tonnage. Irrespective of the fact that the IMO agreement has not yet entered into force, it is important to note that according to the figures published by FAO in the State of World Fisheries and Aquaculture 2020, <sup>189</sup> in 2018, only about 3 percent of all motorized fishing vessels were 24 m and larger (roughly more than 100 gross tonnage). This means that an overwhelmingly large majority of fishing vessels are not covered by these international safety regulations.	The same FAO document reports that in 2018, about 82 percent of the motorized fishing vessels, which had a known length classification, in the world were in the length overall class of less than 12 m, the majority of which were undecked. <sup>190</sup> In practice, this means that, at the national level, the safety of fishing vessels of 24 m in length and greater is ensured by maritime authorities, which have the trained and skilled personnel (surveyors) to carry out this task. For fishing vessels less than 24 meters, the situation is very different and vary greatly from one country to the next. Very often, maritime authorities do not have enough surveyors or other trained personnel to survey small-scale fishing vessels. As a result, many

<sup>189</sup> See FAO. 2020. *The State of World Fisheries and Aquaculture 2020. Sustainability in action*. Rome. <http://www.fao.org/documents/card/en/c/ca9229en> at p. 44

<sup>190</sup> *Ibid*

<b>Gaps</b>	<b>Comments</b>
	small-scale fishing vessels are not required to meet any safety requirements or existing rules are not enforced.

**Table 8 – Synergies between international fisheries, labour, safety instruments to strengthen global fisheries governance**

Synergies	Comments
<b>Global</b>	
<p>At the thirty-fourth session of the Committee on Fisheries (1-5 February 2021), FAO members emphasized the importance of safety at sea and working conditions in the fisheries sector and welcomed the close cooperation between FAO, ILO and IMO, including through the Joint Ad Hoc Working Group on IUU fishing and related matters.</p>	<ul style="list-style-type: none"> <li>• The Joint Ad Hoc Working Group on IUU fishing and related matters between FAO, ILO and IMO provides a forum where maritime and labour issues relating to fisheries can be discussed by the three UN specialized agencies, including common strategies to promote adequate level of ratifications for the C188 and CTA and to mainstream maritime and labour issues in fisheries governance at the global, regional and national levels.</li> <li>• In order to promote a more holistic approach to fisheries governance at the national level, similar Joint Ad Hoc Working Groups between the maritime, fisheries and labour administrations or agencies could be formed. If maritime authorities and fisheries agencies have, in many countries, a long tradition of working together for the registration of fishing vessels, this is not the case with labour departments.</li> <li>• Likewise, common approaches between FAO, ILO and IMO should be developed at the regional level.</li> </ul>
<p>The coming into force of the CTA would have a positive impact on living and working conditions on board fishing vessels as well as on welfare and wellbeing of fishers.</p>	<p>The international fisheries community should take all the necessary measures to ensure that a sufficient number of countries have ratified the CTA to meet the set target date of 11 October 2022 agreed by the participants to the Ministerial Conference on Fishing Vessel Safety and IUU Fishing held in Spain in October 2019.</p>
<p>Both the PSMA and C188 calls for the establishment of mechanisms for cooperation and coordination among relevant national agencies for the fishing sector to ensure effective implementation of their provisions.</p>	<ul style="list-style-type: none"> <li>• One critical area where cooperation and coordination between relevant national agencies should be improved is the system of port controls. In this respect, a number of countries have adopted MOUs on interagency coordination and cooperation for effective implementation of port State measures in relation to fishing and fishing related activities. The purpose of these MOUs is twofold: (a) improve the working relationship between the relevant agencies; and (b) strengthen the combined efforts of the relevant agencies to effectively implement the national laws and international obligations of the country that address IUU fishing and activities in support of such fishing.<sup>191</sup> The scope of these MOUs could be easily</li> </ul>

<sup>191</sup> See for instance the model MOU on interagency cooperation and coordination for effective port State measures in relation to fishing and fishing related activities developed by the Indian Ocean Tuna Commission. <https://iotc.org/compliance/port-state-measures>

Synergies	Comments
	<p>broadened to the implementation of the minimum labour standards set out in C188 and could also address the issue of forced labour.</p> <ul style="list-style-type: none"> <li>As was recognized in Article 42 of C188 (see Table 6 above), labour departments may not have a sufficient number of qualified inspectors for carrying out inspections of living and working conditions on board fishing vessels. Under such circumstances, officers from other agencies could be authorized to perform these inspections, provided they have received a proper training to detect violations of living and working conditions on board fishing vessels. In this regard, materials developed by ILO could be used to develop an appropriate training programme. Note that this training could be extended to the detection of forced labour by using the ILO indicators of forced labour.<sup>192</sup></li> </ul>
<p>With the wider recognition of the need to broaden the scope of fisheries governance to address the issues of decent working and living conditions on board fishing vessels and of forced labour in the fisheries industry throughout the supply chain, one should determine how fisheries legislation could support the effective implementation of C188 and the Forced Labour Convention and its 2014 Protocol.</p>	<p>Critical areas where language relating to decent living and working conditions and forced labour on board fishing vessels could be introduced in the fisheries legislation include:</p> <ul style="list-style-type: none"> <li>(a) conditions of registration of the fishing or supply/support vessel;</li> <li>(b) grounds for deregistering a fishing vessel from the national register of ships (this provision could also be introduced in the merchant shipping law);</li> <li>(c) conditions for issuance of a fishing license or authorization (check previous behaviour of vessel owner, operator and master);</li> <li>(d) grounds for the suspension or refusal to renew a fishing licence or authorization;</li> <li>(e) require reporting of change of crew and provision of a new crew list after each change of crew;</li> <li>(f) make provisions for the repatriation of crew members employed on board nationally-flagged fishing vessels, if this is not appropriately covered by the merchant shipping law, including repatriation of foreign crew;</li> <li>(g) prohibit the use of forced labour on nationally-flagged fishing vessels;</li> <li>(h) make breach of labour standards/rights or use of forced labour on board nationally-flagged fishing vessels an offence under the fisheries legislation (applicable sanctions may be provided for under the labour law or the law on forced labour or human trafficking, if one has been adopted).</li> </ul>

<sup>192</sup> See [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_203832.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf)

Synergies	Comments
<p>Development of certification schemes and other mechanisms or processes to ensure that fish and fish products that are put on the markets are free of forced labour or other forms of exploitative labour.</p>	<p>Note that the enactment of the <i>Illegal Fishing and Forced Labour Prevention Bill</i> into law in the USA would likely prompt other States to develop a new breed of legislation dealing with IUU fishing and forced labour, which may not be restricted to countries operating a distant water fishing fleet.</p> <p>This raises the following questions:</p> <ul style="list-style-type: none"> <li>(a) should regulations such as the EU IUU regulations be extended to forced labour and human trafficking for the purpose of forced labour?</li> <li>(b) should State-controlled certification schemes, such as the Indonesian fisheries human rights certification system, be promoted?</li> </ul>