

IUU Fishing and the rights of work in international law

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note from

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Thank you for inviting me to provide input to your meeting on IUU fishing and rights of work in international law. I particularly thank S.H. MARASHI & Fabrizio DE PASCALE for sending an advance copy of *IUU Fishing and its Relation to the Rights of Fishworkers in International Law*, the report funded by the Directorate General for Fishery of the Italian Ministry for Agricultural, Forestry and Food Resources.

As has been noted in the report, the ILO has adopted international labour standards that apply to all workers and has, five years ago, adopted a new standard specific to the fishing sector. As has also been noted in the report, in recent years there have been considerable developments in the fight against illegal, unregulated and reported fishing (IUU fishing), including the adoption of the FAO's Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO Port State Measures Agreement). The report also describes many other related developments at the international and EU level. Your event focus on the relationship between IUU fishing and working conditions, and specifically about the relationship between international instruments aimed at eliminating IUU fishing and ILO standards aimed at improving labour conditions on fishing vessels.

The definition of IUU fishing contained in the FAO Port State Measures Agreement, which itself draws upon the definition from the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) does not address working conditions (at least not directly). The report raises the possibility of including the issue of working conditions within the definition of the IUU fishing. Including working conditions in the FAO Port State Measures Agreement would therefore require an amendment, which is of course a matter under the control of FAO and its constituents.

The report discusses the link between IUU fishing and unacceptable working and living conditions. In this regard, it indicates that the European Commission, International Transport Workers Federation (ITF), Environmental Justice Foundation (EJF) and others have established that IUU vessels are apt to have unacceptable working conditions. Such conditions exist for many reasons, including lack of control and monitoring of such vessels, in particular by flag States, and use of vulnerable workers by IUU operators.

As IUU fishing and unacceptable conditions of work are frequently related, it would seem that there must be a greater effort to coordinate the work to combat IUU with efforts to ensure decent working conditions of fishers.

If we look at relevant ILO standards, it is clear that certain “core” ILO standards are already universally recognized and clearly apply to all workers, including all fishers. As noted in the report, the ILO Declaration on Fundamental Principles and Rights at Work, adopted in June 1998, highlights core labour principles for all ILO member States (185 States): freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. These principles and rights have been expressed and developed in the form of specific rights and obligations in widely-ratified Conventions: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The above also raises the matter of how one determines what are violations of fundamental rights and principles at work. A few recent developments may be helpful. With respect to child labour, in 2010 the FAO, in collaboration with the ILO, convened a workshop on child labour in the fishing sector. This led to the development of a FAO/ILO guidance document aimed to help identify child labour and propose actions to be taken when it is found. With respect to forced labour, in September of this year the ILO convened a Consultation on forced labour and the fishing sector. The Consultation brought together experts drawn from ILO’s tripartite constituents (Governments, Employer Organizations and Workers Organization), from International Organizations, Non-governmental Organizations and other entities. Among other things, the Consultation discussed the value of developing fishing sector-specific indicators for identifying forced labour on fishing vessels. The ILO is undertaking more detailed work on forced labour and trafficking in the fishing sector, and is drawing upon recent related work by the United Nations Organization on Drugs and Crime (UNODC)¹ and others.

The United Nations Convention on the Law of the Sea (UNCLOS) provides, in Article 94, *Duties of the flag State*, inter alia, that every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. Your report notes the insufficient control exercised by many flag States.

As the report prepared for your meeting notes, a step forward to addressing the problem of poor working conditions on fishing vessels was the adoption, in 2007, of the Work in Fishing Convention (No. 188), along with the accompanying Work in Fishing Recommendation, 2007 (No. 199). The Convention and Recommendation revise five of the seven existing ILO that specifically concern the fishing sector.

The Preamble to Convention No. 188 refers to the Declaration on Fundamental Principles and Rights at Work, 1998, to the fundamental rights to be found in the related international labour Conventions (noted above), and to UNCLOS. Its stated objective is “to ensure that fishers have decent conditions

¹ See TRANSNATIONAL ORGANIZED CRIME IN THE FISHING INDUSTRY, Focus on: Trafficking in Persons Smuggling of Migrants Illicit Drugs Trafficking, UNODC, 2011.

of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security". As noted in your report, it sets out provisions on all these issues, with the idea of establish widely recognized standards for the global fishing sector

Convention No. 188 also sets out important enforcement provisions. It includes provisions for both flag and port State control. If the Convention is ratified and implemented, this will enhance the monitoring and control of fishing vessels, including through inspection.

Convention No. 188 also provides that flag States which receive 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 and that ports States that receive a complaint or obtains evidence that such vessel does not conform to the requirements of the Convention may prepare a report addressed to the government of the flag State of the vessel... may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health. This latter provision is very important to combating IUU fishing as currently there are no international standards in force governing conditions of work on fishing vessels that include port State control provisions. A "complaint" is not only a complaint submitted by a fisher but also a complaint by a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel, including an interest in safety or health hazards to the fishers on board. A complaint, whether to flag or port State authorities, could conceivably be made by authorities also inspecting a vessel for compliance with measures to prevent IUU fishing.

IUU fishing may be involved not only vessels involved in catching fish but also in transporting and processing fish. Such vessels may be deemed to be within the scope of another ILO standard, the Maritime Labour Convention, 2006, which include flag and port State control provisions.

The Maritime Labour Convention, 2006 has recently received sufficient ratifications to enter into force and will do so in August 2013. However, Convention No. 188 has, to date, only been ratified by two States and has not yet entered into force. When it does enter into force, it should prove a valuable tool by not only setting out internationally agreed standards for conditions of work on fishing vessels, but improving monitoring and control of vessels. As more ratifications are registered, the "no more favourable treatment" provisions of the Convention will also lead to pressures to enforce the Convention on all vessels, regardless of whether they fly the flag of a State that has ratified it. In anticipation of the eventual ratification of Convention No. 188, the ILO has adopted *Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)*.

The Maritime Labour Convention, 2006, and the Work in Fishing Convention, 2007, as they become widely ratified and implemented, will also contribute significantly to the *prevention* of violations of ILO fundamental rights and principles (e.g. forced labour) by requiring regulation of recruitment and placement, crew lists, contracts/work agreements of fishers (and seafarers on fish carriers and dedicated processing vessels). Even if these instruments are not fully implemented, improvements in national laws and regulations to reflect their provisions will be an important step towards improving the legal protection of fishers and seafarers.

Assuming Convention No. 188 does enter into force, and hopefully in the near future, consideration should be given to how to enforce it in a coordinated and consistent manner. In the shipping sector, a major factor in reducing substandard shipping has been in the development of regional port State control agreements. In these agreements, port States seek to harmonize their procedures, and to exchange data, concerning international Conventions addressing maritime safety, marine pollution prevention and working and living conditions on board vessels. In at least one region, vessels are identified as “high risk ships” due to a number of factors, and this result in an “expanded” inspection aimed at checking the overall condition of the vessels, including living and working conditions.

Perhaps in the future, in the fishing sector, evidence of IUU fishing could trigger an inspection that would cover living and working conditions on the vessel (through a “complaint” or perhaps through something similar to the “expanded inspection” concept). Similarly, inspection of complaints concerning working conditions could lead to comprehensive inspections that would include checking for IUU fishing (as currently defined). It will important to determine which authorities will have the authority and training to undertake inspections of labour conditions and to take remedial actions. We may need to look in-depth of what should happen when an inspection reveals a violation of fundamental rights and principles at work (e.g forced labour), which may require intervention by criminal authorities.

In such a situation, it will also be important to consider how to handle the situation of fishers on vessels engaged in IUU fishing (perhaps with no control over where and how the vessels operates) who want to complain, or have others complain about their working and living conditions (perhaps even leading to their removal from the situation). It is important not to criminalize the victims.

The report for your meeting also proposes addition research and actions that go beyond what is contained in Convention No. 188. As noted, Convention No. 188 focuses on flag and port State control (with some provisions, such as those concerning recruitment and placement, that are relevant to labour supplying States). Convention No. 188 does not address the roles of coastal States, though there is a provision concerning coastal States in paragraph 55 of the non-binding Work in Fishing Recommendation (No. 199).² The Convention does not refer to any role for RFMOs, though such organizations could complain to flag States or port States when finding conditions on board that a vessel down not comply with the provisions of the Convention.

The above comments are only preliminary thinking on some of the issues related to the links between IUU fishing and international labour standards and on how we move forward beyond the current situation. These are matters that, in the ILO, are important to have discussed in a tripartite setting.

Global Dialogue Forum for the promotion of the Work in Fishing Convention, 2007 (No. 188, 15-17 May 2013)

² A Member, in its capacity as a coastal State, when granting licences for fishing in its exclusive economic zone, may require that fishing vessels comply with the requirements of the Convention. If such licences are issued by coastal States, these States should take into account certificates or other valid documents stating that the vessel concerned has been inspected by the competent authority or on its behalf and has been found to be in compliance with the provisions of the Convention.

With this in mind, your meeting may wish to note that in May 2013 the ILO will convene, in Geneva, a Global Dialogue Forum for the promotion of the Work in Fishing Convention, 2007 (No. 188). The purpose of the meeting would be to discuss challenges in the Convention's implementation, to evaluate how it can be used as a tool to address major issues in the sector, to share good practices and experiences, to report and review promotional activities, and to provide an update on the status of national efforts to implement and ratify Convention No. 188. It is expected that the issue of the relationship between IUU fishing and working conditions, and how Convention No. 188, by addressing labour issues, may help in the fight against IUU fishing, will be discussed at the meeting. With this in mind, I would be very grateful for the results of your meeting.