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# Social Protection of Fishers

- Geneva Declaration on Human Rights at Sea

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- Human rights apply at sea to exactly the same degree and extent that they do on land
- All persons at sea, without any distinction, enjoy human rights at sea
- There are no maritime specific rules allowing derogation from human rights standards
- All human rights established under treaty and customary international law must be respected at sea

## Flag State duties

- Fundamental principles and rights at work also apply at sea:
  - no forced labour; no child labour
  - freedom of association and collective bargaining
  - no discrimination
- Article 94, UN Convention on the Law of the Sea
  - a flag State must assume jurisdiction under internal law in *all* matters concerning ships flying its flag and their crews, so including social matters

- Article 94 Law the Sea (continued)
  - a flag State must take measures to ensure safety at sea with regard to, inter alia:
    - the construction, equipment and seaworthiness of ships
    - the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments
    - flag State and port State control/inspection

## International instruments

- International Maritime Organization (IMO):
  - Torremolinos International Convention on Safety of Fishing Vessels, 1977 (SFV)
  - International Convention on Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F)

## International instruments

- Food and Agriculture Organization (FAO):
  - Code of Conduct for Responsible Fisheries, 1995
  - Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries, 2014
  - Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing, 2009

## International instruments

- International Labour Organization (ILO):
  - Work in Fishing Convention, 2007 (C188)
  - Work in Fishing Recommendation, 2007 (R199)

## International instruments

- IMO Torremolinos International Convention on Safety of Fishing Vessels, 1977 (SFV)
  - Amended by:
    - Torremolinos Protocol, 1993
    - Cape Town Agreement, 2012
  - Still not in force
  - Safe construction, seaworthiness, and equipment of fishing vessels of 24 metres in length and over



## International instruments

- IMO International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F)
  - In force since September 2012; under review
  - Training and certification of
    - skippers and navigational officers on board fishing vessels of 24 metres in length and over
    - engineer officers on board fishing vessels of 750 kW propulsion power and over
    - basic safety training for all fishers regardless of vessel size and propulsion power

## International instruments

- FAO Code of Conduct for Responsible Fisheries, 1995
- FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries, 2014
  - States should ensure that fishing facilities and equipment as well as all fisheries activities allow for safe, healthy and fair living and working conditions and meet internationally agreed standards adopted by the relevant international organizations

## International instruments

- health and safety standards should be adopted for everyone employed in fishing operations and such standards should be not less than the minimum requirements of relevant international agreements on conditions of work and service
- flag States should ensure compliance with appropriate safety requirements for fishing vessels and fishers in accordance with international conventions, internationally agreed codes of practice and voluntary guidelines

## International instruments

- ILO Work in Fishing Convention, 2007 (C188)
- ILO Work in Fishing Recommendation, 2007 (R199)
  - In force since 16 november 2017
  - Minimum standards for decent living and working conditions on board fishing vessels
  - Applies to all fishermen and all fishing vessels
  - More stringent requirements for vessels of 24 metres in length (L) and over

## International instruments

- Why are international legal instruments key for ensuring decent living and working conditions on board fishing vessels?
  - No State acting alone can achieve its aims
  - Fishing is an international, cross-border activity at sea
  - Without international standards chaos rules at sea, jeopardizing safety at sea
    - Fishing is a hazardous occupation
  - Level playing field

## International instruments

- However, ratification rates of these international instruments for fishing are very low, especially if compared with the instruments for shipping. For example:
  - the Maritime Labour Convention, 2006 currently has 92 ratifications worldwide
  - the Work in Fishing Convention, 2007 currently has only 18 ratifications worldwide
- And yet, only 1 out of every 25 working at sea is a seafarer; the other 24 are fishers

- On average only 9 Member States of the EU ratify an ILO- or IMO-convention concerning safety at sea in fishing
- Therefore the European Union has taken responsibility and implemented
  - the Torremolinos Protocol, 1993 amending the Torremolinos Convention, 1977 (SFV)
  - the Work in Fishing Convention, 2007 (C188)
- STCW-F still needs to be implemented in Union law

## The role of the social partners in EU's sea-fishing sector

- EU social partners have the right to make agreements on certain social issues at EU level
- The European Commission may propose transposition of social partners' agreements at EU level into EU law
- The Council of the European Union may transpose social partners' agreements into EU law and inform the EU parliament



## The role of the social partners in EU's sea-fishing sector

- In May 2012 EU social partners signed an agreement between them on implementation of C188 into EU law
- The Council of the EU transposed the social partners' agreement into an EU Directive on December 19, 2016 (Directive (EU) 2017/159)
- All EU Member States must have implemented the Directive on 15 November 2019

## The role of the social partners in EU's sea-fishing sector

- The social partners have concerns about undermining effects of the Common Fisheries Policy (CFP) on safety at sea in fishing, for instance
  - CFP does not allow extra volume for fishing vessels needed to improve safety and decent working and living conditions on board
  - CFP's landing obligation undermines vessel safety and forces fishermen to work more hours

## The role of the social partners in EU's sea-fishing sector

- Where Directive 2017/159 differs from C188...
  - Applies to employed fishers and fishers in an employment relationship
  - Does not apply to other fishers unless they work on the same vessel with employed fishers
  - Exemptions allowed for a maximum of 5 years
  - No specific article on progressive implementation

## The role of the social partners in EU's sea-fishing sector

- Where Directive 2017/159 differs from C188...
  - Not allowed to use instead of length (L)
    - length overall (LOA)
    - gross tonnage (GT)
  - No provisions on compliance and enforcement
  - No provisions on flag State control
  - No provisions on port State control

## The role of the social partners in EU's sea-fishing sector

- Where Directive 2017/159 differs from C188...
  - Provisions on working and rest time are more restrictive
  - No provisions on payment of fishers
  - Provisions on occupational safety and health and accident prevention apply to all fishing vessels
  - No provisions on social security
  - No flexibility on crew accommodation

## The role of the social partners in EU's sea-fishing sector

- Where Directive 2017/159 differs from C188...
  - No diminution of protection where existing EU Directives grant better protection

## EU Member States' duties

- Because of the differences between Directive (EU) 2017/159 and C188 EU Member States with a fishing fleet still have a duty under the Law of the Sea to ratify C188.

## Migrant Fishers

- Human rights do not distinguish between flag State nationals and migrants
- Fundamental principles and rights at work do not distinguish between flag State nationals and migrants
- C188 does not distinguish between flag State nationals and migrants unless social security is concerned



- ILO's September 2017 Tripartite Meeting on issues relating to Migrant Fishers requested for
  - Guidelines on decent cross-border labour market services in fishing
  - Guidelines on medical examination of fishers
  - Data collection on migration of fishers
  - Model agreements between flag States and labour supplying States on labour market services
  - Promotion of C188

- EU social partners in sea-fisheries will develop
  - Guidelines for decent cross border labour market services in fishing
  - Guidelines for medical examination of fishers

## Migrant Fishers

- If human rights, fundamental principles and rights at work, and internationally agreed minimum standards on safety at sea in fishing are not respected towards migrant fishers, there is a real risk in Europe and anywhere else of
  - forced labour
  - child labour
  - human trafficking and slavery
  - other abuses

