



**MORE**  
**troubled**  
**waters**  
fishing, pollution and FOCs

**International Confederation of Free Trade Unions**  
**Trade Union Advisory Committee to the OECD**  
**International Transport Workers' Federation**  
**Greenpeace International**

MORE  
troubled  
waters

fishing, pollution and FOCs

major group submission  
for the 2002 World  
Summit on Sustainable  
Development in  
Johannesburg

**International Confederation of Free Trade Unions  
Trade Union Advisory Committee to the OECD  
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Greenpeace International**

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**GREENPEACE**

## preface

This booklet focuses on the problems posed by the growing use of Flags of Convenience (FOCs) in our oceans and seas and closely follows joint submissions which were made to the Commission on Sustainable Development (CSD) in December 1998 and April 1999.

It is recognised that the problems of marine pollution and overfishing are not limited to the FOC fleet. However, FOCs have a disproportionately large impact in these areas and they continue to pose a grave threat to the sustainability of fisheries and maritime transport.

The booklet seeks to address the FOC problem in terms of the three pillars of CSD: environmental; social and economic.

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## introduction

The International Transport Workers' Federation (ITF) is a Global Union Federation of 604 transport workers' unions in 137 countries, representing around 5 million workers. The ITF campaigns on behalf of its affiliates for an integrated and environmentally responsible approach to transport policy, both nationally and internationally. The ITF has eight industrial sections to look after the interests of workers in a specific branch of the transport industry: railways, road transport, inland navigation, seafarers, dock workers, fisheries, civil aviation and tourism services. ITF affiliates and their members have direct and daily contact with problems and possible solutions related to the sustainable development of oceans and seas.

Although the lead trade union organisation working on this issue is the ITF, sustainable development of the oceans and seas is of concern to all workers. Therefore, from the trade union side, this brochure is a joint collaboration between the ITF, the International Confederation of Free Trade Unions (ICFTU) and the Trade Union Advisory Committee (TUAC) to the Organisation for Economic Cooperation and Development (OECD) and they will collectively be referred to as "the trade unions".

Greenpeace International, like the ITF, is deeply involved in the issues relating to the use of oceans and seas on a daily basis. Greenpeace has devoted considerable resources to determine the extent and nature of illegal fishing, and has gathered much information on the nature of the problem and proposed solutions. Greenpeace has agreed to co-sponsor this brochure with the trade unions.

Chapter 17 of *Agenda 21* contains a number of recommendations crucial for the prevention, reduction and control of degradation of the marine environment from sea-based activities and for the sustainable

utilisation of marine living resources. Like the United Nations Convention on the Law of the Sea (UNCLOS) many of the measures are addressed to the flag State. However, although the generally accepted applicable international instruments set a comprehensive framework for the regulation of such activities, they are dependent on flag States discharging their obligations and exercising effective control over vessels flying their flag.

This joint brochure will show that a significant number of flag States lack the will and/or the ability to enforce the requirements established within international law and the instruments to which they are party. The lack of flag State implementation and the absence of adequate enforcement provisions constitute a serious weakness in the international regulatory regime. This has caused a number of severe consequences and adversely impacts on the sustainable and responsible utilisation of the oceans and seas.

Flags of Convenience are an institutionalised system for the negation of international law. They are a clearly recognised threat to the sustainable development of maritime transport, the protection of the marine environment and the sustainable utilisation of marine living resources. The European Union Fisheries Commissioner, Franz Fischler, stated the following in "Illegal Fishing – a threat to our common heritage":

*"The practice of flags of convenience, where owners register vessels in countries other than their own in order to avoid binding regulations or controls, is a serious menace to today's maritime world."*

([http://europa.eu.int/comm/commissioners/fischler/illfish\\_en.htm](http://europa.eu.int/comm/commissioners/fischler/illfish_en.htm), July 2002)

The Flag of Convenience system also has a darker side which has been demonstrated recently in the hunt for AI

Flag hopping: Al Rabat  
Al Amami (Equatorial Guinea  
to Belize);  
Zarqa Al Yamama (Equatorial  
Guinea to Belize)  
Photographed in Las Palmas  
in 2001  
Photo: ITF



Qaeda assets. The terrorist organisation is believed to own a fleet estimated at between 20 and 80 ships. Due to the lack of transparency inherent in the Flag of Convenience system, it is impossible to trace them. The Tamil Tigers had a fleet of 11 commercial ships, under Panama, Liberian and Honduran flag. Other flags have been more recently named in connection with people smuggling, and drugs and arms smuggling – notably Cambodia and Tonga. Ahmad Yahya, of the Cambodian Ministry of Public Works and Transport, is reported to have said:

*"We don't know or care who owns the ship or whether they're doing 'white' or 'black' business...it is not our concern."* (Fairplay, 12 Oct 2000)

The Cambodian register is said to be partly owned by a North Korean diplomat, and North Korea was identified some time ago as using Cambodia as a base for trafficking in drugs and illegal wildlife products. Cambodia also has the dubious distinction of being one of the fastest growing registers, increasing in size by almost 40% during 2001.

*Agenda 21* noted that there are many problems with unregulated fisheries and that fishing vessels are being re-flagged to escape control. The trade unions and Greenpeace International accept that there is a fundamental crisis within the fisheries sector which is caused by over-fishing, an excess of fleet capacity beyond what the fish resources can support, and pollution and that this crisis is being exacerbated by illegal and irresponsible fishing by flag of convenience fishing vessels. It is clear that many others are aware of this crisis and share a common concern.

The European Parliament Stated the following in the 'Resolution on the Role of Flags of Convenience in the

Fisheries Sector' A5-0405/2001 :

*"... that the use of flags of convenience is generally motivated by a desire to minimise costs and circumvent certain tax regulations by means of complex legal devices and results in numerous difficulties with regard to the attribution of responsibility in the event of illegal fishing, accidents at sea and , in general, with regard to compliance with the competition rules to which sea transport is subject;"*

This brochure examines the State of the maritime transport and fisheries industries in terms of the age and structure of the world fleet and the growth of FOC's; in the maritime sector the brochure also looks at FOCs and maritime casualties, pollution cases and port State control detentions. The situation is put into context through an analysis of the issues raised and their implications for sustainable development. Finally, the brochure makes a number of conclusions, summarises the principal arguments and makes a series of recommended actions to remedy the current situation.

A similar brochure was presented at the 7th Session of the Commission for Sustainable Development (CSD7) in 1999. The importance of these issues was recognised and decisions were taken which were recorded in the report of CSD7. Regrettably, little real progress has been made on these issues since CSD7, and while improvements have been made in regulations, the lack of effective enforcement has meant that the situation in both the maritime and fisheries industries has worsened since 1999.

This joint publication has focused on the problems caused by FOCs. While it is recognised that the problems of marine pollution and overfishing are not limited to the FOC fleet, it will show that FOCs have a negative impact upon the marine environment out of all

## what has happened since CSD7

proportion to their number.

There has been a definite recognition of the problems posed by Flags of Convenience in both the maritime and fisheries sectors, and there has been a hardening of attitude towards the problems which these few States have caused to the rest of the world in return for the revenue which they generate for themselves. Here are some of the steps taken since CSD7:

- The European Commission has condemned FOCs and is now actively encouraging States not to allow the flagging out of their fishing vessels to FOCs, and has moved to eliminate any subsidies paid to transfer fishing vessels to recognised FOC countries;
- Spain have enacted legislation which allows prosecution of their nationals who may be engaged in illegal fishing on board fishing vessels flagged in third-countries;
- The FAO has adopted by consensus an International Plan of Action (IPOA) to Prevent, Deter and Eliminate IUU fishing which includes measures to be taken against FOC fishing, and reinforces the responsibilities of all sectors of the maritime community (flag States, port States, market States and States of beneficial ownership) to stop the catch, transfer, trade and sale of illegally caught fish;
- Mauritius has agreed to end the import of fish from FOC ships, and where the fish cannot be demonstrated to have been caught by legal methods;
- South Africa has banned landings by vessels listed by the International Commission for the Conservation of Atlanti Tunas (ICCAT) as “believed to be engaged in IUU fishing”
- ICCAT has banned the import of bluefin and big eye tuna and swordfish caught by certain FOC fleets;
- The International Tribunal of the Law of the Sea (ITLOS) in a case brought by Belize against France

(France had arrested a vessel engaged in illegal fishing under Belize flag), have decided that the flag of Belize in this case “contained an element of fiction” and did not represent the true ownership of the vessel;

- The United Nations General Assembly Resolution A/54/32 called upon the IMO, in cooperation with the FAO, to define the concept of a genuine link between the fishing vessel and the flag State;
- CSD7 urged the IMO to develop measures, in binding form where appropriate, to ensure that ships of all flag States meet international rules and standards so as to give full and complete effect to UNCLOS and other relevant conventions; and
- The United Nations Millenium declaration confirmed the rule of law, peace and security and human rights.

However, what is still missing is the implementation of the international instruments and a concerted political initiative to address the fundamental problems.

## what are flags of convenience?

As long ago as 1958, the Organisation for Economic Co-operation and Development (OECD) defined Flags of Convenience as:

*“the flags of such countries as Panama, Liberia, Honduras and Costa Rica whose laws allow – and indeed, make it easy for – ships owned by foreign nationals or companies to fly these flags. This is in contrast to the practice in the maritime countries (and in many others) where the right to fly the national flag is subject to stringent conditions and involves far reaching obligations”.*

Under international law every ship must sail under a flag which gives its nationality to the ship. The flag State accepts responsibility for both the conditions on board and the activities of the ship. About 30 countries effectively rent their flag to shipowners of any nationality, guaranteeing the minimum of rules, regulations, taxes and interference. These flags are called ‘Flags of Convenience’ (FOCs). They make money out of their shipping register because they accept the fees, but do not effectively exercise any control over the ships in their fleet or the companies owning these ships, which would normally incur them in expense.

Under the FOC system, the registered owner of most ships is a ‘shell’ company set up for the sole purpose of owning that one ship. That registered owner is often, in turn, owned by another company which

may itself be registered in a country with very liberal company laws. This setup, which works for companies, criminals and terrorists as well as shipowners, allows a shipowner the ability to disappear completely from any accountability which may be attached to him through owning the ship. If anything goes wrong, the company ceases to exist and no information is forthcoming on ownership.

The secrecy and lack of transparency of the FOC system allows shipowners to ignore their responsibilities and cut their operating costs. As well as lax company laws and a lack of any meaningful regulation of the shipping or company operation, FOCs offer cheap registration fees, low or no taxes, and the freedom to employ cheap labour from any country. Industrialised and developing countries have both suffered as a result of the regime of tax havens and Flags of Convenience. The so far apparently fruitless search for Al Qaeda’s ships illustrates the problems which this system has spawned. The trade unions are working to end this system and to get owners to return to their national flags and to restore the ‘genuine link’ between the ship and the flag as required under article 91 of the United Nations Convention on the Law of the Sea (UNCLOS).

## maritime transport

### The age of the world merchant fleet

The average age of the world fleet has increased considerably since 1980 and is now over 20 years of age. The growing age of the world fleet has considerable implications for the safety of life at sea and the protection of the marine environment as there is a positive correlation between age and maritime casualties. In 2001, Lloyds Register reported 155 ships which were total losses. Of these, 8% were less than 10 years old, 25% were 10 – 19 years old and 67% were 20 years old or over.

It should also be noted that older ships are less efficient and that due to the “grandfather clause”<sup>\*</sup> they are not always required to meet the latest international minimum rules and standards. They are only required to meet the standards in place when the keel was laid.

Port State Control authorities recognise that there is a disproportionately high level of deficiencies for older ships. For the area covered by the Paris Memorandum of Understanding on Port State Control (Paris MOU) in 2001, those ships over 15 years old have 19 times the number of deficiencies of those ships younger than 15 years. Following the accident of the Erika off France, the Paris MOU carried out a concentrated inspection campaign on older oil tankers (over 3,000 gt and over 15 years old). The purpose of this was to inspect older tankers much more closely than is possible in the time available for a normal port State control inspection. The results of this three month campaign highlighted an increasing rate in the detention of tankers, a lack of structural maintenance and defects in firefighting equipment. Deficiencies were found in 47% of the 205 inspections. 23 ships were detained. 2 of these ships were found with hull cracking and severe corrosion in bulkheads or frames.

<sup>\*</sup> SOLAS and MARPOL Conventions State that, unless

*expressly provided otherwise, any amendments to the Conventions which relates to the structure of a ship shall apply only to ships which can be considered to be built on or after the date on which the amendment enters into force. The rationale for these so-called “grandfather clauses” is to provide the shipping industry with some certainty when making investments.*

*\*Paris MOU members : Belgium, Canada, Croatia, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Russian Federation, Spain, Sweden, UK.*

### Growth of FOC shipping

The FOC fleet, both alone and as a proportion of the world fleet, continues to increase. With most newly built tonnage being registered with FOCs and existing tonnage still changing from national flags to FOCs, the increase in size of the world fleet is almost entirely an increase in the FOC fleet.

Panama, which is by far the largest fleet in the world in terms of tonnage, has recorded steady growth over the last ten years. It now comfortably exceeds the combined total gross tonnage of Liberia, Bahamas and Greece (respectively 2nd, 3rd and 4th position). In 2001 about 8 million gross tonnes were added to the Panama fleet (a tonnage slightly larger than the total fleet of India, for example). Panama alone now accounts for 21% of the world’s tonnage. Five out of the six largest fleets in the world are FOCs (Lloyds Register, World Fleet Statistics, 2001).

Of these, Liberia is the second largest fleet in the world. Liberia has been the subject of United Nations Security Council sanctions, but the Liberian flag and corporate register remains a lucrative source of funds for Charles Taylor. The United Nations Security Council panel of

Cypriot flagged fuel supply vessel DALNERECHENSK to supply BENNY NO.87 fishing vessel. South Atlantic

Photo: Sutton-Hibbert, Jeremy/Greenpeace



experts concluded in 2001 that the Liberian registry was “vulnerable because of the use of the funds it generates for opaque off-budget expenditure including sanctions busting.” (United Nations Security Council S/2001/1015, 26 Oct 2001). The United Nations Sanctions Committee has recommended that the money from the Liberian fleet should be audited in future to avoid having it spent on arms. However, whether this is feasible in a country with no functioning judiciary is another matter.

In the period since 1980, the number of flags which have been designated by the ITF as being FOC has increased greatly. In 1980 there were 11 registries and now there are 29. This list includes the recent 2002 additions of Tonga, Jamaica and Comoros. All FOC fleets have one thing in common: their priority is to make money for the States concerned.

The ship registration business has produced two models, neither of which require the existence of a functioning maritime administration. The first model is the State owned money making business where the “flag State” collects the tonnage taxes and delegates most, if not all, the survey and certification functions to a recognised organisation (a private body and usually a classification society). Examples of this type include Cyprus and Malta. The other model is where the operation of the register, including the statutory functions, is franchised out to a commercial entity which is located outside the territory and jurisdiction of the flag State and which may itself be bought and sold. Examples of this type include Liberia, Cambodia, Sao Tome e Principe and St. Vincent and the Grenadines.

### FOCs and maritime casualties

Some flag States have had a very poor record for losses of ships year after year. FOCs account for a majority of

these total losses. In 2001, FOCs account for 58% of the losses by numbers, and 63% of the gross tonnage lost. In their annual reports the Institute of London Underwriters, and later the International Underwriting Association, have been damning in their criticism of some of the FOC registers as being among the worst in the world for many years. The flags of Panama, Cyprus, St Vincent and Grenadines, Honduras and Malta feature consistently.

Looking at the figures for ships lost in 2001 it is still the same countries at the top of the lists for both tonnage and numbers of ships lost: the habitual entries of Panama, St Vincent, Cyprus and Malta. Cambodia has had a very bad year for casualties in 2001, with 7 ships lost (Lloyds Register, World Casualty Statistics, 2001).

In the 2001 Annual Report, the UK Marine Accident Investigation Branch (MAIB) chief Rear Admiral John Lang attacked the majority of flag States who have been unable or unwilling to conduct independent, in-depth accident investigations and make their reports publicly available. Admiral Lang blamed States' reluctance on the “lack of transparency in the international shipping community” and also highlights the climate of fear that is “prevalent throughout the industry”. Mariners are genuinely frightened that if they were known to be reporting safety deficiencies, they would almost certainly lose their jobs, he commented. “This... is not conducive to the establishment of a safety culture at sea”. He stressed that the issues of sub-standard shipping, undermanning and mariner fatigue were continuing. While he does not name any particular flag States, FOCs provide owners with secrecy concerning their commercial operations, and this is extended to casualty investigations which are not made public, and indeed in many cases casualties are not investigated at all: “Panama has long ignored its international obligation to carry out casualty investigations, and the Panama

*Maritime Authority's excuse that it does not have the resources..."* (Fairplay, 13 June 2002)

Three high profile casualties of Panamanian bulk carriers in 2001 have not been investigated: Leader L (March); Treasure (June) and Kamikawa Maru (September). Panama was reported by the International Underwriting Association in 2000 to have lost 87 ships over the previous five years; an average of about one ship lost every three weeks.

### **Pollution cases and FOCs**

On 12 December 1999 the tanker Erika broke up in the Bay of Biscay and about 12,000 tonnes of heavy fuel oil was washed ashore on the coast of France. Erika flew the Maltese flag, and initial enquiries as to her ownership started in Malta, where records disclosed that the owning company was made up of two corporate shareholders — both of them companies registered in Liberia. Liberia discloses little about the ownership of companies or ships registered there, and so the two Liberian company names was as close as it was possible for anyone to get to determining the ownership of the vessel, which remained unknown until the owner came forward voluntarily at a later stage.

During the Paris MOU concentrated inspection campaign (September 2000, c.f. page 16) of oil tankers, 47% of the ships detained were Malta flagged. Two of them had serious structural defects. One of these ships, the 26 year old Maria S, had 31 defects covering all convention certificates, manning levels, ship stability and strength, hull corrosion and cracking and cracks in the bulkheads. The results of these inspections were a disturbing reminder that there is much in oil tankers which cannot normally be seen and which indicate another accident waiting to happen.

These ships are most likely to find a home in an FOC flag State.

Pollution caused by FOCs is further illustrated by recent cases in America, where companies have paid large fines and agreed to improve their environmental procedures having been caught by the US Coastguard illegally dumping waste oil at sea. These companies include Carnival Cruise Lines; Royal Caribbean Cruise Lines and D/S Progress (a Danish shipmanagement company). David Uhlmann, chief of the environmental crimes section at the US justice department, said

*"Nearly all these ships have oil-water separators and pollution control devices, and for whatever reason the owners or the people on the ship decide they are not going to pay to use them, they are not going to pay to dispose of the waste properly, but instead they are going to dispose of it overboard. We are committed to prosecuting those pollution cases if they are in US waters. But even if they occur out at sea, the companies involved have to maintain records of pollution activities, and we have prosecuted for falsification of records when they have come into port. We have made tremendous progress in this area, but obviously there is still a serious level of vessel pollution and falsification of records. Once the pollution and the lying stops and we are in a position to devote resources elsewhere, we will."* (Lloyds List, April 25, 2002)

Miami-based Royal Caribbean has agreed to pay record fines in recent years for illegal discharges and falsification of the oil record book. In 1999 the company pleaded guilty to 21 felony charges for dumping bilge water and chemicals, falsifying records and lying about it, and agreed to pay an \$18m fine. More recently, prosecutors took Carnival Corp, the world's largest cruise operation, to court in Miami and in April 2002

## the united nations convention on the law of the sea (UNCLOS)

The United Nations Convention on the Law of the Sea clearly defines the nationality of ships and the duties and responsibilities of the flag State. Article 91 (Nationality of Ships) States that:

*“ships have the nationality of the State whose flag they are entitled to fly” and also stipulates that “there must exist a genuine link between the State and the ship”.*

The convention goes on to explain that ships which fly under the flag of the State:

*“shall be subject to its exclusive jurisdiction on the high seas”.*

As well as this exclusive jurisdiction on the high seas, the State is also to:

*“effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag” and in particular “shall 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” (Article 94, Duties of the Flag State).*

secured \$18m in penalties and a pledge that the company would overhaul procedures. This followed allegations that engineers on six cruise ships were dumping waste by fraudulently operating equipment and falsifying records.

### Port State Control detentions

The lamentable record of some flag States and their abject failure to meet their international obligations has led to the establishment of port State control regimes, both on a national basis and through regional memoranda of understanding. The establishment of port State control, which is expressly provided for in

international law, in UNCLOS and a number of instruments promulgated by the International Maritime Organization (IMO) and the International Labour Organization (ILO), marks an attempt by coastal States to mitigate the adverse competition their national fleets are suffering from the operation of sub-standard shipping and to protect their coastal waters from shipborne pollution.

Many of the flag States which have an above average record in terms of maritime casualties also feature prominently in terms of port State control detentions. The table below provides details of the top ten flag States, in terms of the number of ships detained, within

the countries being part of the Paris Memorandum on Understanding on Port State Control in 2001:

The top ten flag States, in absolute numbers of detentions for the year 2001, Paris MOU region :

Flag	Ships detained
Turkey	212
Panama*	176
Malta*	152
St Vincent*	136
Cyprus*	116
Cambodia*	72
Russia	66
Antigua and Barbuda*	65
Bahamas*	57
Ukraine	38

*Paris MOU on Port State Control, 2001 Annual report*  
\* indicates FOCs

The Paris MOU Annual Report contains a “Blacklist” which names flag States which are below the average figures for Port State Control detentions. These include Panama, Cyprus, Malta and St Vincent, as well as many of the smaller FOCs like Cambodia and Tonga, which have a truly awful record. It should be noted that, in line with the casualty statistics, certain States seem unwilling or unable to come off this blacklist and have remained at a below average level for many years.

The Paris MOU Annual Report for 2001 comments on the existence of flag States which have more interest in revenues than in maintaining safety standards. Cambodia, Sao Tome e Principe and Tonga are mentioned as being particularly bad. All three of these flags are run as franchise – type operations from other countries, pure money making ventures with negligible

State control. The report noted that other notorious flags “seem to be comfortable with their position on the Black List and have not shown any sign of improvement over the years.”

The Paris MOU recognizes the close correlation between safety and working and living conditions. Deficiency rates for working and living conditions, under the standards of ILO 147, have increased over the years. The report notes that older bulk carriers and general dry cargo ships are sometimes found in an appalling condition for the crew. This of course has an effect on accident and pollution prevention as well, and the report notes that “Combined with contracts of long service on board and extensive working hours there is no room for a proper safety culture on board these ships.”

## Comments

It is evident that maritime transport is of crucial importance to world trade and that there is a clear need that such a transport mode be sustainable and environmentally friendly. The following decision was amongst those noted in the report of CSD7 in 1999, where the Commission:

*“Invites IMO as a matter of urgency to develop measures, in binding form where IMO members consider it appropriate, to ensure that ships of all flag States meet international rules and standards so as to give full and complete effect to UNCLOS, especially article 91 (nationality of ships), as well as provisions of other relevant conventions. In this context, the Commission emphasises the importance of further development of effective port State control;”* (CSD, Report of the Seventh Session, page 20, E/CN.17/1999/20)

Left: Illegal longliner Rita downloading Tootfish in Port Louis, Mauritius Accession

Right: Illegal toothfish longliner "Grand Prince" from Belize running away, Indian Ocean. Photo: Beltr, Daniel/Greenpeace



## belize

As at 31 December 2001, Belize had a fleet of 481 vessels engaged in fishing (e.g. slightly larger than China, about the same size as the UK). The latest figures for declared catch for the FAO were for 2000, when the Belize fleet was 509 fishing vessels and the declared catch was 61,000 metric tonnes, or an average of 120 tonnes of fish per vessel for the year.

The former prime minister of Belize, Manuel Esquivel, Stated in 1999 that his government had received many diplomatic complaints about illegal fishing by Belize flagged ships. He said:

*"There was little we could do. These people aren't responsible to anyone. The ships are never seen in Belize. The Belize shipping registry is privatised. There should be proper accountability."* (Sunday Express, UK, 4 April 1999)

The Belize flagged fishing vessel 'Grand Prince', owned by the Spanish company Noycan, was caught fishing illegally for the threatened Patagonian toothfish in December 2000 and impounded by the French court at Reunion with a bond set at over 1,7 million Euros for the release of the vessel. Belize argued on behalf of the owner that the bond should be lowered to about 200,000 Euros. The International Tribunal for the Law of the Sea (ITLOS) questioned apparent irregularities in the Belize registry of this vessel. In its decision, the tribunal held that:

*"in the view of the tribunal, the assertion that the vessel is 'still considered as registered in Belize' contains an element of fiction, and does not provide sufficient basis for holding that Belize was the flag State of the vessel for the purposes of making an application under article 292 of the convention"* [paragraph 85].

In 2001, Belize attended the annual meeting of ICCAT. In an attempt to remove the trade restrictions imposed by ICCAT Belize presented a programme of proposals for control of fishing vessels flying their flag. However, ICCAT did not consider these measures as sufficient to justify the lifting of import bans on bluefin tuna, bigeye tuna and swordfish caught by vessels flying the Belize flag.

Belize also has a sizeable merchant fleet, 751 cargo-carrying ships. This approximately equates, in number of ships, to the Netherlands. There the similarity ends; the average age of the Belize cargo fleet is 25 years; the flag has a history of the worst kind for Port State Control detentions, casualties and problems with crew.

Unfortunately, the IMO has not responded to this invitation with any urgency, and it remains a great disappointment to many in the maritime community that to date little or nothing has been done by the IMO to develop measures in binding form to ensure compliance with international instruments or to move this matter forward in any meaningful way.

The port State control figures indicate that one of the latent effects of the unfair competition and competitive distortion generated by the FOC system is that it has also had a profound impact on many traditional flag States. Although such States are not FOCs some of them also have a very poor record with regard to compliance with widely accepted international minimum rules and standards. This is explained by the fact that shipping is a global industry and the sub-standard operator establishes the marginal freight rates and this also causes problems for national flag operators who have to compete within the global market. The threat of “flagging out” can also sharply reduce the capacity of national administrations to be able to exercise effective control of ships flying their flag as, if they also want to retain a national fleet and prevent the vessels from flagging out to an FOC registry, they may have to be flexible and, in doing so, compromise on the enforcement of international minimum rules and standards.

There have been attempts to define sub-standard shipping and quality shipping solely in terms of the hardware or the technical regulations promulgated by the IMO. There have even been attempts to define a sub-standard ship or operation as one that was “substantially below” IMO requirements and to define a “quality” ship or operation as one that is in accordance with the applicable international minimum standards of the day. This is indicative not of a quality culture but rather and, at best, a compliance culture.

From the seafarer’s perspective — and ultimately for the safe and environmentally acceptable operation of a ship — priority must be afforded to social and labour conditions. This means that equal attention must be given both to IMO standards and to applicable ILO instruments, especially ILO Convention 147, the ILO Declaration on Fundamental Principles and Rights at Work of 1998 and applicable human rights instruments. It is worth noting that the UNCLOS requirement that flag States must conform to generally accepted international regulations, procedures and practices means that even if the State concerned has not ratified the instrument in question, it is nevertheless bound by it.

An OECD Maritime Transport Committee study entitled “the Cost to Users of Sub-Standard Shipping” (January 2001) had the following to say about the current regulatory environment:

*“The strongest message which underlines this study is that as things stand there are no real incentives for either good operators/users, to actually do anything about sub-standard ships. Those in the industry which take their responsibilities seriously are thwarted by the system, and are essentially limited to minimising the damage to their own operations, while those who are not responsible can act with relative impunity, and are beyond the reach not only of their industry peers, but probably most of the regulators as well. **The bottom line, if this can be distilled in one phrase, is that however appealing the concept of industry self-regulation might be (and this Committee has promoted it strongly) in the end it is likely to be largely ineffective.**”*

We have, in practice, a non-functioning self-regulatory system. The use of FOCs and the ability to change flag at whim enables shipowners and ship operators to determine the degree to which they will comply with

internationally agreed minimum standards. We accept that many choose to do so and that some voluntarily go beyond the standards set out in international instruments. However, a sizeable minority do not and we are confronted with the problems and real human suffering which results on a daily basis. The ITF believes that the maritime industry is suffering from regulatory failure due to the fact that many international standards lack an enforcement mechanism and therefore what is required is an agreed framework which ensures compliance.

It is time for governments to confront the inherent problems of the shipping industry and for them to put in place an effective regulatory regime, which will be enforced, and which will restore rationality to the industry. It should ensure that the industry is run in a manner which is consistent with the concepts of sustainable development, both in terms of the ships and the seafarers who are needed to serve on them. A global industry needs the uniform application of all the provisions of international law, rather than selective application and the disregarding of those which it is politically or economically expedient to disregard.

## fisheries

Flags of Convenience in Fisheries offer the advantages available to owners in the maritime sector: lack of transparency; ease of transfer of flag; increased ability to circumvent international regulations on safety and other aspects of life at sea; lack of oversight of commercial fishing operations. In addition, they have an additional important advantage for fisheries alone: the cover for illegal fishing.

The Food and Agriculture Organization (FAO) has confirmed the link between FOCs and Illegal, Unreported and Unregulated (IUU) fishing in the Rome Declaration, and the IMO has been called upon to define the concept of a 'genuine link' between fishing vessel and flag State in order to combat the threat from FOCs. The IMO have not treated this matter with the urgency requested by the United Nations/FAO and so far no effective definition of a genuine link has been forthcoming from the IMO.

Since CSD7 there have been several initiatives which have aimed to cut down on IUU fishing, notably the FAO International Plan of Action to prevent, deter and eliminate IUU fishing. Regrettably, the period since 1999 has seen both a small increase in the FOC fishing fleet and also a large increase in the number of fish catching vessels which are 'without flag' according to the statistics. In this section we will examine the underlying problems which have contributed to the rise in FOCs, the effect of some of the measures which have been taken against them and what can be done to increase the hope of a sustainable fishing industry.

### The age of the world fishing fleet

Lloyd's Register of World Fleet Statistics 2001 notes that the average age of the world fleet of fish catching vessels over 100 GT is 22 years (in 1998 it was 20 years).

The fact that the average age of the world's industrial fishing fleet has become as high as 22 years is a source of great concern and is not compatible with the concept of sustainable development. There is a clear need for an effective scrapping programme as well as a better management of fishing fleets capacity, one which would also pay due regard to the availability of resources to prevent and eliminate excess fishing capacity. This is called for in the FAO International Plan of Action for the Management of Fishing Capacity, amongst other agreements.

Old fishing vessels pose more than just a risk to the crew that sail on them. When their value is so low, they are prime candidates for illegal fishing operations as the possibility of the vessel being impounded carries very little financial risk for the owner. As with many elderly ships, the value of the cargo (in this case fish) is likely to be many times the value of the vessel itself.

### The growth of the FOC fishing fleet

The FOC fishing fleet has increased in size since CSD7. In 2001, FOCs constitute about 12.5% of the world fishing fleet (in 1998 it was about 10%). However, within the FOCs there have been some changes regarding the number of fishing vessels flying their flag. Panama, Malta and Mauritius have reduced the number of fishing vessels flying their flag. Belize, Cambodia, Bolivia and Equatorial Guinea have all substantially increased their fleets since CSD7. Although Belize and Honduras have claimed that they were in the process of deregistering fishing vessels which do not comply with relevant fisheries regulations. Unfortunately, the nature of FOC fishing means that when one country tightens up on registration conditions for fishing vessels in response to international pressure, there are still several other countries where registration can be performed and new

## the international commission on shipping (ICONS)

*“For thousands of today’s international seafarers life at sea is modern slavery and their workplace a slave ship.” (ICONS report, page 3)*

ICONS comprised four Commissioners and was under the Chairmanship of Hon Peter Morris, former Minister of Transport for Australia. Their enquiry into ship safety began in March 2000 and culminated in a report one year later entitled “Ships, slaves and competition”.

*“The underlying cause of substandard shipping is the commercial advantage that a shipowner can gain through avoiding international standards for safety, environmental protection or labour conditions. Wherever possible, this element of the industry*

*shifts its costs to other parties. The elimination of sub-standard shipping requires a sustained attack on this fiscal advantage, using commercial and regulatory mechanisms.” (ICONS report, page 8)*

With regard to the International Maritime Organization, it is generally agreed within the industry that the IMO has developed an adequate set of standards for ship safety, but that implementation of these standards is the central problem. ICONS observed that:

*“responsibility for implementation rests with member States, several of whom have neither the will nor the skills to effectively meet their obligations.” (ICONS, page 194).*

FOCs are emerging in fisheries, such as Bolivia. Also, movements between FOCs can be observed as sanctions are being applied or lifted by certain regional fisheries organisations. For instance, after the trade restrictive measures imposed by ICCAT to Panama were lifted after Panama joined ICCAT, a number of vessels have been reflagged back to Panama and there are claims that they are engaged in IUU fishing activities again. That has led ICCAT at its last meeting in November 2001 to re-identify Panama as having vessels engaged in IUU fishing.

The registered owners of the vessels are located in some 80 countries, but most of the beneficial owners

are based in Taiwan, Japan and the European Union. Paragraph 17. 52 of *Agenda 21* and the FAO Code of Conduct for Responsible Fisheries require flag States to provide full, detailed, accurate and timely reporting of catches and the fishing effort of vessels flying their flag. It can be clearly seen by comparing figures for catch declared to the FAO with the number of vessels registered an FOC country that they are not keeping the FAO correctly informed. For the year 2000, for example, the total declared catch for the Belize registered fleet of 509 fishing vessels was 61,000 metric tonnes (an average of 120 MT per fishing vessel per year). This illustrates the enormous discrepancy between the declared nominal catch of the FOC registered fleet of

certain countries and the amounts that might be expected given the numbers of vessels and gross tonnage of the fleets which fly their flags.

Significantly, there are also 1,349 fish catching vessels flying 'unknown flag' in 2001, a significant increase on 2000 (1,043) and a huge increase over the figure eight years ago in 1994, listing only 14 fishing vessels flying 'unknown flag'. A number of the fishing vessels seen in investigations into IUU fishing in the last three years have shown no markings or name.

### Illegal fishing

It is impossible to divorce the use of FOC fishing vessels from the issue of IUU fishing. The FAO States:

*"increasingly, the reflagging of fishing vessels in particular fisheries has been directly associated with the avoidance of fisheries management measures."*

In Troubled Waters 1 (CSD7) details were given of ships which had been arrested for illegally fishing, and also names of other fishing and reefer ships which had been unloading illegally caught Patagonian toothfish in Mauritius. Of these vessels, 50% were FOC, and 36% carried the flag of Belize.

Since CSD7 there has been active monitoring of IUU fishing by some organisations, and eye-witness reports have helped to demonstrate the scale of the problem. On 20 July 2001, Greenpeace took part in an official aerial surveillance mission organised by the Luxembourg-funded Surveillance Operations Coordination Unit (SOCU), based in Banjul (the Gambia). The 5 hour mission covered the Exclusive Economic Zone (EEZ) of Guinea Conakry. In total 32 fishing vessels and two reefers (transport vessels) were sighted. Most

of them were bottom trawlers. Approximately half of the ships were big (40-50m) trawlers with no name, flag, or identification. The few with a name had hidden it with nets. They were fishing for the most valuable species, cephalopods, shrimp, grouper, sole.

Between 7 and 14 September 2001, off West Africa, Greenpeace sighted 31 trawlers and 3 reefers:

- 8 fishing vessels and 2 reefers were FOC vessels registered in Belize
- 1 mothership registered in Panama
- 2 fishing vessels had no name
- 3 fishing vessels had 2 names each (one had Lian Run 12 / Long Way 008; another Long Way 008 / Lian Run 3 (or 8); another Long Way 009 / Lian Run 7)
- 2 different fishing vessels had the same name (Long Way 009)
- 27 vessels displayed no country or port of registry
- 9 fishing vessels had been sighted previously engaged in illegal operations by the sub-regional aerial surveillance.

In addition to the information based on these sightings, information from the sub-regional Surveillance Operations Co-ordinating Unit is available. Many vessels were repeat offenders. The use of FOCs, the fact that some vessels had two names or no markings at all, and the use of very short term licences makes it virtually impossible to control these fishing activities.

Recognizing the global nature of the problem, the international community has become increasingly concerned about illegal fishing, in particular flag of convenience fishing, and the failure of some flag States to control fishing vessels flying their flag. In recent years a series of Resolutions have been adopted by the United Nations General Assembly during the annual debate on Oceans and the Law of the Sea. In

Left: Japanese owned and Panamanian flagged, refrigerated cargo vessel HATSUKARI. South Atlantic Ocean.

Right: Cambodian flagged BENNY NO. 87 trans-ships tuna to HATSUKARI. South Atlantic

Photo: Sutton-Hibbert, Jeremy/Greenpeace



highlighting the threat to the worlds' oceans, the United Nations Secretary General and the General Assembly have placed particular emphasis in the need to eradicate illegal fishing. In October 2000 a resolution was adopted which called on States to:

*“deter reflagging of fishing vessels flying their flag to avoid compliance with applicable obligations and to ensure that fishing vessels entitled to fly their flag do not fish in areas under the national jurisdiction of other States unless duly authorized buy the authorities of the States concerned and in accordance with the conditions set out in the authorization, and that they do not fish on the high seas in contravention of the applicable conservation and management measures.”*

Again, little has improved here. The international community has registered its concern, and has taken steps to address the issues through resolutions, but the enforcement of existing measures is still not effective and there are too many loopholes which make IUU fishing a hugely lucrative trade, where the rewards heavily outweigh the risks.

Flag of convenience fishing is rife in the Southern ocean around Antarctica. Fishing companies register their vessels and use flags from countries such as Belize, Panama, Seychelles and Saint Vincent and the Grenadines to avoid international fishing rules and any control of the activities of their beneficial owners. France has caught and arrested almost 20 vessels in the waters surrounding its sub-Antarctic territories, many of which flew flags of convenience. World-wide, Belize is the top flag of convenience fishing country with over four hundred industrial-scale fishing vessels flying its flag.

In April and May 2000, Greenpeace conducted a seven

week expedition to the Atlantic fishing grounds. The information collected clearly showed how the operation of FOC longliners are supported by a whole sea-going infrastructure designed to trans-ship the FOC catches to market and to supply the FOC fishing vessels at sea. The flags of these vessels were Belize, Cambodia, Panama or Equatorial Guinea (“Pirate Fishing, Plundering the Oceans”, Greenpeace, February 2001). Their authorities did little or nothing to act against these activities. However, in November 2000 the members of the International Commission for the Conservation of Atlantic Tunas (ICCAT) agreed to close their markets to all bigeye tuna caught by fishing vessels flying the FOCs of Belize, Honduras, Equatorial Guinea, St Vincent and the Grenadines and Cambodia.

In the Southern Ocean, illegally fishing for Patagonian toothfish, many of the vessels engaged in this fishery fly the flags of Belize, St Vincent and the Grenadines, Panama, Honduras and Vanuatu. Flag-hopping between FOC States makes the ships harder to track and to prosecute.

### Comment

As 90% of commercially important fishing stocks lie within the exclusive economic zones of coastal States, there is little to be gained from registering a fishing vessel within an FOC, apart from either being able to circumvent the applicable management regime or to fish illegally. This was recognised in paragraph 17.45 of *Agenda 21*. The problems caused by FOC fishing vessels have been recognised and were the principal reason for the FAO adopting the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea (the Compliance Agreement). It should also be noted that Section 7.8 of the FAO Code of Conduct for Responsible

Fisheries, under the heading “Financial Institutions”, took note of the problems caused by the re-flagging of fishing vessels to FOC registers in order to escape controls, and States:

*“Without prejudice to relevant international agreements, States should encourage banks and financial institutions not to require, as a condition of a loan or mortgage, fishing vessels or fishing support vessels to be flagged in a jurisdiction other than that of the State of beneficial ownership where such a requirement would have the effect of increasing the likelihood of non-compliance with international conservation and management measures.”*

The Secretary General of the United Nations has called the prevalence of illegal, unregulated and unreported fishing “one of the most severe problems currently affecting world fisheries.” The United Nations General Assembly has adopted a series of Resolutions calling on countries to exercise control over the activities of fishing vessels flying their flag. In March 2001, 114 nations agreed to an International Plan of Action to combat Illegal, Unregulated and Unreported (IUU) fishing. Among other things, they stressed the need to impose sanctions of sufficient severity to deter fishing vessels from illegal fishing and deprive them of the benefits of their fishing.

The European Commission has been active in looking at ways to eliminate FOC fishing activities, and the Communication on the Reform of the Common Fisheries Policy (see box EU Fisheries Policy, page 21) outlines the EC action plan against IUU fishing. There have been other international organisations which have taken steps to prohibit illegal fishing by FOC vessels. The International Commission for the Conservation of Atlantic Tunas (ICCAT) has banned the import of certain

tuna and tuna-like species from both contracting and non-contracting parties. At their meeting in November 2001, ICCAT decided to adopt the following trade restrictive measures on non-contracting parties : Belize (import ban on swordfish, bluefin and bigeye tunas); Cambodia (bigeye tuna) St Vincent and the Grenadines (bigeye tuna); and also on a contracting party, Equatorial Guinea (bluefin and bigeye tuna).

It is clear that current trade sanctions imposed by ICCAT are effective in forcing FOC countries to present information to ICCAT, and in some cases to join the organisation. However, the one sanction many of these countries are able to take is to eliminate vessels from their flag, which simply exports the problem to another FOC. In November 2001 ICCAT agreed to re-identify Panama (a contracting party) and identify four other countries (non contracting) as having vessels engaged in IUU fishing (Bolivia, Indonesia, Sierra Leone and Vanuatu). If these countries do not take measures to rectify the situation, trade measures could be agreed at the ICCAT meeting in 2002.

In their efforts to prevent the illegal fishing of Patagonian toothfish, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) introduced a Catch Documentation Scheme (CDS). If implemented correctly, this could allow catches made in accordance with conservation measures to be identified and therefore make it more difficult for FOC/IUU fishers to sell their catch. This has had good response and participation but some countries have used the CDS to validate IUU fish shipments.

The CDS has been followed by a resolution to deny access into port of any vessel identified as illegally fishing even where they have been renamed or reflagged.

## europaean union fisheries policy

The European Commission has been looking at ways to eliminate FOC fishing activities. There has been active encouragement for States not to allow the flagging out of their fishing vessels to FOCs in order to maintain effective flag state control and the Communication on the Reform of the Common Fisheries Policy (28 May 2002, COM(2002) 181 final) outlines the EC action plan against IUU fishing. One of the paragraphs reads:

*“The IUU Action Plan will involve initiatives to: Strengthen and complete the international legal order with a view to eliminating both the use of flag-of-convenience vessels and the practice of landings in ports without proper controls. This should be achieved, inter alia, through the adoption of international instruments that will define both the notion of “genuine link” to the flag State for fishing vessels, so that such vessels are properly controlled by the flag States, and the rights and obligations of the port States to ensure the effectiveness of conservation and management measures.”*(page 17)

In the same document the European Commission proposes an EU diplomatic initiative to convene an international conference for negotiation of an international agreement determining conditions for implementing Article 91 of UNCLOS for fishing vessels, and to establish objective legal criteria for ensuring that an authorisation to fly the flag of a State is based on the existence of a substantive link between that State and the fishing vessel concerned, as required under Article 91 of UNCLOS.

These views are reinforced by the European Union Fisheries Commissioner, Franz Fischler, who stated the following in “Illegal Fishing – a threat to our common heritage”:

*“The practice of flags of convenience, where owners register vessels in countries other than their own in order to avoid binding regulations or controls, is a serious menace to today’s maritime world.”*  
(<http://europa.eu.int/comm/commissioners/fischler/illfish.en.htm>, July 2002)

In May 2001 the Organisation for the Promotion of Responsible Tuna Fisheries (OPRT) had its first meeting in Tokyo. This initiative of the Japanese tuna fishing industry, with the support of the Japanese Government, concluded an agreement with the Taiwanese FOC Fishing Vessels Association to scrap 62 Japanese-built FOC longliners by the end of 2002 and re-register 67 FOC longliners to

Taiwan by the end of 2005 without Taiwan increasing the number of its tuna longline vessels currently in operation.

Unfortunately, these measures have not yet been able to halt the increase in FOC fishing vessels or IUU fishing.

## conclusions

It is expressly stated within international law that the flag State is primarily responsible for ensuring compliance with international minimum standards. Article 94 of UNCLOS establishes the fundamental principles and makes clear that having a shipping register is not an unfettered right of a sovereign State but one which is qualified as a result of the obligations imposed on the State, especially with regard to ensuring compliance with international minimum safety, pollution prevention and social standards. Similarly, Article 217 of UNCLOS sets out the obligation on flag States to effectively enforce international rules, standards and regulations, irrespective of where a violation occurs. These requirements were, *inter alia*, incorporated into IMO Assembly Resolution *Guidelines to Assist Flag States in the Implementation of IMO Instruments* (A. 847 (20)).

Article 91 of UNCLOS provides for a “genuine link” between the ship and the flag State. Although, the “genuine link” is not expressly defined in UNCLOS other Articles, especially Articles 94 and 217, implicitly point to the requirement for at least an “economic link”. This means that there should exist within the flag State a substantial entity which can be made responsible for the actions of the ship and on which penalties of adequate severity can be levied so as to discourage violations of applicable international minimum rules and standards, wherever they occur.

In March 1998 the First Joint Ministerial Conference of Paris and Tokyo Memoranda of Understanding on Port State Control agreed, in their joint ministerial declaration to, *inter alia*, take concerted action within the IMO for the adoption of comprehensive binding quality criteria for flag State administrations and ship registers and to apply all reasonable measures to induce flag State administrations with a record of being

unable or unwilling to exercise adequate control over their ships to do so. Since this declaration others have added their voices to the call for binding measures to ensure flag States perform adequately, among them CSD7; FAO and ICONS.

Increasingly, States and regional bodies who have become dissatisfied with the lack of movement in the international sphere (towards the institution of effective and binding measures for flag States) have taken their own action to protect themselves and others against the excesses of the flag of convenience system. The European Commission is one such regional body, although legislation still needs to be adopted.

It is clear that self regulation in the maritime and fisheries sector is a complete failure; the current system has led to a multiplication of FOCs offering safe haven for ships which should be scrapped and for those engaged in illegal fishing. Central to the trade unions and Greenpeace International’s diagnosis of the problem would be the establishment of mechanisms to eliminate the flag of convenience system which is little more than an institutionalised system for the effective negation of the requirements expressly provided for in international law.

International law clearly provides that every State has a sovereign right to establish a shipping register. However, this right is not absolute and is fettered by the duties, responsibilities and obligations which are clearly and expressly established in customary international law and international instruments. International law and UNCLOS also establish rights for port and coastal States and, at the same time, impose duties on such States to protect the marine environment and the living marine resources within the zones under their jurisdiction. Therefore, there is a clear need to balance the rights of

**View of sterns of 2 reefers**

*Photo: Davison, Kate/Greenpeace*



port and coastal States against those of the flag States in a more equitable manner.

Throughout this brochure the State of crew of both ships and fishing vessels has not been particularly considered. In the experience of the trade unions the living and working conditions on many FOC ships and fishing vessels are appalling, with the flag State exercising even less control over these conditions than they do over the technical State of the ship. The ILO has determined that there is a substantial Decent Work Deficit in the maritime industry, and this also needs to be addressed to improve both safety and pollution.

## recommended actions

In consideration of the conditions necessary for a sustainable maritime transport industry and a sustainable fishing industry, the trade unions and Greenpeace urge the Summit to address the following issues and to include them in the decisions of the Summit:

Agree that the application of International Labour Organisation core labour standards is central to having a sustainable maritime industry and a sustainable fisheries industry;

Agree that Flag of Convenience (FOC) shipping and fishing continues to defy the provisions of international law; that the lack of transparency afforded by Flags of Convenience has been a key factor in making the maritime and fishing industries unsustainable and therefore Flags of Convenience should be eliminated;

Agree that all member States must apply the United Nations Convention on the Law of the Sea (UNCLOS); particularly the areas relating to flag State responsibility and areas regarding flag State enforcement measures for the protection and preservation of the marine environment;

Invite the United Nations Department of Ocean Affairs and Law of the Sea (United Nations DOALOS) to revise the United Nations Ship Registration Convention, in order to develop a mandatory instrument on ship registration giving full effect to UNCLOS;

Urge the International Maritime Organization (IMO) to fully implement the decision taken at CSD7 in 1999 to develop measures, in binding form where appropriate, to ensure that ships of all flag States meet international rules and standards so as to give full and complete effect to UNCLOS and other relevant conventions;

Urge the International Maritime Organization (IMO) to fully implement United Nations General Assembly Resolution 54/32 (Implementation of provisions relating to straddling fish stocks) which calls upon the IMO to define the concept of the genuine link between the fishing vessel and the flag State;

Urge all member States to implement the FAO International Plan of Action (IPOA) to Prevent, Deter and Eliminate IUU Fishing.



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