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DRAFT REPORT

on the role of flags of convenience in the fisheries sector
(2000/2302(INI))

Committee on Fisheries

Rapporteur: Patricia McKenna

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PROCEDURAL PAGE

At the sitting of 18 January 2001 the President of Parliament announced that the Committee on Fisheries had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the role of flags of convenience in the fisheries sector.

At the sitting of 15 February 2001 the President of Parliament announced that she had also referred the matter to the Committee on Development and Cooperation, the Committee on Employment and Social Affairs, the Committee on Environment, Public Health and Consumer Policy, the Committee on Regional Policy, Transport and Tourism, the Committee on Industry, External Trade, Research and Energy and the Committee on Legal Affairs and the Internal Market for their opinions.

The Committee on Fisheries appointed Patricia McKenna rapporteur at its meeting of 23 January 2001.

It considered the draft report at its meetings of 5 February, 24 April, 19 June, 12 September and 2001.

At the last meeting it adopted the motion for a resolution by ... votes to ..., with ... abstention(s)/unanimously.

The following were present for the vote: ... chairman/acting chairman; ... and ..., vice-chairman/vice-chairmen; ..., rapporteur; ..., ... (for ...), ... (for ... pursuant to Rule 153(2)), ... and

The opinionsof the Committee on ... (and the Committee on ...) is (are) attached; the Committee on ... decided on ... not to deliver an opinion.

The report was tabled on .

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on on the role of flags of convenience in the fisheries sector (2000/2302(INI))

The European Parliament,

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- having regard to Rule 163 of its Rules of Procedure,
- having regard to the report of the Committee on Fisheries and the opinion (and the Committee on ...) (A5-0000/2001),
 - A. noting with alarm the increasing use being made of flags of convenience in the fishing industry, with severe impact for the marine ecosystem, as well as social and working conditions for the crews on board,
 - B. recognising the ways in which the UN Agreement on Straddling Fish stocks and Highly Migratory Fish Stocks will provide increased pressure upon flag States to assume their responsibilities by monitoring and controlling the activities of vessels flying their flag, and hence the importance of the entry into force as soon as possible of the Agreement,
 - C. whereas the Member States should act to discourage the transfer of fishing vessels from their registers to registers of FOC countries,
 - D. whereas public money should not be used to fund the transfer of fishing vessels to FOC registers,
 - E. noting the import bans imposed by the International Commission for the Conservation of Atlantic Tunas (ICCAT) on tuna and swordfish caught by vessels flying certain flags of convenience, as well as other undertakings such as the establishment of registers listing vessels which are authorized to fish in the ICCAT Regulatory Area,
 - F. recognising that FOC fishing vessels rely heavily on transport vessels at sea, in order to avoid the need to go into harbours to resupply or to offload their catches,
 1. Strongly condemns all those engaged in the FOC fishing industry, including its attendant transport vessels, for its impact on fish stocks and species caught as bycatch; for its treatment of crew in terms of working conditions, wages and safety standards; for the unfair competition it poses to those legitimate fishing vessels which respect the relevant management measures;
 2. Urges those Member States which have not completed ratification procedures of the UN Fish Stocks Agreement to do so as rapidly as possible;
 3. Welcomes the FAO International Plan of Action on Illegal, Unreported and Unregulated

Fishing and encourages all governments, including those of the Member States, to rapidly and fully implement it in its entirety;

4. Calls upon the Member States to refuse to remove vessels from their shipping registers if they are being exported to third countries which have been identified by the relevant regional fisheries organisations as countries that permit fishing in a manner which jeopardises the effectiveness of international conservation measures;
5. Congratulates the governments and fishing industries of Japan and Taiwan for the innovative programme that they have introduced to repatriate or scrap over 125 large-scale tuna longliners which have been fishing under flags of convenience; equally congratulates the government of South Africa for banning the landing of fish in its ports and harbours by FOC vessels;
6. Condemns the practice of some States, such as Brazil, of temporarily incorporating in their register vessels known to have engaged in FOC fishing, a practice tantamount to laundering; considers that such practice is unacceptable in a situation with excess of fishing capacity;
7. Urges all Member States to vigorously apply all provisions of the Control Regulation, including comprehensive inspections in harbours before allowing fish to be offloaded;
8. Calls upon the Commission to propose amendments to the Control Regulation (2847/93) to allow landing of fish only after it has been demonstrated that it was caught in compliance with the management measures adopted by any relevant regional fisheries organisation and other relevant international instruments such as the UN Agreement;
9. Urges the Commission to propose measures to make it a violation for natural or legal persons in the Community to trade in fish or fish products which have been derived by fishing under flags of convenience;
10. Encourages ICCAT and other regional fisheries organisations, for tuna and other species, to cooperate in their attempts to eliminate fishing under flags of convenience; approves, in particular, of the establishment and dissemination of lists of vessels which authorized to fish in the respective zones as well as the imposition of non-discriminatory trade restrictive measures;
11. Calls upon the Commission and the Council to use the revision of the multiannual scheme of generalised tariff preferences for the period 1 July 1999 to 31 December 2001, in order to establish the highest possible tariffs for products coming from third countries which have been identified as FOC States;
12. Requests the Commission to propose an amendment to add to the list of serious offences under the CFP those infringements of fisheries management measures which are committed by Community nationals on board FOC fishing and transport vessels;
13. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENT

They are the "scourge of the oceans" as Commissioner Fischler has noted, these vessels that fish under flags of convenience, ignoring all rules, exploiting the best fishing grounds and wreaking havoc in their wake. Formerly, unscrupulous ship-owners used flags of convenience (FOCs) to evade tax rules, licence regulations, safety standards and social requirements for the treatment of crew. In more recent times, as fleets continue to increase and resource abundance plummets, flags of convenience are increasingly used as a means of avoiding measures taken by countries or regional fisheries organisations (RFO) to manage fisheries and conserve stocks. Pirate fishing can be seen as an undesirable consequence of States at last attempting to improve the management of fishing.

The Impact of FOC Fishing

The environmental impact of pirate fishing vessels is virtually impossible to evaluate, as, by definition, data on catches are non-existent or, at best, unreliable. For instance, the table shows total fleet tonnage and reported catches for five countries frequently considered to have FOCs:

	Fleet tonnage (vessels > 100 tonnes)	Total catch (MT, 1999)	Catch/tonne of vessel
Belize	347,036	39,940	0.1
Cyprus	103,455	5,273	<0.1
Honduras	173,050	7,214	<0.1
Netherlands Antilles	17,482	900	<0.1
St. Vincent & the Grenadines	181,753		0.1

In other words, these fleets caught 100 kilograms of fish per Gross Tonne of vessel per year! Under-reporting is obviously rampant.

However, pirate fleets target mainly high value species such as tuna, shrimp, toothfish, etc. and some RFOs have investigated their activities. ICCAT has attempted to calculate amounts of tuna they catch, using, among other information, trade data. It was estimated that the annual catches of bigeye by FOC fleets increased from 5,000 tonnes in 1993 to 25,000 tonnes in 1999, equivalent to about a fifth of the total catches. The impact on this over-exploited stock, not to mention numerous species taken as bycatch, is severe. CCAMLR has similarly estimated catches of Patagonian toothfish by illegal and/or FOC fishing vessels.

Pirate fishing is a serious social problem as well. Ship-owners take advantage of the lack of controls to reduce training safety standards, pay minimal wages, lower standards of living and working conditions, require long working periods without proper rest, provide inadequate medical attention and many other offences. The International Transport Workers Federation has, in conjunction with Greenpeace International, waged a campaign against the use of flags of convenience in the fishing industry.

The problem is increasing in its scope and severity. I have written three Working Documents, which provide further details on the legal situation as it pertains to flags of convenience

(Working Document 1, PE 286.566), measures taken by ICCAT to combat pirate fishing (Working Document 2, PE 286.567) and the involvement of EU ship-owners in pirate fishing (Working Document 3, PE 309.162). This report will concentrate more on what can be to end this practice.

An International Obligation

Fishing is now a global industry. Fleets from the EU range all oceans of the world, as do those of several other distant water nations. Markets are also global - one third of total fish production entered international trade in 1998, worth over US\$50,000 million. Capital is perhaps the most global commodity of all, and EU fisheries investments can be found in many countries.

As a consequence, a concerted international effort is needed to eliminate fishing under flags of convenience, involving the countries issuing the flags or whose citizens work on the fishing vessels, ports into which they come for resupply or off-loading, markets in which the fish is consumed, or the home of the capital which finances this destructive phenomenon.

FOC vessels rely heavily on reefers, or transport vessels, to resupply and transship at sea, to avoid the need to enter ports and be subject to controls. Thus, all of the following should be applied to these cargo vessels as well as the fishing vessels themselves.

Flag State Responsibility

There are three requirements - forcing flag States to ensure international norms are complied with, discouraging flagging out to FOC registers and discouraging flagging in to FOC States.

Respecting International Measures

The 1982 Convention on the Law of the Sea simply leaves responsibility for the activities of a vessel up to the State whose flag it flies. Since some countries are unable or unwilling to assume this responsibility, a number of initiatives have been designed to put diplomatic and economic pressure upon the flag State to actively ensure that its vessels comply with conservation and management measures adopted by RFOs. These include the FAO Compliance Agreement and the UN Fish Stocks Agreement; both will be legally binding when they enter into force. The EU has accepted the Compliance Agreement but, shamefully, not all Member States have ratified the UN Agreement. The FAO Code of Conduct and International Plan of Action on Illegal, Unregulated and Unreported Fishing are useful voluntary instruments (Working Document 1, PE 286.566).

At present, the strongest statement is in Article 18 Paragraph 1 of the UN Agreement:

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.

Flagging Out

A great many fishing vessels owned by individuals or companies in the EU operate under

FOCs (PE 309.162). The Member States most implicated are Greece, Spain, Germany, Portugal and France.

The FAO Plan of Action on IUU Fishing calls upon States to "discourage their nationals from flagging fishing vessels under the jurisdiction of a State which does not meet its flag State responsibilities" (Paragraph 19). Though governments claim that this is difficult to do, all that is necessary is to refuse the request of the ship-owner to remove the vessel from the register. Thus, according to documents tabled at the 2000 ICCAT meeting, Japan banned the export of large-scale longliners in 1998.

The EU considers vessel exports to be a solution for its excess fishing capacity, but under no circumstances should vessels be exported to FOC countries, as has often happened in the past. It is unacceptable to provide financial incentives to do so. A Commission proposal (COM 322) will help to close this loophole, but will not prevent indirect transfers to an FOC country via an intermediary - the proposal should be tightened up by requiring refund of the subsidy if the vessel is subsequently transferred to an FOC country within, say, five years.

It should be noted that Spain already prohibits support money for the transfer of certain fishing vessels to countries which have been identified as tax havens. Some of these countries are obviously flags of convenience as well, including St. Vincent & the Grenadines and Panama, but others are not included, such as Honduras and Belize.

Conversely, Japan and Taiwan have recognised the extent to which their longline industries use FOCs and have taken corrective measures, by launching programmes to repatriate and/or scrap a large number of tuna longliners. At least 62 Japanese-built FOC longliners will be scrapped by the end of 2002. A further 67 FOC longliners built in Taiwan will be repatriated to replace older vessels, with no overall increase in fleet capacity. It is expected that this will reduce the FOC tuna longline fleet by about half. These programmes are funded by both government and industry. The contrast with the Community approach could not be starker.

Flagging In

While the EU is not known to flag in FOC vessels, two other countries are at present "laundering" them. Several Japanese and Taiwanese ship-owners did not wish to see their vessels repatriated and scrapped, so began to charter them to Brazil and China, both signatories to ICCAT. As many of these vessels are registered in countries under ICCAT embargoes, the ship-owners have a clear incentive to find an alternative home - as these are bareboat charters, there is no permanent change of flag. Brazil argues that it is preferable for FOC vessels to work under a Brazilian charter, but in an industry with such excess capacity, pirate vessels should be on the priority list for the scrapyards.

Some countries, notably Panama and Honduras, claim to be in the process of cleaning up their registers. However, this essentially means simply deleting many vessels, leaving them free to fish under another flag, or under no flag at all. Instead, they should accept their responsibility for the vessels and ensure that they abide by international management measures.

Port State Responsibility

The role of ports in combating FOC fishing cannot be over-estimated, as all fish must come

ashore in one port or another. Effective controls in ports, designed to ensure that fish being landed was caught in conformity with both national legislation and with the relevant internationally-agreed conservation and management measures, would go a long way towards denying pirates a place to offload their catch.

The EU Control Regulation (Reg. 2847/93, as amended, Article 28 octies) states that the authorities should only allow vessels from third countries to offload fish that was caught on the high seas once they have been satisfied that:

- the species retained on board have been caught outside the regulatory areas of any competent international organisations of which the Community is a member, or
- the species caught on board have been caught in compliance with the conservation and management measures adopted by the relevant regional organisation of which the Community is a member.

The first point is absurd, for it essentially says that, as long as fish is caught outside the areas of the RFOs to which the Community belongs, then the Community is not interested in whether or not it was caught legally or illegally, by a pirate vessel or a legitimate one. If the Community wishes to be considered serious in its attempts to bring FOC fishing under control, this paragraph should be amended so that fish can only be offloaded if it can be demonstrated that it was caught in compliance with all RFOs, not merely those to which the EU belongs.

Further, as the Fisheries Committee has noted upon numerous occasions, the application of the Control Regulation leaves much to be desired, but that is a more general problem, not limited to FOC vessels.

It should be noted that South Africa has prohibited offloading in its ports by FOC vessels, using the lists of vessels which have been established by ICCAT. Cape Town is one of the most important harbours in the South Atlantic for both fishing vessels and their attendant transport and resupply vessels.

Las Palmas de Gran Canaria in Spain fulfils a similar function of resupply and off-loading in the North Atlantic. Additionally, though, Las Palmas serves as a gateway for FOC-caught fish to the huge EU market. This must be brought under control.

Market State Responsibility

Over the past several years, ICCAT has carefully but deliberately restricted international market access for pirate fishing vessels. Information on illegal fishing activities is amassed based on market data, vessel sightings, etc. Following a transparent process, this has led to import bans into all ICCAT Contracting Parties for:

- bluefin from Belize, Equatorial Guinea and Honduras,
- swordfish from Belize, Honduras,
- bigeye from Belize, Cambodia, Equatorial Guinea, Honduras and Saint Vincent & the Grenadines.

This tactic has proven quite effective, at least in the short term. Some of these countries, as well as others that have been warned that import bans may follow if they do not control their fishing vessels, have initiated control programmes, begun legal proceedings against some vessels or cancelled fishing licences. Panama and Honduras joined ICCAT, and Panama cleaned up its activities sufficiently to have its import ban on bluefin lifted.

Unfortunately, some have simply removed the pirate vessels from their registers, leaving them free to seek out another, more convenient flag to fly. However, if ICCAT continues this tactic and is followed by other tuna management organisations, the choice of FOCs will continue to shrink - depriving the pirates of the economic incentive is one of the most effective ways to discourage them. Meanwhile, the bans should be broadened to include a wider range of products - at least all tuna species and preferably all fish products.

The European Union, and indeed other countries, have another market-related tool that they could employ, namely tariffs. The current import tariffs for swordfish, bluefin, bigeye and "other tunas" are as follows:

Exporting Country	Bluefin	Swordfish	Bigeye	Other tuna
Belize	ban	ban	ban	0%
Cambodia	0%	0%	ban	0%
Equatorial Guinea	ban	0%	ban	0%
Honduras	ban	ban	0%	0%
St.Vincent	0%	0%	ban	0%
South Africa	18%	18%	18%	18%

The bans imposed by ICCAT are duly listed (that for bigeye from Honduras will only take effect from January 2002). One can see that, except for the bans, all of the FOC States benefit from a zero tariff for the tuna products entering the EU. On the other hand, South Africa, which has not been identified by ICCAT and, in fact, has actively participated in the fight against pirate fishing by closing its harbours to FOC vessels, faces tariffs of 18%. Rewarding FOC countries with zero tariffs is unfair. While WTO considerations might preclude extending import bans to all types of products for countries which have been listed by ICCAT, preferential tariffs should not be awarded. Indeed, the current regulation (Regulation 2820/98, Article 22) allows for temporary withdrawal of tariff preferences in cases of "manifest cases of infringement of the objectives of international conventions such as NAFO, NEAFC, ICCAT and NASCO concerning the conservation and management of fishery resources". This tool should be used vigorously to impose the maximum tariffs allowed for all products coming from FOC countries.

State of Beneficial Ownership

Article 117 of the UN Law of the Sea states that:

All States have the duty to take, or to co-operate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

The Control Regulation (Reg. 2847/93, as amended) provides a theoretically powerful tool for combating pirate fishing, though, as mentioned above, its application is often far less than ideal. It requires Member States to "ensure that the appropriate measures be taken, including administrative action or criminal proceedings according to their national law, against the natural or legal persons responsible". The measures must be sufficiently strong to deprive those responsible of any economic benefits and to discourage any further offences. It also allows for sanctions to be taken against Member States which do not act. Unfortunately, the Control Regulation only applies to vessels in EU waters and to EU vessels on the high seas and in third country waters. It should be made to apply to EU nationals on non-EU vessels as well. That way, action could be taken against, for instance, an EU citizen who is captain of an FOC vessel or an EU company that owns a pirate ship.

It might be suggested that such extra-territoriality could pose a problem for some countries, but Spain has amended its legislation to provide for a suspension of a captain's certificate for a period of up to five years if he or she commits a serious offence aboard an FOC vessel.

Conclusions

The campaign that must be waged against pirate fishing is a global and multi-faceted one. All countries with any involvement in the fishing industry - catching the fish, owning or crewing vessels, providing harbours, buying the final product - must participate. The EU, as one of the most important countries from all of these points of view, clearly has a special responsibility to assume.

This report has showed a few areas where the EU could take a more serious stand against FOC fishing, in its guises as flag States, port States, market States and States of beneficial ownership or of nationals involved.

It is to be hoped that the Community rises to this challenge.