

# troubled waters

fishing, pollution and FOCs

major group submission  
for the 1999 CSD thematic  
review: oceans and seas

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Trade Union Advisory Committee to the OECD  
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March 1999  
ISBN 0-901969-22-2

Cover photo: Gavin Newman/Greenpeace



**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 a joint submission which was previously made to the Commission on Sustainable Development (CSD) in December 1998.

It is recognised that the problems of marine pollution and over-fishing are not limited to the FOC fleet. However, the booklet argues that they have a disproportionate impact and, therefore, need very special attention by CSD 7.

The booklet seeks to address the FOC problem in terms of the three pillars of CSD; environmental, social and economic. It also refers to some compliance problems which were addressed in Chapter 29 of *Agenda 21*.

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## summary

This analysis demonstrates that there is a serious weakness in the international regulatory regime governing the oceans and seas which has permitted the growth and proliferation of a system which in practice amounts to a negation of international law. It is also clear that the FOC system needs to be eliminated.

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 the United Nations Convention on the Law of the Sea (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 port and coastal states against those of the flag states in a more equitable manner.

## introduction

The International Transport Workers' Federation (ITF) is a global organisation of transport workers' unions bringing together some 533 unions in more than 136 countries in every part of the world, and representing over five million trade union members in every branch of transport. 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 which look after the interests of workers in a specific branch of the transport industry. Each section has its own network of specialist committees and conferences. The eight ITF industrial sections cover railway workers, road transport workers, inland navigation (river) workers, seafarers, dock workers, fishing workers, civil aviation workers and tourism services workers. 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 booklet is a joint collaboration between the ITF, the International Confederation of Free Trade Unions (ICFTU) and the Trade Union Advisory Committee to the OECD (TUAC) 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 sustainable development of oceans and seas on a daily basis and has agreed to co-sponsor this booklet jointly 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 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 which fly their flag.

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 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. The FOC problem, which amounts to an institutionalised system for the negation of international law, is central to the problem of the lack of flag state implementation and has reached a point where it is threatening the sustainable development of maritime transport, the protection of the marine environment and the sustainable utilisation of marine living resources.

Maritime transport is essential to the global economy of today and the sustainable development of the shipping industry is crucial not just to world trade but also to addressing the degradation of the marine environment. However, the trade unions and Greenpeace International consider that there is a fundamental and structural crisis within the maritime sector. The crisis is manifested by the projected shortage of suitably skilled and qualified seafarers, the growing age of the world fleet, the large number of lives lost at sea, the lack of flag state implementation and the spiralling increase in

The *Salvora* suddenly reveals her name and callsign on approach to port. Pictures show her in disguise as she was caught illegally fishing by Greenpeace and as she attempts to show a legal face on her approach to Mauritius.

Photo: Gavin Newman/Greenpeace



the number of port state control detentions. In our view the principal cause of the crisis is the failure to ensure that sufficient environmental, safety and social standards are implemented as a result of unfair competition and the competitive distortion caused by the existence of the FOC system.

*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, lack of agreement between fleet capacity and fish resources, dislocation of the price fixing mechanisms and pollution and that this crisis is being exacerbated by illegal, irresponsible and unreported fishing by flag of convenience fishing vessels.

Indeed, Simon Upton, chair of CSD 7, stated at the second London Oceans Workshop held in December 1998: "The third concern is that fishing activities continue to take place in contravention of the applicable regional conservation regimes and states are not meeting their obligations under the Law of the Sea Convention to control the activities of their flag vessels. Even more problematic is the use of flags of convenience. When fishing companies based in countries that have signed fisheries agreements and conventions then design arrangements that allow ships under their control to go to sea and ignore those agreements under cover of the flag of a non-signatory they make a mockery of the agreement. Governments have to respond."

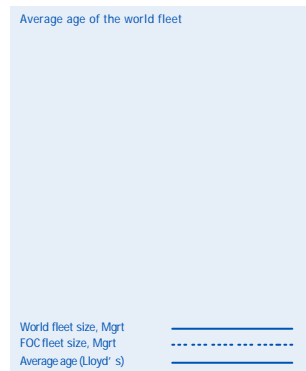
This submission examines the state of the maritime transport industry in terms of the age and structure of the world fleet, the growth of FOC shipping, FOCs and

maritime casualties, the worst pollution cases and port state control detentions. It puts the situation into context through an analysis of the issues raised and their implications for sustainable development. It also examines the structure of the world's fishing fleet, the growth of the FOC fishing fleet and illegal fishing and places the situation into context through an analysis of the issues raised. Finally, the submission makes a number of conclusions, summarises the principal arguments and makes a series of recommendations to remedy the current situation. Throughout the submission, consideration has been given to raising only the issues which lie within the remit of Chapter 17 of *Agenda 21* and, therefore, other aspects which relate to human and trade union rights, which are also fundamentally prejudiced by the current regime and which come within the three pillars of sustainable development and within the scope of UNCLOS, have not been addressed.

## maritime transport

### The age of the world merchant fleet

The chart shows that the average age of the world fleet has increased considerably since 1980 and is now over 19 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. The Institute of London Underwriters in its 1997 report states that:

- 1997, ships under 10 years old accounted for only 4% of total losses, with 93% of all total losses being 15 years or older at the time of the loss

- over the past decade ships under 10 years old have only accounted for 9% of total losses, and
- among tankers, losses were heavily concentrated among ships of 20 years and above.

Older ships are less efficient and due to the "grandfather clause" (see note 1 at the end of this section) they are not always required to meet the latest international minimum rules and standards. That is, they are only required to meet the standards which were in place when the keel was laid.

A 1992 UK House of Lords Select Committee on Science and Technology inquiry into safety aspects of ship design and technology stated:

"In the early 1980s, however, shipyards began to make more use of high-tensile steels. These give more strength than mild steel for the same thickness. Shipyards are also using increasingly precise forms of structural analysis, and increasingly powerful computer programmes. These enable them to design much nearer to the minimum thicknesses and maximum stresses permitted by class. Both these devices make ships cheaper when new, and lighter and therefore more profitable in service. However, they also make fatigue cracks more likely over wide areas of new structure where previously they would not have occurred. The thickness of steel when new is reduced in service by corrosion. Classification society rules set limits to the level of corrosion which may be permitted before steel must be replaced if the ship is to remain in class – typically 15% for primary steelwork and 30% for secondary. High tensile steel corrodes at the same rate as mild steel, and a thinner plate will tolerate less corrosion than a thicker plate before it becomes dangerously thin. Therefore the dangers of thin high-tensile steel when new are rapidly compounded as it begins to corrode." (Paragraphs 2.14 and 2.15)

Greenpeace inflatable crew from the Arctic: Sunrise shadowing an unidentified 'illegal' fishing vessel in the Southern Ocean.  
Photo: Gavin Newman/Greenpeace



### Growth of FOC shipping

The chart also illustrates the increase in world fleet size (in millions of tonnes by gross tonnage) and the increase in size of the FOC (see note 2 at the end of this section) fleet over the same period. With most newly-built tonnage being registered with FOCs and existing tonnage still changing from national flags to FOCs, it can be seen that the increase in size of the world fleet is almost entirely due to an increase in the FOC fleet.

In the period since 1980, the number of registers which have been designated by the ITF as being an FOC has increased greatly. In 1980 there were 11 registries and now there are 27. In addition to these there have, in recent months, been a number of other registries which are coming on stream and hoping to attract customers. They are Mongolia, Equatorial Guinea, Bolivia and Jordan.

It is fair to say that the registration business has produced two models, neither of which requires 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 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 be bought and sold. Examples include Liberia, Marshall Islands, St Vincent and the Grenadines and Vanuatu.

The full impact of the farcical 'pseudo flag' status of some of these registers is made all too apparent in the case of Liberia where, for many years, there was a brutal civil war

and no functioning central government. In recent months the maritime community has been monitoring the very public dispute and court case between the government of Liberia and International Registries Inc (IRI) (the company located in the United States of America which administers the Liberian and Marshall Islands registers). Liberia has recently transferred the operation of its shipping registry to a newly formed company, located in the United States, the Liberian International Shipping Corporate Registry (LISCR). LISCR was established and is owned by the lawyers who are acting for Liberia in their legal case against IRI. IRI has in turn lodged a US\$ 400 million law suit against LISCR. There has also been a public dispute between the two companies over which of them has been authorised to issue certificates of registry and other statutory certificates on behalf of the government of Equatorial Guinea.

### FOCs and maritime casualties

In their annual reports the Institute of London Underwriters (ILU) is damning in its criticism of some of the FOC registers, for example in

1990: "The same flags as usual account for the lion's share of casualties. Panama, Cyprus, Liberia, South Korea and the Philippines account for over a third of all ships lost and nearly two thirds of the tonnage."

1993: It mentions Panama as having "losses well above its share of world tonnage in percentage terms" and St Vincent and the Grenadines and Honduras as having "two extremely poor results".

1994: "yet again, the same flags account for losses well above their share of world shipping, Panama, Malta, Cyprus, St Vincent and the Grenadines being the most significant."

1995: "Honduras continues to maintain its position as the flag with the worst record...ten times worse than average. St Vincent and the Grenadines and Cyprus are particularly prominent despite the latter's efforts to improve its safety standards, while Liberia also accounts for a significant slice of the tonnage lost in 1995."

1997: "Cyprus, Malta and St Vincent and the Grenadines are the top three registries for losses as a proportion of fleet (in tonnage terms)."

**The worst oil pollution cases and FOCs**

*Maritime Casualties, 1963 - 1996* by Norman Hooke (Lloyd's of London Press) provides details of the world's 36 worst oil spills from tankers. Vessels registered with the following flag states are responsible for this pollution:

Flag	No of ships involved	Approx amount lost / spilled in tonnes
Liberia	14	1,281,825
Greece	8	661,000
Spain	2	360,000
South Korea	1	121,000
Romania	1	94,600
Cyprus	2	80,000
Denmark	1	80,000
Iran	1	76,000
Norway	1	70,000
Netherlands		
Antilles	1	53,000
Japan	1	52,000
UK	1	45,000
Uruguay	1	38,000
USA	1	36,448

The average age of the 36 vessels was 10.6 years and the total number which were registered with FOCs was 17.

**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 memorandums 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 IMO and 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 1997. (The bracketed figures show their 1996 ranking.)

1997 Ranking	Flag state	No of vessels detained
1	Cyprus* (1)	163
2	Panama* (2)	161
3	Malta* (5)	152
4	Turkey (3)	146
5	Russian Federation (4)	114
6	St Vincent* (6)	101
7	Honduras* (7)	61
8	Bahamas* (9)	54
9	Belize* (-)	50
10	Liberia* (-)	41

\*Denotes FOC (from the Annual MOUpsc 1997 Report).

In 1996, Greece and Antigua and Barbuda were on the list above in 8th and 10th positions, respectively.

### Observations and comments

It is self evident that maritime transport is of crucial importance to world trade and that there is a clear need for sustainable and environmentally friendly maritime transport. The Organisation for Economic Co-operation and Development (OECD), in document DSTI/DOT/ MTC(98)10/ FINAL entitled *Safety and Environment Protection – Possible actions to combat sub-standard shipping by involving players other than the shipowner in the shipping market*, noted, on page 6, that it is the sub-standard operator and the shipper who is prepared to tolerate the operation of shipping in breach of international minimum rules and standards that sets the marginal freight rate which in some cases and in some sectors has resulted in the depression of freight rates to below the level which is required for the market to operate without unfair competition and competitive distortion and in a sustainable manner.

A system has been allowed to evolve in which a growing number of flag states regard having a register solely as a method of earning revenue. They are, of course, flags of convenience, and they have no interest in maritime transport other than the revenue which accrues from allowing foreign shipowners to fly their flag. The Secretary General of the International Maritime Organization (IMO) stated in his 1994 World Maritime Day address that:

"We in IMO believe that the shipping community can no longer accept what in effect amounts to a double standard in implementing safety and anti-pollution measures. We believe that any country or company which wishes to operate in international shipping must obey the rules which this organisation has developed over the past three decades. If it is not prepared to do so then it should be prohibited from competing with those who are."

The flag of convenience system enables some ship-owners to secure a short term competitive advantage over their competitors by:

- the avoidance of taxation and social security requirements
- allowing the shipowner to determine the extent to which the requirements set out in applicable international instruments are complied with – including those related to fundamental human and trade union rights and to the safety of life at sea and the protection of the marine environment
- reductions in manning levels to the point where it is impossible to undertake essential maintenance, and flexibility in the choice of the nationality of the crew
- undercutting high standard registers.

It should also be noted that, in his preface to the report of the Australian Parliamentary Inquiry entitled *Ships of Shame*, Peter Morris MHR stated:

"At the onset of the inquiry committee members were generally aware that there were problems associated with some ships calling at Australian ports. They were not prepared for the sickening state of affairs associated with the operation of sub-standard ships that was revealed as the inquiry proceeded. The committee was told of:

- the operation of unseaworthy ships
- the use of poorly trained crews, crews with false qualification papers, or crews unable to communicate with each other or Australian pilots
- ships carrying false information
- classification societies providing inaccurate information on certificates
- flag states failing to carry out their responsibilities under international conventions
- careless commercial practices by marine insurers

- inadequate, deficient and poorly maintained safety and rescue equipment
- classification societies that readily classed ships rejected by more reputable societies
- beating of sailors by ship's officers
- sexual abuse of young sailors
- crews being starved of food
- crew members being forced to sign dummy pay books indicating they had been paid much more than they actually received
- sailors being forced to work long overtime hours for which pay was refused
- crew members being denied telephone contact with home when family members have died
- sailors not being paid for several months and/or remittances not being made to their families at home
- sailors being denied medical attention
- officers regarding crew members as dispensable
- crew being denied basic toilet and laundry materials."

The preface to *Ships of Shame* also proceeds to list the following beneficiaries:

- the flag states who accept ship registration fees and pay 'lip service' to their international maritime obligations
- those classification societies who readily accept changes in class of vessels already rejected by reputable classification societies
- the classification societies who issue certificates which do not accord with a vessel's true condition
- shipowners, operators and managers
- crewing and training agencies, and
- charterers, exporters and importers.

The Missions to Seamen, in their submission to the Donaldson Inquiry which followed the *Braer* disaster (Liberian flagged), stated:

"Over the past decade our chaplains have expressed growing concern about what they are finding on board ships. They regularly report poor safety standards, inadequate training, unjust treatment of crews and increased stress and fatigue. In the past two years the frequency of these reports has more than doubled."

Moreover, a Shell International Marine study of standards in the oil industry (May 1992) concluded:

"The study sought to identify why industry standards are causing concern, and how standards might be improved. It found that the depressed shipping market of the 1980s has led to fundamental changes in the structure of the industry. The dominance of owners and charterers with long term objectives is being replaced by a survival ethos which has led most owners to cut manning and maintenance costs to the bone, and some owners to play one classification society against another and to exploit the lack of commitment/resources of the administrations of many open registries (flags of convenience).

With shipowner influence dominating classification societies and P&I clubs and the potential power of underwriters and national administrations neutralised by competition, the less scrupulous shipowner of today is able to pick and choose to the extent that traditional industry standards are no longer effectively enforced."

The trade unions and Greenpeace International believe that the conclusions of the Shell study are just as relevant today as they were in 1992. It should also be noted that the number of recognised non-governmental organisations authorised to carry out surveys and issue statutory certificates on behalf of administrations has climbed to 66 in 1998 (according to the IMO in document FSI 6/4/1). This means that the situation may

Greenpeace activists shadowing an unidentified vessel caught fishing within protected Arctic waters.  
Photo: Gavin Newman/Greenpeace



have further deteriorated since the Shell study was written in 1992.

The securing of a short term competitive advantage through flagging out is dysfunctional to the industry as a whole in that it generally lowers standards. Responsible shipowners have called flags of convenience 'flags of necessity' as they too have to adopt these practices, even against their better judgement. Moreover, such short term competitive advantage prevents the rational ordering of replacement tonnage and thus fuels the growing average age of the world fleet. An OECD study on the *Competitive advantages obtained by some ship owners as a result of non-observance of applicable rules and standards* clearly shows that there is a positive economic incentive in not complying with international minimum standards and the competitive advantage which the sub-standard operator gains is staggering. It also shows that the current port state control regime does not provide an adequate deterrent nor an economic disincentive to the operation of sub-standard ships.

There has been a great number of discussions on sub-standard shipping and how to promote quality shipping. However, to date the debate and the proposed solutions have focused on the sub-standard operator and, to be frank, they have not improved the situation and are unlikely to do so in the future. What is necessary is to concentrate on the system which allows the sub-standard operator to prosper and to continue trading, which means the system which allows owners/operators to shop around and choose the most 'suitable' register. Moreover, despite the growing rhetorical commitments of some of the flag of convenience registers to improve compliance with international minimum standards, the question is does the system itself permit it. Recent reports have indicated that a number of such registers, which

generally have an abysmal record, are to take steps to make it easier to remove vessels from their register.

They will not stop such vessels trading but merely export the problem elsewhere. Given the ease of registration within such registers, which frequently permit 'provisional certificates' to be issued by a consul and do not require a flag state survey to be carried out, such measures are hardly going to solve the problem. It should also be noted that Article 94 4(a) of UNCLOS requires that before registration and thereafter at appropriate intervals, a ship shall be surveyed by a qualified surveyor. This is an absolute and express obligation which is not limited by any caveats such as 'as appropriate' or 'as necessary'.

The problems within the maritime industry have led in recent years to a number of operations promoting quality shipping, most notably within the European Union and the OECD. The governments of the Netherlands and the United Kingdom have also launched significant initiatives. Central to all these initiatives is a perception that there is a need for greater transparency within the industry and for possible actions to combat sub-standard shipping by involving players other than shipowners in the shipping market.

The 1995 IMO Diplomatic Conference which adopted the revised International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, in Conference Resolution 8 (Promotion of technical knowledge, skills and professionalism of seafarers) stressed the need to encourage pride of service and professionalism among seafarers. However, a widely accepted ISF/BIMCO survey has revealed that there is a shortage of suitably qualified seafarers and that the age profile of many of the seafarers from OECD countries gives rise to great concern. As it is commonly accepted that 80% of maritime casualties are attributable to the

human factor, any shortage of suitably qualified seafarers or suggestions that the profession is no longer able to attract high calibre new entrants has implications, not just for sustainable maritime transport but also for the protection of the marine environment. The severe competitive distortion and short term profit ethos which has been caused by the growth and proliferation of the FOC system has also had profound social implications which have far reaching implications for the future of the industry. The profession has become casualised in that there is frequently no long term relationship between the shipowner and the seafarers and the recruitment and placement of seafarers has been delegated to a third party, often a private manning agency. A recent problem which has emerged and been given high priority within the IMO is the alarming proliferation of forged certificates of competency or authentic certificates which have been issued to seafarers on the basis of forged certificates. The information currently available suggests that FOCs are the main culprits. Other cost cutting measures have worsened conditions of employment and led to fatigue among the ship's crew becoming a major problem which prejudices both the safety of life at sea and the protection of the marine environment.

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, as has previously been said, 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.

#### Notes

1 *The 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.*

2 *Central to the ITF definition of a flag of convenience is that the majority of the vessels on the register are not beneficially owned and controlled within the flag state. This means that there is no 'genuine link' between the flag state and the persons or corporate entities which effectively control the vessels registered within the flag state. For ITF purposes, the concept of effective control is taken to mean the control exercised by the entity (ie a person(s) or corporation) being held responsible by the flag state for the actions of the vessels and for fulfilling its obligations to abide by the law of the flag state.*

## fisheries

### The age of the world fishing fleet

Lloyd's Register of World Fleet Statistics 1998 notes that the average age of the world fleet of fish catching vessels over 100 GT is 20 years and that FOCs constitute about 10% of the world fishing fleet.

The size of the world's fishing fleet has, in recent years, attracted a great deal of interest and there are discussions underway within the FAO on the management of fishing capacity with a view to adopting an instrument for the management of fishing capacity.

However, the fact that the average age of the world's industrial fleet has become as high as 20 years is a source of great concern and is not compatible with the concept of sustainable development. There is a clear need for a scrapping and newbuilding programme, one which would also pay due regard to the availability of resources to prevent and eliminate excess fishing capacity as called for in the FAO Code of Conduct, among other agreements, and bearing in mind that the average life expectancy of a fishing vessel may be as high as 20-30 years.

### The growth of the FOC fishing fleet and reporting of catch

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. However, the tables in the annex (see page 22) clearly indicate gross underreporting of the catch by FOC fleets and the enormous discrepancy between the declared nominal catch of the FOC fleet and the amounts that might be expected given the number of vessels and gross tonnage of the fleets which fly their flags.

### Illegal fishing

The link between FOC fishing vessels and illegal fishing is well documented by listing the vessels which have recently been arrested for such activities. A listing of vessels alleged to be involved in the illegal fishing of Patagonian toothfish also reveals the impact of the activities of FOC fishing vessels. The following vessels are listed by ISOLFICH as having been connected with the illegal fishing of Patagonian toothfish and landing their catch in Mauritius:

Flag	Name
Faroe Islands	Pallihja Marrianna
Faroe Islands	Tugvusteinur
Vanuatu*	Cindy, Cevisa, Celina
South Africa	Monte Confurco
Panama*	Cape Flower, Explorer
Belize*	Arctic Fox
Cyprus*	Sea Fox
Argentina	Alida Glacial, Aliza Glacial
Panama*	Caroline Glacial
Panama*	Christina Glacial
Portugal	Praia do Rostello
Mauritius*	Kestrel
Seychelles	Big Star
Argentina	Mar del Sur II
Panama*	Norse Pride
Belize*	Puerto Madryn
Chile	Cisne Verde
Belize*	Ons, Tona Larlen, Alshisha
Chile	Elque, Fisher
Panama*	Merced
Ukraine	Chatir Dag

\* Denotes FOC

Sixteen of the fishing vessels in the ISOLFICH list above are FOCs, which amounts to more than half of the total.

16 troubled waters

The following 14 fishing vessels have been arrested by the French authorities for illegally fishing for Patagonian toothfish within Réunion or Kerguelen waters.

Flag	Name of vessel	Date of arrest	Fine	Owner
Belize*	Bekje III	16/4/97	FF 510,000	Lubmain, Singapore
Portugal	Mar Largo	29/4/97	FF 650,000	Luis Henrique Alexander Gomes, Master of the vessel
Argentina	Kinaho Maru	13/5/97	FF 950,000	Compañía Pesquera Argentina SA
Belize*	Arbumasa XXV	7/10/97	Equivalent to FF 2.86 million	Banco Allado, Panama
Argentina	Magallenes 1	14/12/97	FF 8 million for Master plus confiscation of ship, fish and gear	Argenova SA (subsidiary of Pescanova)
Portugal	Praia do Restello	27/1/98	FF 5 million for Master plus confiscation of ship, fish and gear	Aluship (South Africa) with links to Pescalonga (Portugal)
Belize*	Mar del Sur Dos	29/1/98	FF 6 million	Trade Winds Commercial Corp, Panama
Panama*	Explorer (ex Krill)	4/3/98	FF 1 million for Master plus confiscation of everything	Eurex Ltd (Liberia/Panama/South Africa/Jersey)
Belize*	Suma Tuna	1/4/98	FF 4 million for Master, confiscation of fish and fishing apparatus	Saleco, Las Palmas
Vanuatu*	Golden Eagle (ex Celine, ex Bordo Yarnee)	29/6/98	FF 10 million for company, FF 2 million for Master, confiscation of everything	Okota Ltd, Hong Kong
Chile	Ercilla	14/9/98	FF 65 million, confiscation of fish – case continues	Pesquera de los Andes, Chile
Chile	Antonio Lorenzo	14/9/98	FF 62.5 million – everything arrested case continues	Pesquera Concar SA, Chile
Belize*	Mar del Sur Dos	29/10/98	FF 75 million proposed case continues	Trade Winds Commercial Corp, Panama
Argentina	Vieirasa Doce	29/10/98	FF 45.5 million proposed	Vieira, Argentina

\* Denotes FOC

The ITF's ship the *Global Mariner* is on a world tour to promote the campaign against flags of convenience and sub-standard shipping.



Of the 14 fishing vessels (listed left), half are FOC with five of the total number flying the flag of Belize.

It should also be noted that fishing vessels flying the flags of Belize, Honduras or Panama have seriously affected the ability of the International Commission for the Conservation of Atlantic Tuna (ICCAT) to ensure the sustainable management of the stocks. Indeed, the irresponsible activities of fishing vessels flying these flags has resulted in both Japan and the United States of America prohibiting bluefin tuna which has been caught by fishing vessels flying these flags from being landed in their country. However, given the value of the fish and the difficulties in ensuring that the chain of custody is transparent, there are many ways in which such fish find their way to markets in those countries. In this regard the synergy between the FOC problem in both the merchant marine and the fisheries sectors becomes all too apparent as more often than not FOC reefers are used to tranship illegally or irresponsibly caught fish. Although the landing and import restrictions endorsed by ICCAT only apply to the catch of West Atlantic Bluefin, FOCs are also a problem in the bluefin tuna fisheries in the East Atlantic and Mediterranean Seas. There are on average between 50 and 100 FOC vessels that fish the Eastern Atlantic stocks of bluefin tuna in the Mediterranean Sea during the spawning season every year in spite of an agreement by ICCAT that the fishery should be closed during the spawning season. Furthermore, FOC vessels have recently emerged as a problem in the Southern Bluefin Tuna fishery.

#### Observations and comments

The trade unions and Greenpeace International believe that the fisheries industry is at a crossroads. In recent years there have been profound regulatory changes

within the fisheries sector and it is generally accepted that the sector is in crisis. The adoption of 200 mile exclusive economic zones and the extension of coastal state jurisdiction, along with coastal states developing their own indigenous fishing industries, have severely reduced the access to resources of the fleets of distant water fishing nations. At the same time many formerly artisanal or subsistence fisheries operations are becoming more industrialised, even if they remain small scale. The crisis within the fishing sector has, in part, been caused by over-fishing, lack of agreement between fleet capacity and fish resources and pollution and this has resulted in 60% of the world's conventional fish species being fully exploited, over-exploited, depleted or in the process of rebuilding as a result of depletion. There has been a great deal of discussion on the management of fisheries resources but little consideration of the social consequences, especially with regard to the restructuring of the industry which many have said is necessary. It is within the context of these structural problems that the FOC system has been extended to the fishing industry and FOC fishing vessels have become a serious problem.

At the same time the fisheries sector has become increasingly globalised, most notably in terms of the trade in fisheries products. Globalisation, together with the crisis in the industry and the introduction of new fisheries management systems based on individual transferable quotas (ITQs), has caused considerable problems.

As 90% of commercially important fishing stocks lie within the exclusive economic zone of a coastal state, there is little to be gained from registering a fishing vessel with 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."

Although FOC fishing vessels represent less than 10% of the world fishing fleet, it is clear that they have a disproportionate impact and seriously compromise the sustainable exploitation of the living marine resources. Indeed the FAO, in a recent consultation on elements of an international instrument for the management of fishing capacity (document FI-CSS/98/2), recognised the need to deal with the flag of convenience problem in general. The seriousness of the problem of illegal, unregulated and unreported fishing (IUU) was reflected by the long debate on this issue which occurred at the 23rd session of the FAO Committee on Fisheries, which met in February 1999. Central to the discussions was the flag of convenience problem and the ability of fishing vessels to re-flag to FOCs to escape internationally agreed conservation and management measures, both

on the high seas and within the areas under national control of states which lack the capacity to institute effective monitoring, surveillance and control measures over the waters under their jurisdiction.

#### Concluding observations

It is commonly acknowledged and expressly stated within international law that the flag state is primarily responsible for ensuring compliance with international minimum standards. Indeed, Article 94 of UNCLOS establishes the fundamental principles and thereby 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 incorporated into the recently adopted 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

the Paris and Tokyo Memorandums of Understanding on Port State Control agreed, in their joint ministerial declaration, to 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. Central to the trade unions and Greenpeace International's diagnosis would be the establishment of mechanisms to eliminate the flag of convenience system which is, after all, little more than an institutionalised system for the effective negation of the requirements expressly provided for in international law.

If the fundamental and structural crisis within the maritime industry is to be cured it will require both a strong will and bold actions on the part of governments, as well as a willingness to address the causes, rather than merely seeking to treat the symptoms. As has previously been stated, 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 that state.

In this regard it is worth noting that the September 1998 meeting of the International Civil Aviation Organisation (ICAO) Assembly endorsed a previous decision, taken in November 1997, which, in addition to giving ICAO a number of new powers, agreed to give it a mandate to undertake a safety oversight programme which means that it can request a country to subject itself to an inspection/safety audit involving ICAO inspection teams (ie it does not have to wait for volunteers to present themselves). The situation within the civil aviation industry provides a useful example and suggests a possible solution to the problem which besets the maritime industry as the USA evaluates entire aircraft

registers and, if they are deemed unsafe, their aircraft are prohibited from using US airports. As the concept of 'port state denial' has become established within the maritime industry as a mechanism to ensure compliance with the International Safety Management (ISM) Code, it may be possible to seek to utilise such a mechanism in the future to cure the fundamental and structural problems within the shipping sector and thereby to uphold the requirements prescribed by applicable international law.

The main conclusions of this joint submission are closely in line with the relevant conclusions of the recently published *The ocean our future: the report of the Independent World Commission on the Oceans*, which was chaired by Mário Soares. In particular, efforts are required to build a more effective system of ocean governance which must start with the implementation of UNCLOS and the many other legal instruments existing in relation to the law of the sea. This will require that a stronger political will be demonstrated to ensure full compliance with existing ocean law and the adoption of effective measures to secure enforcement. Indeed, the report states:

"It follows that the first and most important item on the unfinished agenda of ocean law must be full compliance with existing treaty obligations. Concerted action by governments in this respect would be instrumental in defusing current widespread concern over: inadequate enforcement of international legal commitments; the development of appropriate instruments, including economic incentives; and the management of compliance."

Chapter 39 of *Agenda 21* (International legal instruments and mechanisms) also noted that there were problems with regard to the implementation of

existing instruments and called upon parties to international agreements to consider procedures and mechanisms to promote and review their effective, full and prompt implementation. To this end parties were invited to consider establishing efficient and practical reporting systems and to consider appropriate ways in which relevant international bodies might contribute towards the further development of implementation mechanisms. (Paragraph 39.8)

#### Summary

This analysis has demonstrated that there is a serious weakness in the international regulatory regime which has permitted the growth and proliferation of a system which in practice amounts to a negation of international law. It is also clear that the FOC system needs to be eliminated.

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

## recommended actions

The trade unions and Greenpeace International urge CSD 7 to include the following in the report of the decisions of CSD 7 on ocean and seas.

1 Agree that FOC operations amount to a negation of international law which needs to be addressed and ultimately eliminated.

2 Agree that FOCs are incompatible with the three pillars of sustainable development (environmental, social and economic) and prejudice the sustainable development of maritime transport (which could ultimately have an adverse impact on world trade) and the sustainable utilisation of marine living resources.

3 Invite the International Maritime Organization to develop, as a matter of urgency, a legal mechanism, buttressed by a suitable sanction, which will ensure that all flag states have the necessary means and take all the necessary measures to ensure that vessels flying their flag meet international minimum rules and standards and give full and complete effect to the conventions they are party to.

4 Invite the International Maritime Organization to develop, as a matter of high priority, a mandatory instrument on vessel registration which would give full effect to UNCLOS, especially Article 91 on the 'genuine link'.

5 Recommend, as a matter of urgency, ratification of the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea (the Compliance Agreement).

6 Recommend that states, as a matter of urgency, ratify the United Nations Agreement on Straddling

Stocks and Highly Migratory Fish Stocks, as they have been called upon to do by the United Nations General Assembly.

7 Support current initiatives to promote quality shipping and responsible fisheries.

8 Agree that there is an urgent need for greater transparency within the shipping and fishing industries and to invite the competent bodies to investigate what measures could be taken to facilitate greater transparency.

## annex: FOC fishing fleet size and catches

Sources: Lloyd's Register, World Fleet Statistics, FAO Fishery Statistics – catches and landings. Actual figures or FAO estimates in metric tonnes.

Registration	Fish catching			Other fishing			Total		Declared nominal catch of marine species in MT
	No.	GT	Age	No.	GT	Age	No.	GT	
Antigua & Barbuda	1	263	32				1	263	629
Bahamas	7	1,152	19				7	1,152	9,707
Barbados	24	3,033	21				24	3,033	2,585
Belize	68	33,579	20	1	5,206	16	69	38,785	2,033
Bermuda	2	908	31	1	1,085	24	3	1,993	386
Cambodia	0	0	0				0	0	30,560
Canary Islands	0	0	0				0	0	
Cayman Islands	15	12,451	25				15	12,451	710
Cook Islands	1	314	27				1	314	950
Cyprus	23	31,268	17	1	6,140	9	24	37,408	3,006
Djibouti	0	0	0				0	0	320
Equatorial Guinea	1	115	11				1	115	3,300
Honduras	463	170,789	16	5	1,095	21	468	171,884	22,330
Lebanon	3	466	22				3	466	2,205
Liberia	14	25,853	6	2	3,058	5	16	28,911	3,721
Malia	22	5,685	24	1	1,286	26	23	7,171	1,799
Marshall Islands	10	18,547	10				10	18,547	260
Mauritius	38	15,909	20				38	15,909	18,881
Netherland									
Antilles	11	2,175	19				11	2,175	1,110
Panama	609	265,700	22	8	6,832	23	617	272,532	169,393
St Vincent	68	31,810	21	0	0		68	31,810	1,517
Vanuatu	26	25,729	18				26	25,729	2,733
Total FOCs	1,406	645,946	20	19	24,702		1,425	670,648	278,135
World totals	22,709	11,068,634	18	741	1,986,576	17	23,450	13,055,210	91,513,700

## FOC fishing vessel statistics: 1995

Registration	Fish catching			Other fishing			Total No	Total GT	Declared nominal catch of marine species in MT
	No	GT	Age	No	GT	Age			
Antigua & Barbuda	1	263	33				1	263	470
Bahamas	7	1,152	20				7	1,152	9,638
Barbados	6	2,584	20				6	2,584	3,284
Belze	119	67,221	21	3	5,588	20	122	72,809	2,080
Bermuda	2	908	32	1	1,085	25	3	908	444
Cambodia	0	0	0				0	0	31,231
Canary Islands	1	197	28				1	197	
Cayman Islands	12	12,075	27				12	12,075	612
Cook Islands	2	495	18				2	495	1,114
Cyprus	25	40,286	17	14	167,482	9	39	207,768	2,882
Djibouti	0	0	0				0	0	350
Equatorial Guinea	1	115	12				1	115	3,420
Honduras	463	165,386	17	9	3,139	23	472	168,525	23,994
Lebanon	1	131	28				1	131	4,065
Liberia	2	2,445	23	9	66,597	11	11	69,042	4,000
Malta	21	11,142	25	0	0	0	21	11,142	1,758
Marshall Islands	10	18,574	11				10	18,574	260
Mauritius	27	9,826	20				27	9,826	16,940
Netherland Antilles	10	2,010	18	0	0	0	10	2,010	1,010
Panama	541	259,706	23	16	87,155	18	557	346,861	181,332
St Vincent	57	52,903	19				57	52,903	1,480
Vanuatu	27	26,622	19				27	26,622	2,833
Total FOCs	1,335	674,041	22	52	331,046	17	1,387	1,004,002	293,197
World totals	23,111	11,005,206	19	818	2,342,715	17	23,929	13,347,921	91,904,900

## FOC fishing vessel statistics: 1996

Registration	Fish catching			Other fishing			Total No	Total GT	Declared nominal catch of marine species in MT
	No	GT	Age	No	GT	Age			
Antigua & Barbuda	1	263	34				1	263	530
Bahamas	7	1,660	16				7	1,660	9,776
Barbados	5	635	23				5	635	9,439
Belze	130	84,051	21	4	5,926	23	134	89,977	977
Bermuda	2	908	33				2	908	497
Cambodia	1	104	10				1	104	94,710
Canary Islands	2	389	31				2	389	
Cayman Islands	9	10,520	29				9	10,520	615
Cook Islands	3	671	18				3	671	1,010
Cyprus	29	51,088	17	13	155,298	10	42	206,386	2,639
Djibouti	2	240	40				2	240	360
Equatorial Guinea	15	9,449	12				15	9,449	2,306
Honduras	461	167,547	18	11	7,102	29	472	174,649	14,054
Lebanon	1	131	29				1	131	4,135
Liberia	8	14,019	7	8	68,981	13	16	83,000	7,232
Malta	14	19,839	25	1	12,413	7	15	32,252	825
Marshall Islands	11	18,701	12				11	18,701	270
Mauritius	28	10,096	21				28	10,096	12,379
Netherland Antilles	14	8,034	18				14	8,034	996
Panama	529	273,907	24	18	107,670	19	547	381,577	139,156
St Vincent	117	105,902	16	2	2,924	19	119	108,826	1,300
Vanuatu	31	38,109	19				31	38,109	2,729
Total FOCs	1,420	816,263	22	57	360,314	18	1,477	1,176,577	305,935
World totals	23,009	10,892,874	20	806	2,238,556	18	23,815	13,131,430	

24 troubled waters

FOC fishing vessel statistics: 1997

Registration	Fish catching			Other fishing			Total No	Total GT	Declared nominal catch of marine species in MT
	No	GT	Age	No	GT	Age			
Antigua & Barbuda	1	263	35				1	263	
Bahamas	7	1,660	17				7	1,660	
Barbados	5	635	24				5	635	
Belize	157	114,062	22	4	5,926	23	161	119,988	
Bermuda	3	3,597	22				3	3,597	
Cambodia	2	4,511	9				2	4,511	
Canary Islands	2	389	32				2	389	
Cayman Islands	5	2,559	35				5	2,559	
Cook Islands	2	490	24				2	490	
Cyprus	32	62,995	15	15	167,898	11	47	230,893	
Djibouti	2	240	41				2	240	
Equatorial Guinea	40	20,001	12				40	20,001	
Honduras	445	162,051	19	13	8,044	31	458	170,095	
Lebanon	1	131	30				1	131	
Liberia	3	4,436	9	8	68,981	14	11	73,417	
Malia	11	26,135	21	1	12,413	8	12	38,548	
Marshall Islands	11	18,701	13				11	18,701	
Mauritius	29	10,439	22				29	10,439	
Netherland Antilles	16	16,482	17	1	564	26	17	17,046	
Panama	422	209,146	25	22	130,596	19	444	339,742	
St Vincent	137	145,676	16				137	145,676	
Vanuatu	34	46,151	19				34	46,151	
Total FOCs	1,367	850,750	22	64	394,422	18	1,431	1,245,172	
World totals	22,729	10,647,509	20	811	2,024,838	18	23,540	12,672,347	