ALL AT SEA

THE ABUSE OF HUMAN RIGHTS ABOARD ILLEGAL FISHING VESSELS

A REPORT BY THE

ENVIRONMENTAL JUSTICE FOUNDATION

Protecting People and Planet

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ACRONYMS

DWFN	Distant Water Fishing Nation
EEZ	Exclusive Economic Zone
EJF	Environmental Justice Foundation
EU	European Union
FAO	Food and Agriculture Organisation
FoC	Flag of Convenience
FoNC	Flag of Non-Compliance
IEZ	Inshore Exclusion Zone
ILO	International Labour Organisation
IMO	International Maritime Organisation
IPOA	International Plan of Action
ITLOS	International Tribunal for the Law of the Sea
ITF	International Transport Workers Federation
IUU	Illegal, Unreported and Unregulated Fishing
NGO	Non-Governmental Organisation
PoC	Port of Convenience
RFMO	Regional Fisheries Management Organisation
STCW/F	(IMO) Standards of Training, Certification and Watchkeeping Convention
UNCLOS	United Nations Convention on the Law of the Sea
UNIAP	United Nations Inter-Agency Project on Human Trafficking

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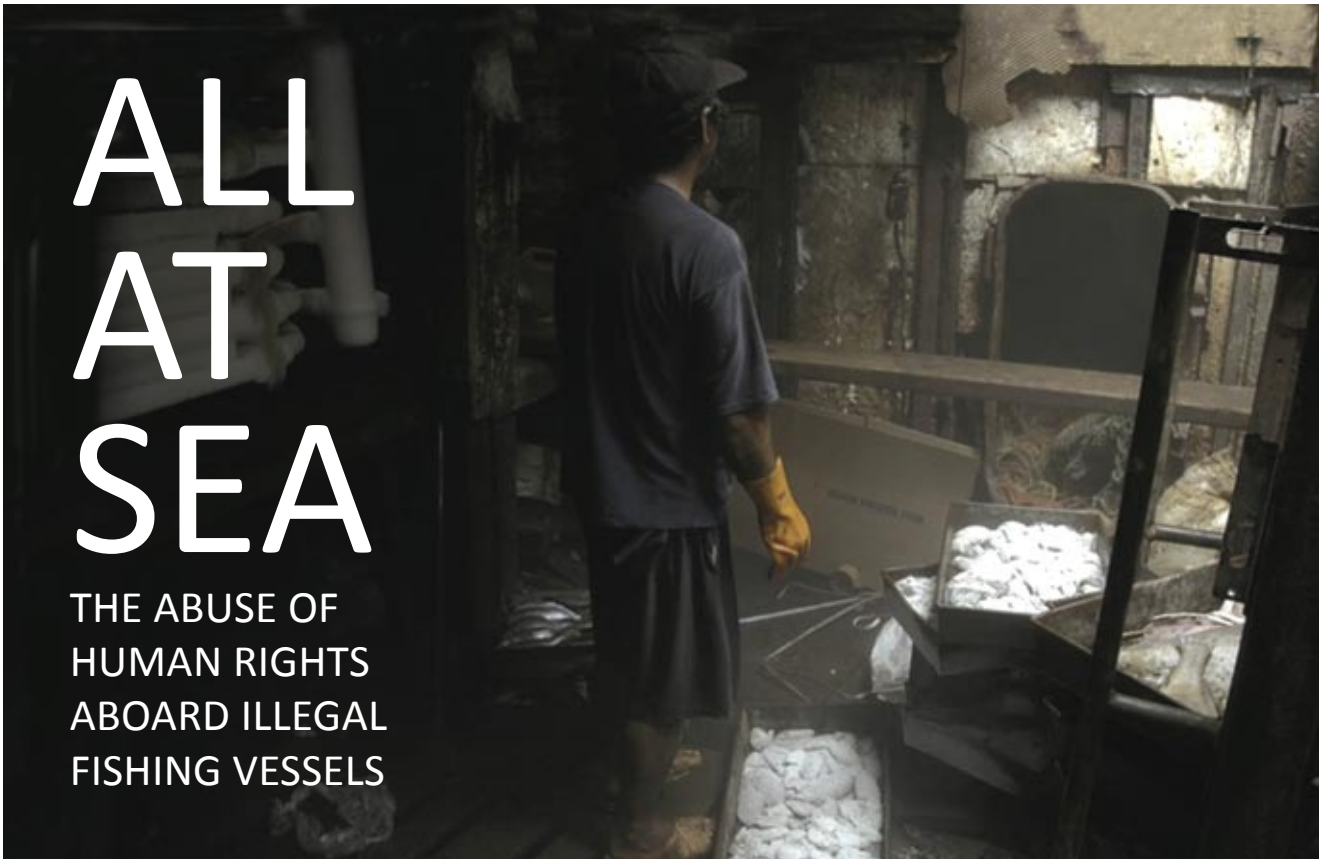

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EXECUTIVE SUMMARY

'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.'
Article 23 - United Nations Declaration of Human Rights

- Globally Illegal, Unreported and Unregulated (IUU) or 'pirate' fishing is plundering fish stocks, devastating marine environments and stealing from some of the poorest countries and people. IUU is the term given to any fishing activity that contravenes national or international laws, such as using banned fishing gears; targeting protected species; operating in protected or reserved areas or at times when fishing is prohibited; or operating without any form of permit or licence to fish. IUU fishing vessels cut costs and maximise profits using a variety of means, including flying Flags of Convenience as a means to avoid detection and penalties for wrongdoing.

- Globally, pirate fishing accounts for US$10 – 23.5 billion each year, representing between 11 and 26 million tons of fish. It is a highly profitable activity driven by the enormous global demand for seafood and which threatens world fisheries. The impacts are environmental, economic and social and it is developing world countries that experience a disproportionate harm as many IUU operators deliberately target poorer nations that lack the capacity to monitor fisheries and enforce controls.

- Life as a crew member aboard any fishing vessel is a difficult and often hazardous occupation, and widely considered to be one of the most dangerous occupations in the world. However, in addition to the hazards associated with weather and the catch itself, the fishing industry is home to some of the worst examples of abuse in the workplace. Pirate fishing operations in particular are often characterised by the lowest standards of working conditions and extensive reports of abuse.

- The abusive and often illegal treatment of workers aboard IUU vessels include financial exploitation; poor healthcare, food and accommodation; poor vessel safety; verbal and physical abuse; incarceration; and abandonment. The worst cases meet International Labour Organisation definitions of forced labour, including physical confinement, compulsion, retention of identity documents, and non-payment of wages. Crew members aboard IUU vessels have reported being punched, beaten with metal rods, deprived of sleep, imprisoned without food or water, and forced to continue working after injury; the worst cases of violence include murder. Travel documents are often confiscated and withheld; cases of abandonment are also reported, and have been documented, on film, by EJF.

- Violations of fair and promised pay are common, particularly the extraction of 'agency fees' and the withholding of pay at the end of the contract period. Recruited crew members may pay up to several times their supposed monthly wage for these 'fees', and there have been reported examples of fishers working without pay for several years.

- The failure of the international community to ratify instruments aimed at establishing minimum safety requirements for fishing vessels, combined with poor enforcement of existing regulations by flag states, enables ship owners to allow the deterioration of the vessel so that it is not seaworthy and fail to provide safety equipment. Regulatory frameworks that address labour conditions aboard fisheries vessels have not been adopted, ratified or adequately enforced by the international community.

- The use of Flags of Convenience (FoC) by IUU fisheries vessels has been identified as particularly problematic. FoC States generally lack the capacity and / or the will to enforce fisheries and labour laws on vessels flying their flag, thereby facilitating the actions of IUU fishing operators by minimising the risk of detection and punishment. FoC are notoriously easy, quick and cheap to acquire, allowing pirate fishing vessels to re-flag and change names several times in a season to avoid authorities. Backed by shell companies, joint-ventures and hidden owners, FoC severely constrain efforts to combat IUU fishing, as they make it extremely difficult to locate and penalise the real owners of vessels that fish illegally and/or exploit their crews.

- This report presents a compelling case for a ban on the use of FoC for fishing vessels (and associated fisheries support ships) as a means to support international action to eliminate crew exploitation, and address the deficiencies in international regulation that allow them to proliferate. Both ILO and IMO Conventions that exist to address crew treatment, training, and vessel safety must be ratified and implemented by coastal states.

INTRODUCTION

Illegal, Unreported and Unregulated (IUU) or 'pirate' fishing has been identified as one of the most serious threats to world fisheries, implicated in a wide variety of negative environmental, economic and social impacts. While studies of the social consequences of IUU fishing have focussed on legitimate operations and artisanal fishers, the plight of workers on board IUU vessels has, in contrast, gone relatively unreported.

Life as a crew member aboard any fishing vessel is a difficult and often hazardous occupation; harsh weather, the long time spent at sea, and the dangers of day-to-day operations on board mean that in many countries fishing is considered one of the most dangerous occupations[1]. Yet these dangers can become significantly worse for those individuals working on vessels run by IUU fishing operators. IUU vessels operate for purely financial gain, and actively seek to avoid expenses associated with legal fishing methods, including the outlays connected to laws and regulations such as licence fees, ship maintenance and the maintenance of minimum standards of crew treatment, safety and sanitary conditions. As a result, crews on board IUU vessels are exposed to further, and unnecessary, danger and exploitation.

Yet the criminality of IUU fishing vessels can extend far beyond cost-cutting on training and safety equipment. IUU fishing vessels by their very nature often operate with little oversight, and investigations by the Environmental Justice Foundation (EJF) and other organisations such as the International Transport Workers Federation (ITF) have highlighted multiple cases of organised and systematic abuse of crewmembers' basic human rights. In their efforts to make maximum profits from minimum costs, illegal fishing vessel owners and officers can ruthlessly exploit their crews, who often face the prospect of verbal and physical abuse, imprisonment, extortion and the withholding of pay. Food and water rations are often meagre and of poor quality, while sleeping quarters can consist of no more than a cardboard mattress in a hold, or on deck.

Although international mechanisms have been developed to address and regulate crew conditions aboard fishing vessels, to date these have not been taken up by the international community. In addition, Flags of Convenience are widely exploited by IUU operators and have been identified as a key loophole by which penalties for illegal fishing activities and abuse of crews are avoided. This report therefore serves to highlight not only how employees aboard IUU vessels are exploited by unscrupulous owners, but also provides compelling evidence and recommendations for the mechanisms that must be implemented and enforced – both to end human rights abuses aboard illegal fishing vessels and also to address the wider need to end IUU fishing globally.

A DANGEROUS OCCUPATION MADE WORSE

Without doubt, life as a crew member aboard any fishing vessel is a difficult and often hazardous occupation. As a whole, the global marine capture fisheries sector is estimated to legally employ a total of over 30 million fishers, who work aboard four million fishing vessels[2]. The work is characteristically labour intensive, perilous, and is widely considered to be one of the most dangerous occupations in the world[3] - with risks primarily associated with harsh weather, the long length of time at sea, and the dangers of the catch itself.

These risks translate into a huge numbers of casualties that remain largely unreported by media and unnoticed by governments. A report by the International Labour Organisation (ILO) suggests that there are an average of 24,000 fatalities and 24 million non-fatal accidents in the fishing industry each year[4]. It is possible that this is an underestimate, and that casualties are even higher than the official figures suggest; the ILO reports that many nations fail to submit statistics and that most injuries and deaths occur in the informal fisheries sector which has no reporting requirement or facility[5].

It can also be assumed that injuries and deaths that occur aboard IUU fishing vessels are rarely reported. The already high labour risks associated with fishing can be significantly worse when vessels are engaged in the IUU fishing trade. Pirate vessels operate purely for financial gain, and will avoid expenses associated with legal fishing methods. This can include the outlays associated with legally enshrined regulations such as licence fees, ship maintenance and crucially, maintenance of minimum standards of crew treatment, safety and sanitary conditions. As a result crews on board IUU vessels – without protection from regulatory laws, and often recruited with limited seagoing experience – are put in even further danger. Considering that between 13–31% of global catches have been estimated to be taken by IUU fishing vessels[6] in all likelihood significant numbers of casualties are simply not being recorded.

Yet the criminality of IUU fishing vessels can extend far beyond simple cost-cutting on training and safety equipment. Based on the testimony of crew members who have been provided aid, the International Transport Workers Federation (ITF) believes that the fishing industry, legal and illegal, is home to some of the worst examples of abuse in the workplace[7]. The few investigations that have revealed the true extent of workers' treatment on IUU vessels confirm that it can be a workplace rife with mistreatment and violent abuse; in their efforts to make maximum profits from minimum costs, IUU fishing vessel owners and officers are even more likely to ruthlessly exploit their crews. Workers face the prospect of unsafe working conditions, imprisonment, and the danger of never being paid. Working hours appear to be excessive; very long shifts are the norm with, in some cases, as little as four hours for rest and sleep each day[8].

Physical abuse has also been reported by crew members who have managed to flee fishing vessels, and attempts by crew members to object to their treatment has led to violent physical assault. Cases of abandonment and beatings have been widely reported, and allegations of serious crimes, including murder, have been made[9]. Food and water rations are often meagre and of poor quality, while sleeping quarters might consist of a cardboard mattress in a hold, or on deck. When crews are finally released many are not paid part or all of the wages they are owed. Estimates suggest that violations of fair and promised pay are frequent, and the scale of exploitation can be staggering; for example, the Indonesian Seafarers' Union (Kesatuan Pelaut Indonesia) investigated claims by 28 fishers that they worked for three years on the vessel FV Lanthe, yet upon completion were refused any pay whatsoever[10].

CASE STUDY:
SUB-STANDARD SAFETY AND SINKING

In the sub-Antarctic waters near Kerguelen, the fishing vessel *Amur* sank while illegally fishing for Patagonian Toothfish (Chilean Sea Bass). Flagged to Flag of Convenience State Sao Tome & Principe, structural modifications had made the vessel unseaworthy and most crew members had neither proper contracts nor insurance cover[11]. Life-saving equipment on board did not function, there was an absence of fire-extinguishers and escape-routes were blocked by sleeping bunks[12]. Fourteen of the forty crew members died from drowning or hypothermia.

©Greenpeace/ Gleizes

CURRENT STATUS OF IUU FISHING

Illegal, Unreported and Unregulated (IUU) fishing occurs globally and has become a symptom of a wider crisis in world fisheries – IUU fishing is now considered by leading experts as one of the most serious threats to the sustainable management of fish stocks. Accurate data on the scope and scale of IUU fishing is hard to come by, as it is in essence a clandestine activity and therefore difficult to accurately assess. Nonetheless, it has recently been estimated that illegal fishing accounts for 13–31% of total catches worldwide, with a value of US$10 – US$23.5 billion per year and representing between 11 and 26 million tons of fish[14].

Increasingly the countries bearing the greatest costs of illegal operations are those in the developing world, which often lack the resources, institutional capacity, expertise and/or political will for monitoring and regulating activities in their coastal waters. Once lucrative fish stocks are being plundered, with severe negative impacts on food security and development; artisanal fishing communities are particularly hard-hit. A 2009 study unsurprisingly demonstrated the strong relationship between IUU fishing and World Bank governance indicators, highlighting the fact that developing countries are more vulnerable to illegal activities conducted by both local fishers and foreign fleets[15]. The fact that many of the latter are often responsible for IUU fishing in the waters of developing countries demonstrates a lack of control by both Flag as well as Coastal States, particularly of vessels registered with Flags of Convenience[16].

The significance of IUU fishing led to the adoption of the UN FAO International Plan of Action (IPOA) to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing in 2001[17]. The response to this has been slow; with a few notable exceptions action by the international community to date has been inadequate and on a global scale poor performance on the control of illegal fishing has been found to be widespread. In an assessment of compliance with illegal and unreported fishing in the FAO's Code of Conduct for Responsible Fisheries[18] over half of the top fishing countries (30/53) failed the grade[19].

WHAT IS IUU FISHING?

The Food and Agriculture Organisation (FAO) defines IUU fishing as the following[13]:

ILLEGAL FISHING

refers to fishing activities:

1) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

2) conducted by vessels flying the flag of States that are parties to a relevant Regional Fisheries Management Organisation but operate in contravention of the conservation and management measures adopted by that organisation and by which the States are bound, or relevant provisions of the applicable international law; or

3) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organisation.

UNREPORTED FISHING

refers to fishing activities:

1) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

2) undertaken in the area of competence of a Regional Fisheries Management Organisation which have not been reported or have been misreported, in contravention of the reporting procedures of that organisation.

UNREGULATED FISHING

refers to fishing activites:

1) in the area of application of a relevant Regional Fisheries Management Organisation that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organisation, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or

2) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

CASE STUDY:
A CREWMAN'S LIFE ABOARD AN IUU TRAWLER IN WEST AFRICA

©EJF

As part of its IUU investigations in West Africa, EJF has cooperated with local authorities to identify and address IUU operations. Off the coast of Guinea, a joint investigation between EJF and Greenpeace International provided logistical support to Guinean fishing authorities, leading to the arrest and impoundment of the vessel Lian Run 14 for fishing without a licence. EJF investigators remained on board the Lian Run 14 with Guinean officials until the vessel was brought into the capital Conakry. During this time they had the opportunity to discuss with the crew the problems and dangers they face working on an IUU fishing vessel. While one individual was from Sierra Leone, the rest came from a poor rural area of China, and had been brought to Africa to fish for two years at a time. Before arriving, some had never seen the sea before, much less known or been trained in the life of a professional fisherman. The owners of the vessel told them what to fish for and where, and most had no idea of what was legal or not.

These men worked long hours in the intense heat, repeatedly lowering the trawl net, and then when it was hauled back in, sorting through the catch – on a dirty deck rarely washed, and often in bare feet. Many of the IUU vessels identified by EJF off the coast of Guinea had DG Sanco numbers, meaning that they had passed supposedly strict European Union hygiene standards and were licensed to import fish into the EU – including the Lian Run 14*. However, EJF documented extremely unsafe hygiene conditions on many of these vessels, along with unhealthy and hazardous conditions that the crews were forced to work in. A number of men had their passports removed, and were at sea for long periods of time - up to the full two years of their 'contract'. The investigations also revealed how IUU vessels unloaded their catches and were re-supplied at sea by refrigerated fisheries support vessels (known as 'reefers'), a process known as 'transhipment' and an illegal activity in Guinean waters. Transhipment allows IUU fishing vessels to rarely if ever return to port – effectively imprisoning the crews at sea, and giving them no opportunity to leave the vessel if they are subject to exploitation and abuse.

EJF investigators have also provided support to the Republic of Sierra Leone Armed Forces (RSLAF) Maritime Wing, including in the arrest of the trawler Apsari-3. Caught illegally fishing well within Sierra Leone's Inshore Exclusion Zone (IEZ), the vessel had 36 crew members on board from South Korea, China, Vietnam, Indonesia and Sierra Leone. Asian crew members had been recruited in their home countries and flown to the port of Las Palmas in the Canary Islands to meet the vessel as it unloaded its illicit catch. Contracts were set for two years, with no chance of a visit home - one man had not yet met his 18 month old son. For sleeping quarters eight men shared a small area of the hold with four 'bunks' made up of planks and cardboard. Four would sleep in the windowless space that led directly into the fish hold while the other four worked their long shift - one individual literally rolling into a place vacated by another only minutes before.

Sierra Leonean crew members had been picked up in Freetown and taken on without contracts, and were not given cash payment. Instead they were paid in boxes of frozen 'trash' fish (caught as bycatch), which they would then have to sell locally. Although well-aware that the vessel they were working on was destroying local fish stocks, these men felt they had little choice but to take the employment; ranked 180 of 182 nations on the UN Human Development Index[18] there are limited job opportunities in Sierra Leone. Crew members reported to EJF that any protest to the captain of the vessel about conditions, pay or treatment would result in immediate termination of the work, and abandonment on the nearest beach.

The poor treatment of crew on board IUU fishing vessels operating in West Africa is not limited to the Lian Run 14 and Apsari-3. Recent EJF investigations on board IUU vessels arrested by the Sierra Leone government during 2009 and early 2010 have demonstrated further examples of poor or non-existent safety equipment, atrocious hygiene standards and extremely poor crew food and accommodation standards[19]. In addition EJF has observed several other vessels engaged in IUU fishing in the region, including the Luanda 11 and Seta 70, both documented as fishing without licences and within the IEZ of Sierra Leone[22]; Seta 70 had previously been arrested for IUU fishing in Liberia[23]. Both Seta 70 and Luanda 11 belong to the Spanish-based South Korean company Inter-Burgo[24], which owns and/or manages vessels that have been identified by a variety of organisations as suspected or confirmed as engaging in IUU operations in various regions of the world[25]; Inter-Burgo has also been highlighted as a company that makes use of Flags of Convenience[26]. In Liberia the company has been accused by the United Seamen, Ports and General Workers Union of Liberia of owing more than US$30,000 in outstanding wages to Liberian crewmembers[27].

** For more on the links between IUU fishing and DG Sanco see EJF's Report 'Dirty Fish' at www.ejfoundation.org/reports.*

HEALTH AND SAFETY

Crews aboard IUU fishing vessels can be placed at risk of serious harm from deficiencies in vessel safety, as well as unsanitary and unsafe working conditions[28]. There has been a failure to achieve international conventions aimed at establishing minimum safety requirements for fishing vessels, which is often coupled with poor enforcement of national laws (if these exist at all for fishing vessels). The result is a situation whereby ship owners can allow the deterioration of fishing vessels to the point of not being seaworthy, and to fail to provide safety equipment[29] - a situation that has earned these vessels the name 'floating coffins'.

Ships that have been found in violation of safety laws included those with no life rafts, flares, and without even basic equipment such as a radio[30]. The arrest of the fisheries support vessel (or reefer) Hai Feng 827 in Sierra Leone also demonstrates the often serious deficiencies in navigational equipment including no functioning radar and poor radio equipment[31] - presenting a danger not only to crew on board but to other shipping as well. Various Hai Feng vessels have been documented conducting or linked to IUU fishing operations by EJF in West African waters, and although Chinese-owned several fly Flags of Convenience[32].

Images: ©EJF

CASE STUDY: CRAMMED ABOARD

A combined EJF and Greenpeace International investigation off the coast of West Africa documented the South Korean fishing vessel Five Star in the outer waters of the Exclusive Economic Zone (EEZ) of Sierra Leone. From a distance the profile of the vessel was distinctly strange; on closer approach it was revealed that a large wooden structure had been haphazardly built onto the back deck of the vessel. Incredibly, once on board it was discovered that this was in fact living quarters for approximately 200 people.

The Five Star was operating as a mother ship, and had picked up 40 small fishing canoes and their Senegalese crews in Dakar and illegally brought them to the rich fishing grounds of Sierra Leone. Each morning the canoes were put to sea, each with 5 or 6 fishermen on board. Having fished all day, the crews returned in the evenings to unload their catches and stack the small boats back on deck. They were then required to retire to the ramshackle construction that had been built to house them.

The structure was divided into four levels, with a maximum head room of barely over a metre. Inside the Senegalese crews had to crawl through to their allocated sleeping area – cardboard mattresses squashed together, with possessions and clothes hanging from the 'ceiling' by string. The crews not only slept in this area, they were also required to cook and eat there as well – all 200 of them. Although roofed there was little protection, and in any type of poor weather conditions the crews would have not only been exposed to the elements but also faced a real danger of the entire structure coming loose and being washed over the side.

The Five Star did not appear on the official Vessel Registration list of vessels licensed to fish in Sierra Leone at the time of sighting[35], and was therefore engaged in IUU fishing operations. Interviews with crew members revealed that the vessel would pick them up for three months, and then return them to Senegal while it continued on to Spain to unload the catch. Although they were unsure of where in Spain, records show that the Five Star has visited the notorious Port of Convenience of Las Palmas in the Canary Islands in the past, most recently in January 2008[36]. The Senegalese crew members felt that they had little choice but to take the employment opportunity offered by the Five Star – fish stocks in Senegal had declined (in part due to IUU fishing) to the point where they could no longer earn a living as fishermen in their own waters.

"The conditions aren't good for us here but we can't do anything about it... it's so hard to find work. If someone offers you a salary of $200, to support your family, it's not good but we just have to live with it"
Asad Diop, Senegalese Fisherman aboard the Five Star

Poor health and hygiene standards can be found on both the crew decks and fish holds of IUU vessels (with the additional health threat to end consumers of illegal fish); crews aboard these vessels are forced to work in filthy conditions, with no protective clothing and frequently with little access to adequate sanitary products or clean water. A lack of adequate medical equipment or facilities for the treatment of accidents or illness has also been documented[33]. Kitchens on IUU vessels have been found to be filthy and the food being served is often of very poor quality[34].

When illegal fishing vessels are detected, they may be pursued for many miles over open sea by national authorities to attempt to force their landing and secure arrest. This can place vulnerable crew in dangerous seafaring conditions on already unsafe boats[37].

CASE STUDY: UNCHECKED PHYSICAL ABUSE

In American Samoa, six Chinese fishers jumped ship from the *Tunago #61*. They gave eye witness accounts of daily physical abuse and death threats onboard the fishing vessel, including 'receiving beatings sporadically and systematically every day' at the whim of the skipper and his brother, the chief engineer[38]. A young fisher was repeatedly punched and kicked in the head by the skipper and made to work continuously for 48 hours for failing to properly secure bait on the hooks. Another was grabbed by the hair and repeatedly punched in the face, and then later beaten with a thick wooden rod[39]. A crew member who asked for leave from the boat was beaten with an iron rod and locked in the bow for three days with serious head injuries and without food or water. All the men were subject to death threats by the skipper, who told them he carried a gun and that they could easily be 'written off' as having been swept overboard[40].

According to Lloyds Register the Tunago #61 is currently registered to Flag of Convenience State Vanuatu[41]. However, demonstrating the difficulty of identifying fishing vessels and particularly those that exploit FoC is the appearance of at least one other vessel that has also been called this name. This second Tunago #61 has changed name and flagged-hopped five times since 2000, including to FoC States Bolivia, Georgia and Belize, and FoNC States China and South Korea[42].

The Fish Carrier Vessel Hai Feng 827 was arrested in Sierra Leone for serious deficiencies in safety and navigational equipment. ©EJF

Crews are often forced to live and sleep in very poor accomodation, often several to a 'bed'. ©EJF

Crews aboard IUU fishing vessels often have to suffer poor food and hygiene. The food preparation area below is aboard the See God II, arrested in January 2010 for IUU fishing in Sierra Leone. ©EJF

CASE STUDY:
BRUTAL EXPLOITATION OF CAMBODIAN AND BURMESE MIGRANT WORKERS

'Victims typically experience numerous forms of severe exploitation at sea, including beatings to the head and body, starvation, lack of pay, and psychological trauma from witnessing violence and murder'
UNIAP 2009[43]

Every year thousands of men, women and children are trafficked into Thailand from Cambodia and Burma[44]; many are fleeing persecution, or simply looking to support their families with a job abroad. According to the ITF and the United Nations Inter-Agency Project on Human Trafficking (UNIAP), some of the most unfortunate are the men and boys who end up working on the Thai fishing vessels that ply the South China Sea, an area notorious for high incidences of IUU fishing[45]. Sold by unscrupulous brokers to Thai fishing boat captains, these individuals are treated as virtual slaves[46]. Workers are subject to constant beatings and forced to work in inhumane conditions, often for days, without sleep or meals[47]. Wages and travel documents can be withheld for years; even if they are paid when crew members try to send money to relatives the payments are required to go through brokers affiliated with the Captain. In many cases the money is stolen, never reaching the crewman's family[48].

In 2009 UNIAP interviewed 49 Cambodian trafficked workers about the working conditions aboard these 'slave ships'[49]. Eighteen percent (18%) of those interviewed were under the age of 18 and were children when they were first recruited. They reported daily beatings and a culture of bullying and intimidation amongst the Captain and senior crew members. Fifty-nine percent (59%) of the victims claimed to have witnessed a boat captain murder a crew member. One 19 year old victim witnessed two separate incidents whereby a Thai captain decapitated a member of his crew. Burmese crews, many of whom have fled from the brutal military regime in Myanmar, have reported a similar story of exploitation, abuse, abandonment, and murder to the ITF and Seafarers' Union of Burma[50]. In one particularly horrifying case 39 Burmese fishermen died aboard a Thai fishing vessel that lay adrift in Indonesian waters for three months without fresh water or food, as the Thai Captain did not want to approach shore for fear of being arrested for illegal fishing[51].

The Thai fishing vessels may stay at sea for years at a time, restocked by supply vessels or at remote islands. As a result, it is very hard for crew to escape their bondage without the risk of drowning or being marooned. Even if they do jump ship, the victims' fates are still in the balance. The fortunate ones are simply arrested and deported, often with a beating from the local police, but others are not so lucky. Deserters are often chased down by their captains and brutally punished; others are found hiding in the forests and subsequently sold to plantation owners, forced to work in the fields under the same slave like conditions they endured at sea[52]. On the Indonesian island of Tual there are an estimated 700 to 1,200 undocumented runaway Burmese seafarers who fled murder and abuse at sea; on shore they face starvation and harassment, as well as arrest and deportation by local authorities[53].

"I think our Burmese boatman die like dogs and pigs. I was sold into slavery by brokers, who passed me from one hand to another. Eventually I was sold to a (Thai) fishing company...When I was on the boat a Thai cook beat one of our Burmese guys with an iron bar in front of my eyes... The guy was hit at the back of his head and his brains spilled out. I grabbed him. He took an hour to die; the young guy took an hour to die"
Saing Winna, escaped Burmese fishing crewman in Tual, Indonesia to ITF interviewers[54]

Migrant Cambodian and Burmese workers are ruthlessly exploited on Thai fishing vessels, such as these in Indonesia. The region has very high levels of IUU fishing.

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©David Browne/Parachute Pictures

HOW CREWS END UP ON IUU FISHING VESSELS

The majority of workers on IUU fishing vessels are hired through recruitment agencies. These will often target vulnerable, powerless individuals. Recruits are very often not experienced fishers and are hired from rural areas in developing countries where alternative work is in desperately short supply. Individuals are recruited from across the world and have been documented to come from, among other nations, China, Vietnam, Philippines, Senegal, Thailand, Burma, Cambodia, Liberia, Nepal and Sierra Leone[55].

Many recruitment agencies operate with little regard for local or international regulations. They may legitimately place workers in jobs for a fee, but in many cases exploit poverty and illiteracy to extract extortionate sums of money from job seekers. Recruited crew members can pay up to several times their supposed monthly wage for these 'fees'[56], and there have been reported examples of fishers working without pay for agencies, sometimes for several years, before they are rewarded with a contract[57]. Recruiting agents may also cream off wages from workers during employment. In a practice termed 'double bookkeeping' it has been found that workers may be tricked into signing a contract in which money from their pay is removed for 'agency fees', as well as leave pay, subsistence, and 'cash advances'[58].

These practises have crippling financial consequences – if agency fees force them into debt, crews are financially powerless and must remain at work, left exposed to further exploitation. In addition, where workers are denied contracts and formal bargaining power, or given fictitious contracts, they have little power to challenge their treatment.

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Crew members are frequently flown across the world to work fisheries grounds far from their home countries[59]. Once on board an IUU fishing vessel crew members can have their passports confiscated, essentially confining them on board[60]. Even if a vessel actually does enter harbour, ship's officers will ensure that disgruntled or abused individuals cannot escape by withholding both passports and wages, and crews can find themselves imprisoned on the vessel[61].

Even the end of a contract aboard the vessel may not result in a return of documents, or freedom from the vessel. Crews have reportedly been held captive for many months in foreign ports, often because the owner of the vessel is unwilling to produce passports, or is unable or unwilling to pay the costs of returning crew home[62]. Repatriation of workers has been highlighted as a particular problem; to avoid payment of owed wages, or to deal with difficult crew, owners will often abandon individuals in foreign ports with no money, compensation or means of subsistence[63]. This renders them reliant upon charity, moneylenders or local people, and some find themselves victims of extortion by local security and immigration officers[64].

CASE STUDY: ABANDONED IN THE SHIPS' GRAVEYARD

Around 70 nautical miles off the coast of Guinea, in West Africa, EJF and Greenpeace discovered dozens of rusting trawlers, anchored and broken down. At first it appeared that these ships had been abandoned, but in fact on board each vessel were one or two crew. These men had been left aboard the derelict boats with decayed or non-existent safety equipment, and no radios for communication with the outside world. Even more serious was the state of their floating jails – rusty, unseaworthy, and in danger of sinking. These men were living onboard with little to do, and no where to go. They were supplied with basic food and water every few months by supply ships, and passed the time by playing cards with others on nearby boats. Many had no idea when they might be relieved – they had been left for months, and reportedly up to two years[65].

Contract

CONTRACT BETWEEN CREW AND FISHING VESSEL

(SIGN IN NEPAL)

Name: HEM BAHADUR SARKI Passport No: _____ Date of Birth: 03/04/1977

Father's Name: CHHABILAL Mother's Name: TEMA KUMARI

Beneficiary's Name: PARBATI SARKI Contact No: 9846173317 (H) 9846141013 (HP)

PERSONAL DECLARATION:

1 It is my deliberate and thoughtful decision to join this job as a 'Fisherman'.

2 In case I fail to complete the contract stated in the contract for personal reasons or dismissed from the job on the ground that I violated the Company Rules & Regulations, I fully understand and agree to the following conditions:

(a) I will pay all the expenses incurred for going home to Nepal from the Fishing Location no matter what the amount may be (minimum US $2,000 and above depending on the fishing location).

(b) I will not claim back any amount of money I spent for securing this job.

1. TERMS AND CONDITIONS WITH UNDERTAKING:

1.1 Tenure of the Contract is 3 years from the date this contract is signed.

1.2 Primary job involves Catching, Packing and Freezing fish. Any other jobs related to these major activities including preparatory works fall within the scope your job.

1.3 Primary fishing activities occur in the Seas. A trip to the Sea may last for 6 months to one year or even more.

1.6 There is no fixed working hours. However, daily working hours will be around 18 hours (sometime more, sometime less)

1.5 Both Accommodation & Food provided by the Company. However, Cigarettes and Personal Supplies (eg. Soft Drinks, Noodles, Sampoo, Tooth Paste, Tooth Brush, Biscuits etc) is not free and will have to be paid by the crew himself.

1.4 Seawater will be used for bathing and laundray purpose.

1.7 New Crews may suffer from seasick. However, the crew will recover automatically within a few weeks working the vessl. No need to take medicines.

1.8 The Crew must follow all the safety rules and regulations on board the ship.

1.9 The ship is responsible for accident occurred during working hours. Insurance is US $5,000/- and payable to nominated Crew's family upon death and permanent disability. However, the ship holds no responsibility for personal sickness, fighting injury and fighting leading to the cause of the death.

1.10 The Crew must work hard, obediently and diligently.

1.11 Any Crew who beaches the Contract (Own Sickness, Lazy and Rejected by the Captain etc) must bear ALL THE EXPENSES INCURRED IN GOING BACK HOME TO NEPAL.

2. SALARY & BONUS

2.1 Your Basic Salary is US $ 200/-. Out of this amount, you will be given US $50/- in the ship by the captain when the ship berth at the port. Remaining US $ 150/- will be kept in the company in Singapore. This amount can be sent home upon request by the Crew as stated below.

2.2 There is NO overtime working hours and NO overtime pay.

2.3 The first 6 x Month Salary (US $ 200 x 6 = US $ 1,200) will be kept in the Company as deposit and will be paid back to the crew when he goes home after completion of the contract.

2.4 Your Salary will be sent home once in every 6 months. The reason why it is 6-month is because it is very costly to send salary home every month.

2.5 Miscellaneous bonuses may be paid annually at the end of the year. However, the amount depends upon the performance of the crews.

Note:

If a Crew finishes the contract at the port at country other than Singapore, it is the responsibility of the crew to call Singapore Office and inform that he is coming to Singapore. Only when Singapore Office gives GO SIGNAL, then the Crew is to board the plane and come to Singapore to collect the remaining salary. The reason why he needs to confirm is because he has to collect all the amounts Ship Captain owe to the Crew before leaving the Ship. If a Crew fail to do so, Singapore Office will hold no responsibility for claiming back the amount the Ship Captain owe to the Crew on behalf of the Crew.

What the Ship Captain may owe to the Crew as follows:

(a) Monthly US $ 50/- which the captain may or may not have paid you in full.

(b) Shark Fin Bonus and other Working Bonuses

Agreed By Crew:

Hem-S.

Name: HEM BAHADUR SARKI

Date: 10/12/2008

Thumbprint (R) (L)

CASE STUDY:
EXPLOITIVE WORK CONTRACTS

This contract[66], signed by an illiterate Nepalese national who almost certainly had never seen the sea or a fishing boat before, highlights the exploitation by some fishing companies and recruiting agencies in regards to crews. The contract is for three years, at a rate of US$200/ month. Of this US$150 per month is retained by the Agency in Singapore (plus the first 6 months total), and $50/month retained by the Captain (to be given 'in port'); remittances can only be sent to Nepal every six months 'because it is very costly'. Crews are expected to work at least 18 hours a day, with no overtime. Seawater is to be used for bathing and washing clothes. At the end of the contract, the crewman must make his own way to Singapore to collect his wages; if the contract is not completed, the crewman is abandoned at the nearest port and responsible for making his own way home.

HOW IUU FISHING VESSELS CAN EXPLOIT AND ABUSE CREWS

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By their very nature of operations, IUU vessels often avoid oversight and prosecution for both IUU fishing and other criminal activities, including the exploitation of their crews. This conduct is greatly facilitated by gaps in international legal instruments. The relevant United Nations agencies have often been slow to produce adequate Conventions, and have then struggled to get these ratified by the international community. Combined with many nations' blatant disregard for developing and enforcing domestic human rights and labour rights laws, these international legal loopholes continue to allow failures in vessel safety and the exploitation of crews.

While it is the obligation of Flag States to regulate and prosecute when their registered vessels break international maritime laws, two United Nations bodies are primarily responsible for developing the international regulations governing labour and safety conditions on board fishing vessels: the International Labour Organisation (ILO) and International Maritime Organisation (IMO).

THE INTERNATIONAL LABOUR ORGANISATION (ILO)

"In the fishing sector many people face extraordinary and unpredictable hazards, often working long hours in harsh conditions to bring food to our markets".
ILO Director-General Juan Somavia[67]

The ILO is the UN agency responsible for creating and overseeing international standards for the rights of workers. There are a number of ILO Conventions designed to prevent poor conditions on fishing vessels, the latest and most important of which is the 'Work in Fishing Convention' (Convention no.188) adopted in June 2007. The Convention sets out acceptable conditions with regard to minimum requirements for work on board, conditions of service, accommodation and food, occupational safety and health protection, medical care and social security. Convention 188 will come into force when ten countries, including eight coastal States, ratify the Convention and adopt the principles into national legislation; however, at the time of writing, only one State has done so[68]. The reason given by governments is financial incapacity and the challenge of allocating the appropriate funds[69].

The slow uptake of Convention 188 is not unique; ratification of all relevant ILO Conventions that would address human rights issues in the fisheries sector has been a significant challenge. In June 2007, the Vice-Chairperson of the ILO Committee on the Fishing Sector expressed 'disappointment' with the 'limited rate of ratification of the five ILO Conventions for the [fisheries] sector'[70]. However it has been stated that these Conventions make a positive difference for those nations that have adopted them, and conditions are reportedly much worse on vessels not so protected[71] - for example IUU vessels flying Flags of Convenience. During discussions for the drafting of Convention 188, the committee did in fact consider introducing a resolution to address workers involved in IUU fishing[72]; however this resolution did not materialize at the time, and neither has it been introduced to the Convention since[73].

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CREW TREATMENT ONBOARD IUU VESSELS MEETS INTERNATIONAL DEFINITIONS OF FORCED LABOUR

The International Labour Organisation (ILO) has noted both the proliferation of forced labour in various industries, and that it is taking increasingly subversive and complex forms. They have therefore defined a number of internationally recognized conditions that they consider constitute forced labour in the workplace.

The conditions for those living and working on IUU vessels, often hiding behind Flags of Convenience, have been found to be consistently poor. Many of the abuses suffered by crew members aboard these vessels bear the hallmarks of the ILO's definitions of forced labour on multiple counts, including the withholding of pay, incarceration, withholding of travel documents, and confinement on board for months or even years.

ILO CONDITIONS FOR IDENTIFYING FORCED LABOUR IN PRACTICE[74]

1. ***Lack of consent to (involuntary nature of) work:*** (the "route into" forced labour)
- Physical confinement in the work location – in prison or in private detention
- Psychological compulsion, i.e. an order to work, backed up by a credible threat of a penalty for non-compliance
- Induced indebtedness
- Deception or false promises about types and terms of work
- Withholding and non-payment of wages
- Retention of identity documents or other valuable personal possessions

2. ***Menace of a penalty*** (the means of keeping someone in forced labour)
- Actual presence or credible threat of:
  Imprisonment or other physical confinement
- Financial penalties
- Denunciation to authorities (police, immigration, etc.) and deportation
- Removal of rights or privileges
- Deprivation of food, shelter or other necessities

ILO 'WORK IN FISHING CONVENTION' (CONVENTION NO.188), IF RATIFIED, WOULD REQUIRE STATES TO ENSURE THAT ALL FISHING VESSELS FLYING UNDER THEIR FLAG ADOPT A VARIETY OF REGULATIONS, INCLUDING:

- vessel-owners must provide the skipper of the vessel with sufficient resources to fulfil his responsibilities for the safety of the fishers and the safe operation of the vessel
- the best-possible conditions of safety and health, including reasonable working hours, health and safety training and ensuring good seamanship standards
- minimum standards of working age of fishers, health and working hours
- all fishers have the protection of a comprehensive fisher's work agreement
- all fishers are repatriated, at no cost, if they are in a foreign port when their contract ends, their contract is terminated or they are incapacitated by illness
- regulated and licensed recruitment of fishers
- regular payment of fishers
- sufficiently spacious, ventilated and comfortable accommodation of fishers
- food and water of a sufficient nutritional value, quality and quantity
- fishing vessels carry appropriate medical equipment, medical supplies and medical training for the service of the vessel
- the prevention of on board accidents and the provision of health and safety equipment and training
- progressively achieving comprehensive social security protection for all fishers.

THE INTERNATIONAL MARITIME ORGANISATION (IMO)

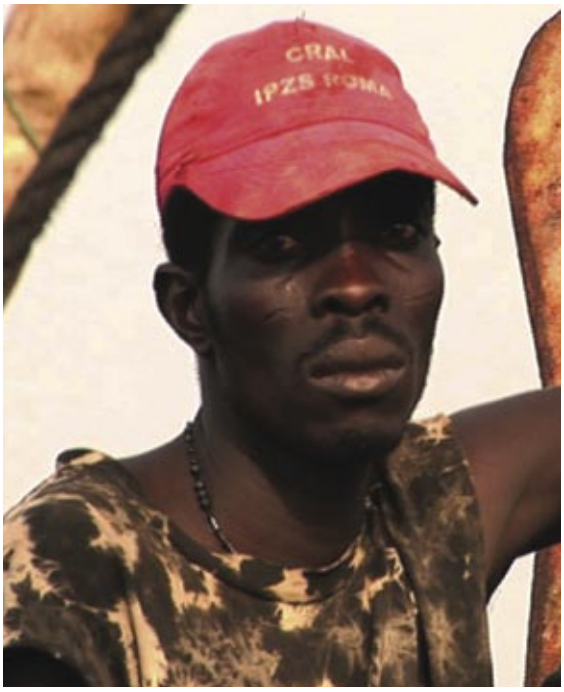
The IMO is the institution globally recognised as responsible for the regulation of the maritime industry. It has created a number of legal instruments relating to safety, environmental concerns, legal matters and maritime security. For example the International Convention for the Safety of Life at Sea concerns the maritime transport industry, and its high ratification and implementation means that 99% of the world's transport fleet are protected by this Convention[75].

The IMO has struggled, however, to create this kind of stable legal framework for the fishing industry. The Torremolinos International Convention for the Safety of Fishing Vessels was first adopted in 1977 to define the safe standards for 'seaworthy' vessels over 24m length, including design, method of construction, equipment, as well as maintenance and inspection. However, the convention was not ratified by a sufficient number of countries as 'certain provisions were considered too stringent'[76]. The IMO has since updated these provisions, making them easier to put into practice and locally relevant, and formed the Torremolinos Protocol in 1993. The entry into force requirements for this Protocol are two-fold: 15 States are required to sign up to it and these States must between them own an aggregate number of fishing vessels (not less than 14,000) of 24 metres or more in length. Once these two requirements have been met, the Protocol will enter into force after 12 months[77]. Yet while the first requirement has been met - 17 States have ratified or acceded to the Protocol - these countries between them only represent approximately 3000 vessels[78].

If the Torremolinos Protocol came into force, it would impose a number of relevant obligations on Flag States. These would include conventional enforcement measures (surveys and certification), and also the regular reporting of relevant information, scrutiny of the texts of national laws, and reports on casualties and accidents involving fishing vessels[79]. To address the low uptake of the Protocol, particularly by nations with large fishing fleets, the IMO has undertaken a number of initiatives to try to expedite the process. These have included trying to persuade States with large fishing vessel fleets to ratify, and undertaking research to try to ascertain which problems prevent them from doing so. Responses from various countries indicated a number of provisions in the Protocol were still considered too stringent for these States to accept[80]. How to address this situation appears to be at an impasse – options include an amendment agreement which would read and interpret the protocol as a single treaty instrument, or an IMO Assembly Resolution – and it is not known if and when a solution might be implemented[81]. Yet according to the IMO, the ratification of the Protocol by only one large fishing nation - such as China with more than 20,000 fishing vessels - would make the crucial difference[82].

Just as the Torremolinos Convention provides the framework for safety of vessels, the Standards of Training, Certification and Watchkeeping Convention (STCW-F) sets out conditions for the safety of fishing workers. The STCW-F underwent major revision in 1995, to the effect that there are now mandatory international conditions for training and certification of ship security officers. The Convention currently has thirteen signatories, two short of the number needed[83]. However with Canada recently deciding to submit ratification there is hope that the STCW-F will soon enter into force[84].

The International Maritime Organisation (IMO) is responsible for regulating the maritime industry. While it has had good success rates in developing ratified instruments for the maritime transport sector, it has struggled to create similar legal frameworks for the fishing industry. As a result many IUU fishing vessels - including the Min Yu 701, arrested in Guinea in February 2005 and again in Sierra Leone in November 2009 – have dangerously low standards of safety. ©EJF



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OTHER INSTRUMENTS

In collaboration with the Food and Agriculture Organisation (FAO), the ILO and IMO have also developed a number of optional (non-binding) tools and guidelines. These include the FAO/ILO/IMO Document for Guidance on Fishermen's Training and Certification; the Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels 2005; and the revised Code of Safety for Fishermen and Fishing Vessels, 2005[85]. There are also plans for the ILO and FAO to release a joint publication *'Guidance on policy and practice in tackling child labour in fishing and aquaculture'*[86].

The revised Code of Safety was developed for use primarily by competent authorities, training institutions, fishing vessel owners, fishermen's representative organisations and NGOs with a recognized role in fishermen's safety, health and training. It provides guidance on health and safety, as well as on the development of national codes and training manuals appropriate to particular needs of different fisheries[87].

In addition there are voluntary instruments that target the fisheries sector that do make reference to the crews that work aboard fishing vessels. In particular the FAO International Plan of Action prevent, deter and eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) states that ***'flag States should ensure that their fishing...vessels do not support or engage in IUU fishing... without prejudice to the taking of appropriate action, as necessary, for humanitarian purposes, including the safety of crew members'***[88]. However, as pirate fishing vessels go out of their way to avoid punishable regulations, voluntary instruments are almost certainly ignored.

DANGERS ASSOCIATED WITH REPORTING CRIMES

While the ILO-defined 'menace of a penalty' is a means of keeping someone in forced labour, it also acts to dissuade workers from reporting abuses, which makes the monitoring and regulation of conditions on vessels even more difficult. Fishers can be threatened with, or subject to, violent attacks for attempting to report unfair or illegal conditions, or can be threatened with blacklisting. Crew blacklists are circulated amongst recruitment agencies, alerting them to 'undesirable' qualities in potential recruits. Blacklisting can effectively render a person unemployable, and for many this leaves them without employment or a way to support their families. The prospect of blacklisting is therefore sufficiently grave to prevent fishers seeking outside assistance.

Crew members may also be reluctant to report conditions out of fear of being associated with illegal fishing, which means they could be liable to prosecution or to being held without trial. Many countries have recently stepped up their efforts in identifying and prosecuting illegal fishing vessels, with variable success dependent on the region, countries involved, and resources available. While the owners and captains rightfully bear the brunt of prosecution penalties, crews can also be jailed and charged – despite the fact that very often these individuals are either unaware of the illegal fishing activities, or are not in a position to protest the activities. Crews can face jail times and financial penalties, and are rarely supported by their employers[89]; in some tragic cases, crews have been held for long periods of time without any trial at all.

CASE STUDY:
UNFAIR INCARCERATION

In February 2010 a Kenyan crewmember from the Taiwanese fishing vessel Tawariq-1 died in mysterious circumstances in jail. The vessel had been arrested in Tanzanian waters for IUU fishing in March 2009, in the company of three other vessels that managed to escape enforcement authorities. Since the time of arrest the crew members, consisting of 15 Chinese, 8 Filipinos, 5 Vietnamese, 6 Indonesians and 3 Kenyans, have been held in two separate jails. In September of 2009 a Tanzanian court of law in Dar-es-Salaam ruled that the crew members could be released from jail against a bail of one million Tz Shillings per seafarer (around US$770 per head); however this was not paid by the vessel owners and the crew members themselves could not afford the amount, resulting in their continued incarceration. Meanwhile the owner-manager of the Tawariq-1 has not been clearly identified or arrested. The East African Seafarers Programme and the NGO ECOTERRA International have appealed to the Government of Tanzania for the immediate release of the crew[90].

FISHING VESSELS, FLAGS OF CONVENIENCE AND THE EXPLOITATION OF CREWS*

'Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matter over ships flying its flags'
Article 94 - UN Convention on the Law of the Sea

Flags of Convenience (FoC) – described by Franz Fischler, former EU Commissioner for Fisheries, as ***"the scourge of today's maritime world"*** – represent one of the simplest and most common ways in which unscrupulous fishing operations can circumvent management and conservation measures, and avoid penalties for IUU fishing. Under international law, the country whose flag a vessel flies is responsible for controlling its activities. However, certain countries operate 'open registries' that allow any vessel, regardless of nationality, to fly their flag for a few hundred dollars and then ignore any offences committed. FoC nations notoriously overlook illegal practices such as the evasion of taxes and fisheries management regulations. Equally however, FoC often allow IUU fishing vessel owners to disregard vessel safety requirements, as well as regulations pertaining to crew labour and training.

FoC are used extensively by various maritime sectors as a means of minimising operating costs, the majority of which are part of the merchant marine; fishing vessels constitute an estimated 7-15% of the global total of vessels registered to FoC[91]. It is easy to understand why the use of FoC by IUU fishing vessels has become so widespread when the financial benefits are considered. Ship owners enjoy reduced

FLAGS OF CONVENIENCE STATES

Note: Not all fishing and fisheries support vessels flying the flags of the countries in the diagram below will be under foreign ownership; some may be genuinely owned by nationals. Equally not all fishing vessels flagged to a FoC State will necessarily engage in IUU fishing or the abuse of crews.

**For more on the links between IUU fishing and FoC see EJF's Report 'Lowering the Flag' at www.ejfoundation.org/reports*

operating costs as they do not have to pay for licences or vessel monitoring systems[92], and can avoid regulations and laws requiring insurance, training of crew, and the purchase of safety gear. As many countries with FoC registers are either *unable* or *unwilling* to monitor and control the activities of fishing vessels flying their flag, illegal operators are often able commit crimes with little fear of prosecution. FoC vessels are therefore frequently implicated in IUU fishing operations, and often characterised by the lowest standards of vessel safety and crew working conditions[93].

Fishing vessels flying FoC are particularly problematic because they are difficult to monitor, regulate and manage. These flags are notoriously easy, quick and cheap to acquire. IUU vessels can re-flag and change names several times in a season to confuse management and surveillance authorities, and avoid prosecution (a practice termed 'flag-hopping'[94]). Flag hopping can be done frequently and cheaply since applications for new flags can often be sent by fax or made online and processed within 24 hours. Backed by shell companies, joint-ventures and hidden owners, FoC severely constrain efforts to combat IUU fishing and penalise cases of crew abuse, as they make it extremely difficult to locate and penalise the beneficial owners of vessels[95].

Unscrupulous ship-owners have long used FoC to evade regulations such as tax rules and safety standards. A proportion of IUU fishing and the exploitation of the crews aboard could therefore be eliminated if all Flag States exercised effective control over fishing vessels. Closing the loophole in international law that allows States to issue Flags of Convenience to foreign-owned fisheries vessels would be the single most effective step in eradicating IUU fishing[96], yet up to now, all attempts to eliminate the FoC system have been unsuccessful, and FoC vessels have proliferated over the past 20 years[97]. Until the loophole is closed, their widespread use to perpetrate IUU fishing, and the exploitation of crews, will continue[98].

Currently 32 countries and international ship registries are considered FoC by the International Transport Workers Federation[99]. The website www.flagsofconvenience.com (a company facilitating the purchase of FoC) and a report for the Food and Agriculture Organisation identify a further 8 states[100].

While information regarding the numbers of fishing vessels flying FoC is difficult to accurately assess, an analysis of Lloyds Register of Ships for fishing vessels ≥24 metres highlights that some FoC nations are particularly notorious in regards to flagging fishing vessels (Table 1). Equally the very nature of FoC makes it extremely difficult to identify the true owners and beneficiaries of IUU fishing vessels exploiting open registries. However, again using Lloyds Register of Ships, it is possible to get a snapshot of the nationality of some of the companies exploiting Flags of Convenience (Table 2).

'Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship' Article 91 - United Nations Convention on the Law of the Sea

While these tables do give a glimpse into FoC use it is important to note that data obtained from Lloyds has limitations, as only vessels with IMO numbers are included (those ≥24m); EJF investigations have demonstrated that many IUU fishing vessels are smaller than this limit. It is therefore likely that there are many more fishing vessels flying FoC than identified in the tables below. Information on Lloyds is also subject to the limitations of information reporting, and as FoC vessels can and do reflag, data can be out of date. As well as the issues surrounding FoC, this state of affairs also highlights the problems associated with the current lack of an international registry and vessel identification system for fishing vessels.

TABLE 1
FISHING VESSELS REGISTERED TO 10 FOC STATES ≥24M IN 2005, 2008, 2009

FoC	2005[101]	2008[102]	2009[103]
Belize	241	52	55
Cambodia	47	127	176
Cyprus	27	16	18
Equatorial Guinea	39	30	28
Georgia	60	65	38
Honduras	416	283	293
Mauritius	24	24	26
Panama	222	265	283
St Vincent & Grenadines	74	49	49
Vanuatu	47	62	33
TOTAL	1197	973	999

FLAG OF NON-COMPLIANCE (FONC)

In addition to FoC States, there are many countries that while not having an open registry are nonetheless notorious for failing to enforce Flag State obligations – particularly in high seas and distant water fisheries. Any country that lacks the resources or intent to monitor and control vessels fishing on the high seas and flying its flag are more generally known as Flags of Non-Compliance (FONC).

Countries that do not operate FoC registries, but have been documented as FONC include China[106], South Korea[107], and Taiwan[108] - all major Distant Water Fishing Nations (DWFN). EJF investigations presented in this report highlight both Chinese and South Korean vessels in violation of labour laws and vessel safety regulations. All FONC countries should exercise authority and implement their international responsibilities as Flag States to ensure that fishing vessels and companies involved in distant water fleets are fishing legally, and abiding by international maritime safety and labour standards.

The FAO is currently examining the potential to develop some type of regulatory framework with the objective of setting criteria for Flag State performance and identifying actions that can be taken if these criteria are not met[109]. Negotiations are likely to start in 2010, though it is currently not known whether the end regulation will be a binding treaty or voluntary agreement. EJF believes it is crucial that these discussions develop into official negotiations towards a binding treaty on Flag State Performance that not only closes open registries to fisheries vessels, but ensures that all current non-compliant nations are made to abide by international requirements.

TABLE 2 TOP COUNTRIES LISTED AS COUNTRY OF RESIDENCE OF OWNER, OPERATOR,OR MANAGER OF FISHING VESSELS FLAGGED TO ONE OF THE TOP 14 FOC COUNTRIES 2005 AND 2009

Top countries/areas of residence of vessel owner, manager or group	No. of fishing vessels ≥24m in 2005 flagged to top 14 FoC[104]	% of all fishing vessels ≥24m or longer flagged to one of top 14 FoC countries in 2005	Rank 2005	No. of fishing vessels ≥24m in 2009 flagged to top 14 FoC[105]	% of all fishing vessels ≥24m or longer flagged to one of top 14 FoC countries in 2009	Rank 2009
Taiwan	142	11.2	1	117	10.4	3
Honduras	111	8.8	2	119	10.6	2
Panama	96	7.6	3	212	18.9	1
Spain	87	6.9	4	58	5.0	6
Belize	74	5.8	5	71	5.3	5
South Korea	43	3.4	6	93	8.3	4
Japan	32	2.5	8	29	3.6	7
China	N/A	N/A	N/A	56	5.0	6
EU	170	13.4		187	16.7	

CONCLUSIONS

Illegal, Unreported and Unregulated (IUU) fishing vessels operate throughout the world, taking advantage of weak international regulation and the inability of many developing nations to control their national waters. EJF and other organisations have documented extensive human rights abuses aboard IUU fishing vessels, characterised by appalling mistreatment and exploitation of individuals working on poorly maintained, unsafe vessels. The evidence of this report suggests that in some cases these abuses amount to International Labour Organisation definitions of forced labour.

This exploitation requires urgent international action, and there is a pressing need to address the deficiencies in international regulations. Existing international instruments developed by both the ILO and IMO have either not been ratified, are voluntary, or have not been adequately developed. Furthermore, the exploitation of Flags of Convenience not only perpetuates IUU fishing operations, but allow illegal operators to ignore vessel safety and labour standards.

An end to IUU fishing is no longer just desirable, it is crucial if sustainable fisheries are to be achieved. The environmental impacts of IUU fishing in terms of plummeting fish stocks and reduced biodiversity is well-known and widely reported; the social and economic impacts, particularly for developing nations, are also acknowledged. This report on the human rights abuses suffered by the crews working aboard these vessels adds further strong argument for immediate and effective action to combat IUU fishing operations.

RECOMMENDATIONS

Clearly there is a compelling need for the international community to ratify and bring into force existing international instruments that address labour and safety standards. Among those that have particular relevance and value are:

EJF calls on the International Community to ratify and implement:

- ILO Maritime Labour Convention
- ILO Work in Fishing Convention
- IMO Torremolinos Protocol(for safety of fishing vessels)
- IMO Standards of Training, Certification and Watchkeeping Convention

EJF calls for renewed efforts to secure the entry into force of these instruments and leadership by, among others, the European Union, United States, the Commonwealth of Nations and ASEAN to secure near-term agreement to achieve this.

However, other actions with high potential for success and equally important impact should be promoted and be adopted by the International Community in the near-term. Key groupings, and in particular the European Union and Commonwealth can and should provide political and practical leadership to achieve these goals:

1. An End to the use of Flags of Convenience by Fishing and Fisheries Support Vessels (reefers)

Flags of Convenience often result in an extremely tenuous, or even non-existent, link between fisheries vessel and flag state. As a result there is little oversight of the activities of both FoC nations and flagged vessels to ensure that they are complying with international regulations. It is therefore vital that FoC states are persuaded to stop issuing FoC to fisheries vessels and fulfil their obligations as responsible flag and port states.

In consideration of this EJF calls on:

- All Flag States to ratify all existing international conventions in regards to fisheries responsibilities, in order to provide a comprehensive legally binding framework. This includes the development of minimum enforceable standards for parties to international agreements and ensuring compliance by all contracting parties to international agreements, if necessary by the use of legal procedures.
- International bodies and governments to initiate national and international negotiations leading to a global end to the exploitation of Flags of Convenience (FoC) by Fishing and Fisheries Support Vessels. This should include a new, and binding, implementing agreement to the UN Law of the Sea framework that sets out enforceable measures to ensure that Flag States fulfil their responsibilities under the United Nations Convention on the Law of the Sea (UNCLOS) and other existing instruments. The agreement should establish criteria for a 'genuine link' between vessel and Flag State; define enforceable measures to prevent States from operating vessel registers in breach of international agreements;

Images ©EJF

and prevent States from flagging foreign-owned fishing and fisheries support vessels to national registers.

- All FoC nations to immediately delist foreign-owned Fishing vessels and Fisheries Support Vessels, and develop a publicised national legal framework that disallows the granting of flags to this sector.
- A responsible Flag State, or group of States party to an RFMO, to initiate legal action to seek compensation for the costs incurred from FoC (i.e. IUU) fishing, by taking a FoC State to the International Tribunal for the Law of the Sea (ITLOS) under the compulsory dispute-settlement provisions of UNCLOS. If such a test case proved successful, FoC States would be faced with the prospect of paying substantial sums in compensation for their failure to regulate their fishing fleets, thereby constituting a significant and cost effective deterrent to IUU operations.
- All Flag States to ensure that vessels seeking to enter their registries do not have a history of IUU fishing, and are not affiliated with companies that do so.
- States take measures to prevent their nationals from reflagging fishing and fisheries support vessels to FoC registers.
- Port States to ban the entry and landing of fish from vessels flying FoC. Communication and cooperation should be developed to ensure FoC vessels are also effectively barred by neighbouring States at the regional level.
- RFMOs to introduce the wider use of trade sanctions to address vessels that engage in IUU fishing, including a ban on all vessels operated by FoC registries unless a genuine link to the Flag State can be established; this includes all fisheries support vessels / reefers. Wider authority should be given to RFMO Contracting Parties to arrest and prosecute IUU vessels.
- The private sector to introduce full track and trace systems in place for all fish products, and implement policies barring the trade in fish caught / transported by FoC States.

2. An international registry and vessel identification system for fisheries vessels bound by internationally agreed regulations.

The international community should support FAO moves towards establishing a global vessel registry that provides greater transparency in the identification of fishing vessels. In order to identify and prosecute labour, safety and wider IUU fishing violations it is vital that information on current and previous vessel names and flags, beneficial owners, country of ownership, call sign, tonnage, and other relevant information is collated and made publicly available for monitoring by national and international agencies and organisations.

3. Regional Vessel Listings

The international community should strengthen its technical and financial support for developing coastal states and RFMOs, giving them the capacity to more effectively control national and international waters. Where they don't exist there should be the creation of publically available 'whitelists' that allows relevant government agencies to upload data on those vessels currently licensed to legally fish in their waters or under their flag. This initiative should be complemented with 'blacklists' of vessels involved in IUU fishing, which can be used to expose unscrupulous operators, and deny them access to fishing grounds, licences, port facilities and flag registration. For companies that own multiple vessels, increased scrutiny once a history of IUU fishing amongst individual ships within their fleet has been established would act as a further deterrent to IUU fishing activities.

4. Information Exchange

The international community should support full and timely exchange of all relevant information among all Port States, Coastal States, Flag States and regional fisheries bodies globally.

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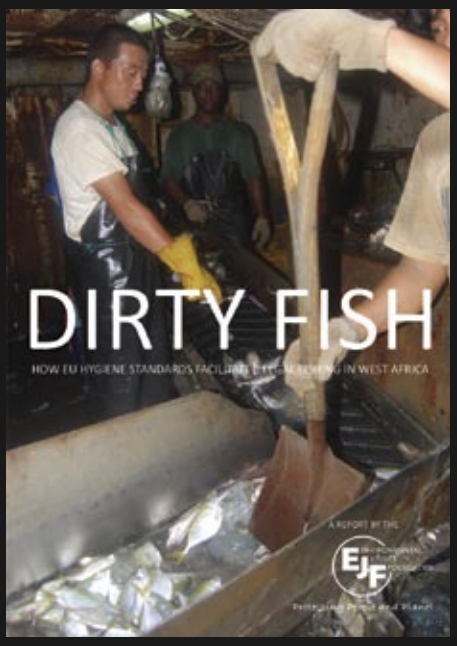

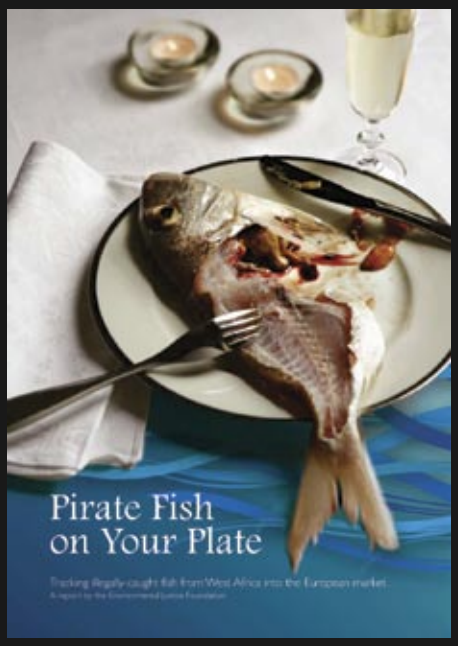

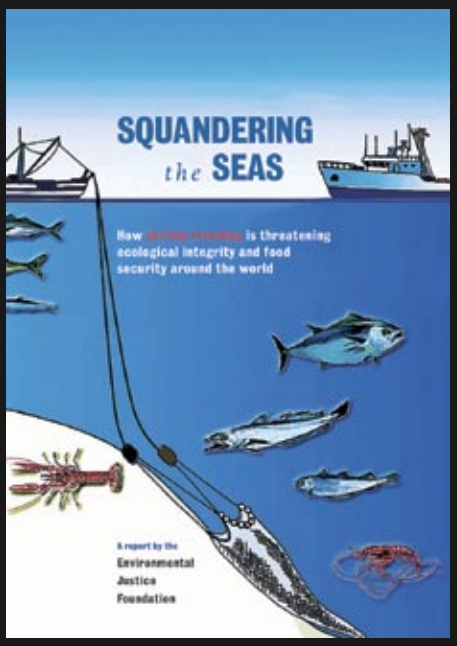

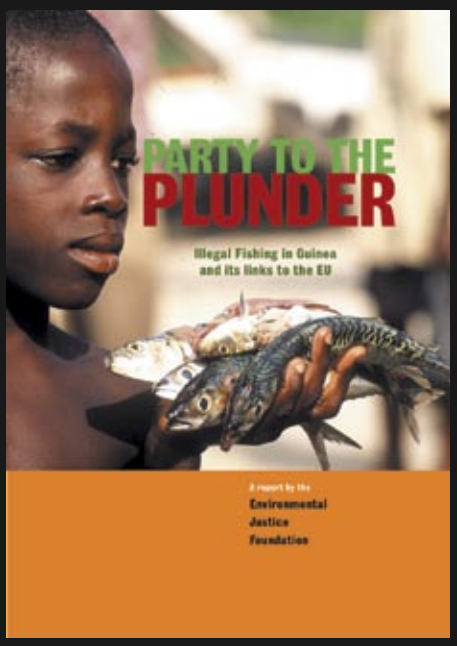

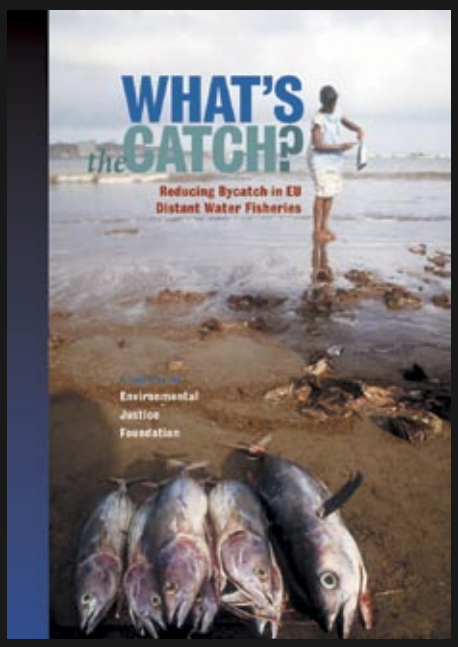

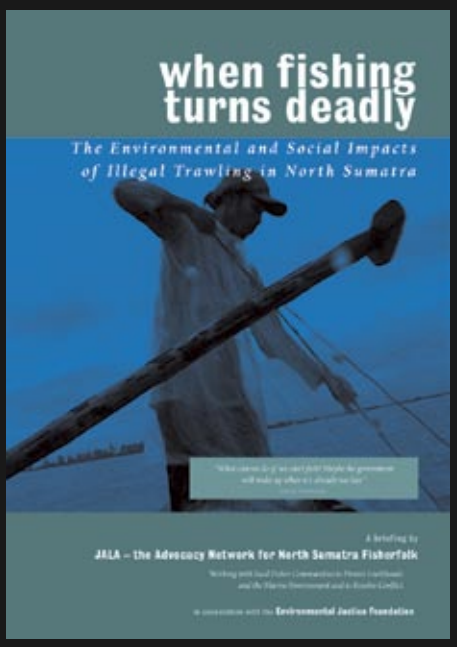

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