




Human Rights in Fishing

through

Sustainable Fisheries Partnership Agreements
Between the EU and Third Countries
(External Dimension of EU's Common Fisheries Policy)

As seen from a fishing vessel owners' perspective

Ment van der Zwan



EU Common Fisheries Policy (CFP)


“The Union shall ensure that sustainable fisheries partnership agreements include a clause concerning respect for [...] human rights, which constitutes an essential element of such agreements”

(Article 31, paragraph 6, CFP)

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About this presentation

- This presentation is limited to the human rights of fishers to safety of their lives at sea and to decent working and living conditions on board, realized through legislation providing for:
 - safe manning of fishing vessels;
 - training and certification of fishers; and
 - labour conditions of fishers.

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About this presentation

The objective of this presentation is to substantiate this proposition:

Current fisheries partnership agreements requiring placement of local fishers aboard EU vessels neglect human rights by a built-in disregard for flag State measures ensuring safety at sea in fishing. This puts the lives of local and EU fishers at risk.

And to propose possible practical solutions.

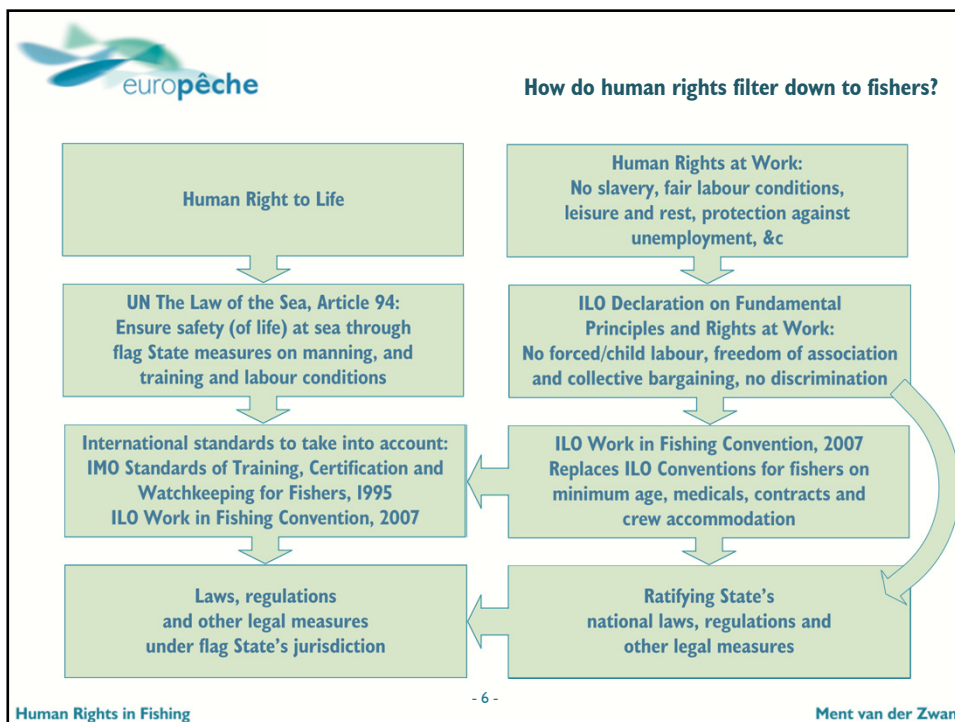
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Which human rights to safety at sea in fishing to respect?

- **Question:**
 - Under a sustainable fisheries partnership agreement (SFPA), what exactly does a fishing vessel owner have to respect where human rights are concerned?
- **Answer:**
 - The laws, regulations and other legal measures that:
 - apply to the fishing vessel, the fishing vessel owner, or the fisher; and
 - implement human rights.

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Relevant international instruments

- For the purpose of this presentation, the following international instruments are relevant:
 - the United Nations Convention on the Law of the Sea, 1982 (UNCLOS);
 - the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F) of the International Maritime Organization (IMO);
 - the Work in Fishing Convention, 2007 (C188) of the International Labour Organization (ILO);

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Relevant international instruments

- Relevant international instruments for this presentation (continued):
 - Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I),
 - A.k.a. EU's private international law;
 - the Code of Conduct for Responsible Fisheries, 1995 of the Food and Agriculture Organization (FAO).

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The Law of the Sea

- **UN Convention on the Law of the Sea, 1982**
 - Every State shall assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of, inter alia, social matters.
 - Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to the manning of ships, labour conditions and training of crews,
 - **taking into account the applicable international instruments.**


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Standards of training, certification and watchkeeping

- **International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F) of the International Maritime Organization (IMO)**
 - In force since 29 September 2012.
 - Not included in EU legislation.
 - 5 ratifications by EU Member States:
 - Denmark, Latvia, Lithuania, Poland, and Spain.
 - 5 ratifications by African States:
 - Congo, Mauritania, Morocco, Namibia, and Sierra Leone.


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Standards of training, certification and watchkeeping

- **STCW-F covers:**
 - Pre sea basic safety training for all fishers, approved by flag State Administration, in the areas:
 - personal survival techniques, including donning of lifejackets and, as appropriate, immersion suits;
 - fire prevention and fire fighting;
 - emergency procedures;
 - elementary first aid;
 - prevention of marine pollution; and
 - prevention of shipboard accidents.


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Standards of training, certification and watchkeeping

- **STCW-F covers (continued):**
 - Training and certification of Skippers and officers in charge of navigational watch on board
 - fishing vessels with a length of 24 m and over in limited/unlimited waters.
 - Training and certification of chief and second engineer officers on board
 - fishing vessels with main propulsion power of 750 kW or more.
 - Training and certification of fishers in charge of radio communication on board all fishing vessels.


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Standards of training, certification and watchkeeping

- **STCW-F covers (continued):**
 - Recognition by flag States of certificates issued by other Parties to STCW-F.
 - Ratifying Parties must deposit their laws, regulations and other legal measures implementing STCW-F with IMO.
 - **So far no Party to STCW-F has fulfilled this obligation.**
 - The flag State must ensure that requirements of STCW-F are fully complied with by the issuing Party.
 - **Requires inspection by flag State inspector(s) at training institutes of the issuing Party.**
 - Enforcement through flag *and* port State control.


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Decent working and living conditions

- **Work in Fishing Convention, 2007 (C188) of the International Labour Organization (ILO)**
 - Not in force; once in force, ratification means automatic denunciation of:
 - Minimum Age (Fishermen) Convention, 1959;
 - Medical Examination (Fishermen) Convention, 1959;
 - Fishermen's Articles of Agreement Convention, 1959;
 - Accommodation of Crews (Fishermen) Convention, 1966.


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Decent working and living conditions

- C188 (continued)
 - Not included in EU legislation.
 - 0 ratifications by EU Member States.
 - 3 ratifications by African States:
 - Congo, Morocco, and South Africa.
- C188 Covers:
 - minimum age;
 - **mandatory medical examination of all fishers;**
 - manning and hours of rest;


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Decent working and living conditions

- C188 covers (continued):
 - mandatory crew list;
 - **mandatory written fisher's work agreement,**
 - particulars to be included in the agreement are detailed in an annex to the Convention;
 - repatriation rights;
 - **recruitment and placement, and posting;**
 - **payment of fishers;**
 - accommodation and food,
 - requirements for crews accommodation on board **new** fishing vessels are detailed in an annex to the Convention;


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Decent working and living conditions

- C188 covers (continued):
 - medical care aboard and abroad;
 - occupational safety and health and accident prevention,
 - mandatory basic safety training (see STCW-F section),
 - familiarization training and other on-board training;
 - social security,
 - responsibility of State of residence of the fisher unless agreed otherwise in an agreement between flag State and State of residence;
 - protection in case of work-related sickness, injury or death.


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Decent working and living conditions

- Implementation is a flag State responsibility.
- C188 Compliance and enforcement:
 - flag State inspection;
 - mandatory Valid Document for fishing vessels
 - of 24 m in length and over, or
 - normally navigating at a distance exceeding 200 nautical miles from the coastline of the flag State;
 - port State inspection if that State has ratified C188,
 - no more favourable treatment of fishing vessels flying the flag of a State that has not ratified C188.

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Applicable law

- Regulation (EC) No 593/2008 on the law applicable to contractual obligations:
 - applies to individual employment contracts with an international dimension;
 - limited choice of applicable law,
 - at least protection afforded by provisions that cannot be derogated from under the law designated by the Regulation;
 - overriding mandatory provisions apply regardless of chosen/designated law, such as
 - provisions of measures taken by the flag State in compliance with international instruments it has ratified or acceded to (e.g. ILO Conventions on work in fishing).

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Safety at sea in fishing and fisheries policies

- Code of Conduct for Responsible Fisheries, 1995 of the Food and Agriculture Organization (FAO)
 - Non-binding Code.
 - Pleads for inclusion in fisheries policies of measures to ensure safety at sea in fishing.
 - Such measures to be based on internationally agreed standards.
 - To date, the European Union has not done so for safe manning of fishing vessels, training and certification of fishers, working and living conditions of fishers.

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Application of relevant international instruments

- Ratification rates of relevant international instruments on safety at sea in fishing are quite low.
 - This is contrary to ratification practices for shipping.
- However, especially where larger fishing vessels are concerned, responsible EU flag States may still have laws, regulations and other legal measures applying to fishing vessels, fishing vessel owners and fishers which cover all or part of the subjects covered by:
 - STCW-F; and
 - C188 (or prior, now outdated, ILO Conventions).

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Application of relevant international instruments

- That's why the fishing sector lacks harmonization where measures taken to ensure safety at sea are concerned.
- Furthermore, the EU has not incorporated in Union law the relevant international instruments on social matters in fishing so far.
 - To date EU social partners' initiatives to incorporate these instruments in Union law have been without success.
- As a result, even among EU flag States there is a lack of harmonization.

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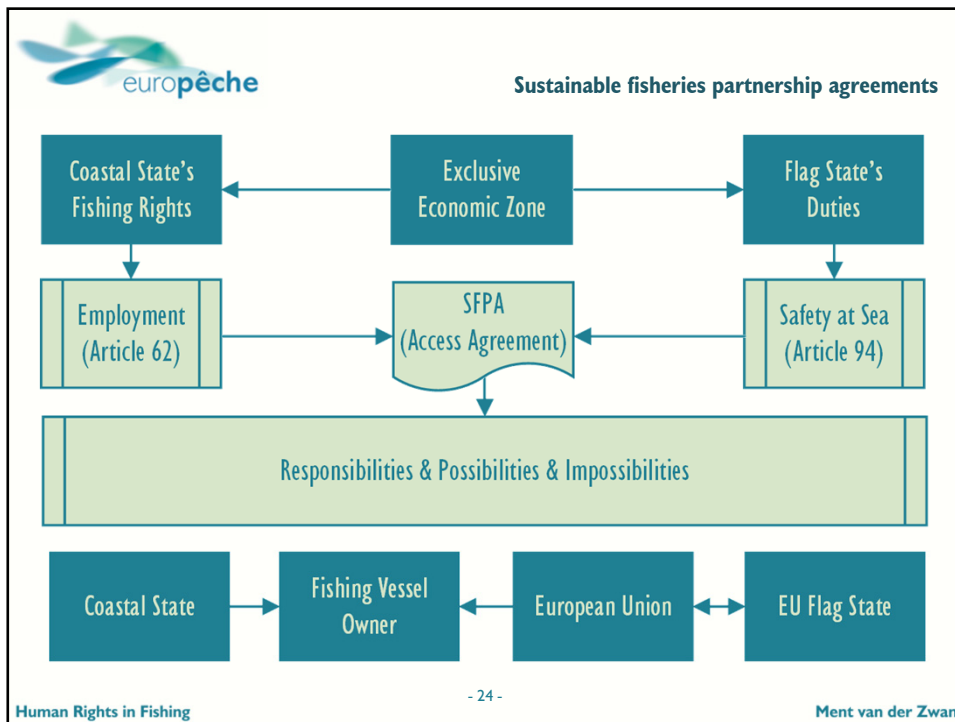



Now, Sustainable Fisheries Partnership Agreements
Between the European Union and African Coastal States

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Sustainable fisheries partnership agreements

- Coastal States have a legitimate interest in training or employment of their fisher work force aboard EU fishing vessels operating in their fishing zones.
- Flag States have a legitimate interest in enforcement of the legal measures taken under their jurisdictions ensuring safety at sea in fishing in a broad sense.
- These legitimate interests are conflicting interests if local fishers, respectively local employers, do not comply with flag State measures on manning, training and certification, and labour conditions.

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Sustainable fisheries partnership agreements

- The lack of harmonization found complicates the process of making sustainable fisheries partnership agreements, because
 - there are too many variations to deal with, and, possibly,
 - negotiating parties therefore choose to ignore the various EU flag States' requirements altogether.

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Sustainable fisheries partnership agreements

- The absence of a safety at sea in fishing objective within the Union's CFP does not help either, because there is no encouragement from that policy to take EU flag States' measures to ensure safety at sea in fishing seriously.
 - This is not in line with the FAO Code of Conduct for Responsible Fisheries, 1995 which pleads for inclusion of a broad safety at sea in fishing objective in fisheries policies.

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Sustainable fisheries partnership agreements

- As a result, current fisheries partnership agreements prescribing (quota for) local fishers to be taken aboard EU fishing vessels:
 - often ignore flag State legislation on safety at sea in fishing, thereby
 - jeopardize local and EU fishers' safety of life at sea,
 - bring fishing vessel owners in conflict with flag State law, and thus
 - disrespect, instead of respect, human rights in fishing.
- In this manner the CFP clause on respect for human rights is just window dressing!


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Sustainable fisheries partnership agreements

- If flag State measures ensuring safety at sea are ignored,
 - local fishers may not have had medical examination in compliance with flag State and EU requirements based on international standards;
 - local fishers' education, training and certificates may not comply with flag State requirements and may therefore not be recognized by the flag State;
 - recruitment of local fishers may not comply with flag State requirements based on international standards.


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Sustainable fisheries partnership agreements

- In the interest of all parties concerned and the international community as a whole, the contracting Parties should at least seek practical solutions for the conflict between employment interests of the coastal State on the one hand and safety at sea interests of the flag States on the other hand.


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Sustainable fisheries partnership agreements

- Possible solutions for the conflict of interests:
 - All parties concerned should enable harmonization of measures to ensure safety at sea in fishing.
 - The European Union should be urged to take safety at sea in fishing seriously by harmonizing EU flag States' measures through incorporation in Union law of the relevant international instruments available for fishing.
 - **It has done so for shipping!**
 - **Why not for fishing?**


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Sustainable fisheries partnership agreements

- Possible solutions (continued):
 - The EU flag States should be urged to ratify and implement the relevant international instruments available for fishing,
 - **like they have done for shipping!**
 - African coastal States should at least implement key elements of the international instruments available to ensure safety at sea in fishing.
 - The European Union should offer its African partners technical, practical and financial assistance for implementation of these key elements of the international instruments.

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Sustainable fisheries partnership agreements

- Possible solutions (continued)
 - In the meantime, contracting parties to SFPAs should seek practical solutions for conflicts of interests regarding the employment or on board training of local fishers.

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Sustainable fisheries partnership agreements

- Possible practical solutions:
 - Coastal States to acknowledge flag State responsibility for ensuring safety at sea in fishing through national measures on:
 - safe manning of fishing vessels;
 - training and certification of fishers; and
 - labour conditions of fishers.

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Sustainable fisheries partnership agreements

- Possible practical solutions (continued):
 - Coastal States to ensure that all fishers to be placed on board EU fishing vessels:
 - have been recruited in accordance with the requirements of CI 88, Article 22;
 - carry a valid certificate attesting to their medical fitness to perform their duties on board fishing vessels and that their medical examination has been carried out in accordance with the requirements of CI 88, Articles 10-12;
 - carry a valid certificate proving that the fisher has received pre sea basic safety training in accordance with STCW-F, Chapter III;


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Sustainable fisheries partnership agreements

- carry the valid certificates of competence required for their duties on board;
- have sufficient knowledge of the working language of the fishing vessel in order to receive familiarization and other on-board training, and to understand and follow up orders in that language;
- carry a signed fisher's work agreement that complies with CI 88, Articles 16 and 17;
- carry a valid identity document; and
- are covered under the coastal State's social security system.


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Sustainable fisheries partnership agreements

- Possible practical solutions (continued):
 - The coastal State to allow:
 - flag States to appoint and instruct medical examiners on its territory; and
 - flag States' inspectors to conduct inspections of education and training facilities in its territory in order to assess compliance with flag State requirements,
 - in order to enable flag States to recognize local fishers' education, training and certificates.

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Sustainable fisheries partnership agreements

- Possible practical solutions (continued):
 - The European Union to promote co-ordination between EU flag States in order to ensure that coastal States can anticipate harmonized requirements concerning:
 - mandatory medical examination of fishers;
 - training and certification of fishers; and
 - fisher's work agreements.

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Sustainable fisheries partnership agreements

- Possible practical solutions (continued):
 - Contracting Parties to consider earmarking funds, made available through SFPA's for development of sustainable local fisheries, to training and certification of local fishers.
 - The recently signed Protocol to the Fisheries partnership agreement between the European Union and the Islamic Republic of Mauritania is a major step in the right direction as far as safety at sea in fishing is concerned.

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**THE LABOUR OF FISHERS
IS NOT A COMMODITY**

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