Fishing post further March 2018 BREXIT betrayal. What about 2021?

The ISSUE: - FISHING QUOTS [see Dr North article on NON BREXIT DAY on this site dated 30 3 2018]: - A dialogue between these three learned gentlemen.

Abolition of Fish Quotas at Brexit time: Compensation or not and to whom when and why?

Dr R North

- "We're dealing, amongst other things, with the doctrine of acquired rights here, in the context (unlike milk) of the quota system continuing.
- If the EU (or the UK) was to abolish the quota system altogether, then those who had invested in buying up quotas would probably have very little cause for action - provided that all parties were treated in the same way. But simply to expropriate lawfully acquired property in order to redistribute it to other parties (in contravention of international law) is not a scenario which would be greeted with universal applause."

Mr. Edward Spalton of CIB *campaignforanindependentbritain.org.uk*

• "A Milk quota was a tradable asset and there were quota brokers who arranged the transfer from farmers who wanted to stop milking cows to those who wanted to increase their dairy herds. The quota could either be sold outright or leased; giving either a lump sum or an income to the "slipper farmers" who preferred (as it were) to put their feet up by the fire and let others milk the cows.

So now, in the matter of fish, there are numerous "slipper skippers" who can draw an income from the quota they have acquired whilst those who still go to sea pay them for the privilege.

The EU simply abolished milk quotas and that was it. No question of compensation. The fact that people had paid for it was just tough luck. Of course, it helped that milk prices were so low at the time and nobody would pay for quota to lose money on milk production. Therefore there was little outcry about this.
But it was, if you like to use the term, a sovereign act of state by the EU to simply end the scheme.

At the end of the Article 50 period when " the treaties cease to apply", it would appear that the whole legal basis for quota in British EEZ and territorial waters simply evaporates, if HMG is prepared to play for our side. Of course, a new scheme such as proposed by Fishing for Leave could then be introduced which could grant a reasonable access to British waters to foreign vessels for payment, initially for the fish which is beyond the capacity of the diminished British fleet to catch but it should not create a permanency nor any capital asset. If the foreign quota owners felt aggrieved, they could apply to the EU.

Mr Aaron Brown from Fishing For Leave: -

"Good Reply Edward, one thing everyone has missed including Richard is the distinction between International Total Allowable Catches **(TACs),** EU Quotas and British Fixed Quota Allocations **(FQAs)**

TACs are an international share out system and then the EU has its rigid individual species kilogram Quotas which are a system to divide out and burn through whatever TACs the EU is given. Under UNCLOS* it is at the discretion of an independent state how it burns through its TAC. **The big problem is the EU has tried a rigid individual species approach which is impossible to work in a mixed fishery such as we have.**

It is impossible for fishermen to catch the right admixture of species to match their quota. This results in being legally obliged to discard what you don't have quota for. This is an economic and ecological disaster as you are putting in twice the effort and catches necessary to find what you can keep.

The system also causes a severe **paucity of data** and therefore inaccurate science as landings only reflect the quota limits set and are not a true representation of what is being caught and as we have seen the theory and quotas have diverged massively from reality.

This creates a closed downward spiral of inaccurate quotas gives inaccurate landings, inaccurate landing give inaccurate data, inaccurate data gives inaccurate science and inaccurate science gives inaccurate quotas – repeatedly.

It is the entirely autonomous British system of FQA entitlement units which British Fishermen and EU 'flagship' companies registered here have bought and sold. All FQAs are is a stocks and shares entitlement system which gives entitlement to a proportion of the (disproportionately small) slice of the EU quota pie we are given.

That is what the article in the Times and Richard have both missed. Sickeningly not only do we **only receive 25%** of the TACs through the EU when with our waters independent it **should be 60%** but big EU fishing companies have come and had a second bite at the cherry by buying out British fishermen struggling with their small allocations FQAs.

So the EU is getting 60% of our fish and then another half of the 40% we do get through flagships aided and abetted by the NFFO. We will be freed from the quota system and as the EU has agreed the "treaties cease to apply" the CFP dissolves and our waters and resources are removed from the common EU pot.

Under UNCLOS we are entitled to a proportion of shared stocks based on the

predominance of species in our waters - **zonal attachment**.

Post Brexit with cessation of CPF and International Law.

Therefore we automatically gain the shares of fish the EU has caught in our waters (750,000t) and the EU gains what we have caught in theirs (90,000t). The EU can cry and howl at this exchange which favours us but that is tough - they agreed the treaties and the CFP cease - international law obliges them to re-adjust their shares based on the loss of half the waters from the EU pot.

As the EU has agreed that the treaties shall thus cease, then the EU will have no recourse under International Law, as the Vienna Convention, under Article 70, says: **the rights and obligation under a treaty continue unless otherwise agreed - the EU has agreed otherwise through Article 50.**

It is these FQAs that the industry (and a government fearful of legal challenge) does not want to abolish and thereby maintain the investment and entitlement distribution to various fisheries.

FISHING FOR LEAVE proposals: -

This is why the policy Fishing for Leave incorporated these British FQAs into a new system of effort control that we would be free to use once independent as a system to burn our TAC.

What we did was convert FQAs from being an entitlement to kilograms of a species to entitlement of a percentage. E.g. If a vessel had 20 tons of Cod out of 100 tons then he should aim for 20% of his catches to be cod. Rather than hit an arbitrary limit the vessel could retain, rather than discard, fish above his target % in exchange for a loss of time equivalent to the value of the "wrong" fish.

Therefore, this maintains investment and distribution of fishing effort to avoid any race to fish under time at sea alone where vessels could race to target the most valuable species for the best return.

Under our system you can make mistakes but if you try to be belligerent and catch the wrong species you traditionally had no entitlement for then you lose a punishing amount of time as compensation.

So in summary –

Post Brexit, the EU member states and vessels under their flag have no acquired rights as the CFP ceases to apply; we are out of the common EU pot and the UK is an independent coastal state under UNCLOS. However, as EU flagship companies domiciled here have acquired British FQAs they will still be

entitled to whatever slice of British resources they have acquired. As the Times has revealed, it's a lot!

The only way to get round this is to revisit Factortame** and enact a new merchant shipping act which rigorously enforces that 60% of the crew should be British, 60% of landings should be made and sold in Britain and that 60% of each of the companies' ownership should be British subjects. This last clause is what the flagships couldn't fulfil and which won the factortame case.

Does the government have the guts to tackle the flagships and/or close the door so they can't buy or create more...?

Can the government tighten up on foreign ownership of British companies..?

That's another big question and one which then ripples out over the rest of our national life from housing to utilities and is what most people voted Brexit to stop. "

***UNCLOS: -** UN Convention on the law of the sea. Start date: 10 December 1982

** Factortame: - ***R (Factortame Ltd) v Secretary of State for Transport***

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R (Factortame Ltd) v Sec. of State for Transport	
Court	House of Lords, European Court of Justice
Full case name	*R (Factortame Ltd) v Secretary of State for Transport*
Decided	March 1989 to November 2000

Citation(s)	• [1990] UKHL 7 • C-213/89 • (1991) C-221/89 • (1996) C-46/93 • [1999] UKHL 44 • [2000] EWHC 179
Keywords	
Parliamentary sovereignty, direct effect, Common Fisheries Policy	

R (Factortame Ltd) v Secretary of State for Transport[1] was a judicial review case taken against the United Kingdom government by a company of Spanish fishermen who claimed that the United Kingdom had breached European Union law by requiring ships to have a majority of British owners if they were to be registered in the UK. **The case produced a number of significant judgments on British constitutional law, and was the first time that courts held that they had power to restrain the application of an Act of Parliament pending trial and ultimately to dis-apply that Act when it was found to be contrary to EU law.**

The litigation was lengthy, and is typically divided into five main stages:

- *Factortame I*, where the High Court and then the House of Lords both made a reference to the European Court of Justice on the **legality of the Merchant Shipping Act 1988's ("MSA") requirement for UK fishing vessels to be 75% UK owned.** After the ECJ confirmed the incompatibility of the Act with EU law, ***Factortame*** **saw the House of Lords confirm the supremacy of EU law over national law in the areas where the EU has competence because of the UK acceding to the EU treaties**.[2]***

- *Factortame II*, where the ECJ held that the provisions of the MSA were required to be disapplied by the UK courts if they contravened EU law.

- *Factortame III*, where the ECJ held that a member state could be liable for damages in an action by the European Commission for breach of EU law.

- *Factortame IV*, where the House of Lords ruled that damages could be awarded against a member state like the UK for losses suffered by private parties under the *Francovich v Italy*[3] principle, that wrongs by violation of a public body generate a private law claim from anybody who has suffered a directly connected loss (also known as the doctrine of state liability).

- *Factortame V*, holding that claims after 1996 were statute barred, since claims against a member state were like other claims in tort under the Limitation Act 1980.

***** Please see the letter to Edward Heath in 1960 from the then Lord Chancellor, Lord Kilmuir, confirming this supremacy of EU law over UK law and therefore confirming the loss of Sovereignty of the UK by joining the EEC. That correct advice was kept secret by the Government of the day for over 30 years.**

[IT IS OUR UK SOVEREGNTY THAT WE ARE SEEKING TO RECOVER BY BREXIT. Ed.]