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## Seafarers and International Shipping Standards

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SEAFARERS AND INTERNATIONAL  
SHIPPING STANDARDS

A Major Paper Submitted  
In Partial Fulfillment in Candidacy for the Degree of  
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Department of Geography and Marine Affairs  
Lawrence Juda, Chairman  
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by

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## Preface

Merchant seafaring, as the subject of modern research and study, is a profession that has not received an undue amount of attention or attraction. The modern seafarer thus remains a 20th century enigma. The quickpace of technological, political, economic and social change taking place throughout the entire realm of international ocean shipping would seem to indicate that additional information and study is needed to help government, labor, management and seamen's welfare agencies take into account the rights of seafarers to pursue their material well-being and spiritual development under conditions of stability, freedom and dignity; of economic security and equal opportunity.

It is already clear, given the general lack of information available regarding the conditions of employment and adherence to international labor standards, that merchant seafarers are in some jeopardy of not being given their due regard and dignity as workers and as human beings.

Of particular concern here will be the international standards of employment, particularly as they are implemented under circumstances of open-registry shipping where their enforcement is commonly called into question. Indeed, open-registry shipping has come to be the focal point of much critical and conflicting debate reflecting the lack of agreement as to whether or not open-registry shipping presents a threat or an opportunity.

Thus this study will present some of the debate surrounding the issue of conditions of employment aboard open-registry ships, indicating to what extent, if any, seafarers are adversely affected. This study is further intended to indicate the degree of difficulty in properly assessing the conditions affecting the seafarer, and the need for additional information, study, research and enforcement of existing international labor standards. The overriding purpose of this study is to outline the conditions under which the modern seafarer pursues his profession.

## Introduction

In the overall scheme of things their numbers are small, and inconsequential. Their presence in the world's work force is hardly noticed or mentioned, and generally limited to geographic areas outside the mainstream of daily human activity. Their numbers: one to two million; their sphere of activity: the high seas, oceans, ports and harbors of the world.

In addition to their small number, seafarers generally lack strong political representation and union protection (fully one-third of all seafarers are unionized), and because they come from all parts of the world they are hard, by definition, to organize as a group or political force; they are unknown to one another except in the most general and ephemeral of ways, and they have only minimal contact with one another.

As a group they have little in common, their levels of education vary, their languages differ, their social, cultural and political orientations differ, as do their political allegiances and philosophies.

They are as individuals attracted to the sea as a livelihood for a variety of different reasons, and become subject to the full force of the seafaring profession's social and physical environment which often results in low self-esteem, alcoholism, depression, occupational injury, loneliness, and suicide. They face the realities

of their isolated world every day and fall victim to the circumstances of their trade in greater numbers than comparable shoreside workers.

In spite of their relatively small numbers and general separation from the mainstream of daily human activity, seafarers perform an indispensable and invaluable service for the rest of mankind. The industry for which they toil is a critical one; an industry upon which the entire world depends for its economic survival; for its very existence as we know it. They shuttle the raw materials and finished commercial products between producers and consumers in an endless transfer of goods and material essential to the modern world.

The men and women who depend upon the sea for a living, particularly those who have turned to seafaring as a livelihood, are caught in the midst of a world revolution in international ocean shipping that threatens their jobs, their human dignity and their personal and material well being. It is a revolution of political, economic and technological change taking place throughout the entire spectrum of international ocean shipping and human existence.

The world itself is changing from one economic/political order to another; from a world of colonial interests and domination to a world of newer nations; from an old world order to a new world order that takes into account the economic and political aspirations of



newer nations that are demanding an equitable redistribution of resources and a share in the common heritage of mankind, however that term may be defined from time to time.

International ocean shipping operates both under national and international law and custom. It is subject to the conditions and exigencies of a dynamic and rapidly changing world that has triggered economic and organizational responses that affect, among others, the individual seafarer.

Shipowners for their part have turned in ever greater number, to the use of open-registry shipping in an effort to protect their margin of profit and independence of action. In the liner trades, shipowners have sought to limit new entrants into the market place; to protect their share of the cargo carried. In the bulk-trades, shipowners have sought to maintain low labor costs and flexibility in an effort to capture a share of this potentially lucrative, but highly competitive, market.

Economic conditions which developed following the large oil price increases of 1973 were as damaging to the shipping industry as they were to other segments of the world economy, resulting in overtonnaging of ships and shipping service, and the displacement of seafarers, especially those from the countries least able to sustain any increase in unemployment expenses.

Seafarers have traditionally been less fortunate or able to counter the forces which affect the shipping industry. They are, so to speak, migrant guest workers, hired during good economic times only to be let go when times are not so good. Their employment is of a temporary nature accounting, in part, for the high turnover rate and lack of retention characteristic of the profession. Career advancement, to say the least, is whimsical.

## SEAFARERS AND INTERNATIONAL SHIPPING STANDARDS

### I. General Conditions and Circumstances

International ocean shipping represents a significant aspect of international trade and relations. The growth of world trade and the emergence of new national interests has served to emphasize the importance of shipping and its significance to the economies of developed and developing nations. Table 1 illustrates the dramatic rise in world seaborne trade since 1950 in terms of metric tons carried.

The development of international shipping policy has been influenced to a great degree by the freedom of the sea concept as presented by various international jurists in the formulation of international custom and convention. The concept of the free and open sea has been presented alternatively by spokesmen for commercial and governmental interests arguing for or against unrestricted regulation of the maritime environment.<sup>1</sup> Today, the freedom of the developed nations to conduct business as usual is being challenged by the developing states along vari-

<sup>1</sup> Edgar Gold, Maritime Transport: the Evolution of International Marine Policy and Shipping Law (Lexington: D.C. Heath, 1981), p. 41.

Table 1

DEVELOPMENT OF WORLD SEABORNE TRADE  
(in million metric tons)

<u>Year</u>	<u>Dry Cargo</u>	<u>Petroleum</u>	<u>Total</u>
1950	300	225	525
1960	540	540	1 080
1965	570	580	1 150
1970	1 125	1 422	2 545
1975	1 391	1 652	3 043
1979	1 733	2 021	3 754

Source: OECD, Maritime Transport, 1980  
Abrahamsson, International Ocean Shipping. Table 1.

ous fronts of international discourse. This challenge, as it pertains to the use of the sea, is seen in recent discussions at the Third Law of the Sea Conference, and the on-going trade discussions taking place under the auspices of the United Nations Conference on Trade and Development (UNCTAD).

International shipping regulation and legislation, established primarily through commercial practice and custom, now covers a variety of areas including: jurisdiction of the sea, conflict of laws, maritime claims of nations, the status of merchant ships, the regulation of traffic, the carriage of goods and passengers, marine insurance, and the limitation of liability of shipowners, among others.<sup>2</sup>

Given its sphere of activity, the merchant marine, of all trades and professions, is perhaps the most international. What consequence this has upon the individual seafarer, particularly during the past ten to fifteen years, is of concern here, especially in light of the significant growth of open-registry shipping, also referred to here for convenience sake as flag-of-convenience or FOC shipping.

The existence of open-registry shipping has been the subject of several major studies, none of which has been

<sup>2</sup> International Labor Office, Report of the Director-General: International Labour Conference, 62nd (Maritime) Session, 1976 (Geneva, 1976), pp. 57-58.

particularly conclusive, however, in its findings,<sup>3</sup> nor specifically concerned with the impact of FOC shipping upon the employment of the individual seafarer, although the 1976 Report of the Director-General to the 62nd (Maritime) Session of the International Labor Conference, the EIU report on Open-Registry Shipping, and the UNCTAD Report TD/B/C.4/220 entitled Action on the Question of Open Registries, came closest to the discussion of the issues.

The growth of open-registry shipping has led to charges and counter charges by spokesmen for or against FOC shipping. The potential danger of FOC shipping to the health and well-being of seafarers has been expressed by various labor groups since 1933. In 1972, for example, the seafarers spokesman at the 21st Session of the International Labor Organization's Joint Maritime Commission meeting charged that crew members aboard FOC vessels were being exploited through low wages, long hours, arduous working and living conditions, and were experiencing unduly long absences from their homes and denied repatriation

<sup>3</sup> [1973] Committee on Inquiry Into Shipping: Report. Para. 184, HMSO (Cmd. 4337); OECD, Study on Flags of Convenience, reprinted in Journal of Maritime Law and Commerce, 4, No. 2 (1973), pp. 231-254; B.A. Boczek, Flags of Convenience: an International Legal Study, (Cambridge, MA: Harvard University Press, 1962); and more recently: Open Registry Shipping: Some Economic Considerations (London: The Economist Intelligence Unit, Ltd., 1979), and UNCTAD, Report TD/B/C.4/220: Action on the Question of Open Registries, 1981.

expenses, social security benefits and pension rights, among other grievances.<sup>4</sup> The seafarers' spokesman said:

. . .Flag-of-convenience vessels were prone to serious accidents involving the safety of life and property at sea and causing ocean pollution, owing to the poor physical condition of such ships, inadequate manning standards, the use of crews comprising different nationalities and the lack of properly trained and properly certified seafarers in such vessels.<sup>5</sup>

And at the 1976 Maritime Session of the International Labor Conference, the Worker's Delegate from Australia, Mr. Geraghty, alleged the consequences of open-registry shipping to be unseaworthy vessels, life boats that don't work or operate properly, assault by officers upon crew members, enormous language and communication problems owing to the presence of crews from several countries on one ship, different rates of pay on the same ship based on nationality differences rather than on the job or the qualifications of the individual seafarer, poor food and appalling living accommodations.<sup>6</sup>

<sup>4</sup> International Labor Organization, Flags of Convenience, document JMC/21/4, Joint Maritime Commission, 21st Session (Geneva, 1972) cited in: Enrico Argiroffo, "Flags of Convenience and Substandard Vessels: a Review of the ILO's Approach to the Problem," International Labour Review, 110 (1974), p. 449.

<sup>5</sup> Argiroffo, p. 449.

<sup>6</sup> International Labor Conference, Record of Proceedings, 62nd (Maritime) Session, 1976 (Geneva, 1976) - hereinafter referred to as Int. Lab. Conf. Rec. Proc. (1976), p. 108.

In a recent statement concerning the rapid increase in and consequences of open-registry shipping, the General Secretary of the International Transport Workers Federation (ITF) said that seafarers have always been potentially worse off than other workers, and that is precisely why traditional maritime countries have passed laws to protect seafarers and to see to it that seafarers sail on seaworthy and habitable ships, that they are validly signed on in accordance with standard articles of agreement. The existence of FOC shipping was said to threaten these safeguards.<sup>7</sup>

In order to determine to what extent the negative allegations and characterizations of FOC shipping are true would require a detailed analysis of the shipping industry that is clearly beyond the scope or purpose of this paper. It should be noted, however, that the United Nations Conference on Trade and Development is engaged in several such studies<sup>8</sup> as part of its program to assist developing nations become full partners in the world economy. It is doubtful, at present, whether UNCTAD's findings will be accepted without strong disagreement due in part to UNCTAD's reputation for being against the developed market states' position.

<sup>7</sup> International Transport Workers' Federation. ITF Statement on Flags of Convenience. Geneva, 27 May - June 5, 1981 (London: 1981), p. 24. Hereinafter: ITF Statement (1981).

<sup>8</sup> UNCTAD, Secrétariat. Action on the Question of Open Registries. TD/B/C.4/220. 1981. Beneficial Ownership of Open-Registry Fleets - 1980. TD/B/C.4/218. 1980.



At present, given the general unavailability of information<sup>9</sup> for whatever reason, it is difficult to speak with any accuracy or definitiveness on the subject of social and employment conditions aboard ships of the open-registry fleet. This lack of statistical information was recently commented on in an UNCTAD report which said, in part, that:

There are no statistics<sup>10</sup> available to indicate the extent to which social and safety standards are being observed [aboard open-registry ships]. Casualty statistics are available, but these do not give a proper indication of observance of standards, since casualties can occur without any breach of standards, and there are obviously many breaches of standards which do not result in casualties. . .<sup>11</sup>

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The Repercussions of Phasing Out Open Registries. TD/B/C.4/AC.1/5. undated; and Report of the Ad Hoc Inter-Governmental Working Group on the Economic Consequences of the Existence or Lack of a Genuine Link Between Vessel and Flag of Registry. TD/B/C.4/177. undated.

<sup>9</sup> Seafarers are a highly mobile group, spread around the world, constantly on the move, and working under a variety of circumstances. It is therefore difficult to know how significant the problems may be. The Seamen's Church Institute of New York and New Jersey has recently established a Center for Seafarers' Rights, the first of its kind in the world, and has begun to identify, document and study the problems which are said to exist. Seamen's Church Institute, Human Rights for Seafarers (New York: 1981). See Appendix I.

<sup>10</sup> UNCTAD estimates that there are between 100,000 and 150,000 seafarers from developing countries employed aboard open-registry ships, and an unknown additional number on vessels of normal registries. UNCTAD. Report 1981, TD/B/C.4/220. p. 24.

<sup>11</sup> UNCTAD. Report 1981, TD/B/C.4/220. p. 13.

It would be presumptuous to accept outright reports that seafarers are any worse off under conditions of open-registry shipping than under conditions of national flag registry merely on the basis of flag. While UNCTAD has been especially critical and active in its opposition to open-registry shipping, it has nevertheless recognized the common sense truth that all FOC ships are not the same:

There are of course many responsible owners who operate vessels under various flags, and who adopt high standards, regardless of whether they are operating under a normal registry or an open registry. . . .<sup>12</sup>

Our purpose here is to present some of the debate, and to describe some of the circumstances affecting the merchant marine industry, so as to indicate to what extent there may be cause for concern with the conditions under which international seafarers pursue their profession; and to indicate the recommendations proposed by various agencies and spokesmen, especially the work of the International Labor Organization (ILO) in the development of a safe working environment for seafarers of all nations.

Social and employment conditions aboard ship, of whatever registry, and in port, are important factors in influencing the quality of crew, safety of the ship and protection of property and the environment.

. 12 UNCTAD, Report. TD/B/C.4/220. 1981. p. 3.

Beyond the obvious factors such as food and wages are those of bonus pay, leave time, overtime pay, pensions, social security coverage, subsistence allowances, medical coverage, travel expenses, welfare items such as books, films, television, radio, games, crew support factors such as advanced training and upgrading, standby wages, study pay, sick pay, and other factors such as bedding, linens, laundry and furnishings.<sup>13</sup> Add to this the political demands of freedom of association to bargain wages and conditions, and the desire to achieve conditions of continuity of employment.

In its concern for seafarers, various conventions, recommendations and resolutions have been adopted by the ILO. According to Francis Blanchard, the Director-General of the ILO:

The 29 Conventions and 22 Recommendations concerning seafarers adopted by the International Labour Conference between 1920 and 1970 have had a profound influence on conditions of work and life at sea, and have provided valuable guidelines in the development of national labour legislation for seafarers in a number of countries. These international instruments as a whole now form a synthesis of reasonable concepts and practical procedures embodying the accepted principles on which seafarers' conditions of employment, social security and welfare should be based, which are now known as the International Seafarers' Code.<sup>14</sup>

<sup>13</sup> Joseph P. Goldberg, "ILO Tightens Standards for Maritime Safety," Monthly Labor Review, 100, No. 7 (1977), p. 28.

<sup>14</sup> Report of the Director-General, 62nd (Maritime) Session, 1976 (Geneva, 1976), p. 59.

The general purpose of the ILO instruments on seafaring are thus to raise the status of seafarers, to improve their wages and conditions of employment, and to protect the rights of seafarers to pursue their livelihood in conditions of stability, freedom and dignity; of economic security and equal opportunity.

While conditions aboard ship and ashore have improved over the past sixty-three years since the founding of the ILO, and national and international laws enacted to protect the human and social rights of merchant seafarers, there still exists obstacles to their attainment of economic well-being and security; to their ability to earn a steady livelihood and to be full participants in society.

These impediments to full participation in society and the enjoyment of the benefits thereof come from a variety of sources and manifest themselves in various forms, such as: the current world economic recession, the increased size of vessels and/or technical sophistication with a resultant minimization of crew; the decrease in seafaring employment opportunities in countries with high wage scales or union limitations on the entry into the merchant marine; the lack of continuity of employment, especially in developing countries, and the lack of unemployment benefits; the inability of some countries to attain or ratify ILO conventions and recommendations, especially basic minimum wage recommendations; the lack of strong, independent trade organizations for as many as

two-thirds of the world's seafarers; the need for more and better vocational training; the improper certification of seafarers and their recruitment, especially in the Asian Pacific Basin countries and territories, and in the African countries; the need for responsive and up-to-date social services ashore; the increase in the number of industrial accidents and injuries; and the failure of some maritime countries to ratify and/or enforce international labor, safety and pollution standards.<sup>15</sup>

The scapegoat for many of the ills affecting the international ocean shipping industry, and the poor performance of many of the traditional maritime nations' merchant fleets, not to mention the employment and social conditions affecting merchant seafarers, has been open-registry shipping. Indeed, FOC shipping has been characterized by UNCTAD as a factor contributing to the disorderly development of the world merchant fleet and as a cause, if not the cause, of the over-capacity in the shipping and shipbuilding industries.<sup>16</sup> These arguments expand upon the earlier charges presented during the 1971 Organization for Economic Co-operation and Development (OECD) hearings on FOC shipping, such that open-registry shipping posed the danger of unfair economic competition, and threatened the marine environment and maritime community due to the ineffective enforcement of safety standards by the flag state.<sup>17</sup>

<sup>15</sup> Report of the Director-General, 62nd (Maritime) Session (1976), pp. 19-55.

FOC shipping is not a new phenomenon, but is a manifestation of a practice as old as modern national states themselves, the objective of which was less a consideration of labor cost differentials or tax structures, as it is today, as it was a political device to avoid governmental decrees, and exposure to international piracy.<sup>18</sup>

For our purpose, FOC shipping refers to a phenomenon dating back to the end of the First World War when certain non-traditional maritime countries, particularly Panama, Liberia and Honduras, among others, began to register vessels owned, in whole or in part, by foreign nationals or companies under the laws and regulations of their countries.<sup>19</sup>

Although Panama began to register foreign-owned vessels under its flag in 1922, the phenomenon was of little significance, economically or politically, until after the Second World War when only 2 per cent, or 1.99 million gross registered tons (grt) were under open-registration.<sup>20</sup> Since then, the growth of FOC shipping has been phenomenal. In the early 1950s tonnage under

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<sup>16</sup> UNCTAD, Report. TD/B/C.4/220. 1981. p. iii.

<sup>17</sup> OECD, Study (1973), p. 254.

<sup>18</sup> R.S. Doganis and B.N. Metaxas, Impact of Flags of Convenience. (London: Ealing Technical College, 1976.), p. 103.

<sup>19</sup> Ebere Osieke, "Flags of Convenience Vessels: Recent Developments," American Journal of International Law, 73; No. 4 (1979), p. 604.

<sup>20</sup> Doganis and Metaxas, p. 18.

open-registration was approximately 5 per cent of world total. By 1959 the number of ships under FOC registry had increased significantly to 13.6 per cent of world gross tonnage.<sup>21</sup>

Although the rapid growth of open-registry shipping saw a brief respite in the early 1960s, due to a period of relative stable shipping circumstances and government sponsored incentives to maintain fleet levels or to win back ships registered under foreign flag through fiscal incentives or direct government subsidies,<sup>22</sup> growth of FOC shipping demonstrated unusual resilience and continued its growth. Tables 2 and 3 the illustrate the growth.

Since 1970 the situation has changed dramatically, so much so that fleets under open-registry now dominate the world's shipping industry. The five-year period between 1970 and 1975 saw a spectacular increase in FOC shipping. In the OECD countries, i.e. the industrialized countries, the number of vessels increased by 8.6 per cent and carrying capacity by 44.6 per cent while the number of vessels registered in FOC countries increased by 104 per cent and carrying capacity by 129.9 per cent.<sup>23</sup> By 1974, 24 per cent or 74.7 million grt of world shipping was under FOC registry.<sup>24</sup>

<sup>21</sup> OECD, Study (1973), p. 223.

<sup>22</sup> OECD, Study (1973), p. 231.

<sup>23</sup> Int. Lab. Conf. Rec. Proc. (1976), p. 48.

<sup>24</sup> Doganis & Metaxas, p. 18.

**DEVELOPMENT OF OPEN-REGISTRY FLEET**  
(Ships of 100 grt and over)

<u>Year</u>	<u>Liberia</u>	<u>Panama</u>	<u>Honduras</u>	<u>Costa Rica</u>	<u>Lebanon</u>	<u>Cyprus</u>	<u>Somalia</u>	<u>Singapore</u>	<u>% Total of World</u>
1939	—	0.7	0.1						1.2
1949	0.1	3.0	0.4						4.2
1950	0.2	3.4	0.5						4.9
1955	4.0	3.9	0.4	0.3					8.6
1960	11.3	4.2	0.2	0.1	0.3				12.4
1965	17.5	4.5	0.1		0.8				14.3
1970	33.3	5.6	0.1		0.2	1.1	0.7	0.4	18.1
1975	65.8	13.7	0.1		0.2	3.2	1.8	3.9	25.9
1978	80.2	20.7	0.1		0.3	2.5	0.1	7.5	27.4

Table 2

Source: Lloyd's Register of Shipping. Statistical Tables.  
Chrzanowski, "Shipping in the 1980's." Table 2, p. 6.



Table 3

**DEVELOPMENT OF OPEN-REGISTRY FLEET**  
(Ships of 100 grt and over by number, mid-year)

<u>Country/Year</u>	<u>1939</u>	<u>1950</u>	<u>1960</u>	<u>1970</u>	<u>1979</u>
Liberia	—	22	977	1 869	2 005
Panama	159	573	607	1 031	3 621
Honduras	32	142	59	52	87
Costa Rica	—	—	44	—	22
Lebanon	—	—	74	79	179
Cyprus	—	—	—	207	746
Somalia	—	—	—	79	15
Singapore	—	—	—	153	1 018
Total # of FOC Ships	191	737	1 761	3 470	7 693
FOC % of Tonnage (grt)	1.2%	4.9%	12.4%	18.1%	27.4% (1978)
Total # of Ships World	29 763	30 852	36 311	52 444	71 124

Source: Lloyd's Register of Shipping. Statistical Tables.  
OECD. Study on Flags of Convenience. p. 234

During the years 1970 to 1978, the developed market economy states' share of the world deadweight tonnage actually declined from 65 per cent in 1970 to 53.4 per cent owing to the growth of FOC shipping.<sup>25</sup> By mid-1980 the total world tonnage under FOC registry stood at 114.6 million grt or 27.3 per cent of total world tonnage.<sup>26</sup>

World tonnage in mid-1980 figures stood at 419.9 million grt - of this Liberia controlled 80.3 million and Panama 24.3 - or 25 per cent of total world shipping tonnage, thus earning the rank of number one and number five, respectively, in the world list of merchant fleets. Together, these two principal open-registry nations accounted for 91.2 per cent of the 114.6 million grt listed as being under open registration in 1980.<sup>27</sup> Of the 73,800 merchant ships registered, approximately 3,800 are registered in Panama and 2,400 in Liberia, most of these ships being large bulk carriers or liquid carriers.

In his study of international ocean shipping, Bernhard Abrahamsson concluded that the extraordinary growth in the open-registry fleet was a direct consequence of labor's demand in the developed market economy countries for increased wages and better working conditions; the demands of states that ships comply with safety and

<sup>25</sup> R.A. Ramsay, "World Trade Versus the Supply of Shipping and Ships," Marine Policy, January (1980), p. 64.

<sup>26</sup> OECD, Maritime Transport, 1980, p. 71.

<sup>27</sup> OECD, Maritime Transport, 1980, pp. 131-132.

polluting standards; tax and fiscal policies of countries; and the shipowners' search for alternatives to adverse conditions, of whatever nature.<sup>28</sup>

The recent UNCTAD report (TD/B/C.4/220) dealing with the effects of open-registry shipping on the safety and social standards aboard FOC registered vessels attributed the most significant advantage obtaining to shipowners operating under open-registry conditions as freedom from restraints on the use of cash flow, savings on crew costs, and overall reduction in operating costs.<sup>29</sup>

Additionally, the EIU in their study on Open-Registry Shipping, determined that the strongest argument used in support of open-registry shipping is that it provides low-cost service and allows the operator greater flexibility and freedom from bureaucratic control, thus permitting savings on transportation expenses to be passed along.<sup>30</sup>

The fiscal flexibility available to shipowners operating under open-registration was cited by the OECD as a prime factor contributing to the rapid development and modernization of the FOC fleet in comparison to the fleets of the traditional maritime countries, especially that of the Liberian fleet which saw a 238 per cent

<sup>28</sup> Bernhard J. Abrahamsson, International Ocean Shipping (Boulder: Westview, 1980), p. 132.

<sup>29</sup> UNCTAD, Report. TD/B/C.4/220. 1981. pp. 10-11.

<sup>30</sup> EIU, Study, 1979. pp. 37-38.

increase in tonnage during the period 1963 to 1971 as compared to only 45 per cent increase in the European fleets of the OECD countries for the same period.<sup>31</sup>

Rowan, Northrup and Immediata, in their study of international labor standards, concluded, in reference to FOC shipping, that the growth was due in part to the benefits derived from politically neutral flags offering their registries, attractive fiscal arrangements - including low registration fees, low tonnage taxes, and in some instances, tax exemption, and lower manning costs made possible by the absence of unions and social benefits, legislation on shipping and government regulation.<sup>32</sup>

According to the Federation of American Controlled Shipping chairman, Mr. Philip Loree, it was the basic non-competitiveness of U.S. manned vessels operating in the international bulk trades, where U.S. shipowners were without subsidy or cabotage protection against foreign competitors which led to the large scale transfer of U.S. flag vessels to foreign registries, particularly those of Panama, Liberia and Honduras - the so-called PANLIBHON fleet, in the period immediately following World War II. By 1979 the U.S. controlled PANLIBHON fleet totalled 450 vessels at more than 49 million deadweight.<sup>33</sup>

<sup>31</sup> OECD, Study (1973), p. 248.

<sup>32</sup> R.L. Rowan, H.R. Northrup and M.J. Immediata, "International Enforcement of Union Standards in Ocean Transportation," British Journal of Industrial Relations, 15, No. 3 (1977), p. 338.

<sup>33</sup> FACS Forum. June, 1979, pp. 3-4.

At a seminar sponsored by the University of Virginia's Center for Oceans Law and Policy, Mr. Loree described the problem of non-competitive costs confronting the U.S. flag fleet operating in the international wet and dry bulk trades where U.S. participation amounts to less than 2 per cent of commercial cargo movements.<sup>34</sup>

Citing from his own notes, Mr. Loree compared American payroll costs to European costs for the years 1971 and 1981, using a typical U.S. flag tanker or bulk carrier with a crew of 32 as an example:

	<u>1971</u>	<u>1981</u>
Am. crew	\$810,000	\$2,750,000
Italian	295,000	1,300,000
Spanish	200,000	1,050,000

Mr. Loree pointed out that while the gap in payroll cost had decreased from 2 1/2 to 4 times in 1971 to 2 to 3 times in 1981, the difference in dollars between the nations had actually increased. The movement of shipping services and the supply of seafarers is in the direction of the Far East, Mr. Loree said, where, for example, the 1981 payroll cost of an entire Filipino crewed vessel was said to be \$475,000 and that of a Hong Kong Chinese crew approximately \$600,000.

<sup>34</sup> In response to an October 6th, 1981 New York Times Op-Ed commentary on the plight of the U.S. flag merchant marine, Mr. Loree, in a letter published in the October 13th issue of the Times, pointed out that in the liner trades (where most of the maritime subsidy dollars have

On the capital side of the cost equation, Mr. Loree pointed out that the cost of a U.S.-built vessel, in comparison to a typical foreign-built vessel, was double the cost in 1971 and triple the cost in 1981.<sup>35</sup>

With these pessimistic figures, Mr. Loree concluded his presentation with the remark that irregardless of how the higher capital and operating costs came to be ". . .they have made it impossible for U.S. flag vessels to be competitive in the international bulk trades. . ."36

While there appears to be a lack of general agreement as to the definition, and dimensions of the term, FOC shipping generally refers to those countries identified as Liberia, Panama, Singapore, Cyprus, and Somalia.

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gone), U.S.-flag share of liner carriage is approximately 26 per cent. FACS Forum, October 1981, p. 3. Overall share of U.S. trade is 4.3 per cent. That same issue of FACS Forum (page 4) reprinted an earlier interview with Mr. Loree which originally appeared in the October 1981 issue of the Marine Engineering/Log in which Mr. Loree said: ". . .open registries did not, for example, make U.S. flag vessels non-competitive in the international bulk trades. It was the increasingly non-competitive U.S. flag fleet which caused U.S. owners to turn to open registries." Facs Forum, October 1981, p. 4.

<sup>35</sup> FACS Forum, December 1980/January 1981, pp. 2-3.

<sup>36</sup> FACS Forum, December 1980/January 1981, p. 2.

Other registries such as the Bahamas, Bermuda and Greece and some smaller countries in the Pacific archipelago are identified as quasi-flag of convenience registries because, while not generally permitting foreigners to register under their flag, are said to approximate the traditional FOC countries in the establishment and enforcement of shipping regulations.<sup>37</sup>

As to the composition of the fleet, a 1979 UNCTAD report showed the 1978 FOC fleet to be made up of 34 per cent tankers, 29.8 per cent bulk carriers, 20.4 per cent general cargo vessels, 7.9 per cent container vessels, and 7.9 per cent other categories.<sup>38</sup>

The EIU Study of open-registry shipping, undertaken at the same time as the UNCTAD study cited above, indicates a similar, although slightly different, composition in the open-registry fleet: 34.5 per cent tankers, 29.2 per cent bulk/ore carriers, and 16.6 per cent general cargo carriers. The EIU study went further, however, and indicated that over 80 per cent of the Cypriot fleet consisted of general cargo vessels, as did 44 per cent of the Panamanian fleet, and 36 per cent of the Singaporean fleet, compared to only 6 per cent of the Liberian fleet.<sup>39</sup>

<sup>37</sup> Rowan, Northrup and Immediata, p. 338.

<sup>38</sup> UNCTAD, Review of Maritime Transport, 1978. TD/8/C.4/182 (31 May 1979), p. 10 cited in Lawrence Juda, "World Shipping, UNCTAD, and the New International Economic Order," International Organization, 35, No. 3 (1981), note 38 at p. 506.

<sup>39</sup> EIU, Study, 1979. p. 8.

This breakdown by flag and type of vessel is significant in the discussion of casualty figures, safety standards, and social conditions since there are strong indications that the greaterst number of alleged abuses to the rights of seafarers under conditons of FOC shipping take place under such flags as the Cypriot and Panamanian flag to a greater degree than under other flag registrations. It is not coincidental that the oldest, more accident prone vessels are to be found under the Cypriot and Panamanian flag, among some others.

In their study of FOC shipping, R.S. Doganis and B.N. Metaxas investigated the general view that the overall casualty rate for FOC ships was substantially higher than that for shipping under the traditional maritime countries concluding that:

The casualty rates of flag of convenience fleet, taken as a whole, are significantly higher than those of the regulated fleets. . . . Those of [the newer convenience flag, namely Singapore, Cyprus and Somalia] have a particularly bad safety record. Finally, the analysis has also shown that fleets operated under quasi-flags of convenience, such as the Greek fleet, may have casualty rates which are as high as those of the convenience fleets.<sup>40</sup>

The casualty rates are high and the impact upon seafarers is heavy in terms of life, injury, damage to health, loss of possessions, loss of employment. In many cases

<sup>40</sup> Doganis and Metaxas, p. 103.



survivors of maritime accidents do not receive adequate compensation and might not even receive repatriation allowances if the shipowner is delinquent in his insurance payments. There are, in addition, industrial accidents on board caused by faulty machinery and unsafe working conditions that go unrecorded.

In the next two sections we will take a look at the legal regime under which open-registry shipping exists, and take a closer look at attempts to regulate its use through international conventional law.

## II. The Status of a Ship

The status of a ship under national and international law has developed over the years in a gradual process influenced to a great extent by commercial interests. It has been found to be in the best interest of shipowners, and cargo owners to formulate rules with an international perspective since shipping transcends the boundaries of states.

In the initial stages of international shipping there existed a legal void in which merchants formulated rules of conduct to settle conflicts and disputes. In such a fashion such early maritime codes as the Rolls of Oleron, Consolato Del Mare, the Sea Laws of Wisby, the Hansa Towns Shipping Ordinances, the Rhodian Sea Law and the Black Book of the British Admiralty, among others, came to be established and accepted.

In time these commercial codes, and later national maritime laws, came to form modern international customary practice and conventional international law. This synthesis

culminated in the 1958 Geneva Convention on the Law of the Sea<sup>41</sup> which sought to harmonize existing practice, customary law and multilateral treaties. It is an ongoing process seen continuing most recently in the negotiations at the Third Law of the Sea Conference, and as expressed in the 1980 Draft Convention on the Law of the Sea.<sup>42</sup>

Through time, custom and agreement it has come to be recognized by sovereign states that a merchant ship is governed by the laws of the flag under which it is registered and whose flag it flies. The country to which a vessel belongs has a recognized and well defined interest and control over the vessel, its crew and its activities, particularly those concerned with the internal good order and economy of the vessel.<sup>43</sup>

Despite this primary interest and intimate connection between a ship and its flag state, it has come to be accepted, nevertheless, that a merchant ship subjects itself to the jurisdiction of another state<sup>44</sup> upon entering the territorial and/or jurisdictional waters of that state. But otherwise, the ship is governed by the law of the flag. An English admiralty case, The Nina recognized this principle where it held that: ". . .as regards civil actions which arise on board a ship on the high seas, prima facie, they are governed by the law of the flag. . ."<sup>45</sup>

41 ~~1958~~ Geneva Convention on the High Seas, 450 UNTS 82.

42 United Nations, Third Conference on the Law of the Sea: Draft Convention on the Law of the Sea. (Geneva, 1980: Doc. A/Conf. 62/WP.10/rev). Reproduced in 19 ILM 1131 (1980).

Through comity and practice there is an understanding which limits the exercise of coastal state jurisdiction over acts relating to the internal discipline and civil acts governing and regulating rights, duties and obligations of persons on board such foreign flag ships that do not otherwise affect the peace and tranquility of the coastal state,<sup>46</sup> unless the aid of the coastal state is requested by the master of the ship or the consular official of the flag state.

Two famous American admiralty cases illustrate the policy consideration of many countries to leave as much authority as possible to the officials of the flag state in matters involving international maritime commerce when questions of internal order are involved: The Wildenhus' Case and Lauritzen v. Larsen.<sup>47</sup> The Wildenhus' Case held, in part, that:

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<sup>43</sup> George C. Garbesi, Consular Authority Over Seamen from U.S. Point of View (The Hague: Martinus Nijhoff, 1968), p. 205.

<sup>44</sup> The Wildenhus' Case (Mali v. Keeper of Common Jail) 120 U.S. 1, 30 L.Ed. 565 (1887).

<sup>45</sup> The Nina L.R. 2 P.C. 38 (1867) cited in Constantine John Colombos, The International Law of the Sea, 6th ed. (London, Longmans, 1967), 309.

<sup>46</sup> The Wildenhus' Case.

<sup>47</sup> Lauritzen v. Larsen 345 U.S. 571, 581 (1953).

By comity, it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace and dignity of the country or the tranquility of the port, should be left by the local Government to be dealt with by the authorities of the nation to which the vessel belonged, as the laws of that nation or the interests of its commerce should require.<sup>48</sup>

In Lauritzen v. Larsen the Supreme Court held that matters of discipline and activities on board not involving the peace or tranquility of the port should be left to the authorities of the flag state.<sup>49</sup>

Through its consular offices, states exercise authority over ships registered under their flags in a practice recognized by the Pan American Consular Convention of 1928<sup>50</sup> and the more recent United Nations Vienna Convention on Consular Relations (1963).<sup>51</sup>

The reasoning behind these understandings has been motivated by commercial concerns and seen to be in the best interest of merchant shipping and international trade to impose only a minimal amount of restriction and control over merchant shipping.<sup>52</sup>

<sup>48</sup> The Wildenhus' Case as cited in Colombos, p. 325.

<sup>49</sup> Lauritzen v. Larsen as cited in Colombos, pp. 326-327.

<sup>50</sup> Pan American Consular Convention of 1928. UN Doc. A/Conf. 25/12, April 1963. Reproduced in 57 AJIL 995 (1963).

<sup>51</sup> United Nations. Vienna Convention on Consular Relations. 1963. UN Doc. A/Conf. 25/12, April 1963. 57 AJIL 995 (1963).

Maritime commerce is an internationally shared enterprise with the benefits of commerce and trade accruing to all regardless of national boundaries. The overriding interest then is one of non-interference with vessel movement unless administrative control is required to protect the public interest.<sup>53</sup>

The practice followed by the majority of states is to disclaim jurisdiction over matters on board foreign flag ships present in their waters but to reserve the right to intervene when circumstances require.<sup>54</sup>

#### Registration

Under conventional international law each state has the right to register ships under its flag whether or not that state is a coastal state or a landlocked state.<sup>55</sup> As a consequence, each state may determine for itself the conditions under which it will grant its nationality to a merchant ship.

Article 5, paragraph 1, of the 1958 Geneva Convention on the High Seas provides that: "each state shall fix the conditions for the grant of its nationality to ships, for the registration of ships to its territory, and for the

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<sup>52</sup> Garbesi, pp. 4 - 5.

<sup>53</sup> Garbesi, p. 205.

<sup>54</sup> Colombos, p. 319.

<sup>55</sup> 1958 Geneva Convention on the High Seas, Article 4, paragraph 1, and the 1980 Draft Convention, Article 90.

right to fly its flag." The same Article provides that: "there must exist a genuine link<sup>56</sup> between the state and the ship; in particular, the state must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag."

The U.S. Supreme Court recognized the right of each state to determine for itself the conditions under which it will grant its nationality in the case of Lauritzen v. Larsen where it said that the grant of nationality is: ". . .perhaps the most venerable and universal rule of maritime law. . ."<sup>57</sup>

Ships are permitted, however, to fly under the flag of only one state, and may not change flags during a voyage or while in port, except to conclude a transfer of ownership.<sup>58</sup>

<sup>56</sup>"The notion of 'genuine link' between a ship and its State of registration is a controversial international doctrine that has never been clearly defined. The principle emerges by comparison to the holding of the International Court of Justice in the Nottebohm Case (Liechtenstein v. Guatemala), 1955 ICJ 4, which held that the grant of nationality to an individual need not be respected by other States if there is no real connection between the State and the individual. Thus, an analogous argument can be made under the 'genuine link' theory, that a State has the right to refuse recognition of a ship's registration because sufficient contacts do not exist between the ship and the State of registration." Cited from Rachel Roat note 42 at p. 63. Rachel Roat, "Promulgation and Enforcement of Minimum Standards for Foreign Flag Ships," Brooklyn Journal of International Law, 6 (1980), p. 63.

<sup>57</sup> Lauritzen v. Larsen cited in Edith A. Wittig, "Tanker Fleets and Flags of Convenience: Advantages, Problems, and Dangers," Texas International Law Journal, 14 (1979), p. 116.

<sup>58</sup> 1958 Geneva Convention on the High Seas, Article 6, paragraph 1, and Art. 92, para. 1, of the 1980 Draft Conven.

How this all affects the merchant seafarer is seen in the existence of FOC shipping and in the right of states to determine for themselves which laws will apply over a ship, and the protection afforded to merchant seafarers accordingly. Since the laws differ from one state to another, the conditions under which the seafarer lives and works varies from state to state. Companies, to be sure, interpret the requirements of the law to suit their own purposes and are not limited from establishing higher standards if they so choose.

Thus the law of the flag is applicable to all events which take place aboard ship and by the laws of the majority of countries a state's jurisdiction is delegated to the captain who is entrusted to maintain order and to protect persons and property under his command.<sup>59</sup> There will be times, however, when the master is one of the adversaries in a shipboard dispute. This is particularly true in cases concerning social and working conditions aboard ship.<sup>60</sup>

### III. The Law of the Sea - An Attempt at FOC Control

The existence and growth of open-registry shipping is a concern to many, including shipowners, governments, environmentalists, seafarers and their spokesmen, to name a few. Attempts to limit FOC shipping has met with considerable challenge and evasion. The most successful

<sup>59</sup> Colombos, p. 297.

<sup>60</sup> Garbesi, pp. 3-4.

attack has come from the genuine-link requirement as expressed in Article 5, paragraph 1, of the 1958 Geneva Convention on the High Seas.<sup>61</sup>

Article 5, paragraph 1, reflected a changing attitude on the jurisdictional rights of sovereign states over vessels registered under their laws, and established a test of nationality that curtailed the freedom of the seas concept.

The existence of FOC shipping<sup>62</sup> was a difficult issue for the Conference to come to grips with and instead of expressly prohibiting its use preferred to require the existence of a genuine-link between the state and its vessel, and called for the exercise of effective control and jurisdiction by the flag state over vessels registered under its laws.<sup>63</sup>

<sup>61</sup> The incorporation of the genuine-link article into the 1958 Geneva Convention was the successful result of a coalition of maritime labor, shipowners from the traditional maritime countries and concerned governments. McDougal, Burke and Vlastic, in their article, argue that it was a fundamental misconception of the problem on the part of coalition, especially the seafarers, that succeeded in producing the genuine-link article. While not dismissing the anti-FOC arguments of labor as illegitimate or specious, the authors found the proposed remedy an impediment and a hindrance to the flow of ocean trade, commerce, and the maintenance of public order on the high seas by conferring upon states the unilateral right to question the competence of another state in the exercise of its sovereign rights by the use of an ill-defined criteria. Myres McDougal, William T. Burke, and Ivan A. Vlastic, "The Maintenance of Public Order at Sea and the Nationality of Ships." American Journal of International Law, 54 No. 64 (1960), pp. 28-35.

<sup>62</sup> Although there is no reference to 'flags of convenience' vessels in the provisions of Article 5, the debate and proceedings of the conference indicate that control of such vessels was the intent of the Article. Osieke, p. 606.



Article 5, paragraph 1, stipulated that "there must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag." Article 10 of the Convention outlined the obligations of the state in granting its nationality to a ship, and the obligations of that state to conform to the generally accepted international standards in ensuring safety at sea.

The implication of Article 5, paragraph 1, was that a grant of nationality would be defective under international law if there did not exist a genuine-link between the vessel and the state. This implication was the basis for a dispute over the granting of membership to Liberia on the Maritime Safety Committee of the Intergovernmental Maritime Consultative Organization (IMCO). It took the International Court of Justice, in an advisory opinion in 1960 to confirm the rule of international law that registry is the test of a ship's nationality, as determined by the municipal laws of the state. The Court rejected the test of nationality based on the idea of beneficial ownership as being too difficult to ascertain, impractical, uncertain and without basis in international practice.<sup>64</sup>

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<sup>63</sup> Osieke, p. 606.

<sup>64</sup> [1960] I.C.J. 125, 169. Cited in Wittig, note 59 at p. 126.

The Convention does not define the meaning of the term genuine-link, and there has been, as a result, a void in international law that lingers to this day. If a uniform law of ship registration is ever to be achieved by the international community such a definition must be found.

Despite its failure to control FOC shipping through legislative action, Article 5, paragraph 1, was a significant step forward in an attempt to control and limit the right of states in the exercise of their sovereignty. The lack of a consensus to establish a firm genuine-link rule was a victory for the conservative forces, but the attempt to establish control indicated, nevertheless, that the world community was preparing to test the right of sovereign states in the determination of their ship registration policies.

The recent negotiations at the Third Law of the Sea Conference indicate that the international community is still struggling with the FOC issue and the definition of a genuine-link. The Draft Convention on the Law of the Sea appears to prefer control of FOC shipping in much the same manner as the 1958 Law of the Sea Convention, i.e. through the exercise of jurisdictional control within the context of national ship registration.

The Law of the Sea Draft Convention, under Article 91, paragraph 1, calls for the existence of a genuine-link between a state and the ship without defining the

meaning of the term. Under Article 94, however, certain details exist which, while not defining the meaning of a genuine-link or the term effective control, do indicate what is required or expected of nations which grant their registration to a ship not previously indicated by the 1958 Convention.

Article 94, paragraph 1, for example, provides that "every state shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag," and in paragraph 2 that "in particular every state shall: (a) maintain a register of shipping containing the names and particulars of ships flying its flag. . .and (b) assume jurisdiction under its internal law over each ship flying its flag and its matters, officers and crew in respect of administrative, technical and social matters concerning the ship." Article 94, paragraphs 3,4 and 5 refer to technical matters involving the safety and inspection of a vessel and its operation including the qualifications of the master, officers and crew. Paragraphs 6 and 7 deal with investigation into the lack of proper jurisdiction and control, and inquiries into marine casualties.

Paragraph 6 of Article 94 is significant in that it creates a right of general supervision and control over the exercise of jurisdiction by a non-flag state. According to paragraph 6:

A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

In his review of recent developments of FOC shipping and the Law of the Sea negotiations, Ebere Osieke was optimistic about the LOS deliberations and the potential effect they would have upon the international law of merchant shipping:

At UNCLOS III the attempt to consolidate existing rules and procedures continues, and if the proposals before the conference are crystallized into legal norms, the international community will have gone a long way in building a body of international law on merchant shipping.<sup>65</sup>

#### Section IV: Flag of Convenience Shipping - Problem or Solution?

Discussion of the obligations and responsibilities of flag registration brings us back to the specific issue of the impact of open-registry shipping upon the seafarer. It is to be remembered that our focus here is the seafarer, which we will try to maintain in presenting the open-registry debate. The FOC debate itself belongs to those better able to discuss it, and is, in and of itself, outside the scope of this paper, although a significant aspect of it.

<sup>65</sup> Osieke, p. 627.

Section I, above, indicated that there are several various reasons for the use and expansion of FOC shipping, which help to explain its phenomenal growth. In presenting this section, it will be both instructive and helpful to begin first with a review of the findings of a few widely recognized studies, then an outline of the arguments in defense of open-registry shipping.

In 1957, the U.S. Maritime Administration in a statement to the U.S. House Sub-Committee on the Merchant Marine<sup>66</sup> listed seven advantages obtained by U.S. ship-owners who used the FOC shipping device:

- 1) The market value of the ship increases;
- 2) Easy currency conversion facilitates trade and the payment of crews in the currency of their nationality;
- 3) Owners may effect repairs abroad at less cost than in the United States;
- 4) Operating costs are reduced due to lower wages and more lenient labor and safety standards;<sup>67</sup>
- 5) Owners may avoid United States income taxation;
- 6) Owners are able to acquire new tonnage more easily from the increased earnings of their operations; and
- 7) Owners may avoid United States Coast Guard regulations governing the condition of the vessel.<sup>68</sup>

<sup>66</sup> Study of Vessel Transfer Trade-In and Reserve Fleet Policies: Hearings Before the Subcommittee on the Merchant Marine of the House Committee on Merchant Marine and Fisheries, 85th Congress, 1st Session 140 (1957). Cited in Wittig, note 14 at p. 119.

<sup>67</sup> In the United States shipowners under U.S. registration must hire U.S. crews at U.S. wage scales, and these ships must be built in U.S. yards to qualify the shipowner for government construction and/or operational subsidies.

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U.S. wages alone can be as high as 50 to 75 per cent above those of certain other national wage rates. Filipino seafarers, for example, earn about \$180 a month compared to \$800 to \$1,000 a month for an American seafarer of similar rank.

<sup>68</sup> Cited in Wittig, p. 19. In some traditional maritime countries, it is national policy to provide owners with certain tax advantages and/or direct financial assistance. As one way of insuring to maintain a strong national merchant fleet. While the United States provides tax breaks and subsidies for construction and operation, it is also a non-policy, as a result of certain tax law provisions, which encourage large multinational corporations, primarily the large oil companies and manufacturing companies requiring steady supplies of certain imported raw materials that operate vessels between a limited number of ports, to transfer or initially register new vessels under open-registry arrangements.

Under U.S. tax law an American shipowner can avoid the payment of U.S. corporate income taxation to the extent allowable by forming a foreign-based shipping corporation. Sections 872 (b)(1) and 883 (a)(1) of the Internal Revenue Code provide for exclusions from United States gross income of earnings from a foreign corporation for earnings derived from the operation of a ship registered in a country that grants an equivalent tax exemption to U.S. citizens and corporations organized in the United States. The exemption applies equally to a charterer who hires a vessel and operates it to and from an American port.

Any major change in the U.S. tax law to discourage U.S. beneficial ownership of foreign flag ships would prevent, in part, American owners from being able to compete favorably with European shipowners, and in that this is true, it can be said that U.S. tax law amounts to a form of hidden subsidy for a select group of American shipowners. Wittig, pp. 121-123. And James K. Pedley, "Under Foreign Flags: The Inequitable Avoidance of United States Taxation by American-Owned Ships," Case Western Reserve Journal of International Law, 8 (1976), pp 192-199.

In 1970, the Report of the Committee of Inquiry into Shipping (the Rochdale Report after its chairman Lord Rochdale) identified six features common to countries offering flag of convenience registration:

- 1) The country of registry allows ownership and/or control of its merchant vessels by non-citizens.
- 2) Access to the registry is easy. A ship may usually be registered at a consul's office abroad. Equally important, transfer from the register at the owner's option is not restricted.
- 3) Taxes on the incomes from the ships are not levied locally or are low. A registry fee and an annual fee, based on tonnage, are normally the only charges made. A guarantee or acceptable understanding regarding future freedom from taxation may also be given.
- 4) The country of registry is a small power with no national requirement under any foreseeable circumstances for all the shipping registered, but receipts from very small charges on a large tonnage may produce a substantial effect on its national income and balance of payments.
- 5) Manning of ships by non-nationals is freely permitted.
- 6) The country of registry has neither the power nor the administrative machinery effectively to impose any government or international regulations; nor has the country the wish or the power to control the companies themselves.<sup>69</sup>

In 1971 the OECD undertook a review of the developments in open-registry shipping and found, among other things, that:

- 1) The Rochdale criteria for FOC identification was acceptable;
- 2) FOC countries offer extremely low taxation levels, although this may prove to be of only secondary importance;

<sup>69</sup> Committee of Inquiry into Shipping. Report. Cited in Argiroffo, p. 438.

- 3) A principal advantage for owners using flag of convenience shipping lies in the field of crew costs, particularly among American shipowners;
- 4) The use of FOC shipping enables the owner to operate on lower manning scales than those imposed by many governments or established by agreement with unions;
- 5) Profits made by FOC ships can be retained without any formality for further investment without taxation;
- 6) FOC registration can be useful to shipowners who are reluctant to be identified with a particular country, for whatever reasons which may be deemed important;
- 7) A strong tradition of secrecy, self-reliance and opposition to government regulation makes certain owners prefer the flags of certain open-registry countries to that of their own national register;
- 8) The flexibility of investment which FOC owners enjoy through their tax status and other advantages have resulted in rates of development and modernization of some fleets considerably above those of traditional maritime countries;
- 9) The host countries are normally unable or unwilling to provide enforcement mechanisms for safety and social regulations;
- 10) Compliance with international safety and operating conventions and standards is sometimes lacking in the case of FOC countries, although this can be said to be true for certain other registers as well;
- 11) The personnel standards of FOC registered vessels have been in various instances lower than that for other registries, especially during periods of shipping depression and abundant labor supply;
- 12) Seafarers on flag of convenience ships may also suffer from the fact that legal disputes, e.g. in the case of breach of a seaman's contract, will normally require a seaman to pursue remedy in the country of the ship's registry.<sup>70</sup>

<sup>70</sup> Paraphrased from OECD, Study (1973), pp. 231-254.



The OECD, while offering no specific recommendations other than the subject merited continued monitoring, concluded its study by saying:

Flags of convenience posed two major problems; firstly, the danger of unfair competition resulting from special economic advantages and, secondly, the threat to the maritime community as a whole which might result from inadequate safety standards and their ineffective enforcement. . . .<sup>71</sup>

In its 1981 report on the effects of open-registry shipping on safety and social standards, the UNCTAD Secretariat said in part that:

Owners of open-registry ships are less accountable than owners of other ships, because they are often unidentifiable and because they cannot be brought before courts. . . .

The disorderly development of the world fleet can be largely attributed to the existence of open registeries, as tax-sheltered profits have been recycled into new buildings leading to over capacity in the shipping and shipbuilding industries. . . .

The benefits which developing labour-supplying countries enjoy from supplying crews to open registry ships are of an unstable character - since these countries can only maintain employment opportunities by refraining [emphasis in text] from insisting on proper employment conditions - and are of an insignificant magnitude compared with the benefits received by owners. . . .<sup>72</sup>

<sup>71</sup> OECD, Study (1973), p. 254.

<sup>72</sup> UNCTAD. Report 1981, TD/B/C.4/220. p. iii.

The UNCTAD report indicated that there are ten basic reasons why standards are more likely to be violated under conditions of open-registration than under conditions of normal registration:

1) Real owners are not readily identifiable (partly because of difficulties in identifying; partly because of lack of incentive to identify) and are therefore in a good position to take risks by comparison with owners in normal registries who are living under the eyes of a maritime administration.

2) Real owners can change their identities by manipulating brass-plate companies and consequently avoid being identified as repeated [emphasis in text] substandard operators or risk-takers.

3) Since the master and other key shipboard personnel are not nationals of the flag State, they have no need or incentive to visit the flag State and can avoid legal action.

4) Owners who reside outside the jurisdiction of the flag State can defy the flag State by refusing to testify at an inquiry by the flag State and avoid prosecution.

5) Since open-registry owners do not have the same interest in preserving good relations with the flag State, they do not feel the need to co-operate with inspectors of the flag State.

6) Open-registry shipping lacks the union structure which is so essential to the application of safety and social standards in countries of normal registry: namely, a national trade union of the flag State representing basically the interests of national seamen on vessels owned by owners who have economic links with the flag State.

7) Open-registry owners are in a better position to put pressure on masters and officers to take risks, since there is no really appropriate government to which shipboard personnel can complain.

8) Port-State control is weaker because the port State can only report substandard vessels and practice to a flag State which has no real control over the owner.

9) Owners can suppress any signs of militancy among crews by virtue of their freedom to change nationalities of crews at whim.

10) Enforcement of standards is basically inconsistent with the operations of a registry with the sole aim of making a profit.<sup>73</sup>

The response of open-registry shipowners and governments to negative allegations and reports has been steady and persistent in its claim to legitimate and responsible supervision. The defense of open-registry shipping is difficult, nevertheless, especially in light of the media attention paid to shipping accidents involving large oil spills and/or loss of life.<sup>74</sup>

Indeed the casualty rate of FOC ships has proven to be an embarrassment to responsible open-registry operators. In their study of FOC shipping: Open Registry Shipping: Some Economic Considerations, the Economist Intelligence Unit, Ltd, (EIU) concurred with the general assessment that the allegations of higher casualty rates could not be denied:

The charge of substandard ships and inadequate safety requirements has been levied against the flags of convenience since the early 1960s, and it cannot be denied that

<sup>73</sup> UNCTAD. Report 1981, TD/B/C.4/220, pp. 18-19.

<sup>74</sup> Rachel Roat, p. 54.

there is considerable statistical evidence to support it. The loss ratio's of the open registry fleets are considerably worse than the UK fleet, although it may be noted that the difference between the Cypriot fleet and the Liberian fleet is greater than that between the Liberian fleet and the UK fleet. . .<sup>75</sup>

In presenting their case, shipowners and spokesmen for the open-registry countries have emphasized the positive aspects and advantages of open-registry shipping such as: the lower overall cost of transportation services in comparison with the traditional maritime flag fleet; the increased employment opportunities available to seafarers from developing countries; the growing compliance of open-registry countries with internationally recognized safety, social, and pollution standards; and a growing improvement in the enforcement of international standards, among other positive aspects of FOC shipping.

Spokesmen for FOC shipping point out that there is a vast difference between FOC shipping and sub-standard shipping, and that the two are not synonymous; that sub-standard shipping can and does exist irregardless of flag of registry; that there is a vast difference in compliance with standards and methods of operation under all flags, irrespective of flag of registry.

Since it is clear that beneficial ownership of the open-registry fleet is concentrated in the United States, Japan, Hong Kong and Greece, as well as in some EEC countries, as indicated by Table 4, it is appropriate, therefore, to

<sup>75</sup> EIU, Study, 1979. p. 30.

Table 4

True Managers and Beneficial Owners of Open-registry fleets, 1980  
(Number of vessels and thousand of dwt)

Home country or territory	True Managers			Beneficial Owners		
	Nb	Dwt	% of total dwt	Nb	Dwt	% of total dwt
U.S.A.	769	54 577	25.1	888	64 545	29.7
Hong Kong	1 215	46 850	21.5	999	42 873	19.7
Greece	637	15 825	7.3	851	28 587	13.1
Japan	858	21 437	9.9	925	23 349	10.7
Germany, Fed. Rep. of	384	6 529	3.0	423	7 166	3.3
Norway	118	3 053	1.4	172	6 241	2.9
Unspecified	251	4 255	1.9	287	5 239	2.4
Singapore	489	5 382	2.5	409	4 028	1.9
Switzerland	126	4 095	1.9	115	3 836	1.8
United Kingdom	380	17 802	8.2	138	3 481	1.6
Netherlands	124	1 812	0.8	131	2 794	1.3
Italy	92	2 330	1.1	109	2 648	1.2
Canada	28	1 330	0.6	68	2 648	1.2
Israel	29	1 939	0.9	53	2 490	1.1
China	1	2	-	101	1 641	0.8
Monaco	112	10 291	4.7	38	1 574	0.7
France	50	1 481	0.7	48	1 414	0.7
Indonesia	73	1 111	0.5	75	1 151	0.5
Countries with less than 0.5 %	997	15 907	7.3	903	10 303	4.7
Unidentified	258	1 488	0.7	258	1 488	0.7
World Total	6 991	217 496	100.0	6 991	217 496	100.0

Source: UNCTAD, Beneficial Ownership of Open-Registry Fleets - 1980  
TD/B/C.4/218. (6 November 1980), p. 4 Table 1

The FACS theme of open-registry flexibility, efficiency, and service surfaced again in a presentation to a symposium of European shipowners and shippers, by Mr. Loree, as reported in the October 1980 issue of FACS Forum:

The inherent flexibility in open registries permits the most efficient possible allocation of the world's maritime resources. That flexibility in turn provides the market place with relatively low cost, reliable and efficient bulk shipping services.

There is no question that shipowners benefit from open registries, but the benefit is mutual in the sense that it is also shared by shippers and ultimately by consumers, because low cost, reliable and efficient bulk shipping services directly aid in facilitating and promoting trade among nations. . . .<sup>78</sup>

In response to allegations of poor living and working conditions, substandard shipping practices, high casualty rates and inadequate compliance with national and international shipping standards, FACS has been careful to point out the progress of Liberian and Panamanian flag shipping in the development of a sound merchant marine fleet:

For almost ten years Liberia has been expanding and refining the legal and professional machinery by which it exercises an effective degree of control over the construction, equipage, maintenance, and manning of Liberian vessels. The Liberian safety inspection now is truly world wide. . . . The Licensing program has reached the point where it can hold its own against most of the programs in the non-open registry fleets. . . .<sup>79</sup>

<sup>78</sup> FACS Forum, October, 1980, p. 2.

<sup>79</sup> FACS Forum, October, 1980, pp. 2-3.

present statements in support of FOC shipping beginning with those made by spokesmen for the American beneficial owners.

Perhaps the most effective and articulate of all the FOC support groups is the Federation of American controlled Shipping (FACS), an organization representing U.S. companies which together own or operate approximately 50 million deadweight tons of Liberian and Panamanian tankers, bulk carriers, and specialized vessels. FACS was originally organized in 1958 to counterbalance American and foreign union labor efforts to discredit the use of open-registry shipping. Today, its mission includes speaking out on a broad range of international shipping issues, policies and practices which affect the interests of FACS members.<sup>76</sup>

In a presentation to a trade association in Marseilles in October 1979, Mr. Philip Loree, in discussing non-competitive U.S. costs and FOC shipping said:

So to us, open registries are a solution, one that we believe have provided benefits not only to ourselves, but to others. They include the consumers who are the ultimate users of our reasonably low cost and reliable shipping services, the flag nations which have earned a substantial portion of their annual revenues from their shipping registries and the crews of various nationalities who have earned wages, pensions and other benefits on our vessels at least equal to and almost always better than those available on ships flying their own national flags.<sup>77</sup>

<sup>76</sup> As of May 1981 some 27 American companies were members of FACS, most in the oil production/transportation business. This is FACS (FACS pamphlet, May 1981).

<sup>77</sup> Journal of Commerce, October 18, 1979 as reprinted in FACS Forum, October, 1979, p. 2.

and,

The Panamanian annual safety inspection program is now in place, and the number of inspections is progressively increasing. Licensing, for many years a problem waiting for a solution, has been carefully studied and, I am told, is about to be tightened up and subjected to more effective and centralized government control. . .<sup>80</sup>

The success of the Liberian upgrading program was cited by Mr. Loree in an address to the Tanker Conference of the American Petroleum Institute in Boca Raton, Florida in May, 1982. Mr. Loree pointed out that since May, 1971, when Liberia announced its new safety program, substantial progress had been made. By 1981, 96 per cent of all officers had valid Liberian licenses, and 92 per cent of all Liberian ships were inspected in 1981.<sup>81</sup>

While recognizing the imperfections in the open-registry fleet, FACS finds that detractors have accentuated the negative aspects and avoided the issue of the need for ratification and/or enforcement of existing social, safety and pollution prevention conventions, and the expansion of responsible port-state control over sub-standard vessels irregardless of flag of registry. In a speech to the European shipping symposium referred to above, Mr. Loree said, in part, that:

<sup>80</sup> FACS Forum, October, 1980, p. 3.

<sup>81</sup> FACS Forum, May, 1982, pp. 1 and 4.



While open registries have some imperfections, their detractors have, in effect, attempted to accentuate the negative and have urged that open registries somehow be suppressed or even 'phased out'. . . The suppression of open registries would hardly be an effective answer to the overall problem of safety and pollution prevention. A much more realistic approach would be the expedited ratification of IMCO safety and pollution prevention conventions, and the expansion of responsible port state controls over substandard vessels regardless of flag. Substandard social conditions on open registry vessels and non-open registry vessels alike can be upgraded in much the same manner, by ratification of appropriate ILO conventions, and by effective port state action. At the same time, the flag states must continue their efforts to improve open registry shipping.<sup>82</sup>

And more recently, in a prepared statement on behalf of the International Chamber of Commerce before the UNCTAD Committee on Shipping, Third Special Session, June 4, 1981, in Geneva, Mr. Loree, in his capacity as Vice-Chairman of the ICC Sea Transport Commission, said:

Open registries have been disproportionately blamed for ship casualties, poor shipboard conditions, fraud, fly-by-night operators, and even violations of UN supported boycotts. To a very minor extent some of these criticisms may be valid, but the overriding fact is that in all cases the culprits, to the extent there are any, can be found under the flags of many nations of the world, not only open registries. To paint open registries with so broad a brush is inherently discriminatory, unfair and unreasonable.<sup>83</sup>

<sup>82</sup> FACS Forum, October, 1980, p. 2.

<sup>83</sup> Statement of International Chamber of Commerce Before the UNCTAD Committee on Shipping. Third Special Session. June 4, 1981. p. 4. [In writer's possession].

Arguments, similar to those presented by FACS, appear in the findings of the 1979 EIU study on open-registry shipping which was prepared independently at the request of the United States Council of the International Chamber of Commerce. The report is perhaps the best recent study of FOC shipping and succeeded in presenting the information in an even handed manner, not always the case in reports dealing with FOC shipping.

The EIU report concluded, in part, that:

One of the main features of existing open-registry operations is that in a competitive market unrestricted by cargo-sharing they provide a very flexible, readily available supply of shipping services at a lower price to the buyer than would be the case if the beneficial owners were obliged to operate under their national flags. . . .<sup>84</sup>

And under any scheme to phase-out or redeploy vessels:

Rates would almost certainly rise as a result of higher unit costs stemming from the loss of economies which most open registry vessels gain in the present market by backhauling and general operational flexibility . . . and any loss of flexibility resulting from restrictions on the nationality of the crew, choice of repair centres, bunkering, etc. . . .<sup>85</sup>

Since our concern here is more with the crew than with the merits of open-registry shipping, per se, let us look more carefully at some of the EIU findings as they pertain to labor issues.

<sup>84</sup> EIU Study, p. 61.

<sup>85</sup> EIU Study, p. 61.

While agreeing that the allegations of poor accountability, similar to those recently raised by UNCTAD in its report, Action on the Question of Open Registries, such that:

Open registration creates two fundamental problems. The first. . . arises from the difficulty of identifying the owners responsible. The second arises from the fact that the owners, managers and key shipboard personnel all reside outside the flag State. . . . This situation creates the most favourable conditions imaginable for negligent, irresponsible, and even criminal conduct on the part of owners. . .<sup>86</sup>

are ". . . a legitimate cause for complaint by the UNCTAD Secretariat,"<sup>87</sup> the EIU study pointed out, however, that:

In practice some open registries are more 'respectable' than others. Liberia. . . has during the 1970s made conscious efforts to put its house in order and now provides for the effective regulation of its open registry shipping in terms of safety and manning. On the other hand, Cyprus has still to tighten up its regulations and still has a very poor safety record, while Panama. . . has lagged well behind Liberia and appears, from the absence of statistical data, to have little idea of what is really happening under its flag. . . The basic point here, of course, is that it is the bad and dishonest owners rather than the flags under which they operate who must come under attack from organisations such as UNCTAD and IMCO.<sup>88</sup>

The EIU study reported that although there are few reliable statistics available on employment in the open-registry fleet, in general, there are, however,

<sup>86</sup> UNCTAD. Report 1981, TD/B/C.4/220, p. 3.

<sup>87</sup> EIU Study, p. 7.

<sup>88</sup> EIU Study, p. 6.

reasonable statistics about employment of non-nationals on Liberian flag vessels. . . [indicating] that the main countries providing officers and crew are not, in fact, the poorer developing countries, but the OECD countries, and especially Italy, Spain, Greece, the United Kingdom and Japan; China, Hong Kong and Taiwan; and South Korea. . .<sup>89</sup>

As for FOC compliance with internationally recognized labor and safety standards, the EIU report concluded that:

Most open registry countries are improving their safety standards. . . .Nevertheless, the major problem [with compliance, whatever the flag of registry] remains the sub-standard ships and sub-standard operators who try to avoid compliance with the set safety standards and regulations. . . .Any argument that the phasing [out] of open registries would in itself reduce the risk of casualties seems like a 'non-sequitur.'<sup>90</sup>

The EIU study also found that while 85 per cent of the open-registry fleet is unrestricted in its choice of crew and use of labor, that:

. .the conditions of a vessels' country of registry will affect wage levels, the crew's living standards on board, the availability of seamen and union standards. . .the reputable owner will more likely than not pay for the normal labor cost items, on the other hand the less reputable owner, whatever his flag, will try to cut labor costs. . .<sup>91</sup>

<sup>89</sup> EIU Study, p. 22. The EIU cautioned, however, that ". . .there is no reason to assume that the Liberian flag, in this respect, is typical of open registries as a whole."

<sup>90</sup> EIU Study, pp. 35-36

<sup>91</sup> EIU Study, pp. 26-27.

The EIU study, although comprehensive in its presentation is, nevertheless, shallow when it comes to recommendations. Perhaps the report itself is intended to indicate where change is necessary. The study did, however, make a concrete suggestion that has also been suggested by other open-registry spokesmen:

What is called for is a combination of a conscientious owner and a strict government control. . . The problem of the unscrupulous owner will remain whatever the flag position and here clear-cut inter-governmental action of the kind already initiated by IMCO and the United States Coast Guard is called for. Unseaworthy and inadequately manned and equipped vessels should be stopped by direct international action regardless of whether flags of convenience are phased out or not.<sup>92</sup>

There have been studies and reports prepared or commissioned by pro-open registry groups in addition to the arguments and reports presented by FACS and the EIU. Two recent publications<sup>93</sup> focus on the recent UNCTAD reports calling for an end to open-registry shipping, and raise some serious questions regarding the UNCTAD Secretariat's findings and impartiality. Neither publication, however, treats the issue of social conditions and labor standards with any depth or insight. The Liberian Shipowners Council report, for instance, found it convenient

<sup>92</sup> EIU Study, p. 30.

<sup>93</sup> International Chamber of Commerce, Critique on Chapters I and II of the UNCTAD Report Entitled "Action on the Question of Open Registries." [H.P. Drewry (Shipping Consultants) Ltd.] London, 1981. Liberian Shipowners' Council Ltd., Open Registries and the Merchant Fleets of Developing Countries. New York [1981].

to dismiss the issue of labor disputes, saying that there are already rules of international law which provide adequate protection and recourse to protect the seafarer in cases involving labor dispute or other problems.<sup>94</sup> When we consider the potential difficulty an ordinary seaman faces in finding a remedy for an alleged wrong or an injustice, it is not hard to imagine that without strong and effective recourse, that the seafarer doesn't stand much of a chance to find satisfaction. It is irresponsible for the LSC to suggest otherwise.

Suffice it to say that the FOC debate and its impact upon seafarers indicates that more information is needed before either side of the issue can unequivocally claim that seafarers are better off or worse off under conditions of open-registration. It is appropriate to say that given the international character of shipping; the trend to reduce the size of the crew; the state of the world recession in shipping services and oversupply of ships; the rapid growth of open-registry shipping; and the trend to employ seafarers from countries with lower pay scales, especially the developing countries where there are fewer traditions of social security; that seafarers are in need of international protection to guarantee that they don't become a form of international migrant or guest workers.

<sup>94</sup> Liberian Shipowners' Council, Report, p. 15.

In the remaining sections we shall take a look at several campaigns designed to restrict or prevent the existence of open-registry shipping and sub-standard shipping practices; to see what international oversight protection has been provided or proposed to protect seafarers from the alleged or potential abuses of international ocean shipping, and finally, the paper will review some of the latest developments which portend the future of open-registry shipping.

V. Labor's Complaint:  
The ITF and Open-registry Shipping.

The introduction of open-registry shipping aroused the interest and concern of seafarers and their unions from the start. Labor's complaint has focused on two main issues: the standards of safety and living accommodations, and the low wages payed. The competition for jobs between nationals of developed and developing nations has complicated the situation by dividing labor against itself. The International Transport Workers Federation (ITF) has condemned the existence of FOC shipping as a device designed to exploit seafarers with serious consequences for seafarers who are exposed to it.<sup>95</sup>

As FOC shipping has expanded so has the concern of seafarers. Mr. Harold Lewis, Secretary General of the ITF, in a statement before the UNCTAD Shipping Committee, said

<sup>95</sup> Seamen's Church Institute, p. 14.

that the growth of FOC shipping has led to an ITF campaign supported by its affiliates to secure: a) minimal terms and conditions aboard FOC ships, and b) the phasing out of FOC shipping through the establishment of a genuine-link between the ship and its flag.<sup>96</sup>

Pressure from the seamen's unions and the ITF played a major part in the early years of FOC shipping to force governments through the ILO's good offices to improve the general standards of seafarers and to take a more active part in ensuring that the conditions of employment, salaries, and the seaworthiness of FOC ships and substandard ships were brought up to acceptable standards.<sup>97</sup>

Doganis and Metaxas found that it was ITF pressure upon governments, and international organizations that forced improvement in the conditions of employment and of living and safety conditions aboard FOC and substandard ships.<sup>98</sup> Not only was the ITF successful in this, they found, but it was also able to force governments to become more directly concerned with FOC shipping by threatening boycotts and other similar job actions.<sup>99</sup>

The ITF, established in 1896, claims a worldwide membership of four million members in 368 affiliated unions in eighty-one countries. There are eight industrial sections within the ITF structure among which is the Seafarers' Section which is responsible for conducting activities

<sup>96</sup> ITF Statement (1981), p.1.

<sup>97</sup> Doganis and Metaxas, p. 33.

<sup>98</sup> Doganis and Metaxas, p. 33.

<sup>99</sup> Doganis and Metaxas, p. 33.



to eliminate substandard working conditions in the world shipping industry. As of February 1977, 990 vessels were covered by an ITF agreement.<sup>100</sup>

In 1946, the ITF appealed to the ILO to investigate the growing problem of FOC shipping which was just then beginning its expansion. The ITF was particularly concerned social conditions and safety standards.<sup>101</sup>

The initial ILO response did not produce any specific actions but, rather, was limited to an investigation and a warning that transfer of vessels from one flag to another might have a detrimental effect on seafarers.<sup>102</sup> This disappointing ILO response, and the appalling conditions then to be found aboard many FOC vessels, especially under Panamanian and Honduran flag, led to the threat of an ITF sponsored boycott in 1948.<sup>103</sup>

The ITF adopted a resolution at that time stating that the transfer of ships from one registry to another was for the purpose of evading taxes, currency regulations, safety, social and labor standards, and established a boycott committee to carry out its threat of a boycott.<sup>104</sup>

<sup>100</sup> Rowan, Northrup and Immediata, p. 345.

<sup>101</sup> Doganis and Metaxas, p. 26.

<sup>102</sup> Argiroffo, p. 441.

<sup>103</sup> Rowan, Northrup and Immediata, p. 339.

<sup>104</sup> Goldberg, p. 27.

It was the imminent possibility of an ITF boycott that encouraged the Panamanian government to request an ILO investigation of the allegations. The resulting report<sup>105</sup> concluded that the charges were, in part, justified as regards the age of the ships and the possible evasion of safety, labor and social conditions. Following the publication of the ILO report, a number of shipowners signed collective labor agreements with the ITF,<sup>106</sup> but the growth of FOC shipping was just beginning in earnest and the ITF, along with its affiliated maritime unions, had its work cut out.

The early ITF policy in concluding collective labor agreements was to set a minimum acceptable standard and to organize unaffiliated seafarers aboard FOC ships. In the case of crews of mixed nationality, the policy was to use the minimum standards established by the British National Maritime Board. In the case of similar nationality, the minimum acceptable standard was that of the national maritime board of the home country of the majority of the crew, if those standards were above those of the British Board.<sup>107</sup>

<sup>105</sup> ILO. Conditions in Ships Flying Flags of Convenience; Report of the Committee of Enquiry of the International Labour Organisation, Studies and Reports. New Series, No. 22. (Geneva, 1950). Cited in Doganis and Metaxas, pp. 26-28.

<sup>106</sup> Rowan, Northrup and Immediata, p. 340.

<sup>107</sup> Rowan, Northrup and Immediata, p. 340.

The Special Seafarers Section was set up as the bargaining agent for crews without union representation or membership in an affiliated union.<sup>108</sup> In 1954, the ITF replaced the original boycott committee with a permanent International Fair Practices Committee composed of representatives from affiliated seamen's and dockers' unions.<sup>109</sup>

By 1956 the ITF campaign against FOC ships began to take on a new dimension in response to the growth of FOC shipping. By 1956 much of the obsolete tonnage registered under the flags of Panama, Honduras, Liberia and Costa Rica, that had originally been transferred as surplus tonnage following the end of the Second World War, had now been scrapped. FOC tonnage, however, continued to grow from 1.99 million grt in 1947 to 8.5 m grt in 1955. The ITF began to perceive the situation in terms of unfair economic competition.

<sup>108</sup> In addition to its own campaign to conclude collective labor agreements, the ITF encouraged its affiliated members in the traditional maritime countries to organize crews aboard FOC ships calling in their national ports. In the United States, the efforts to organize unaffiliated crews aboard FOC ships was initially successful and supported by favorable review by the National Labor Relations Board. But a series of Supreme Court decisions overruled the favorable NLRB decisions effectively stripping the NLRB of jurisdiction in collective bargaining disputes having anything to do with foreign ships in U.S. ports. This virtually ended U.S. union support of the ITF campaign to organize FOC crews: *Benz v. Compania Naviera Hidalgo* 353 U.S. 138 (1956); *McCulloch v. Sociedad Nacional de Marineros de Honduras* 372 U.S. 10, 83 S Ct 671 (1963); *Incres SS Co. v. International Maritime Workers* 372 U.S. 24, 83 S Ct 611 (1963); *Windward Shipping Co. et al v. American Radio Association, AFL-CIO* 94 S Ct 959, 415 U.S. 104 (1974). Rowan, Northrup and Immediata, p. 343 and Doganis and Metaxas, pp. 61-62.

<sup>109</sup> Rowan, Northrup and Immediata, p. 340.

By 1958, the ITF had succeeded in joining forces with governments and shipowners in the traditional maritime countries whose merchant marine fleets were being affected by the increasing tonnage being transferred to FOC countries, especially Panama, Honduras and Liberia. Rowan, Northrup and Immediata commented on this demonstration of force exhibited by the ITF coalition:

The adoption of the 'genuine link' by the International Law Commission in 1956, its subsequent incorporation as Article 5 in the 1958 U.N. Convention on the High Seas, and the adoption of the Seafarers' Engagement (Foreign Vessels) Recommendation (No. 107) and the Social Conditions and Safety (Seafarers) Recommendation (No. 108) by the Maritime Session of the 1958 International Labour Conference marked the most significant achievement of this temporary coalition of interests.<sup>110</sup>

ITF strategy seemed to be working and its strength seemed to be growing which encouraged its leadership to call for a four-day boycott in December of 1958 against all FOC ships not carrying collective labor agreements acceptable to ITF standards.

The effectiveness of this ITF boycott was spotty at best, although initially successful in the United States where 42 per cent of all FOC ships at the time were beneficially owned. The boycott did not receive the expected support from shipowners and governments who charged that the boycott was a breach of national collective agreements

<sup>110</sup> Rowan, Northrup and Immediata, p. 340.

and of international law. The successful coalition that had been established between the ITF, shipowners and government came to an end.

There was some success in the early 1960s in stemming the tide of FOC shipping growth, but as we saw earlier this had more to do with a stable world economy and efforts by national governments to maintain strong national merchant fleets, than it had to do with any particular effort of the ITF, the ILO or any other group or organization.

Up until 1963 it had been ITF policy to concentrate its efforts against traditional flag operators who transferred their ships to FOC registry and who employed crews of convenience. Beginning in 1963, a new policy expanded the ITF definition of FOC shipping to include any expedient registration in another country's registry where effective control could not be exercised.<sup>111</sup> Today, the ITF has revised and simplified its definition of FOC shipping that places the burden on the shipowner or his representative to show that a ship is not an FOC vessel.<sup>112</sup>

In 1963 the Fair Practices Committee announced a new ITF policy establishing the ITF position on the employment of Asiatic seafarers aboard vessels registered in traditional maritime countries. Disparate wage scales throughout the different regions of the world had caused strain in the

111 Rowan, Northrup and Immediata, pp. 343-344.

112 ITF Statement (1981), p. 5.

ITF solidarity which resulted in a revised policy permitting affiliates to adopt a flexible approach to the problem of wages and conditions to suit the circumstances caused by the introduction of Asian seafarers, but in no instance were conditions to be lower than that of the ILO's Recommendation on Wages, Hours of Work and Manning (No. 109).<sup>113</sup>

The ITF collective agreement now employs two wage scales for FOC shipping, one for European affiliates and the other for Far Eastern affiliates. These scales, which establish monthly pay for various occupational groups from master to catering,<sup>114</sup> set the rate for able seamen at U.S. \$483 per month and U.S. \$343 per month, respectively effective September, 1975.<sup>115</sup>

According to current ITF policy, shipowners must pay the ITF wage rate to the crew if it is higher than that paid under an agreed contract even if the crew is paid in accordance with the rate of one of the countries whose wage scale was used to calculate the official ITF rate.<sup>116</sup>

As for developing countries where it is understood that it may be difficult or impossible to achieve the higher standards established by the traditional maritime

<sup>113</sup> Rowan, Northrup and Immediata, p. 344.

<sup>114</sup> This rate is the rate-of-the-job defined as an average of the wage rates negotiated by seafarers for ships operating in either the European or Asian regions.

<sup>115</sup> Rowan, Northrup and Immediata, note 55 at p. 354.

<sup>116</sup> "Now ITF Turns its Fire on 'Crews of Convenience,'" Seatrade, August 1978, pp. 57-59. Cited in Wittig, note 68 at p. 128.

countries,<sup>117</sup> the ITF policy was stated by Mr. Lewis in his presentation to the UNCTAD Shipping Committee:

The policy of the ITF is that if a ship is beneficially owned and controlled in a developing country then the terms and conditions of employment should be negotiated by free and independent seafarers trade unions, subject to the minimum standards laid down by the ILO, on which governments, employers and workers from almost all the developing countries are represented. The ITF Collective Agreement and the ITF Campaign relate specifically to flag of convenience ships and not to ships which are beneficially and genuinely owned and controlled in developing countries.<sup>118</sup>

Today, the issuance of the blue certificates of compliance is part of the ITF Campaign which replaced the reliance on the use of boycotts and work actions. These blue certificates attest to the compliance with ITF minimum requirements on wages and working conditions, and are made directly with the individual shipping company in the form of company contract, and have become prerequisite for conducting business by some insurance companies and charterers.<sup>119</sup>

The success or failure of the ITF Campaign to see to it that all crew members are covered by proper trade union agreements, and that these agreements are fully implemented

<sup>117</sup> In 1973 the ITF reached an understanding with the Indian National Maritime Board regarding the difference in the higher pay allowances recommended by the ITF and that of the lower scale set by the Indian Maritime Board to the effect that the difference would be paid into a specified seamen's welfare fund to assist Indian seafarers. Int. Lab. Conf. Rec. Proc. (1976), p. 39.

<sup>118</sup> ITF Statement (1981), p. 8.

<sup>119</sup> Abrahamsson, p. 134.

wherever the ship may be, depends upon the support of national legislation and the willingness of affiliated national maritime unions to take sympathetic action. Beyond this the ITF must look to the individual governments at the national and international level to put an end to the use of FOC shipping. With only 25 per cent of the FOC fleet under ITF contract<sup>120</sup> the successes achieved or attributable to the ITF leaves much to be desired.

#### VI. The International Labor Organization

The International Labor Organization (ILO) has played a significant part in improving the living, working, and social conditions of seafarers aboard ship and ashore by promoting safe and healthy conditions through international agreement. These efforts have been for the benefit of seafarers, shipowners and cargo owners alike, in that all benefit from greater productivity.

The ILO was originally established in 1919 as an outgrowth of the Versailles Peace Treaty. It was seen at that time that world peace and social justice could be enhanced, in part, through the establishment of international agreed labor standards in the form of obligation-creating conventions and less legally compelling recommendations.

<sup>120</sup> ITF Statement (1981), p. 6.



The ILO's commitment to human rights is reflected in its constitutional preamble which recognizes, in part, the principles of freedom of association, the right to collective bargaining, promotion of full employment, raising of labor standards, promotion of fair wages, humane hours and conditions of work, and the protection of workers' lives and health.

The aims and purpose of the ILO were restated in 1944 in the famous Declaration of Philadelphia which said, in part, that:

All human beings, irrespective of race, creed, or sex have the right to pursue both their material well being and their spiritual development in conditions of freedom and dignity, of economic security and equity of opportunity.<sup>121</sup>

The work of the ILO, like its membership,<sup>122</sup> embraces the world, and covers such concerns as safety, health, recruitment, vocational training, wages, hours and conditions of employment, and social security benefits, among

<sup>121</sup> ILO, Declaration Concerning the Aims and Purposes of the International Labor Organization. Adopted as an Annex to the ILO Constitution, April 1944. Cited in Christopher C. Joyner, "The United States' Withdrawal from the ILO: International Politics in the Labor Arena," International Lawyer, 12, No. 4 (1978) pp. 723-724.

<sup>122</sup> According to its constitution, countries are accorded membership in the ILO on the basis of: 1) those who were ILO members as of November 1, 1945; 2) any member of the United Nations willing to abide by the ILO Constitution; and 3) new members admitted by a two-thirds vote, including two-thirds of the government delegates. Membership terminates only after the expiration of a two-year notice of intent to withdraw. As of 1976 there were 132 member countries with 95 member states with maritime interests. (Int. Lab. Conf. Rec. Proc. (1976), p. 5).

others. Subjects relating to many industries are dealt with, and in the case of the seafarer these include crew accommodation, manning requirements, training and upgrading, welfare on board and ashore, among others.

What makes the ILO unique among international organizations is its tripartite structure.<sup>123</sup> Its legislative, and executive branches include representatives from national governments, national trade union associations, and representatives from employer's associations. The ILO is the only world organization in which representatives of employers and workers participate on an equal footing with representatives of government in determining and implementing international programs and standards.<sup>124</sup>

The principal organs of the ILO are: 1) the International Labor Office<sup>125</sup> which is its permanent secretariat and administrative agency overseen by the Director-General who is appointed for a five-year term by the Governing Body; 2) the Governing Body, which is its executive branch,

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In November 1977, the United States withdrew from the ILO in protest over the 'politicization' of the organization, as dramatized by its decision to accord the Palestine Liberation Organization observer status. On February 18, 1980 the United States "persuaded that the vast majority of its membership is intent on assuring that the Organization will live up to its principles and promises," resumed membership. K.T. Samson, "The Changing Pattern of ILO Supervision," International Labour Review, 118 (1979), editor's note at p. 32.

<sup>123</sup> Walter Galenson, The International Labor Organization: An American View (Madison: Univ. of Wisconsin Press, 1981), p. 11.

<sup>124</sup> K.T. Sampson, p. 33.

and 3) the International Labor Conference which meets annually and is composed of four representatives of each member state: two from government and one each representing labor and employers. The Conference is the policy-making body of the ILO.<sup>126</sup>

The Governing Body is tripartite in structure, comprised of 56 members representing 28 governments, 14 worker delegates and 14 employer delegates. Of the 28 government seats ten are reserved for the chief industrial states.<sup>127</sup>

The International Labor Conference is the ILO's legislative, policy-making forum to which the member nations send their delegations. The Conference operates through a series of tripartite committees: the Selection Committee, Credentials Committee and the Committee on the Application of Conventions and Recommendations, among others.

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<sup>125</sup> The Maritime Section is a subdivision of the International Labor Office charged with the responsibility of preparing official reports, gathering background information for the Conferences, and the collection and dissemination of information on subjects related to industrial life and work. Joyner, p. 725.

<sup>126</sup> In addition to the three main bodies of the ILO, the Joint Maritime Commission, an advisory group made up of seamen's representatives and shipowners, meets periodically to study the conditions affecting seafarers, and to prepare agenda items for consideration by the International Labor Conference.

<sup>127</sup> In 1979 these were Brazil, Canada, China, France, Germany, India, Italy, Japan, United Kingdom, and Russia. ILO and the World of Work (Geneva: 1979), p. 13.

The task of the International Labor Conference is to work out and adopt labor standards in the form of conventions and recommendations.<sup>128</sup> In addition, the Conference approves the ILO budget, and acts as a forum for social and labor questions brought before it for consideration.

The Constitution of the ILO provides that the Conference may determine for itself whether a proposal before the Conference should take the form of an international convention or a recommendation according to the circumstances prevailing at the time of consideration. A two-thirds majority of delegates meeting is required for adoption of a measure.

Under the ILO's Constitution, a convention is an international legislative action proposed for ratification by the member states while a recommendation is a document to be considered for future Conference review and a guide to member and non-member nations in the formation of national labor policy.

But whether in the form of a convention or a recommendation, the International Labor Conference has no supernational legislative power of its own. Measures adopted by the Conference must be submitted to member states for appropriate action.<sup>129</sup> Thus, the conventions and recommendations constitute only the basis for prospective national legislative action.

<sup>128</sup> The Conference may also adopt resolutions but these do not create any obligations on the member states but are intended, rather, to articulate official ILO sentiment.

Under paragraphs 5 and 6 of Article 19 of the ILO Constitution, member states are required to submit adopted conventions and recommendations to their competent national authority for enactment and enabling legislation. The most significant aspect of the provisions of these paragraphs is the requirement to bring conventions and recommendations before the national authority or authorities within whose competence the matter lies, for enactment of legislation or other such action, within twelve to eighteen months after the Conference adopts an instrument. There is a further obligation to report to the ILO on measures taken with regard to the instruments adopted.

In the event that a member state acts to ratify an ILO convention, it must then take the necessary steps to adopt national legislation in conformance with the provisions of the convention. In the event that a state does not ratify, it is nevertheless obligated to report on the progress made to conform to the subject matter of the convention. Similar obligations pertain to recommendations except that ratification is not necessary.

Although the ILO Constitution makes provisions for investigations into allegations of non-compliance with ratified conventions through its complaints and represen-

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129 Ronald Mortished, The World Parliament of Labour: a Study of the International Labour Organisation (London: Fabian Publications, 1946), p. 20.

tations procedure, only seven representations and six complaints had been filed as of December, 1976. Few additional complaints and representations have been filed since.<sup>130</sup>

In 1950 the ILO established a special procedure to examine allegations of violation of trade union rights to collective bargaining and union activity when it created the Governing Body's Committee on Freedom of Association and has since considered over 800 cases of alleged violations.<sup>131</sup>

Reports submitted to the ILO are reviewed by two committees: the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations before being transmitted along with findings and recommendations to the International Labor Conference.

Unlike other international organizations, the ILO has from the outset prohibited the use of reservations to a convention when adopted by member states. In this regard the ILO recognizes the competence of the International Court of Justice to pass final decision over disputes involving complaints of non-compliance and interpretation of the ILO Constitution. In 1951 the ICJ, in an advisory opinion, supported the ILO position prohibiting the use of reservations to conventions.<sup>132</sup>

<sup>130</sup> ILO, The Impact of International Labour Conventions and Recommendations (Geneva: 1976), pp. 66-67.

<sup>131</sup> ILO, Impact, pp. 69-70.

<sup>132</sup> [1951] I.C.J. at 216 (advisory opinion). Joyner, note 19 at p. 724.

Conventions adopted by the International Labor Conference and subsequently accepted and ratified by member states are required to be registered with the UN Secretary General.

Since the primary concern here is with the protection and safety of seafarers under international law, we will now take a closer look at the success of the ILO in formulation of international seafaring conventions and recommendations.

#### VII. The ILO and the Seafarer

From the beginning the ILO has been concerned with the welfare of seafarers. Indeed, one of its main purposes has been to ensure the right of seafarers to pursue their material well-being and spiritual development in conditions of freedom, dignity, economic security and equal opportunity.<sup>133</sup>

When the Versailles Peace Treaty was being drafted, the Commission on International Labor Legislation was requested by concerned seamen's welfare agencies and organizations to make provisions for a special body, independent of the proposed International Labor Organization, to deal specifically with maritime questions. Although the Commission on International Labor Legislation denied the request for a separate maritime agency it did recommend that:

<sup>133</sup> Report of the Director-General, 62nd (Maritime) Session (1976), p. 108.

. .the very special questions concerning the minimum conditions to be accorded to seamen might be dealt with at a special meeting of the International Labour Conference devoted exclusively to the affairs of seamen.<sup>134</sup>

This recommendation was the basis for the ten special Maritime Sessions of the International Labor Conference held since 1920 devoted exclusively to the problems of seafarers. The conventions and recommendations that have been adopted in these sessions constitute what is informally referred to as the International Seafarer's Code - a compilation of agreed upon principles which have given direction and form to the decisions made in various states in the formation of legislation and regulations regarding the employment and welfare of seafarers.

Since 1920 the ILO has adopted 32 conventions and 25 recommendations, and a number of resolutions dealing specifically with problems associated with seafaring: minimum age for admission to employment, medical examinations, entry to employment, articles of agreement, vocational training, certification of qualification, unemployment indemnity insurance, repatriation provisions, social security, hours of work, holiday pay, welfare in port and aboard ship, and medical care and identity documents, among others. See Appendix 2.

<sup>134</sup> Cited in George A. Johnston, The International Labour Organisation: its Work for Social and Economic Progress (London: Europa, 1970), p. 240.



At its initial meeting in 1920, the Governing Body of the ILO, acting on the recommendation of the Commission on International Labor Legislation, created the Joint Maritime Commission, which, as we saw earlier, was established to act as a preparatory and advisory body to the International Labor Conference on matters relating to maritime labor.<sup>135</sup>

Later that same year, at its Second Session, the International Labor Conference devoted itself entirely to maritime questions, and elected the first members of the Joint Maritime Commission. At its Third Session in 1921, the Conference adopted a resolution requiring that all questions relating to maritime affairs be put before the Joint Maritime Commission prior to being considered by the Conference.<sup>136</sup> This procedural action strengthened the importance of the JMC within the structure of the ILO while it recognized the unique status and needs of seafarers.

The structure of the JMC is bipartite, comprised of fifteen delegates and five deputy delegates representing shipowners, and fifteen delegates and deputy delegates representing seafarers. The Chairman of the Governing Body and two Governing Body representatives, one each from the workers' group and employers' group complete the composition of the Commission.<sup>137</sup>

<sup>135</sup> Nagendra Singh, International Conventions of Merchant Shipping (London: Stevens, 1963), p. 1250.

<sup>136</sup> The consideration of maritime questions within the ILO is unique in that it is the only industrial area for which special and separate ILO sessions are held.

The JMC, which meets only upon call rather than at stated intervals, carries on the work of the Maritime Session of the International Labor Conference between sessions of the ILC and helps assure continuous review of all questions relating to seafarers, and prepares the agenda and necessary background information for future sessions.

The JMC is not, however, a permanent body in the sense that it is always in session, and so, the day-to-day matters under JMC review are handled by the Maritime Section of the International Labor Office. The Maritime Section prepares the necessary background material and information for consideration by the JMC and full Maritime Sessions of the International Labor Conference, and maintains an oversight of the implementation of ILO maritime conventions and recommendations. In addition, the Maritime Section gathers information, makes investigations, formulates suggestions, issues reports, and prepares proposed draft conventions and recommendations.

While the JMC and the Maritime Section perform their duties and prepare background material and draft proposed agenda items, it still remains for the International Labor Conference, meeting in Maritime Session, to consider and take appropriate action on matters brought before it.

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Amongst the more significant actions of the Maritime Sessions of the International Labor Conference are: the 1920 Placing of Seamen Convention (No. 9), under which the abuse of questionable employment practices were declared illegal while still permitting freedom of choice of ship for seafarer and choice of crew for the shipowner. It was adopted essentially to put an end to the notorious crimping business which sought to supply seafarers of whatever qualification to masters or shipowners who were unconcerned with the source of supply or the quality of labor.<sup>138</sup>

Under provisions of the Placing of Seamen Convention, each ratifying state agreed to prohibit private fee-charging employment agencies from operating in their territories.

In 1926, the International Labor Conference adopted the Seamen's Articles of Agreement Convention (No. 22), the Repatriation of Seamen Convention (No. 23) and the Repatriation (Ship Masters and Apprentices) Recommendation (No. 27).

The Seamen's Articles of Agreement Convention provided that at the time a seaman signs-on both he and the agent for the owner must sign an employment agreement which states the obligations of each party to the other, including the job to be performed, the amount to be paid, termination provisions, and further stipulates that there are not to be any secret agreements or understandings such that would

<sup>138</sup> Seamen's Church Institute, p. 11

diminish the effect of the Articles of Agreement. Under the Convention, seamen's rights to repatriation were also established.

In 1936, the Maritime Session of the International Labor Conference succeeded in adopting several important conventions dealing with such subjects as Sickness Insurance (Sea), No. 56; Shipowner's Liability (Sick and Injured Seamen), No. 55; Holidays With Pay (Sea), No. 54; Officers' Competency Certificates, No. 53; and also raised the minimum age for employment at sea from fourteen years to fifteen by adopting the Minimum Age (Sea) Convention, No. 58; and adopted a Recommendation on Seamen's Welfare in Ports, (No. 48).

In 1946, two conventions on minimum qualifications were adopted: Certification of Ship's Cooks (No. 69); and Certification of Able Seamen, (No. 74). The Conference also adopted a Convention on the Accommodation of Crews, (No. 75); Wages, Hours of Work and Manning (Sea), (No. 76); a Recommendation on Vocational Training, (No. 77); and the Recommendation on Seafarer's Social Security (Agreements), (No. 75).

The 1946 Convention on Wages, Hours of Work and Manning (Sea), (No. 76), fixed the minimum basic pay for seafarers,<sup>139</sup> hours of work and the manning scale to ensure the safety of life and health of the seafarer.

<sup>139</sup> As of 1976 the ILO had recommended that the basic monthly wage for able seamen should be \$115. This has been surpassed by the United States (\$832), France (\$416), Norway (\$567), United Kingdom (\$298), Greece (\$241) and Italy (\$222). The basic minimum wage has still to be met by many

In 1958, the Seafarers Engagement (Foreign Vessels) Recommendation, (No. 107) was adopted to encourage member states to take appropriate action to discourage seafarers from joining vessels registered in a foreign country where conditions were not equivalent to a bona fide organization of shipowners and seafarers of maritime countries.<sup>140</sup>

This recommendation signified, for the first time, direct action by the ILO in response to the unprecedented growth of open-registry shipping and the growing reports of exploitation, low wages, long hours, hazardous and arduous living and working conditions, long absences from home, refusal of repatriation requests, denial of social security and pension benefits, and other alleged abuses associated with FOC shipping.<sup>141</sup>

Recommendation (No. 108), Social Conditions and Safety (Seafarers) was adopted at the same time as Recommendation (No. 107) and addressed itself to the issue of safety of seafarers and their welfare, particularly those serving aboard FOC ships and substandard ships.<sup>142</sup> The

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developing countries. Report of the Director-General, 62nd (Maritime) Session (1976), pp. 21-23.

<sup>140</sup> Osieke, p. 616.

<sup>141</sup> Johnston, p. 246.

<sup>142</sup> See Enrico Argiroffo, "Flags of Convenience and Substandard Vessels: a Review of the ILO's Approach to the Problem," International Labour Review, 110 (1974) pp. 437-453, for a complete discussion of Recommendations 107 and 108.

recommendation obliged every state to take necessary measures to ensure safety of life at sea, and urged the country of registry to accept its full responsibility for the obligations implied by the grant of registration.

The last Maritime Session to date adopted the Convention on Minimum Standards in Merchant Ships (No. 147), and Recommendation (No. 155) on the Improvement of Standards in Merchant Ships, which set minimum standards for safety, living and working conditions aboard ships, particularly those of substandard condition.

#### VIII. The ILO and Open-Registry Shipping

Although the ILO has been interested in the effect of FOC shipping upon seafarers, it was unable, for various reasons, to come to grips with the problems of FOC shipping until 1958 when it adopted the Seafarers Engagement (Foreign Vessels) Recommendation, (No. 107), and the Social Conditions and Safety (Seafarers) Recommendation, (No. 108), as noted above. These two recommendations challenged member states to accept the full responsibilities implied by the grant of registration, and to exercise effective jurisdiction over ships under its registry, and to provide for the safety and well-being of seafarers serving aboard ships so registered.<sup>143</sup>

<sup>143</sup> Osieke, p. 616.

Recommendations No. 107 and 108 represented a significant breakthrough for the ILO in its efforts to improve the general well-being of seafarers aboard FOC ships and substandard ships. But because these two recommendations were not effectively implemented the measures failed in their purpose to protect seafarers or to trim the growth of FOC shipping. Efforts to establish an obligation-creating international convention were resumed.

As they had in the past, seafarers at the 1976 Maritime Session of the International Labor Conference charged that certain shipowners who registered their ships under FOC registry did so so as to avoid internationally recognized standards for merchant ship safety; to exploit the freedom of the sea concept for their own benefit; to employ seafarers at rates of pay below the standard wage rates; and to profit at the expense of labor.<sup>144</sup>

There was also widespread concern expressed at the 1976 Maritime Session over the decline in job opportunities and continuity of employment resulting from the world-wide over-supply of ships and seafarers, and the continuing economic recession in world trade and shipping.

Convention (No. 147) Concerning Minimum Standards in Merchant Ships, and Recommendation (No. 155) on the Improvement of Standards in Merchant Ships, adopted by the 1976 Maritime Session of the International Labor Conference,

<sup>144</sup> Argiroffo, pp. 448-449.

consolidated the provisions of the earlier 1958 recommendations and introduced additional provisions on actions to be taken by states to ensure effective jurisdiction and control over ships flying flags of convenience or otherwise considered substandard.<sup>145</sup>

Under provisions of Convention 147, ratifying states were granted power to hold inquiries into any serious marine accident involving injury or loss of life, (Article 2 (g)), for ships under its registry, and to take necessary measures to rectify improper standards aboard vessels calling at their ports (Article 4).

Article 2 of the convention calls for ratifying states to not only implement provisions of the convention itself, but to implement standards substantially equivalent to the conventions or articles of conventions referred to in an accompanying appendix. The conventions referred to concern such subjects as crew accommodation, accident prevention, medical examination, food and catering services, officer competency, articles of agreement and freedom of association and collective bargaining.

Article 2(g) required substantial discussion due to its controversial provision requiring that official inquiries conducted by flag states involving incidents of serious injury be made public in its final report. Article 2(g) specifically states that each ratifying state undertakes to:

<sup>145</sup> Osieke, p. 617.



. . .hold an official inquiry into any serious marine casualty involving ships registered in its territory, particularly those involving injury and/or loss of life, the final report of such inquiry normally to be made public.<sup>146</sup>

Article 4 of the Convention Concerning Minimum Standards in Merchant Ships provides that necessary measures be taken by member states when complaints are received or evidence presented that a ship visiting its port does not conform to the standards outlined in the convention. Article 4, paragraph 1, states that:

. . .if a Member which has ratified this Convention and in whose port a ship calls in the normal course of its business or for operational reasons receives a complaint or obtains evidence that the ship does not conform to the standards of this Convention, after it has come into force, it may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.<sup>147</sup>

<sup>146</sup> Although there is an overall similarity between the 1976 ILO Convention and the 1980 UNCLOS III Draft Convention on the Law of the Sea, Article 94, there is one problem which was identified by Ebere Osieke in his review of the ILO convention such that Article 94, paragraph 7, of the Draft Convention omits the critical ILO phrase: "the final report of such inquiry normally to be made public." Osieke recommended that the UNCLOS III Article 94 be redrafted to conform with the earlier ILO Convention 147. Osieke, p. 621.

<sup>147</sup> Once again, there is an overall similarity between the ILO convention and provisions of the 1980 Draft Convention on the Law of the Sea, but nevertheless not complete. Article 94, paragraph 6, of the Draft Convention substantially alters the meaning of Article 4, paragraph 1, of the ILO convention, by taking port-state

### Port-State Control

Article 4, like Article 2(g), has generated a great deal of discussion. Article 4 is substantially out of character with customary and conventional maritime practice in that it permits port-state control over the internal affairs and economy of a foreign flag vessel when found to be in the jurisdictional waters of another's state. Article 4 is also out of character with ILO practice which has been traditionally content to exert a moral influence rather than a legislative one.

Despite the discussion and controversy surrounding Article 4, Ebere Osieke found in his review of the convention that provisions of Article 4 are designed to protect seafarers and to deal with the issue of substandard vessels, whether of open-registry origin or not, which have on board conditions inferior to those required by the ILO's conventions - conditions that threaten the health and safety of the seafarer and which therefore constitute a serious danger to the entire marine community and the environment.<sup>148</sup> In Osieke's view, Article 4 is merely a

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control away from coastal states and returning it to the flag state. This is a serious reversal. It should be noted that Article 94, paragraph 5, of the Draft Convention requires compatibility with previously determined international law in conventional form. But here we find a substantial alteration of an earlier convention. The effectiveness of Article 4 of the 1976 ILO Convention is therefore in serious jeopardy of being ignored.

<sup>148</sup> Osieke, p. 618.

consolidation of state practice on the jurisdiction of coastal states over foreign flag vessels operating in their waters, and is not an innovation in international law.

Article 4, however, departs from earlier ILO practice because it permits coastal state control over, and involvement in, the internal affairs of a foreign merchant ship temporarily located within the waters of another state. Indeed, Article 4 introduces into the Seafarer's Code an element of control never before permitted. What constitutes a necessary and reasonable measure, and what conditions permit interference have yet to be determined.

#### The IMCO Precedent

The concept of port-state control may be new insofar as the ILO is concerned, but it is a concept that has precedence in its use by IMCO.<sup>149</sup>

Goldberg in his study of standards of maritime safety found that existing IMCO conventions contain port-state provisions requiring or permitting vessel inspection, and

<sup>149</sup> The Intergovernmental Maritime Organization (IMCO) was established in 1958 by the United Nations to consider action on matters affecting maritime safety and prevention of pollution and to facilitate co-operation among governments in technical matters pertaining to shipping, among others. The most important international instruments of which IMCO is depository are the Conventions for the Safety of Life at Sea, the International Regulations for Preventing Collisions at Sea, and the International Convention on Load Lines. Int. Lab. Conf. Rec. Proc. (1976), p. 17.

As of May 22, 1982 IMCO is now referred to as the International Maritime Organization (IMO). Seatrade, May 1982, p. 9.

more recently IMCO has developed a scheme permitting authorities to initiate inspection of foreign flag ships to determine if substandard conditions exist.<sup>150</sup>

The 1960 International Convention and Regulations for the Safety of Life at Sea, for example, authorizes port states to ensure that ships meet convention standards on safety before the ship can proceed to sea without posing a threat to the passengers or crew.<sup>151</sup>

The IMCO Secretary-General, Mr. Srivastava, in his presentation before the Maritime Session of the International Labor Conference in 1976, said that routine port-state inspection by IMCO over foreign flag vessels could be extended to a substantive investigation of the ship and its equipment, under provisions of Regulation 19, Chapter 1, of the Safety of Life at Sea Convention, and Article 21 of the 1966 Load Line Convention, if there is reason to believe that the condition of the ship and its equipment are not satisfactory.<sup>152</sup>

IMCO procedure provides, further, that information that a ship appears to be substandard may be submitted to authorities in a port-state by a member of the crew, professional organization, association trade union, or any individual with an interest in the safety of the ship, its crew or passengers.<sup>153</sup>

<sup>150</sup> Goldberg, p. 28.

<sup>151</sup> Osieke, p. 619.

<sup>152</sup> Int. Lab. Conf. Rec. Proc. (1976), p. 18.

In addition to the above mentioned provisions, the 1973 IMCO Convention on Marine Pollution gives broad powers to individual states should a violation of the Convention occur within jurisdictional boundaries. Under provisions of this convention, the country may undertake proceedings under its national law or provide the flag state with evidence of a violation. Authorities at each port may inspect oil pollution prevention certificates and may refuse the ship to sail. A state may also deny a ship access to its ports or offshore terminals for lack of compliance with provisions of the convention.<sup>154</sup>

Port-state control must be seen then, as an alternative to effective flag state control or as a supplement to it - but not a substitute for effective control. The IMCO precedent should permit the ILO to attempt to make use of the port-state control device provided for in Article 4 of the Convention Concerning Minimum Standards in Merchant Ships without fear of straying too far afield from the path of acceptable international maritime practice.

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<sup>153</sup> ITF Circular No. 47/S.13/D.5 paragraph 4 (1981), Annex 4. Cited in E. Welling Thomas, The Rights of Foreign Seafarers in United States Ports; a Working Paper (New York: Seamen's Church Institute, 1982), p. 3.

<sup>154</sup> Wittig, p. 133.

IX. The Future of International Labor Standards:  
Unilateral Action, UNCTAD, and the New  
International Economic Order

What of the future? It remains to be seen what influence the provisions of the 1976 Convention Concerning Minimum Standards in Merchant Ships (No. 147) will have upon open-registry shipping and on substandard shipping. By December, 1980 the required number of states had ratified the convention<sup>155</sup> for it to come into force on July 8, 1982.<sup>156</sup> It is expected that implementation of the convention will act to improve conditions of employment and accommodation and safety, especially if the port-state control provisions of Article 4 are actively and effectively implemented by the signatory states.<sup>157</sup>

In addition to the coming into force of the ILO Convention on Minimum Standards, unilateral and multilateral action is being taken by governments concerned with the safety and well-being of merchant seafarers serving aboard open-registry and substandard ships.

On March 23, 1977, for example, the government of Italy adopted legislation designed to protect seafarers recruited to serve on board ships flying a flag other than that of the nationality of the seafarer.<sup>158</sup>

<sup>155</sup> H.P. Drewry Ltd. Report, 1981, p. 9

<sup>156</sup> Liberian Shipping Council Ltd. All-Members Circular, March 29, 1982.

<sup>157</sup> Liberia adopted ILO Convention 147 in 1981 and is said to be drafting the necessary enabling legislation. Liberian Shipping Council Ltd. Open Registries, 1981, p. 16.

Rachel Roat, in her note on the promulgation and enforcement of international labor standards for merchant ships, described the new Italian law:<sup>159</sup>

Under the new law, an agent recruiting a national or foreign seafarer for a ship flying a flag other than that of the seafarer's nationality must assume responsibility for the seafarer's invalidism, old age, accident, and sickness and guarantee protection not less favorable than required by Italian statutes. . . That the goal of the Italian law is to stop the hiring of crews for foreign flag ships without assurance that they will be paid reasonable wages and be insured against accident and sickness.<sup>160</sup>

In 1978, Belgium, Denmark, France, the Federal Republic of Germany, the Netherlands, Norway, Sweden and the United Kingdom, signed a Memorandum of Understanding, effective July 1, 1978 which presents a regional approach to the implementation of the provisions of the 1976 ILO Convention on Minimum Standards, as adopted, and called the Hague North Sea Agreement.<sup>161</sup>

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<sup>158</sup> "Legislation to Protect Crews of Ships Flying Flags of Convenience," ILO Social and Labour Bulletin, 2 (1977) p. 145.

<sup>159</sup> Disciplian Della Professione Di Raccomandatorio Maritimo.

<sup>160</sup> Roat, p. 79.

<sup>161</sup> "North Sea Countries Sign Memorandum on the Maintenance Standards on Merchant Ships," ILO Social and Labour Bulletin, 2 (1978) pp. 160-161.

And just this past winter the Paris Memorandum on Port State Control was signed by the governments of Belgium, Denmark, the Federal Republic of Germany, France, the Netherlands, Norway, Sweden, Ireland and the United Kingdom, Finland, Greece, Italy, Portugal and Spain.<sup>162</sup>

Under provisions of the Paris Memorandum, each signatory state is expected to inspect 25 per cent of the foreign ships visiting their ports. A central data bank will be established to maintain basic information on ships and to insure compliance with provisions of the agreement. The intention of the agreement is to improve the safety of life at sea, to prevent pollution, and to reduce the existence of substandard shipping practices.

The Paris Memorandum seeks to enforce the following seven international shipping conventions:

- The International Convention on Load Lines, IMCO, 1966.
- The International Convention for the Safety of Life at Sea, IMCO, 1974.
- The Protocol of 1978 Relating to the International Convention for the Safety of Life at Sea, IMCO, 1974.
- The International Convention for the Prevention of Pollution from Ships, IMCO, 1973 as modified by the Protocol of 1978.
- The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, IMCO, 1978.
- The Convention on the International Regulations for Preventing Collisions at Sea, IMCO, 1972.
- The Merchant Shipping (Minimum Standards) Convention, ILO (No. 147), 1976.

<sup>162</sup> Paul Bartlett, "European States Move Against Safe Havens for Substandard Ships." Seatrade, vol. 12, No. 2 (February), 1982, pp. 73-74.



The nations which signed the Paris Memorandum, and have not yet ratified all the conventions included, have promised to do so as soon as possible.

There are other forces of change at work which will have an impact upon the future of open-registry shipping, specifically the work of the United Nations Conference on Trade and Development and the call by the developing nations for the establishment of a New International Economic Order.

It is not owing to any overriding concern for the well being of seafarers, their opportunities for employment or career advancement, that UNCTAD is interested in the present arrangement of international ocean shipping. Rather, it is UNCTAD's concern for its developing state majority constituency that UNCTAD's attention is focused on shipping in general and open-registry shipping in particular.

Shipping services are perceived by the developing states, especially the so-called Group of 77, which now numbers over 100 countries, as one method by which the western developed states continue to exercise economic dominion over former colonial territories,<sup>163</sup> and other developing countries.

It is not surprising, then, to hear that the developing states, with the possible exception of the FOC countries, are calling for a phase-out or redeployment of

<sup>163</sup> Juda, p. 506.

open-registry shipping to something more akin to national flag fleets.

The developing states desire a fairer share of their country's trade for their own fledgling merchant marine fleets and/or better cargo rates for their imports/exports. Table 5 indicates a comparison of cargo turnover and fleet ownership between groups of countries and helps illustrate the disparity between goods loaded and unloaded and the percentage of the world fleet held by the developing states.

The demands and proposals for change in shipping services are seen as part of the larger call for the establishment of a New International Economic Order (NIEO), which, according to Professor Juda, encompasses two general themes:

. . .the first is the need for major alterations in the world's economic system so that benefits are, from their point of view, more equitably shared - that is, with more benefits accruing to the developing countries. The second is that Third World states should be fully involved in the making of economic and political decisions that affect their well-being.<sup>164</sup>

The concept of equity is indeed central to the demands of the developing states who see it less as an economic term, than as a political rallying point.<sup>165</sup> Equity, in this context, is a concept that involves the fundamental

<sup>164</sup> Juda, p. 494.

<sup>165</sup> Juda, p. 505.

## COMPARISON BETWEEN CARGO TURNOVER AND FLEET OWNERSHIP, 1976

Country Group	Goods Loaded and Unloaded (million tons)	Total of Goods Loaded/ Unloaded (m tons)	DWT of Merchant Fleet (m tons)	World Cargo Turnover ( % )	World Merchant Fleet ( % )	
Developed/ Open-regis. countries	1 130	2 544	3 674	521.2	55.4	86.7
Socialist Countries/ Eastern Europe and Asia	206	133	339	37.0	5.1	6.2
Developing Countries	2 038	576	2 615	40.8	39.4	6.8
World Total including Unallocated Tonnage	3 375	3 253	6 627	601.2	100	100

Source: UNCTAD, Review of Maritime Transport, 1978  
Cited in: Ramsay, World Oversupply, Table 2, p. 64.

abstract notion of fairness and justice; it is a concept that questions the distribution and control and benefits derived from international trade, particularly that of international ocean shipping.<sup>166</sup>

Today, the developing countries are firmly embarked on a policy of establishing or expanding their own national maritime fleets in an effort to expand their exports, improve their trade balance, earn foreign exchange, reduce the cost of imported manufactured goods, and gain work opportunities for their nationals.<sup>167</sup>

As of 1976, it was estimated that only 6.8 per cent of the total world shipping fleet was registered under the flags of developing countries, excluding the FOC countries.<sup>168</sup> By mid-1980 the developing market economy countries' share of world shipping had increased dramatically to 46.2 m grt or 11 per cent of total world tonnage, but, at a time when most of the developed countries and Eastern European countries and especially the FOC countries had registered substantial gains as well. In mid-1980 the OECD countries' share of world tonnage stood at 215.9 m grt (51.4%); Eastern European/USSR at 32.0 m grt (7.6%) and the FOC countries at 114.6 m grt (27.3%).<sup>169</sup>

<sup>166</sup> In 1976, the last year for which detailed figures are available, developing states exported by weight 60.4% of world export cargoes and imported 17.7% of world import cargoes. UNCTAD, Review of Maritime Transport, 1978 TD/B/C.4/182 (31 May 1979) p. 4. Cited in Juda, note 3 at p. 494.

<sup>167</sup> Report of the Director-General, 62nd (Maritime) Session (1976), p. 67.

<sup>168</sup> UNCTAD, Review of Maritime Transport, 1978. Cited Ramsay, Table 2, p. 64.

International seaborne trade plays an important part in the economic well-being of a nation, and transportation charges can represent as much as one-third the price of exported and imported goods.<sup>170</sup> For developing countries with serious balance of payments deficits, large-scale unemployment problems, and a dependence upon the export of a limited number of raw materials, these transportation charges can represent a serious economic drain on their limited resources.

The slow pace of expansion of the merchant marine fleets of developing countries, as illustrated in Table 6, and the difficulty experienced in establishing fleets and in negotiating favorable freight rates have caused the developing states to demand change in the system of international ocean shipping; changes that will affect the liner trades, the bulk trades and the operation of open-registry shipping and even that of cross-traders who engage in the carriage of cargo between states other than those of their own flag and its trading partners.

Seen in this context, the call for a NIEO is indeed a call for substantial change in the organization of international shipping with far reaching consequences. In terms of shipping, the NIEO's influence can be seen in the deliberations taking place at the UNCTAD maritime sessions.

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<sup>169</sup> OECD, Maritime Transport, 1980, p. 71.

<sup>170</sup> Int. Lab. Conf. Rec. Proc. (1976), p. 140.

## OWNERSHIP OF THE WORLD FLEET, 1970-1978 (mid-year figures)

Country Group	1970		1976		1977		1978	
	m grt	%	m grt	%	m grt	%	m grt	%
World Total	217.9	100	367.1	100	388.5	100	400.7	100
DME Countries	141.8	65.1	207.8	56.6	211.4	54.4	215.3	53.7
Open- Registry Countries	40.9	18.8	99.5	27.1	109.2	28.0	111.0	27.7
Socialist Countries	19.5	8.9	31.4	8.6	33.3	8.6	35.5	8.9
Developing Countries: Major oil Exporters	2.0	0.9	6.3	1.7	9.4	2.4	11.0	2.7
Developing Countries: Other	12.5	5.8	20.6	5.6	23.6	6.1	26.3	6.6
Other: Unallocated	1.2	0.5	1.5	0.4	1.6	0.5	1.6	0.4

Source: UNCTAD V, Review of Trends 1977/1978, TD/222/Supp. 6  
Cited in: Chrzanowski. Table 1, page 3.

UNCTAD is a permanent organ of the United Nations established in 1964 whose purpose is to promote international trade and development, especially in the countries where the need is the greatest, i.e. the developing countries. UNCTAD's concerns with shipping originated with the establishment of a separate Shipping Division in 1965,<sup>171</sup> and it has remained a primary concern since.

Over the years UNCTAD has been successful in influencing international shipping policy and its most significant action was the successful adoption of the Code of Conduct for Liner Conferences Convention adopted in 1974 at a Conference of Plenipotentiaries.<sup>172</sup>

The UNCTAD Code of Conduct for Liner Conferences addresses itself to a number of major concerns of the developing countries, particularly those stemming from the carriage of liner cargoes and the liner conference system. Specifically, the Code calls for:

. . . a system of international controls of liner shipping, based on the principles that (1) government will have a predominant role in all relations between shippers and shipowners; (2) admission to conference membership will include noncommercial criteria, one of which would be the development of national shipping lines; and (3) flag discrimination to aid national shipping lines will be acceptable in principle.<sup>173</sup>

<sup>171</sup> Juda, p. 494

<sup>172</sup> UNCTAD, United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences. (UN Publication Sales No. E.75.11).

<sup>173</sup> Abrahamsson, pp. 9-10.

The Code is perhaps most noted for its call for a cargo sharing plan that in principle allocates cargo between trading partners on a 40 per cent basis for each party with the remaining 20 per cent made available for the cross traders.<sup>174</sup>

The cargo sharing plan is the basis for the development and expansion of national flag fleets in the developing countries, and for this reason is seen as not only desirable but central to the concerns for a rational world merchant fleet development by its proponents. Not only does the plan provide for fleet development and expansion, but it also is seen as an aid in the diversification of the economies of the developing states and a psychological boost as a blow against the neocolonial system.<sup>175</sup>

#### Bulk Shipping

The initial focus of UNCTAD's attention was on liner shipping. More recently, attention has come to focus on the dry and liquid bulk trades which account for 80 per cent of worldwide cargo tonnage.<sup>176</sup> The recent realization of the great cargo carrying potential available to the developing states has caught the imagination of developing states to such an extent that extension of the UNCTAD Code to cover bulk carriage is not an unlikely possibility.

<sup>174</sup> As of 31st May, 1981 the Convention had not come into force. While the requirement for 24 states becoming Contracting Parties has been exceeded, the tonnage requirement of 25 per cent of the world tonnage



The UNCTAD Shipping Division demonstrated the seriousness of this possibility during its 1979 meeting in Manila when it passed a resolution proposing the extension of the Code to cover the bulk trades and to restrict or phase out open-registry shipping as a long-term goal.<sup>177</sup>

Resolution 120 (V) adopted by UNCTAD in Manila gave a mandate to the Secretariat to conduct studies on the desirability of phasing out open-registry shipping operations, and to study the feasibility of establishing a mechanism for the regulation of open-registry fleets.<sup>178</sup> The resolution recognized, in part, the right of countries to participate in the carriage of cargoes generated by their own foreign trade, especially in the bulk sector.<sup>179</sup>

More recently, UNCTAD, at its Third Special Session of the Committee on Shipping, held in Geneva May 27 - June 6, 1981, adopted, by a vote of 49 to 18, a resolution that called for:

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has not. At the end of April 1981 there were 51 Contracting Parties to the Convention with a total tonnage of 14.7 m grt, equivalent to 20.29 per cent of the relevant world fleet. OECD, Maritime Transport, 1980, pp. 17-18.

<sup>175</sup> Juda, pp. 500-501.

<sup>176</sup> 90 per cent of the world bulk and tanker fleet is beneficially owned in the developed states. Juda, p. 503.

<sup>177</sup> Abrahamsson, p. 15.

<sup>178</sup> Juda, pp. 508-509.

<sup>179</sup> Ramsay, p. 65.

. . . the present regime of open registries be gradually and progressively transformed into normal registries by a process of tightening the conditions under which open registry countries retain or accept vessels on their registers so that they will be capable of identifying owners and operators and making them accountable for all shipping operations including the maintenance of standards and the welfare of their crews.<sup>180</sup>

The vote was unusual in that it was taken without regard for the UNCTAD tradition of consensus voting. Not one of the industrialized states present voted for the resolution. Liberia voted against the resolution while Panama abstained in opposition.

The June 6, 1981 resolution recommended that an Intergovernmental Preparatory Group (IPG) be convened to propose a draft international agreement on manning, management, equity participation, and identification and accountability of owners and operators, for adoption by a United Nations Conference of Plenipotentiaries. Such a conference would be convened to draft an international convention to establish rules of vessel registration. The concept of a genuine link between the ship and its state of registry would be central to such a convention.<sup>181</sup>

<sup>180</sup> "UNCTAD Votes to End Flags of Convenience," UNCTAD Information Unit, TAD/INF/1266, 9 June, 1981, p. 1.

<sup>181</sup> Ian Middleton, "West and Third World - No Genuine Link at Geneva." Seatrade, vol. 12, No. 5 (May), 1982, pp. 15-16.

A meeting of the IPG took place this past spring amidst much speculation and uneasiness. The United States, for one, did not participate on the grounds that vessel registration is a national concern.<sup>182</sup> Michael Fielder, spokesman for the industrial countries in attendance, warned that banning open-registry shipping could be damaging to the trade and maritime interests of all nations. Mr. Fielder is also reported as saying that the industrial group countries would offer a new proposal designed to improve accountability as well as to widen international standards of safety, pollution, working conditions and social conditions.<sup>183</sup>

<sup>182</sup> Liberia and Panama refused to participate in the IPG conference, which met from April 13 to April 30, 1982 to discuss the UNCTAD draft convention proposed to establish a 50 per cent shipowning equity for the country of registry and 50 per cent of the crew be from the flag country. Bruce Bernard, "Open-Registry Debate Commences in Geneva." Journal of Commerce, April 14 (Wednesday), 1982.

The key issues before the IPG meeting were manning, equity participation, identification and accountability, and measures to protect the countries which supply maritime labor. There was agreement on the issues of accountability/identification, and the protection of labor supplying countries. But on the issues of manning and participation, the two sides were far from agreement. Another meeting of the IPG is scheduled for November at which time the disagreements will be reevaluated. Ian Middleton, "West and Third World - No Genuine Link at Geneva." Seatrade, 12, No. 5 (May), 1982, pp. 15-16.

<sup>183</sup> Bernard Lovell, "New Split Feared on Open Registry." Journal of Commerce, April 12 (Monday), 1982.

## CONCLUSION

Whatever progress made by national governments, labor organizations, seafarers' welfare agencies, or the International Labor Organization in the promotion and well-being of merchant seafarers in the past is now in jeopardy more so today than ever before due to the existence of substandard shipping practices.

It may be mistakenly assumed by some that the days of the bucko mate, rotten conditions and helpless seamen disappeared some time ago; that seafarers are all well paid, well fed; that they work short hours and under conditions of luxury and comfort; that ships are new and well appointed; that seafaring has become a choice profession with few openings. The truth is, however, that while conditions have improved in general, seafaring remains an arduous, monotonous and dangerous occupation. Alcoholism, depression, suicide, and isolation from the mainstream of human activity are frequent occupational hazards contributing to the lack of continuity of employment, and to a heavy turnover in personnel. Seafaring, for many, remains a temporary occupation and not a life long vocation, if it can be avoided. Many of those who remain are often embittered by the experience, and have feelings of missed opportunities.

The existence of substandard shipping practices only compounds the negative circumstances of seafaring, particularly so because it seems to affect those least

able to protect themselves; because it affects those who are politically, economically and socially disenfranchised by war, civil strife or economic circumstances beyond their control; because it affects those who have lost a degree of protection afforded by their national governments when they become guest workers in foreign countries.

Conditions of international ocean seafaring have changed dramatically with the fortunes or failures of national economies; with the development of national merchant fleets or their collapse; with technological change. The dramatic rise in world seaborne trade, and open-registry shipping have preserved the need for seafarers, in general, although there has been a dramatic shift in the source of supply. More seafarers now come from the southern European countries than from northern European or from the United States. The trend is towards employment of more seafarers from the developing countries, especially from the Asian Pacific basin nations.

The age-old concept of freedom of the sea has contributed and encouraged the expansion and development of world trade. It has also permitted and encouraged shipowners to register a ship under the laws of open-registry countries. Shipowners from developed countries in search of ways to reduce their expenses or to protect their flexibility of management have sought out these registries, and have defended their existence, often in opposition to the interests of their own national governments or merchant marine, although they claim otherwise.

Although substandard shipping knows no flag, the flexible circumstances of open-registry shipping lends itself to the designs of the unscrupulous shipowner, and it is little wonder, then, that the majority of complaints are lodged against such flag vessels. Seafarers, jealous of their jobs, find it convenient to attack the worst aspects of open-registry shipping, confusing an already confused issue. To the extent that the rights of seafarers are abridged by the existence of FOC shipping is statistically impossible to verify at this time, but there is cause for concern.

Those legitimately concerned with the well being of seafarers would do well to begin their work by seeking to eliminate substandard shipping practices through enforcement of existing international labor and safety standards, and by encouraging implementation of port-state control of shipping along the lines recommended by IMCO and the ILO. Attacking the broader based issue of open-registry shipping would appear to be misguided if the real intention is to eliminate unsafe or unfair labor conditions.

National governments of non-FOC Third World countries see open-registry shipping as a deterrent to the promotion of their own national fleets since beneficial ownership remains in the hands of the nationals of developed countries. The phasing-out of FOC shipping is seen by the unwary developing country as an opportunity to benefit quickly from the redeployment of shipping services, but

economic studies have warned that the expected gains will not necessarily be realized by all the developing countries, and that the cost for shipping services could actually rise for all nations rather than going down as some would argue.

The international seafarer, unfortunately is a disenfranchised spirit in the world of international shipping, and a pawn used by the proponents and opponents of open-registry shipping. Until there can be a settling out of the disturbances in the world of international shipping; until there can be a true evaluation of the facts, the sea of turmoil that exists will continue to be clouded by charges and counter charges; of half-truths and misrepresentations. Those legitimately concerned with the circumstances of their employees; with national seafarers; with the seafarer as an individual; with the rights and dignity due any individual, should seek to promote safe, stable shipping circumstances at sea, and to work to eliminate substandard shipping practices wherever they exist.

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Appendix 1

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Seafarers' Rights Project  
Paul K. Chapman, Coordinator

Of the more than 100 ships that come into our port each week, the vast majority are well-managed and provide a satisfactory work place for the officers and crew. On a few there are problems which must be addressed.

Here follows a catalogue of the kinds of problems that we encounter on these poorly run ships, and ships that have problems in port, together with examples from many ports of how the seafarers are affected. The selection of examples is to illustrate the range of problems, and not the frequency of the type of problem or the flag of registry. A poorly run ship is apt to have many problems, but the most frequent are compensation disputes.

Paul K. Chapman, Coordinator  
SCI Human Rights Project

[September 1981]

Appendix 1 - cont.

## TYPES OF PROBLEMS ON BOARD

1. Finding Employment
2. Compensation disputes
  - a. Basic wages
  - b. Overtime
  - c. Holiday, vacation, subsistence allowance, bonus and weekend pay
  - d. Pay for special work
  - e. Deductions from pay, eg. NAT
  - f. Sickness, disability or accident compensation
  - g. Allotment problem
3. Hours
  - a. Long hours
  - b. No vacation, holiday, weekend
  - c. Work not normally required of seafarers
4. Contract (Articles)
  - a. No contract
  - b. Signing plank papers or papers one can't read
  - c. Secret agreements and disclaimers
  - d. Broken contract, unjustified discharge
5. Termination problem
  - a. Problem signing off
  - b. Repatriation problem
6. Ship safety
  - a. Fire drills
  - b. Life boat
  - c. Unseaworthiness
7. Living conditions
  - a. Food, water
  - b. Sanitation, linens, cleanliness
  - c. Personal belongings and security
8. Human relationships
9. Port problems
  - a. Federal authorities
  - b. Privacy and security on board

Appendix 1 - cont.

FINDING EMPLOYMENT (1)

deposition Jan. 19, 1980

"I finally got my job on the Dona Rita but it cost \$800. which was demanded by the employment agent on Akti Miaouli in Piraeus. At \$300. a month I could pay that off in just under 3 months. But when three months were up, the captain put me off the ship for no reason in Caracas. I have a valid one year contract and want to keep working. So far I've worked for 3 months with no pay."

Chilean seaman

Panamanian flag

FINDING EMPLOYMENT (1)

"Geo" Article by C. Jungblut

"In Piraeus, to find a job an unemployed seaman has to go through one of the hundreds of shipping masters or agents in the city...I was told by one of these latter day crimps to be at his office at 10 a.m. I arrived and was put off until noon. Then I was told to return in the afternoon, at which time I was casually put off until the next day.

"He was teaching me a lesson; no commission no ship - that was the rule. He leaned across his desk close enough for me to count the bristles of his beard and quietly named his price--'20,000 drachmas? he said. 'You must understand, we get the smallest share of the pie. 5,000 go to the crew manager of the shipping company, who will move your application from the bottom of the pile to the top. 6,000 are for the port captain of the shipping line to get him to give you a good ship. 5,000 go to immigration so they will take care of the passports. Only 4,000 are for us.'"

German "seafarer"

Panamanian flag

COMPENSATION (2a.)

Ship visitors' report: June 23, 1980

"Mr. Kan Fon Shiah, an engine room fitter from the M.V. Craigwen, British flag, berthed at the Sugar & Syrup facilities in Yonkers, complained about the fact that 8 Hong Kong Chinese aboard this ship were being paid on a lower scale of wages than other crew members doing the same job where countries were South Yemen and the Cape Verde Islands."

Hong Kong seaman

British flag

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U.S. District Court petition: Aug. 25, 1980

"The defendants, MV Transworld Sailor, et. al., failed, refused and neglected to make payment of the wages due to said plaintiffs, said wages, upon information and belief, being in excess of \$150,000.00."

Filipino seamen

Greek flag

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COMPENSATION (2b. & c.)

July, 1981 deposition

"As the secretary to the captain, I had access to the true wage records of the officers and crew...The master required me and other officers and crew to work 12 hours on and 12 hours off per day while the ship was in port. While at sea I and the other officers were required to work eight hours on and eight hours off. These hours we were required to work every day including Saturday and Sunday (84 hours a week). At no time was overtime ever paid to officers or crew. (Third mate received \$455. a month and \$30 ITF bonus. O.S. received \$210. a month plus \$30 ITF bonus--about 70¢ an hour."

Filipino seaman

Panamanian flag



## COMPENSATION (2e.)

5

Letter: Oct. 28, 1980

"Some anomalous and unfair practises on board are, deduction from our wages of some amount for the Greek Seamen's Union in which we are absolutely not benefitted of its Collective Agreement regulations. Deduction from our wages some \$200-\$350 every three months which foreigners are not supposed to be deducted for this is exclusively for Greek nationals."

Chilean seaman

Greek flag

## COMPENSATION (2f.)

Letter: Jan. 21, 1981

"I have worked for the company for 6 years without any problems in the past. I was working on the Elizabeth Oldendorf for 3 months when I was taken ill. I left the ship Oct. 19, 1980 in the U.S. at the port of Tampa, Florida due to my illness. I was seen by a doctor there who advised me to go into hospital. He had written me a letter which I took to the captain of the ship who tore the letter up and did nothing to help me."

Portuguese seaman

Panamanian flag

## COMPENSATION (2g.)

Letter of Sept. 8, 1981

"I've had this problem with the company once before. The pay slip of March 8, 1981 says that the company sent 125,000 Greek drachmas to my account in the Bank of Commerce in Trinidad, and on Oct. 9, 1981 they sent 80,000 Greek drachmas. But I have a telex from the bank saying they never received the money. The captain says that as far as he is concerned, I've been paid. What do I do now?"

Trinidadian seaman

Greek flag

CONTRACT (4a.)

Deposition of a seaman - Oct. 1980

"Trying to find work in my country is very difficult. In April 1980 I was employed by the captain of the Wauwinet (Grand Cayman registry). He agreed to pay me \$120. monthly for 60 hours a week as an oiler, plus 85¢ an hour for overtime, but there is no contract. I have seen no papers; I have signed nothing. I get paid every month. I know nothing about how long I will be on this ship, or any benefits."

West Indian seaman

Grand Cayman flag

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CONTRACT (4b.)

Deposition taken in July, 1981

"I first went to sea in 1973 on the M/B Buntai as an apprentice. About 11 months later I left that ship for another where I worked as an ordinary seaman. I then joined a succession of ships in various capacities being promoted over this period to the rank of Third Officer after a period of 8 years.

"I was recruited in September 1980 for the M/S Sun Castor by Northeast Shipping Agency Corporation; the manning agency in the Philippines and they arranged for my N.S.B. clearance and for transportation to Japan to join the ship. Before I was allowed to leave the Philippines, I had to sign a blank piece of paper which I also dated the 19th of September, 1980. Had I not signed this paper I would not have been allowed to leave the Philippines. This requirement was enforced strictly by the manning agent."

Filipino seaman

Panamanian flag

## CONTRACT (4c.)

Deposition July 1981

"Prior to arriving in European waters, the radio officer and the second navigating officer, both of whom are Chinese, advised the crew that the master would be approaching them to ask them to sign a paper saying that they were receiving ITF wages and warned them that before they signed for ITF pay they should make sure that they were receiving a guaranteed sum of \$30. every month since March, 1981. To the best of my knowledge, all members of the crew have received \$30. every month, because they were signing for ITF wages which in fact they were not receiving."

Filipino seaman

Panamanian flag

## CONTRACT (4d.)

Letter: March 28, 1980

"I am an Indian serving on international ships. After having worked for 3 years on Indian ships, I joined a Kuwait flag ship through a Bombay agent on the 26th of October, 1978 as Third Navigation officer. I signed a contract (for U.S. \$400 a month) with the company in Kuwait where I worked for just a week as third mate when just before sailing I was called by the master on board and was told that I was not required as 3rd mate and that I have to work as an AB seaman (for \$160. a month) or pay my own passage back to India."

Indian seaman

Kuwaiti flag

TERMINATION (5a.)

Letter: Sept. 19, 1980

"We the above 3 seafarers had been on board the M/V Assomatos more than 24 months, 18 months and 26 months respectively. On the 20th of June 1980, on reaching Bandor Khomeini, Iran we wrote an application to sign off. According to the master of the vessel, our request be carried forward to the next port, Durbar, S.A. Then we arrived at Durbar. There once again we are very pleased to the master on signing off, with the result we are not granted. At Durbar the agent vessel's agent transfer us to the local authority, where we were imprisonment for nine days together with the criminal cell. Is this what we receive after many months of excellent services on vessel?"

Indonesian seamen

Greek flag

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TERMINATION (5b.)

Letter: April 8, 1981

"The vessel (M.T. Polyvos) sailed from Tubarao to Sãa Sabastias, onwards to Paranagua and then back to Tubarao, all that time sailing without a radio officer.

"As a responsible radio officer and accountable for life at sea, I had to report this matter to the Port Captain and the Coast Guard. The authorities agreed wholeheartedly with me and severely reprimanded the master of the vessel, also with a fine...

"As a result of this action taken by me, the master tried to get his own back on me in revenge by refusing to pay the balance of the salary, refusing to pay leave money due to me and had me repatriated from Brazil by the federal police with a banning order not allowing me to make a telephone call...I was escorted to the plane by the agents and federal police and had to fly from Vitoria to Rio, to Geneva, to London, to Dublin without a single piece of currency in my pocket. I was not allowed to say good bye to my wife and my 2 sons who were also left penniless (in Brazil)."

Irish seaman

Greek flag

SHIP SAFETY (6b.)

9

Letter: March 13, 1981

"The life boats are completely not good, all the four life boats with holes, not one hole but many holes, and all the lines are broken."

Ghanese, Turkish & Yugoslav seamen

Panamanian flag

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SHIP SAFETY (6c.)

Letter: Jan. 19, 1981

"We want to sign off from MV Kimolos because of the following reasons:

1. The M/V Kimolos is not sea worthy and if we work again in this ship we may have to lose our lives.
2. Hatch No. 5 has developed a 9-inch crack about 15 days back and it was so severe that the ship was about to sink. It was plugged by the Nautical Diving Services of Bermuda.
3. The Bermuda Chronicle has published in the front page about the news of the condition of the ship "Sinking Ship allowed to anchor off at East end." The crew had no sleep and no food for at least 10 days.
4. After Bermuda the crack again developed and the hatch was full of water and the ship would have been abandoned and the crew would have lost their lives but for the timely help of the U.S. Coast Guard who dropped five pumps for us.
5. The crack could have been from overloading of 2,000 tons more of cargo beyond the maximum of 18,000 tons.
6. Other conditions of the ship are quite alarming. The anchor has not worked in many weeks. There is no firefighting equipment; the ballasts pumps are not working; the life boat is not in good condition."

Pakistani seaman

Greek flag

## LIVING CONDITIONS (7a.)

Report of Commission for Filipino Migrant Workers - June 2, 1981

"For ten months the Saudi Independence has been sailing as a hunger ship. Despite repeated requests of the crew for adequate and varied food, the shipowner has refused the crew's request.

"The ship sailed from port to port, from Jeddah to Piraeus, to Antwerp, to Bremen, etc. The shipowner always promised that the food supply would be replenished in the next port. But already after some weeks, the captain at that time was dismissed because of his efforts to improve the food situation on board the ship. His place was taken by a Filipino captain. Soon after he was sent back to the Philippines for the same reason. Later, during the second trip to Europe, the Filipino first mate was also dismissed after making a complaint over radio on the lack of food. Finally, the radio officer was also dismissed.

"The need became so great that the crew had to improvise making a fish net to try to catch fish and supplement their meager rations of food with fish.

"At the same time, the shipowner very shamelessly sent a telegram ordering more savings and limitations on food supply. There was in fact no food supply."

Filipino seamen

Saudi flag

## LIVING CONDITIONS (7a.)

Letter: April 30, 1980

"On the 7th of April the chief mate complained that there is a lack of fresh water and he rationed each person two buckets of water to take a bath. We have no water to wash our clothes and we are wearing dirty clothes and even for that chief mate said he is charging a penalty for a person who comes dirty to the mess room. As we came near to Taiwan on the 19th of April the chief mate said we can use fresh water as normal and again on Sunday the 20th he closed the fresh water again and rationed 2 buckets per person. Sir, between time (April 18) the chief mate gave the order to the deck people to wash the deck with fresh water for 3 days (April 18, 19, 20) but there is no water to take a proper bath."

Sri Lanka seaman

Panamanian flag

LIVING CONDITIONS (7b.)

11

Letter: August 12, 1980

"Bed sheets are normally changed once in a month, whereas towels we use our own, and washing soap/bath soap we buy from canteen on payment...If any crew member complains against old bad food company's reps or our supervisors stop our overtime and threaten us to be signed off."

Sri Lanka seaman

Singapore flag

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LIVING CONDITIONS (7c.)

Excerpt from ship visitor report: Aug. 22, 1981

"Kazal Saha was transferred from the Concordia Venus to the Concordia Tarek. In the transferring process and because of customs regulations, Saha had to leave some of his personal effects behind. He was promised that when his vessel reached New York his personal effects (one radio cassette, one radio TV, one Yashica 35mm. camera and a few items of clothing) would be delivered to him. However, when Saha collected his personal effects on May 23rd or 24th he discovered his radio-cassette and camera missing. He duly reported this to the masters of Concordia Tarek and the New York agent, but got no satisfaction from either..."

Indian seaman

Greek flag

## HUMAN RELATIONSHIPS (8)

Letter: March 18, 1981

"I am from Pakistan, sailing as a marine electrician for 20 months. Vessel arrived in Belgium; crew went to Belgium ITF and ITF came on board 15 November 1980 and get settled their difference in pay. While this was happening I came to know that all money shall be taken back by the owner as he is sailing with the vessel secretly. I was afraid to face the consequences. Soon after we passed the first lock bridge in Belgium harbor, one Indian called by master on bridge. When he returned to accommodation he was shouting from pain and blooded all over and wounds I have seen in his head and his face. He was beaten with the barrel and butt of Browning shot gun."

Pakistani seaman

Panamanian flag

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 PORT PROBLEMS (9a.)

A letter to the Consul General of India: July 6, 1980

"Upon berthing of the vessel, M.V. Ratna Vandana U.S. Immigration officers boarded the vessel and issued landing permits to all but 3 officers. Of these 3 officers, one is cadet, one 5th engineer and one second officer. What's interesting is the cadet and 2nd officer have visited U.S. on previous trip and were allowed ashore and 5th engineer had come first time to U.S.A. The reason for denial of landing permit is not known and immigration officer, according to him, has used his discretionary power in denying landing permits to the above officers. All these 3 officers have good characters and conducts."

Indian captain

Indian flag

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 PORT PROBLEMS (9b.)

"It's the longshoremen. They take over in the lounge; they demand food and drinks from the cook; they even go into our rooms. I hate this port."

Polish seaman



Appendix 2

ILO Conventions and Recommendations (Seafarers)

<u>ILO No.</u>	<u>Conference Session - Subject</u>	<u>Notes</u>	<u>No. of Ratifications As of Jan. 1980</u>
<u>Second Session (Genoa) 1920</u>			
7	Minimum Age (Sea)	- Revised No. 58	49
8	Unemployment Indemnity (Shipwreck)		45
9	Placing of Seamen		31
<u>Third Session (Geneva) 1921</u>			
15	Minimum Age (Trimmers & Stokers)		64
16	Medical Examinations of Young Persons (Sea)		64
<u>Ninth Session (Geneva) 1926</u>			
22	Seamen's Articles of Agreement		48
23	Repatriation of Seamen		32
<u>Twenty-First Session (Geneva) 1936</u>			
53	Officers' Competency Certificates		26
54	Holidays with Pay (Sea)	- Revised No. 72	—
55	Shipowners' Liability (Sick and Injured Seamen)		14
56	Sickness Insurance (Sea)		12
57	Hours of Work and Manning (Sea)	- Revised No. 76	4
<u>Twenty-Second Session (Geneva) 1936</u>			
58	Minimum Age (Sea) (Revised)		49

## Appendix 2 - cont.

<u>ILO No.</u>	<u>Conference Session - Subject</u>	<u>Notes</u>	<u>No. of Ratifications As of Jan. 1980</u>
<u>Twenty-Eighth Session (Seattle) 1945</u>			
68	Food and Catering (Ship's Crews)		19
69	Certification of Ship's Cooks		24
70	Social Security (Seafarers)	- Not yet in force	7
71	Seafarers' Pensions		10
72	Paid Vacations (Seafarers)	- Revised No. 91	--
73	Medical Examinations (Seafarers)		27
74	Certification of Able Seamen		20
75	Accommodation of Crews	- Revised No. 92	--
76	Wages, Hours of Work and Manning (Sea)	- Revised No. 93	--
<u>Thirty-Second Session (Geneva) 1949</u>			
91	Paid Vacations (Seafarers) (Revised)		21
92	Accommodation of Crews (Revised)		28
93	Wages, Hours of Work and Manning (Sea) (Revised)	- Revised No. 109	5
<u>Forty-First Session (Geneva) 1958</u>			
108	Seafarers' Identity Documents		39
109	Wages, Hours of Work and Manning (Sea) (Revised)		8
<u>Fifty-Fifth Session (Geneva) 1970</u>			
133	Crew Accommodation on Board Ship		12
134	Prevention of Occupational Accidents to Seafarers		15
<u>Sixty-Second Session (Geneva) 1976</u>			
145	Continuity of Employment (Seafarers)		9
146	Annual Leave (Seafarers)		4
147	Minimum Standards in Merchant Ships		7

<u>ILO No.</u>	<u>ILO Recommendations for Seafarers</u>
9	National Seamen's Code, 1920
10	Unemployment Insurance (Seamen), 1920
26	Migration (Protection of Females at Sea), 1926
27	Repatriation (Ship Masters and Apprentices), 1926
28	Labor Inspection (Seamen), 1926
48	Seamen's Welfare in Ports, 1936
49	Hours of Work and Manning (Sea), 1936
75	Seafarers' Social Security (Agreements), 1946
76	Seafarers' Medical Care for Dependents, 1946
77	Vocational Training (Seafarers), 1946
78	Bedding, Mess Utensil and Miscellaneous Provisions (Ship's Crews), '46
105	Ships' Medicine Chests, 1958
106	Medical Advice at Sea, 1958
107	Seafarers Engagement (Foreign Vessels), 1958
108	Social Conditions and Safety (Seafarers), 1958
109	Wages, Hours of Work and Manning (Sea), 1958
137	Vocational Training of Seafarers, 1970
138	Seafarers' Welfare at Sea and in Port, 1970
139	Employment Problems Arising from Technical Developments on Board Ship, 1970
140	Air Conditioning of Crew Accommodation. . . 1970
141	Control of Harmful Noise in Crew Accommodation and Working Spaces on Board Ship, 1970
142	Prevention of Occupational Accidents to Seafarers, 1970
153	Protection of Young Seafarers, 1976
154	Continuity of Employment of Seafarers, 1976
155	Improvement of Standards in Merchant Ships, 1976

**GROWTH IN MERCHANT SHIPPING  
(100 grt and over)**

<u>Year</u>	<u>No. of Ships (steam &amp; motor)</u>	<u>Tons, Gross</u>
1912	23 217	40,518,177
1920	26 513	53,904,688
1930	29 996	68,023,804
1939	29 763	68,509,432
1950	30 852	84,583,155
1960	36 311	129,769,500
1965	41 865	160,391,504
1970	52 444	227,489,864
1972	57 391	268,340,145
1974	61 194	311,322,626
1975	63 724	342,162,363
1976	65 887	371,999,926
1977	67 945	393,678,369
1978	69 020	406,001,979
1979	71 129	413,021,426
1980	73 832	419,911,700

Source: Lloyd's Register of Shipping. Statistical Tables  
OECD, Maritime Transport, 1980.

**GRT Lost as a  
Percentage of Total Fleet GRT, 1965-1976**

	Flag of conven- ience fleets <sup>a</sup>	Regulated fleets <sup>b</sup>	World average
1965	0.90	0.27	0.46
1966	1.08	0.25	0.48
1967	1.30	0.12	0.46
1968	0.80	0.13	0.39
1969	0.57	0.32	0.39
1970	0.51	0.17	0.27
1971	0.80	0.20	0.42
1972	0.62	0.07	0.35
1973	0.71	0.09	0.32
1974	0.43	0.16	0.28
1975	0.48	0.11	0.29
1976	0.67	0.08	0.31

**Table 20. Vessels  
Lost as a Percentage of  
Total Vessels in Fleet, 1965-1976**

	Flag of conven- ience fleets <sup>a</sup>	Regulated fleets <sup>b</sup>	World average
1965	1.8	0.5	0.7
1966	2.2	0.5	0.7
1967	2.4	0.5	0.8
1968	1.7	0.4	0.7
1969	1.5	0.5	0.7
1970	1.4	0.5	0.7
1971	2.0	0.4	0.7
1972	1.5	0.4	0.7
1973	1.3	0.4	0.6
1974	1.1	0.3	0.5
1975	1.0	0.4	0.5
1976	1.3	0.3	0.5

a Flag of Convenience Fleets include those of Liberia, Panama, Lebanon (till 1972), Cyprus, Somali Republic and Singapore. b Regulated Fleets include those of Japan, UK, Norway, USSR, USA, German Fed. Rep, Sweden and Netherlands.

Source: Lloyds.

## Open Registry Fleets, 1950-1978

Year	Liberia			Panama			World	
	No. of vessels	GRT ('000)	% of world	No. of vessels	GRT ('000)	% of world	No. of vessels	GRT ('000)
1950	22	245	-	573	3,361	4.0	30,852	84,583
1960	977	11,282	8.7	607	4,236	3.3	36,311	129,770
1965	1,287	17,539	10.9	692	4,465	2.8	41,865	160,392
1968	1,613	25,720	13.2	798	5,097	2.6	47,444	194,152
1970	1,869	33,297	14.6	886	5,646	4.8	52,444	222,490
1975	2,520	65,820	19.2	2,418	13,667	4.0	63,724	342,162
1978	2,523	80,191	19.8	3,640	20,749	5.1	69,020	406,002

Source: EIU, Open Registry Shipping, 1979.