

MARITIME TRADES DEPARTMENT

AMERICAN FEDERATION OF LABOR and CONGRESS OF INDUSTRIAL ORGANIZATIONS

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August 11, 2000

Hon. Peter Morris, Chairman
International Commission on Shipping
P.O. Box 162
Civic Square
Canberra ACT Australia 2614

Dear Chairman Morris:

The Maritime Trades Department, AFL-CIO (MTD) is an organization of 30 national and international unions dedicated to improving the wages, benefits and working conditions of workers worldwide and promoting a strong U.S. maritime industry. Since its inception in 1946, the MTD has worked to eliminate the main impediment to achieving these goals: the proliferation of the flag-of-convenience (FOC) system.

As stated in our submission, "The FOC system has created a worldwide fleet of derelict hulks rusting in ports around the globe, manned by sailors left to rot at sea while shipowners squabble over ... fines and port fees, or simply (file) bankruptcy."

Given the maritime industry's importance to international commerce, policymakers around the globe have a vested interest in ensuring that it remains fundamentally sound. The MTD applauds the efforts of the International Commission on Shipping to study the burgeoning problems surrounding the operation of substandard FOC vessels. We also submit our views on the current FOC system, including the MTD's recommendations on what steps are necessary to correct this situation.

The MTD believes that the global maritime community must take appropriate steps to ensure that substandard registries implement and adhere to international standards, regulations and norms.

The environmental, safety and humanitarian crisis at sea must be confronted. Maritime workers should be recognized as the important asset that they are, and steps must be taken to improve their wages, working conditions, skills and training.

In many ways, the maritime industry embodies the worst aspects of globalization. In one respect, however, it may enjoy a head start on other industries in the struggle to develop conditions that will permit maritime workers, regardless of nationality, to arrest the "race to the bottom" mentality permeating today's global economy.

Maritime was one of the first industries to experience the negative effects of globalization. It doesn't have to create a network of international organizations and procedures; such a network already exists. The problem is with enforcement. While many international organizations are doing fine work in promulgating rules, standards and regulations, few have the power to effectively enforce them.

Clearly, the international community must work on two different tracks. All governments must work together to strengthen organizations like the International Maritime Organization and the International Labor Organization by enhancing their powers to enforce existing rules, standards and regulations. And port states, individually and in regional associations, must begin by exerting more control to make it difficult for *any* substandard ship to ply the world's sea-lanes.

We hope that the MTD submission will assist you and your fellow commissioners in analyzing the FOC system as well as help in developing action recommendations that will enable us plot a course to reverse the industry's current decline

Sincerely,

Michael
Sacco
President



Frank Pecquex Executive
Secretary-Treasurer

CRISIS AT SEA

"The FOC system has created a worldwide fleet of derelict hulks rusting in ports around the globe, manned by sailors left to rot at sea while shipowners squabble over ... fines and port fees, or simply (file) bankruptcy."

—The Tampa Tribune



ICONS SUBMISSION

Maritime Trades Department, AFL-CIO

Crisis At Sea

We live in a time of great change, one marked by remarkable technological advances and by the rapid movement of capital, goods, services and people. Even so, oceanborne transportation remains the most efficient and cost-effective method of transporting goods and products on a mass scale; at last count, 90 percent of the world's trade was transported by sea.

Given the maritime industry's importance, policymakers around the globe have a vested interest in ensuring that it remains fundamentally sound. Unfortunately, the proliferation of flag-of-convenience (FOC) registries has created a structural crisis that is manifesting itself in numerous ways:

- A future shortage of suitably skilled mariners;
- An aging world fleet;
- A dramatic long-term increase in the number of accidents and lives lost at sea;
- Serious and chronic human rights abuses; and
- The inability or unwillingness of some flag states to implement vitally important international standards.

As one reporter recently noted, the FOC system has created "a worldwide fleet of derelict hulks rusting in ports around the globe, manned by sailors left to rot at sea while shipowners squabble over... fines and port fees, or simply (file) bankruptcy."

In short, what we have is a crisis at sea—an environmental crisis, a safety crisis, and, most importantly, a humanitarian crisis. It is the decided view of the Maritime Trades Department, AFL-QO (MTD) that the international maritime community must take action to deal with this problem.

What Is A Flag of Convenience?

In order to address the problems facing the international maritime industry, it is important to have some understanding of the FOC system.

Throughout most of the post-World War II era, nationality was the key factor in determining if a registry was an FOC. Most important was the relationship between the vessel owner and the flag of registry. If the nationality is not identical, the ITF is very clear in its treatment:

"Where the beneficial ownership and control of a vessel are found to lie elsewhere than in the country of the flag the vessel is flying, the vessel is considered to be flying under a flag of convenience. In other words, **no genuine link** exists between the nationality of the flag a ship flies and the country of its owner."

With the fall of the Soviet Union and the recent rise of hybrid registries which incorporate aspects of both traditional and FOC registries, defining an FOC or a substandard registry has become more difficult. Even so, several criteria for classifying an FOC registry remain constant:

- The country allows non-citizens to own and control vessels;
- Access to and transfer from the registry is unconstrained;
- Taxes on shipping income are low or non-existent;
- The country of registry does not need the shipping tonnage for its own purposes, but is keen to earn the tonnage fees;
- Manning by non-nationals is freely permitted; and
- The country lacks the power or willingness to impose national or international regulations on its vessel owners.

Of course, nontraditional, runaway flags have been part of the international maritime industry for as long as there have been traditional registries. But the very nature of the system underwent a dramatic transformation after the end of World War II.

Before then, most shipping companies that documented their vessels under runaway registries did so because they wanted to transfer to a neutral flag in order to avoid wartime requisitioning of their vessels or escape the neutrality laws of their own country. For example, when Congress enacted the Neutrality Act of 1939, many owners of U.S.-flagged tankers took advantage of existing loopholes in international law so that they could continue proscribed trade with England. After World War II, however, there was a different impetus for reflagging. Instead of looking to runaway registries as a temporary expedient to cope with unusual international situations, an increasing number of shipping companies realized that they could be used as a long-term mechanism to avoid paying taxes and evade any kind of health, safety, environmental and labor regulation.

In time, far-reaching changes in information and communications technology and transportation would allow many companies in the industrialized world to relocate their operations to low-wage and low-regulation nations. But for the first three decades after the end of World War II, this phenomena was confined to the maritime industry, which, by its very nature, was portable.

A Bad Situation That Is Growing Worse

The crisis in the maritime industry is being propelled by the growth and proliferation of substandard, runaway registries. The situation, already bad, is growing worse.

In 1998, the world merchant fleet set a new record tonnage: 532 million gross tonnage (mgt), an increase of 9.7 mgt over 1997. This increase was almost entirely due to an increase in FOC-registered vessels. In 1980, there were 11 runaway registries; today, there are 27.

Deaths and injuries in the international maritime industry are higher than they need be because of a pervasive lack of accountability inherent in the FOC system. Workers are routinely denied overtime and back pay, or left stranded in foreign ports. Moreover, unsafe shipboard conditions and inadequate maintenance and training procedures have created an epidemic of environmental disasters, many of which could have been prevented had some kind of meaningful enforcement mechanism been in place.

Consider the statistics. According to a recent study released by the International Transport Workers' Federation (ITF), at least five crews are abandoned by shipowners each month, with FOC registries having the worst record among flag states.

The figures actually are worse because many incidents go unreported. But between July 1995 and December 1998, at least 70 ships registered under the Panamanian flag were abandoned; the Maltese registry alone accounted for 20 such cases. Belize, Cyprus, Honduras, St. Vincent and Liberia each had five or more. In total, the ITF received notification of 199 such cases involving 3,500 individual seafarers.

Earlier this year, the *Tampa Tribune* ran a series of scathing articles on the plight of Lithuanian and Russian mariners who were stuck aboard the *Golden Star*, a 490-foot Panamanian-flagged vessel.

The *Golden Star* had limped into the port of Tampa in September 1998 after sustaining damages from a hurricane. Seventeen months later, the vessel was still there, and so was the crew.

Describing the conditions aboard the unrepaired vessel in a February 27, 2000 article, reporter Elizabeth Bettendorf wrote that the *Golden Star* "has become (the crew's) prison. They share it with cockroaches and sweltering heat" It had been six months since they last received any pay.

Horrendous as this story was, at least it had a happy ending. Thanks to the outcry caused by Bettendorfs account, the mariners received their back pay and were flown home. Many others are not so fortunate. Between 1990 and 1999, in the bulk trades alone, 99 carriers sank on the high seas with an ensuing loss of 645 lives. The numbers are so high because, at its heart, the FOC system is based on fear and intimidation.

For example, Filipino mariners, who make up about 20 percent of the world's maritime labor force, are blacklisted if they report unsafe conditions or press for back pay. No matter how deplorable or life-threatening a situation may be, a Filipino mariner will have his name and photograph circulated among manning agents if he makes any kind of complaint

Accidents involving FOC vessels have become so common that the U.S. Coast Guard has been forced to target certain high-risk registries for special attention. Many European nations also have adjusted their port procedures to deal with the problem.

Despite these and other positive developments, most port states aren't doing enough to ensure that the vessels entering into their territorial waters are meeting local or international standards. Moreover, without a comprehensive restructuring of the international system, the accidents, injuries, deaths, labor abuses, unsafe conditions and environmental damage will continue to mount

Individual nations can make a real difference, but this is a problem that must be addressed by the entire international community. The United States has a strong port state control program. However, the budget for the Coast Guard, the agency charged with marine safety and environmental protection, is being stretched thin among its many varied missions. Ship compliance and safety have to compete for funds with drug intervention, military support, humanitarian relief and conservation. The situation is exacerbated by the fact that merchant vessels generally spend only limited periods in port; even under the best of circumstances, it is difficult for officials to check all vessels to ensure total compliance.

Besides tackling the symptoms on the ground, the international community needs to get at the root cause, which is that the FOC system was created for the specific purpose of allowing shipowners to avoid taxes and escape any kind of meaningful regulatory oversight. The situation has been allowed to fester because the maritime industry is, in many respects, out of the public eye. Indeed, it is important to remember that much of the damage that the FOC system is inflicting upon the world community is happening outside any nation's territorial waters, far from any oversight. According to a Jan. 3 1999 article in *The New York Times*:

'The dumping of oil and other wastes by cruise ships, which can create lasting pollution problems in oceans and coastal areas, is more common than previously known. And it reveals an influential industry that has assembled an international lobbying force to plead its case...

"(Concern) is deepening that the industry's explosive growth is posing new threats to the environment, from the popular Caribbean to the pristine coastline of Alaska ...

"All major cruise ship owners... sail their ships under (runaway) flags. By registering with so-called foreign flags in exchange for substantial fees, the owners avoid American corporate taxes and can pay lower wages to foreign crews...

"Critics say (these savings) come at the price of muddled jurisdiction and lax enforcement".

In short, the FOC system has become synonymous with the exploitation of workers and the debasement of international standards. The situation is best summed up in the preface of a 1992 Australian Parliamentary Inquiry entitled "*Ships of Shame*":

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

According to the report, "the Committee was told of... the operation of unseaworthy ships (and) the use of poorly trained crews, crews with false qualification papers, or crews unable to communicate with each other or Australian pilots."

Moreover, there were numerous instances of "ships carrying false information, classification societies providing inaccurate information on certificates (and) flag states failing to carry out their responsibilities under international conventions."

Safety was routinely threatened by "careless commercial practices by marine insurers; inadequate, deficient and poorly maintained safety and rescue equipment; and classification societies that readily class ships rejected by more reputable societies."

Labor and human rights abuses were rampant. Evidence was found of the following:

- sexual abuse of young sailors;
- crews being starved of food;
- crew members being forced to sign dummy books indicating they had been paid much more than they actually had received;
- sailors being forced to work long overtime hours for which pay was refused;
- crew members being denied telephone contact when family members had died;
- sailors not being paid for several months and/or remittances not being made to their families at home;
- sailors being denied medical attention;
- crews being denied basic toilet and laundry materials.

Recent studies show that 80 percent of all maritime accidents are the result of human error. With conditions like these prevalent in the maritime industry, is it any wonder that death and injury rates are so high?

The Veil of Secrecy

In 1996, the *Sea Empress*, a Liberian-flagged tanker, was responsible for a catastrophic oil spill off the Welsh coast. Once again, a substandard FOC vessel had caused irreparable environmental damage on a widespread scale. In reporting the story, the *Independent* newspaper touched upon one of the most troubling aspects of today's maritime industry—the lack of any kind of accountability:

"Built in Spain, owned by a Norwegian, registered in Cyprus, managed from Glasgow, chartered by the French, crewed by the Russians, flying a Liberian flag, carrying an American cargo and pouring oil on to the Welsh coast. But who takes the blame?"

A good question. Under the present system, no one does.

Like many other FOC vessels, the *Sea Empress* was owned by what many legal authorities call a "shell" company. A large and prosperous shipping company from an advanced industrial nation, seeking to evade taxes and its country's minimum safety and labor standards, will redocument its fleet under an FOC registry. Once it does that, it often will go one step further and limit its liability by spinning off a number of one-ship companies with few assets beyond that one ship. The larger entity, of course, has de facto control over the smaller company. But proving that in court is extremely difficult.

Operating on a shoestring, the shell company doesn't have the money or inclination to invest in proper maintenance or training. Profits are siphoned into the larger entity, while the vessel in the sham company is run into the ground, or, to be more precise, into the sea. When an accident or environmental catastrophe does occur, which is all but inevitable given the conditions aboard some of these vessels, the shell company is sued for the damage. But even if it loses in court, justice isn't done. The shell company declares bankruptcy, claiming it doesn't have the money to cover the damages. The original entity does, but it is safely ensconced behind a corporate veil that refuses to be pierced.

There is a growing recognition of this problem. Earlier this year, participants at the Singapore Seminar on Quality Shipping agreed that transparency and the communication of information were important issues that needed to be addressed. In the byzantine world of international shipping, where progress in making substantive changes to existing procedures and structures is excruciatingly slow, this was a major victory. But unless the general public becomes aware of what is at stake—substandard vessels, inadequate training, labor abuses, deaths at sea and considerable environmental damage—we'll have countless more incidents like the one involving the *Sea Empress*. Last year, for example, the unspoiled beaches off the coast of Oregon were damaged and a number of near-extinct species almost wiped out in an accident involving a substandard FOC vessel, the *New Carissa*.

The veil of secrecy that pervades the FOC system is causing other problems as well. There are reports that some of the FOC-registered shell companies are being used for money laundering purposes by international crime syndicates. Indeed, a recent list of 35 unfair tax havens that the

Organization for Economic and Cooperative Development (OECD) released earlier this month contained a number of countries that double as FOC registries: Panama, Liberia, Vanuatu, the Bahamas, the Marshall Islands and others.

In drawing up the list, the OECD looked to see if there were any genuine links between the host nations and the foreign countries that had relocated under their jurisdictions. Other criteria included the following: whether or not a host nation had a minimal tax rate and if it gave foreigners breaks unavailable to its own citizens.

The existence of these unfair tax havens distorts legitimate worldwide capital and financial markets much the same way that FOC registries have distorted traditional maritime institutions and registries. Indeed, the elements for abuse are all there. Most FOC registries, including some of the largest (Panama, Liberia, Bahamas, Belize) do not require the provision of audited accounts. A number do not reveal the names of shareholders or directors. Where shareholders are named, nominees can be chosen that obscure the identity of the real owner. In this fashion, a company from an FOC jurisdiction is put into the chain between the beneficial owner and the ship. It is both easy and inexpensive for an owner to hide between a string of companies in order to obscure their identity and limit their liability.

In almost all FOC registries, there is a level of secrecy regarding shareholders which makes it very difficult to trace an owner. Even in high-profile cases involving the U.S. government, it takes months or years, if ever, to get the information. In this regard, anyone who goes up against the owner of an FOC vessel in court—everyone from indigent Third World mariners who are trying to recover months of unpaid back wages to the United States government—are on equal terms: sooner or later, they will run up against a brick wall.

Even when the identity of an owner is known, tracking down information or gaining access to a neutral court is difficult. When the U.S. government filed criminal charges against Royal Caribbean for environmental damage caused by an oil discharge from the company's premier resort ship, the *Sovereign of the Seas*, the company's immediate response was that "it is immune from criminal prosecution because its ships fly foreign flags." In the end, the U.S. government was only able to establish jurisdiction because it was able to prove that the company had made repeated willful misrepresentations to the Coast Guard.

In reporting on the case. *The New York Times* noted the "crucial witnesses, all foreign employees of Royal Caribbean, had left the company and either returned home or taken jobs with other cruise lines outside the United States." The same paper, reporting on a series of sexual harassment and rape suits filed by former employees and passengers who sailed aboard FOC passenger cruise ships operating out of Florida, underscored the same point: after a suit was filed against a company, potential witnesses had a disturbing propensity to leave UK ship and fly home, well out of the jurisdictional reach of U.S. courts.

The World Maritime Community

Before World War II, individual countries had the power to ensure minimum safety and labor standards. The rise of the FOC system after World War II decimated or weakened most traditional registries, at least in regards to international trade.

Though great maritime nations like England, the United States and Norway had their own particular regulatory standards and enforcement procedures, they all shared one important trait: they had genuine social and economic links with the shipping companies that were documented under their registries. As stated before, these links are absent between FOC nations and the foreign companies that rent their registries. While responsible for administering international standards under the 1982 United Nations Convention on Law of the Sea (UNCLOS), many FOC-flag states, generally speaking, have neither the will nor the resources to ensure that they are implemented. And while international maritime and labor organizations have addressed the problems of safety, marine pollution and conditions of employment, they usually don't have the power to ensure that the regulations they formulate are implemented.

Thus, generally speaking, it is up to the flag states to implement most international regulations. Unfortunately, under the present system, companies are free to pick and choose their own flags. Countries with no maritime heritage or infrastructure can just open their registries and put out a shingle for business. Competition is fierce. Even within the FOC system itself, more "established" registries must compete with upstarts for business.

Not surprisingly, this has led to a constant downward spiral in standards. For example, in reporting on the Royal Caribbean case mentioned earlier in this submission, *The New York Times* disclosed that disposing oil products in an environmentally safe manner can cost \$80,000 a year per ship. Disposing it safely in ports can cost \$300,000. The \$9 million judgement rendered against Royal Caribbean is the exception, not the rule: the case made the news because it is so uncommon for a major passenger cruise ship company to be held accountable for polluting the environment, lying to federal authorities and engaging in a systematic pattern to bypass pollution regulations. As long as FOC companies believe that they can engage in wrongful behavior and not pay any penalty for it, they will have no incentive to change.

The Royal Caribbean case underscores an observation made by the Organization for Economic Development (OECD) in a 1996 report on the international maritime industry. Its title pretty much says it all: *"Competitive advantages obtained by some shipowners as a result of non-observance of applicable international rules and standards."* If one of the largest and most profitable FOC companies operates in this manner, what about the sham, one-ship shell companies that are set up for the sole purpose of limiting liability?

Classification Societies

Before the rise of the FOC system, most nations with large international fleets had maritime infrastructures capable of ensuring that the ships flying their flags adhered to national and international standards. Most FOC nations have never developed this resource; instead, they hand over many duties traditionally associated with the state to agents in the private sector, most notably classification societies.

This has caused a number of serious problems. The classification industry remains highly competitive and, for the most part, unregulated. As the ITF has noted, there is an inherent conflict of interest built into the situation since "a shipowner can choose a classification society, which is then empowered to issue the statutory certificates on behalf of the flag state, which the owner has also selected."

While the International Association of Classification Societies has striven to improve standards within the industry in recent years, the results have been decidedly mixed, and, in some cases, catastrophic. Recent U.S. Coast Guard statistics show that detention rates for vessels that had received certificates from a core group of 15 "worst-case" classification societies was 16 percent, or one out of every six ships, compared with an industry average of 1.1 percent

Safety conditions among FOC fleets will never reach acceptable levels as long as FOC shipowners can switch registries, and, by extension, classification societies at will. It also is important to remember that classification societies enjoy limited liability. Thus, if a classification society fails to provide a shipowner with a certificate of approval, it runs the risk of losing his business. On the other hand, if a ship goes down or spills oil off the coast of a heavily populated area, a classification society will not be liable for any damage, even if it approved a patently unsafe ship.

A recent catastrophe shed light on the dynamic of the process. On December 17, 1997, the Panamanian-flagged *Albion Two* set sail from Antwerp loaded with steel products and general cargo, including hazardous materials. The vessel was bound for Kingston, Jamaica, but it never reached its destination. The vessel's structure underwent catastrophic failure some 40 miles west of Ushant. There were no survivors.

The **owners** waited two weeks after this date to report that they had not received any communication from the vessel. In court, they contended that a lapse such as this was "not unusual."

A Belgian court rejected the company's assertion that the sinking was caused by exceptional weather conditions and instead determined that "*the Albion* was affected by very serious corrosion problems, whereas the last owners restricted the ship's maintenance to the strict minimum."

Four things stand out about the case:

- The *Albion Two* was owned by a single ship company, Oinousses Navigation of Cyprus;

- It was flying an FOC flag (Panama);
- The owners refused to pay contractual compensation to the 14 Indonesian families represented by the ITF; instead, they insisted that the families sign “quiet claims” and confirm that they would not pursue any negligence cases; and, most tellingly,
- The Albion Two had been inspected by a classification society the year before and passed with flying colors.

Manning Agencies

The abuse and exploitation of mariners that is rampant in the FOC is reminiscent of conditions aboard U.S.-flag vessels before the advent of the modern seamen's movement

At one time in the United States, civilian mariners had a legal status little better than slaves. Before 1895, a seaman who "correctly" feared for his life had the right to leave a ship. Yet a seaman who feared "only" physical abuse from his shipmates did not. Reflecting the prejudices of his day, one 19th century judge wrote, "Seamen, as a class, are an injudicious group often given, on shipboard, to frequent and violent quarrels... A black eye, lacerations and bruises are not too uncommon a sight"

This institutionalized pattern of legal discrimination encouraged the worst kind of abuses. More than anything else, it was reinforced by the hiring system. In order to be employed on a ship, a seaman had to submit to the notorious "crimp" system, where the owners of bars and rooming houses were given liens on his future earnings.

Today, thanks to labor unions and a century of political and legal reform, mariners employed aboard U.S.-flag vessels are middle-class wage earners whose workplaces meet stringent safety standards. Routinely praised by Department of Defense officials for their professionalism and skills, they are an important national asset and treated as such.

Unfortunately, the same is not true for their FOC counterparts. If an American mariner from the 19th century were to read the 1992 Australian Parliamentary Inquiry entitled "*Ships of Shame*," he would find many similarities to his own situation: unsafe working conditions, unpaid wages. Mariners who are stranded in foreign ports and left to fend for themselves; workers who are fired if they dare talk to an ITF official about situations that might prove lethal. The average working American might find these things inconceivable, but a 19th century mariner would see in them the daily fabric of his own life. And, more than anything else, he would recognize manning agencies, which play an important role in the FOC system, for what they in many instances are: linear descendants of the 19th century crimps.

In order to be employed aboard most FOC vessels, a mariner has to enroll in a manning agency. As is the case with classification societies, these organizations operate in a mostly unregulated environment outside the scope of most international law. A handful of international conventions (ILO Convention 145 and *TLO* Recommendation 139), however, do outline important principles: labor markets should be linked to training; manning agencies should be run effectively, seamen's income and employment opportunities should be sufficient and regular. If the industry were to adhere to these principles, the international maritime industry would be a safer, more efficient and humane place.

Like their 19th century counterparts, the crimps, today's manning agencies want an easily controlled workforce. Over the past 50 years, the MTD and its affiliated unions have supported the ITF's campaign against substandard vessels and seafarer abuse. Time and time again, in American ports, we have seen Third World conditions and oppression transferred to our shores. Inevitably, workers who try to report unfair and unsafe conditions and practices to ITF inspectors are placed on a "watch list" No matter how justified the complaint, manning agencies will refuse to employ them.

No one document could accurately portray the countless daily incidents of abuse. Statistics, however, are enlightening. According to the ITF, of the 20,433 ships visited by its inspectors between 1996 and 1999, 9,672 had severe crew problems. During that same period, the union handled 3,273 cases of unpaid wages. Thanks to its efforts, nearly two-thirds of the cases were resolved in the workers' favor. Total amount of recovered back pay amounted to \$110,347,737.

But this is just the tip of the iceberg. During that same period, 4-8 percent of all crews expressed dissatisfaction with their situations, but were so afraid of reprisals from the company and the manning agency that they refused to file a complaint. And these were just the crews that were *willing* to admit that they were afraid.

The MTD believes that for obvious moral and humanitarian reasons, workers should have the right to bargain collectively to better their wages, benefits and working conditions. Under most traditional registries, that right is protected by law. But in the FOC system, that is not the case. And there's a price to be paid.

Maritime accidents and deaths will continue to soar as long as workers know that they might be fired for reporting unsafe conditions. Mariners who find themselves mistreated, underpaid or forced to work under questionable conditions will leave the industry. Workers who are treated like disposable units won't develop the kinds of skills needed to maintain a safe, efficient fleet.

In the United States, civilian mariners have access to federal and state run academies and jointly-run management-labor training programs that teach the latest techniques in vessel maintenance and operation. Properly trained, protected by a government committed to fashioning and enforcing stringent safety, labor and environmental standards, they have a stake in the industry's survival. By contrast, in the FOC system, manning agencies serve as middlemen between companies and workers, and, all too often, bad middlemen at that. Convinced that they have an endless supply of cheap labor, most FOC companies do not invest adequately in training. Crews who serve on their vessels typically do so under short-term contracts.

The consequences of these practices are just being felt. Recent International Shipping Federation surveys demonstrate that there is a shortage of suitably qualified mariners. The average age of officers is growing. That this is a problem in the FOC sector comes as no surprise. However, over *the* past two decades, *the* FOC system has forced nations like the United Kingdom and Norway to replace their traditional registries with hybrid ones. Fearful of this long-term trend, many workers, even those trained at state run or federally financed maritime academies, leave the industry. Many eventually make fine lawyers or business executives. Increasingly, they don't become captains or chief engineers.

To sum up, many of the problems associated with the FOC system stem from the fact that workers are considered disposable and that existing international standards are not being implemented. Until shipowners, whether they control a vessel directly or through a series of sham, one-ship companies, come to believe that they will lose their "license to operate" if they abrogate international norms, the crisis in the maritime industry will continue. Moreover, effective sanctions must be developed for all those in the chain of responsibility—charterers, cargo owners, banks and insurers. As Section 7.8 of the FAO Code of Conduct for Responsible Fisheries states:

"Without prejudice to relevant international agreements. States should encourage banks and financial institutions not to require, as a condition of a loan or mortgage, fishing vessels or fishing support vessels to be flagged in a jurisdiction other than that of the State of beneficial ownership where such requirement would have the effect of increasing the likelihood of non-compliance with international conservation and management measures."

That suggestion should apply to all segments of the international maritime industry, not just fishing. When reviewing proposals, banks and financial institutions should take into consideration all aspects of a company's business dealings, especially its record on safety and labor relations. Right now, in most instances, a bank will approve a loan if the scrap value of a vessel is enough to protect their financial exposure. As the OECD recently noted:

"A fully responsible lending policy could prevent the creation of companies that operate at the bottom end of the 'safety scale.'"

International Institutions and Standards

In many ways, the maritime industry exists well out of the radar screen of the general public. Mention the U.S.-flag merchant marine to an average American citizen, and the person, if he or she responds at all, will often confuse it with the U.S. Navy. Conversely, many of those associated with the industry like to think of it as an entity unto itself. The FOC system thrives on this state of affairs. As long as ordinary citizens remain unaware of what is happening in the international maritime industry, they won't demand change. Business can go on as usual.

It is incumbent upon everyone in the maritime industry to shed light on what is happening to FOC mariners, and to connect their plight to the plight of millions upon millions of land-based workers in today's global economy. The MTD has strongly supported the efforts of the AFL-CIO and international labor organizations to publicize the downside of globalization. Thanks to these efforts, trade and human rights are no longer separate subject matters; increasingly, they are being linked in the public's mind.

The same process of grass roots education is beginning to happen in the maritime industry. As evidenced by the recent successful worldwide voyage of the ITF's *Global Mariner*, the general public will respond to our message if it hears it. Increasingly, newspapers across the nation are carrying stories about abandoned FOC vessels and mariners. Over the past year, there have been front page stories about sexual harassment and marine pollution aboard FOC passenger cruise ships that operate out of Florida. Slowly, the general public is beginning to understand that human rights abuses, safety lapses and environmental damage are not just happening somewhere out there on the high seas, they are happening in their own communities.

It is a slow process, but it's already taking shape. As stated before, the international maritime industry embodies the worst aspects of globalization. In one respect, however, it has had a head start. Because of the nature of the industry, and because the maritime industry was one of the first sectors of the world economy to experience the effects of globalization, there is a network of international organizations and procedures and laws already in place. The problem is that many of those international organizations, while doing fine work in promulgating rules and regulations, do not have the power to enforce them.

The international community must work on two different tracks in confronting the crisis in the maritime industry. It must strengthen organizations like the International Maritime Organization (IMO) and the International Labor Organization (ILO) by enhancing their powers to enforce existing international rules and regulations. And port states, individually and in regional associations, must begin exerting more control.

Port state control and flag state control have been sanctioned through organizations like the IMO and ILO. These and other intergovernmental bodies promote a flag state's responsibility to implementing internationally agreed upon standards and a port state's enforcement of these standards.

Thanks to this trend, port state control officials are boarding FOC vessels to enforce IMO instruments governing safety, ship management, marine pollution and the training and certification of seafarers. However, there are limits to what individual port state nations, by themselves, can accomplish. For example, ILO Convention 147, which covers the health and safety of seafarers, has not been ratified by countries representing half the world's tonnage. And even countries that have accepted this resolution and others like it often use their powers to correct and eliminate intolerable shipboard conditions sparingly, and usually only when a vessel has been detained for other defects. All too often, local authorities are afraid to act because of the potential economic consequences of reduced port calls.

There is other good news on this front. The OECD Maritime Transport Committee has drafted a plan of action encouraging the adoption of various initiatives to combat substandard shipping. This intergovernmental proposal involves initiatives regarding P&I clubs, shipper inspection schemes, shipbrokers, ship financiers and transparency of information.

An IMO panel—the Subcommittee on Flag State Implementation (FSI Subcommittee)—is developing criteria against which the performance of a flag state's merchant fleet may be measured. Noting that the effectiveness of IMO safety and pollution prevention instruments depends upon flag state enforcement of their requirements, the subcommittee is identifying measures necessary to ensure global implementation of IMO instruments.

Furthermore, the proliferation of FOC vessels and the threat they pose to the global marine environment is being brought before the United Nation's Commission on Sustainable Development (CSD). Yet despite all the praiseworthy initiatives underway, governments, international organizations and the shipping industry itself have so far failed to eradicate substandard FOC vessels.

The proliferation of FOC vessels and other hybrid registries has reached epidemic proportions. The situation has become so dire that traditional maritime registries are endangered. Several years ago, Canada, once a major maritime nation, effectively repealed its cabotage laws and opened up its territorial waters to unsafe, substandard FOC vessels. In the United States, there is an effort by some to repeal the Jones Act. Some nations that once boasted proud maritime traditions, like Japan, the United Kingdom and Norway, have effectively transformed their international fleets into hybrid registries. This trend must be stopped, because traditional maritime registries are the most important protection against unsafe conditions in the maritime industry. In this area, the trend is not promising. Since 1980, the proportion of the world merchant fleet registered in developed nations has fallen from 51.7 percent to 25.7 percent, while the volume of tonnage registered with FOC registries has more than doubled.

In a related vein, if the world maritime community is to make headway in confronting the problems facing the industry, it must make the FOC system more accountable. FOC shipping companies should not continue to be self-regulating, nor should they be allowed to pick and choose their registries at will. There must be transparency of exchange and information. Adequate penalties must be imposed on those registries, manning agencies and classification societies that fail to meet minimum international standards.

Finally, any review of the international maritime industry must start off by acknowledging the importance of developing and maintaining a skilled and productive workforce. We have not yet reached the point where ships can sail themselves. Unfortunately, while much of the world has entered the 21st century, FOC owners seemed to be mired in the past. Conditions for many of the world's merchant mariners recall the words of Andrew Furuseth, the great American maritime labor pioneer, who once said:

"You can put me in jail, but you cannot give me narrower quarters than as a seaman I have always had. You cannot give me coarser food than I have always eaten. You cannot make me lonelier than I have always been."

It is important to remember that Furuseth uttered these words shortly before enactment of the Seamen's Act of 1915, the landmark bill that established the first meaningful protections for U.S. seamen. It was enacted 112 years after the first recorded seamen's strike in America and only 20 years after Congress finally determined that U.S. mariners were not legally bound to their ships. What this suggests more than anything else is that change is possible.

FOC companies are banking that the international maritime community is so dispirited that it won't press ahead to reform the present system. While much needs to be accomplished, a great deal of progress has been made in recent decades. All that's missing is for the international community to come up with a mechanism to implement and enforce standards and regulations that, for the most part, are already in place.

In addition to civilian mariners, the MTD represents many workers employed in non-shipboard trades, but they strongly support our efforts to reform the international maritime industry because they realize that the FOC system epitomizes all that is wrong with globalization. In many respects, the structural problems are even worse.

For example, when an American or Canadian company relocates an industrial plant to a Third World nation, at least there is some kind of connection between the government and the workers. Countries like Burma or China may not respect democratic rights, but at least the workers employed in these transplanted factories are citizens. But the merchant mariners who crew FOC vessels are, for the most part, foreigners who never even step foot in a host FOC nation.

Moreover, if the United States, which is the richest nation in the world, is finding it difficult to allocate the necessary resources to fund the activities of the U.S. Coast Guard, then what about nations like Vanuatu, Belize and Saipan? What kind of meaningful regulatory oversight can they exert over billion dollar companies that, with a stroke of a pen, are capable of transferring their vessels to a more accommodating registry? And what about a country like Liberia, which has one of the largest fleets in the world? Torn by civil war, it barely possesses a functioning central government; its citizens are being murdered by the thousands, often by government forces. Does anyone believe that the Liberian government is interested in the welfare of the Filipino or Ukrainian mariners who crew the vessels that fly its flag?

It would be, if the international community could agree on a meaningful enforcement mechanism. Since one hasn't been devised, port states, on an ad hoc basis, will have to fill the vacuum. Some are taking tentative steps in that direction; many aren't. Indeed, in dealing with one aspect of the crisis in the international maritime industry—marine pollution—the CSD recently recommended that the IMO and its Subcommittee on Flag State Implementation should:

"Develop, as a matter of urgency, measures, **in binding form**, where the members of the IMO consider it appropriate, to ensure that ships of all flag states meet international rules and standards as to give full and complete effect to the United Nations Convention of Law of the Sea, especially Article 91 (Nationality of Ships), as well as provisions of other relevant conventions."

Executive Summary and Recommendations:

Problem: A Crisis at Sea

The international maritime community is suffering from a grave structural crisis which is being manifested in numerous ways: a future shortage of suitably skilled mariners; an aging world fleet; a dramatic long-term increase in the number of accidents and lives lost at sea; serious and chronic human rights abuses; and the inability or unwillingness of some flag states to implement vitally important internationally agreed upon standards for the safety of vessels, crews and the marine environment.

The international maritime community must address this dangerous situation. The MTD recommends that it:

- Recognize the important role that the industry plays in the world economy and establish and enact policies that ensures its continued viability and structural soundness.
- Confront the environmental, safety and humanitarian crisis at sea.
- Establish meaningful incentives/measures to modernize the international fleet and reduce the alarming increase in maritime accidents and deaths.
- Recognize that maritime workers are an important asset and take steps to improve their wages, working conditions, skills and training.
- Participate in international organizations such as the ILO and IMO and strengthen them by enhancing their oversight authority in the enforcement of existing and future rules and regulations and by ensuring that they receive the proper resources to reach this objective.

An Underlying Cause of the Crisis: the Flag of Convenience System .

The current crisis at sea has reached epidemic proportions due to the existence and continued proliferation of the FOC system and other hybrid registries. In fact, the FOC system is endangering the very existence of traditional maritime registries. As noted in the body of this report, the FOC system has created "a worldwide fleet of derelict hulks rusting in ports around the globe, manned by sailors left to rot at sea while shipowners squabble over... fines and port fees, or simply (file) bankruptcy."

To combat the serious deterioration of the world fleet caused by this phenomena, the MTD recommends that the international community:

- Refuse to accept the culture of secrecy that surrounds the FOC system and take steps to make it more open and transparent
- Require that a genuine link exist between shipowners and the nations under whose registries they document their vessels.
- Take appropriate steps to ensure that FOC and substandard registries implement and adhere to international standards, regulations and norms.
- Acknowledge that conditions in the international maritime industry will never improve if owners are permitted to change registries at will.
- Restore accountability and establish effective sanctions to all facets of the FOC system, including registries, shipowners, classification societies, charterers, manning agencies, banks and insurance companies.

Moreover, civilian mariners are important assets and should be treated with dignity and respect. Unfortunately, labor and civil rights abuses permeate today's FOC culture; investment in seafarer training and development is virtually nonexistent. The MTD recommends that the international community:

- Pay attention to the human element in shipping. Chronic labor and human rights abuses that exist aboard substandard and FOC vessels should not be tolerated.
- Ratify and rigorously enforce ILO Convention 147, the ILO Declaration on Fundamental Principles and Rights at Work (1998).
- Make maritime training and strict enforcement of the IMO Standards of Training, Certificate and Watchkeeping a priority.

Flag State and Port State Responsibilities

Individual nations can play an important role in eradicating abuses aboard FOC vessels through both their flag state responsibilities and port state control activities. The MTD recommends that as flag states, individual nations:

- Provide agencies in charge of overseeing maritime safety, labor and governmental standards with the resources necessary to ensure that these standards are being met.
- Ratify, implement and enforce maritime treaties and obligations to which they are party.

- Support concerted actions by the IMO FSI Subcommittee to establish mandatory/binding international requirements for the quality of flag states and flag registries.
- Urge the IMO to develop, as a matter of urgency, measures in binding form, where the members of the IMO consider it appropriate, to ensure that ships of all flag states meet international rules and standards as to give full and complete effect to UNCLOS, especially Article 91 (Nationality of Ships), as well as provisions of other relevant conventions.
- Support actions by the FSI Subcommittee to ensure that flag states properly implement and enforce conventions that they ratify.
- Support actions by the FSI Subcommittee to establish a “white list” for nations that pass IMO scrutiny in the implementation and enforcement of their conventions.

Further, the MTD recommends, as port state control, entities, individual nations:

- Exercise appropriate and strict port state control measures in scrutinizing the movement of substandard and FOC vessels in their waters, including detention and denial of entry into its waters to any ship flying the flag of a chronic offending nation.