FLAGS OF CONVENIENCE: THE DEVELOPMENT OF OPEN REGISTRIES IN THE GLOBAL MARITIME BUSINESS AND IMPLICATIONS FOR MODERN SEAFARERS

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ABSTRACT

Flags of convenience, a tool developed by the modern maritime business to circumvent Western labor and tax regulations through international vessel registration, pose a significant risk to the well-being of global seafarer labor and contribute to the decline in prominence of American Merchant Mariners. When an American-owned vessel is outsourced via a flag of convenience, the owner is no longer required to follow American labor laws or pay American taxes, and this motivation is one of the most frequent reasons for the action. Often ignored by business leaders seeking to lower their operating costs, the seafarer suffers the most under a legal system chosen by his employer when he or she registers the vessel. While little attention is paid to this situation by the popular global labor movements, the issue touches all consumers, as we are end users of shipping every time we purchase a foreign-sourced item in a store.

As we will see, globalization itself was made by possible by open registry shipping, and open registry shipping was a self-inflicted wound on the industry. Flag of convenience shipping encouraged and enabled low-cost international sourcing of labor and manufactured goods by making it easy to swiftly lower transportation costs. An industry-wide motivation to keep shipping freight rates as low as possible

led to a complete disregard for all other concerns. Developed alongside the shipping container, we will see that the impact to labor was severe. Flags of convenience produce a shipboard environment free from guaranteed rights to bargain collectively or strike, and often have strained working conditions. These ethical considerations, along with all other aspects of the decision to outsource, will be explored in great depth in subsequent chapters. We will see first the perspective of the owner and the financial and operational motivations to flag out, followed by a detailed analysis of the implications for the seafarer. Concluding statements will discuss the impact on American labor in the future and possible opportunities for further action.

ACKNOWLEDGEMENTS

I would like to extend my sincere appreciation to all members of the Georgetown Library for their assistance in the completion of research. This thesis covered a topic not frequently addressed, and during the length of my research I always received prompt service and kind attention.

I would also like to thank my family for their support through this endeavor.

DEDICATION

This work is dedicated jointly to all seafarers, American and international, past and present.

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CHAPTER I

INTRODUCTION TO THE OPEN REGISTRY

Open registries are a relatively new innovation in the ancient trade of international shipping, yet are one of the most important developments since the creation of the steam engine. While open registries may serve many purposes in the developing world, in the developed world they were deployed and are frequently used as a tool by ship owners to outsource labor and circumvent safety regulations. In doing so, companies sought to drive the cost of moving goods as low as possible. This emphasis on lowest cost per unit shipped is central to shipping economics and has led to a revolution in modern transportation management, and the implications for American labor are far reaching.

Much like a car or a plane is required to be registered by its owner in a local jurisdiction, a ship must be registered with a local authority and a homeport declared. Ship registration is like all other vehicle registrations in the sense that the owner will pay taxes and abide by safety laws based on the jurisdiction in which the ship is registered (think of the difference between vehicle registries in the District of Columbia when compared to Maryland, for example). While there are some similarities between registry jurisdiction and nationality of owner, the development of the open maritime registry and its accelerated acceptance in international business over the past half century has created an environment where vessel owners can navigate away from expensive and heavily regulated jurisdictions and select instead registries where labor is cheaper, safety standards are more relaxed and environmental policy is less likely to be enforced.[1]

There are many characteristics of open registries, but for purposes of this thesis labor and safety will be the primary concern and investigative lens. When a vessel is flying a flag of convenience, she is most likely flying the flag of a country other than her origin and most certainly different from her owner's. The term flag of convenience, as noted in the introduction, is a customary layman's term for a vessel's flag when registered in an open registry. Open registries are countries typically "not involved in waterborne trade" that become maritime registers for vessels simply as a source of revenue.[2] While there are many states offering this service now, the practice was led in the 1940s and 1950s by Liberia and Panama, discussed in greater detail in chapter three.

The countries offering open registries allow maritime companies and individual ship owners to register their vessels in their ports often without ever setting foot in the country. Some states, to be discussed in greater detail in later chapters, even allow registry online. The revenue from vessel registration operations can be significant compared to other forms of income for a developing state.[3] This creates an interesting situation: ship owners, looking for a way to

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[1] James J. Buckley, *The Business of Shipping*, 8th ed. (Centreville: Cornell Maritime Press, 2008), 28.

[2] Ibid., 23.

[3] Khadija Sharife, "Flying a Questionable Flag: Liberia's Lucrative Shipping Industry," *World Policy Journal* (Winter 2010): 111-118.

decrease costs, can stimulate the budget of a developing state while reducing their own operating expenses. It becomes a gainful relationship for both. It is important to note that the open registries, while perhaps encouraging the outsourcing of vessel registration by marketing their relaxed regulations to ship owners, are simply responding to a demand from overseas shipping firms, a topic elaborated on in chapter three. Without this demand, it is unlikely that the open registry system would have developed.

The move toward open registries as an effective tool for reducing costs is driven by a style of maritime financial management focused not necessarily on quality of shipment method, but rather on lowest cost per-unit-shipped, as evidenced by trends showing percentage of freight as total cost of goods sold steadily decreasing as vessels are modernized.[4] Shipping is a fiercely competitive fixed-asset business, whereby the ship itself as the transport vehicle will not significantly increase or decrease the cost per unit shipped. Rather, reductions in overall freight rates come from reductions in operating costs such as labor rates and fuel prices. When shipping companies compete based on rates and service levels, frequently shippers will hire the companies with the lowest rates in their lanes. Aside from the cost of capital, which is determined at the initial purchase of the vessel, the operating costs are the only other significant cost that a ship owner can impact in hopes of attracting customers with lower rates.[5]

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[4]Martin Stopford, *Maritime Economics*, 3rd ed. (New York: Routledge, 2009), 75.

[5] Ibid., 223.

The most immediate result following registry in a flag of convenience state, after tax reductions for the owner, is the outsourcing of labor. An American ship owner will no longer need to hire American labor, and American seafarer jobs will be put at risk as they are forced to compete with South Asian and Eastern European wage rates. This will be explored in greater detail in later chapters.

Vessel Registration, the Shipping Cycle, and Freight Rates

In order to understand the impact freight rates have on vessel registration and decisions affecting income, it is important to first discuss the current global transportation system, beginning with the shipping cycle. Once the shipping cycle is clear, its impact on rates will become apparent.

Freight rates are central to the modern transportation system and global transportation management structure. Maritime shipping is a business based on cycles of derived demand, and these cycles can have lasting impacts on the life of companies engaged in trade. At its most elementary level, shipping by default "involves the physical movement of goods and passengers from ports of supply to ports of demand," implying that when there is a strong economy and demand for goods and travel shipping will boom and when the economic conditions worsen shipping demand will decrease significantly (relative to changes in demand).[6] As Stopford relates, shipping is also a very capital-intensive business, and as such the volatile swings in freight rates throughout the cycle can significantly impact the overall health of the modern transportation company.

[6] Buckley, *The Business of Shipping*, 8.

Rates are integral to the entire business model because simple economics dictates that, in general, product shippers, the shipping firm's customer (that is, the person hiring the shipping company to move their raw materials or finished goods), will select services based on overall value. In the eyes of a shipper, a shipping company is selling a service that can be outbid by another shipping company. This can easily create a freight rate war and a test of the strength of each company.[7] This was evident over the past two years as shipping company after shipping company filed for bankruptcy protection while rates collapsed in the tanker, container and dry bulk market. During this tense transportation market companies poached business from each other by reducing rates below operating costs to maintain market share as the cycle turned to one of collapse.[8] "These shipping cycles roll out like waves hitting a beach. From a distance they look harmless, but once you are in the surf it's a different story," notes Stopford.[9] While ships may be built for rough seas, their owner's finances are not always as solid.

In the midst of the downward part of the shipping cycle, sustainable rates and cash on hand are essential when determining the shippers who will survive and those who will not. This is easily observed when the cycle is simplified not in terms of months and years, but into key milestones. Stopford's four-prong shipping cycle

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[7] Niklas Magnusson and Christian Wienberg, "Maersk Shares Poised to Benefit as Overcapacity Overwhelms Rivals: Freight," Novermber 16, 2011, http://www.bloomberg.com/news/2011-11-15/maersk-shares-poised-to-benefit-as-overcapacity-overwhelms-rivals-freight.html (accessed July 15, 2012).

[8] Ibid.

[9] Stopford, *Maritime Economics,* 93.

definition captures the business as a whole and identifies four key points within the cycle:

1. Phase one: “trough”
    a. During the trough period, there is a surplus of freight capacity, and rates “fall to the operating cost of the least efficient ships,” ships which are taken out of the marketplace. The market will “stagnate” as a result, and investors will put pressure on the firms.

2. Phase two: “recovery”
    a. Finally, the freight rates will begin to increase to a profitable level and mothballed vessels will be brought slowly back into service. While not all companies are profiting, there are enough firms sustaining themselves to allow for a minor investor confidence in the industry.

3. Phase three: “peak”
    a. Markets peak when the global economy is strong and there is a significant increase in the demand for transportation services. This will lead to rates several times the operating costs of the vessels, and encourage owners to purchase more vessels (important to note is that the longer the peak, the more vessels they will purchase). Financial institutions also become much more interested in lending, using the skyrocketing rates as an indicator of the overall health of the industry.

    b. Older vessels will also trade at higher values, contributing to an “excitement” that is hard to contain.

4. Phase four: “collapse”
    a. The market will begin to strain as new vessel buildings come into the market and tonnage capacity is significantly increased. If this increase in available capacity occurs during a recession or stagnant economy, the market may not demand the vessels and rates will begin to react. Combined with ”confusion” by some owners, financial institutions will begin to react and restrict capital until the market begins to recover, usually alongside a demand in manufacturing or other industries serviced by the transportation industry.

    b. The cycle renews itself by returning to the trough period following an outright collapse.

Naturally, common sense dictates that a shipping company will attempt to structure its finances and freight rates to allow for the greatest flexibility when markets become difficult, but this is not the only important aspect of the modern business. Maritime companies will geographically structure themselves in order to achieve the lowest possible operating cost. This is where outsourcing of vessel registration becomes important. Shipping cycles create a great risk, placed on the shoulders of the ship owners for the most part. While it is highly unlikely, there is a chance for vessels ordered and constructed during phase three of Stopford's economic cycle to complete and enter the market during phase four of the market cycle, a period in which the ship owner will surely lose all or a portion of his investment.[10] During phase two and three of a shipping cycle the daily operating cost and taxes owed may not be as important, as the inflated freight rates are sufficient to cover all expenses. During phase one and four, a time when rates will be integral to survival, it is reasonable to expect the global shipping firm to hedge, seeking out lowered operating costs by moving their operations to a more favorable registry. They will also structure their transportation lanes to maximize economies of scale (a topic explained later in this chapter).

There have been several historic shipping cycles important to the United States' economy. One cycle worth noting while investigating the development of open registries is a collapse of the liner rates in the first half of the 20th century,

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[10] Stopford, *Maritime Economics,* 102.

resulting in a horrific market for ship owners beginning in 1930 and extending all the way to the 1940s and through World War II.[11] Around the same time that open registries became an accepted component of the ship owner's business model, the industry was reeling from a difficult collapse in trade and reduced return on investment. New widespread methods were needed to maximize return on investment, and one of these was the flag of convenience.

Determining a Freight Rate

Now that the importance of sustainable rates to the shipping business's decision model is clear, it is important to explain how exactly a rate is determined. While each shipping firm will have their own peculiarities and specifics that impact its rates differently, there are some key concepts that are applicable to all trades. For the purpose of this discussion and to limit the analysis to a manageable size, I will focus on determination of rates for tramp and liner shipments, the most common types of shipping that experience flag of convenience registration, and will exclude project cargo as it is beyond the scope of this thesis.

Tramp shipping is the term used to describe shipping bulk cargoes such as ores, heavy metals, grain, and oil. In tramp shipping, the customer will make use of the entire vessel for a voyage (similar to a citizen hiring an airport shuttle for his family). The tramp trade is the easiest type of rate to calculate because the rate is determined for each voyage. The tramp trade is also vulnerable to wide swings in market rates. This vulnerability makes it the easiest market sector to view the

[11] Ibid., 119.

potential for significant loss if a ship enters the market in an unfavorable rate phase as discussed above.[12] When a ship owner begins to negotiate a tramp charter agreement, they will have in their minds a clear idea of the operating costs of the vessel, as well as the desired profit (which, as is usual, will be viewed as a cost by the ship owner). Buckley explains this well by reminding first that a ship owner will view the "total cost of a venture" by the following equation: (Fixed Costs) + (Variable Costs) = (Total Cost). An additional preliminary analysis, the vessel's individual required basic rate to break-even is represented as such: (Total Cost) / (Tons Carried) = (Break-even rate per ton). The break-even rate per ton will be inclusive of things such as vessel mortgage payments, labor rates, bunker fuel expenses, provisions, and regular onboard preventive maintenance. This rate is essential to the decision to order more newly built vessels during phase three of the shipping cycle. An owner must feel that he can at a minimum secure this rate to keep his ship working and her crew employed when the market begins to progress to the next cycle. If he does not feel the rate can be achieved he will likely not purchase the vessel. As noted, during the recent collapse of the global shipping markets, it was not uncommon for vessels to be chartered out only at operating costs or in some cases below it. This number is absolutely essential to all vessel operation decisions.

Following the calculation of the break-even rate, an owner will next move to calculate his desired rate to charter his vessel to a shipper for movement of their

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[12] Buckley, *The Business of Shipping,* 330.

cargo. When markets allow, the owner will include a profit into his operating cost and determine the rate per ton as such: [(Total Cost) + (Required profit)] / (Tons carried) = (Quoted freight rate per ton).

The calculation of rates for container liner services varies slightly from the calculation of freight rates for tramp services, and for one important reason. When a shipper is chartering a vessel to move a cargo of grain or oil, that shipper is chartering to use the full cargo capacity of the vessel and will be charged as such. However, when a shipper is contracting with a shipping firm to ship containerized freight such as Christmas trees from China or garments from Bangladesh, the shipper is paying for a fixed space (the container) within the ship and will be charged for the full space whether they use it or not. There would not be a reduction in the rate for a shipper that contracted to move two 40 foot containers, but only filled 32 feet in each one.[13] This is a very important distinction as it allows the container company to have greater planning capabilities when filling the ship in terms of revenue generated, as the company will know precisely how much to charge each customer ahead of time to ensure at the minimum a break-even rate. Negotiations need not be made based on additional expenses per type of cargo, as may occur in a tramp market. The stevedore and longshoreman fees will be the same whether unloading a container of colanders or washing machines, full or half empty, while there would be different requirements when unloading iron ore compared to grain or sugar cane.

[13] Ibid., 336.

Organization of the Modern Shipping Market

Today's shipping market is truly a global business, not solely because of its primary task of transporting goods internationally, but also from a strategic and corporate standpoint. No longer is the business dominated by smoke-filled coffee shops in London, the waterfront offices of Athens or the skyscrapers of New York City, with owners shipping in predictable trade lanes and dictating by default where goods would move. Today's market is characterized by shipping lanes designed to reduce cost and achieve economies of scale in all corners of the world, and many of the biggest shipping companies in the world trading in America are no longer American owned. Today shipping capital comes from sources not typically seen in the industry a century ago. Growing and developing regions have created demand for new services. Internationalization at the corporate and strategic level is possible due to a formal, organized global logistics network developed and continuously improved over the past half century. This network permits a dependable system of trade. There have been many developments in the network such as airfreight and project cargo, but for this discussion we will focus on maritime trade as the others are outside the scope of this thesis.

Issa Baluch, a leader in the study and development of modern transportation networks, asserts unequivocally that a well-planned network is required for successful international development.[14] Baluch's transportation perspectives, split

[14] Issa Baluch and Charles H.W. Edwards, *Transport Logistics* (Raleigh: Ivy Hill, 2010), 33.

into five pieces, are the foundation for any industry-wide planning (not solely maritime). Baluch declared:

1. Transportation networks are systems of ". . . interconnected nodes that reflects a trade-off between efficiency and stability."

2. The location and the connection of each of the nodes are strategic and not left to chance. Value is increased as connections increase.

3. The ". . . hub's efficiency is based on achieving economies of scale"

4. Dominant hubs will emerge in a sort of economic natural selection, whereby the "winner takes all" as far as business is concerned.

5. Each network is dynamic, and must be cognizant of market demands to survive.

Note well that in Baluch's discussion of networks, a focus is again placed on achieving economies of scale, thereby driving down the overall cost of transporting a single good from origin to destination. Just as we see the motivation on the operating side aboard a vessel, selection of hub ports will also be determined by the cost added per unit, and the most cost effective hubs will become dominant. It is clear to even the most casual observer glancing at a map why Rotterdam might be a more attractive transshipment hub for vessels originating in New York and trading with Germany than Rome would be; the additional expense of unloading in Rome would render the cost per unit shipped unnecessarily high. Each line will develop its own transportation network based on the regions it serves and the demand of the customers, but there will be always be an overarching directive: keep costs low.

The transport model is designed to lower overall cost for all involved in each transaction and create a competitive system for the shipping line operating it.

According to Baluch, there are five main types of transportation system models that modern shipping companies employ in an effort to reduce costs and improve service, each used in a particular part of the world by particular actors. These are:

1. The "end to end" model, used primarily by railroads and coastal shipping in which freight moves from one end straight to the other.

2. The "loop" model, where a carrier moves goods in a circle, commonly used in a courier service.

3. The "hub and spoke model," where all goods move through a central hub, a model used by both maritime and air carriers.

4. The "least cost to user model" in which each node in the network is connected.

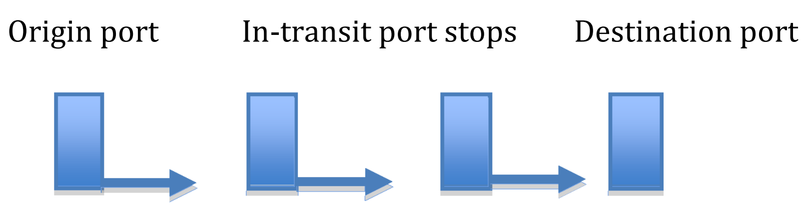
5. The "least cost to builder" network, in which the links are reduced and a "spine" is used to carry much of the freight.

Some are more successful than others at reducing costs. The two systems used most by maritime organizations to reduce costs, the "hub and spoke," and "end to end" will be explained below.[15] The other three models are not intrinsically applicable to maritime trade.

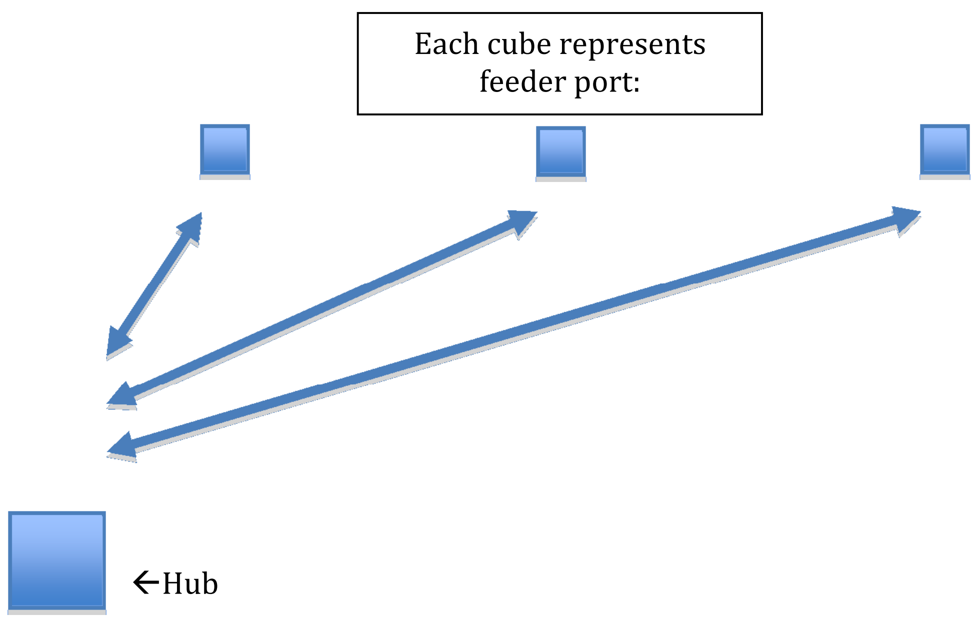
The first type of network employed by international shippers is the "end to end" model, so called because the goods transported move from origin to destination after passing through several hands. This type of model has higher

[15] Baluch, *Transport Logistics,* 35.

operating costs than other models because of the multiple stops the freight makes, but it is still used reasonably successfully in systems. An example of this system being employed by ocean carriers would be a vessel sailing for Singapore from the United States. This vessel might be reasonably expected to begin her journey in the Port of New York, and then make calls at Baltimore, Norfolk and Charleston before heading west through the Panama Canal towards Singapore. At each port of call, she would pick up more cargo for on carriage to Singapore, and the freight from New York and other ports earlier would be forced to wait a few days at each port while longshoreman loaded the additional goods. In intra-coastal shipping in the United States (referred to as cabotage), vessels calling successive U.S. ports must be registered in America and crewed by American seafarers, a point elaborated on in chapter five. For comparison, this system is also visible in railroads carrying goods to an ocean port or inland port. Graphically, it would resemble the below (author's diagram):



The next type of network that is seen most clearly in the ocean transport industry is the hub and spoke model, in which a central point is used to feed destinations away from it that may not be economical to trade with directly. Freight would move to the "hub" and from there be distributed to other locations. This can be seen in the barge systems many lines operate and the global transshipment business. For example, all freight originating in Asia for a particular line and heading for Dammam in Saudi Arabia (a port less traded than New York for example) might be brought to Singapore, and a single vessel loaded with cargo from many ships would be responsible for on carriage to the Saudi port. This results in significant savings as it prevents multiple vessels' need to sail from Papua New Guinea, Philippines or Korea half-full all the way to Dammam. Instead, one full vessel can sail there, reducing the cost per unit shipped. Graphically, this system looks like this, with product from two or more ports sailing to the hub and then all goods moving to a third port (author's diagram):



Each of these systems allows the modern ship owner flexibility in establishing a network capable of serving his customers at the lowest cost possible, while continuing to remain competitive from the standpoint of service levels, as represented by number of sailings and destinations served.

The Motivation Behind Lowest Cost Per Unit Shipped

We have seen that every strategic decision made by a modern, global maritime company is centered in reducing the operating costs of the vessel fleet in order to keep the cost per freight unit shipped as low as possible while still remaining profitable. The motivation behind this is clear: the customer demands it, and the shipper is demanding it because global consumers are demanding access to the lowest cost goods possible.

Manufacturers contracting with a container company for the movement of goods from China to the United States' West Coast will have a budgeted freight amount within their cost of goods sold that cannot be exceeded if the company is to remain in a healthy state and achieve its margin goals. The manufacturer is likely to be little concerned by the financial health of the liner and will demand that rates not exceed the budgeted amount. If the rates do exceed the predicted amount, the manufacturer will likely seek other liners to move the goods from Asia to the United States, kicking off a rate war.[16]

This response by the manufacturer cannot be treated as a self-centered position. It is the exact same response the manufacturer will expect from his end customer, the consumer, if his product price was to jump dramatically: the consumer would likely find another, more affordable version of the same type of

[16]Buckley, *The Business of Shipping*, 320.

commodity. The drive by consumers for lowest-cost-possible has impacted the maritime trade and is an important component of the move to outsource labor by flying flags of convenience. The ship owner is simply trying to ensure he is still able to offer the lowest cost product at the same level of quality as before, and remain competitive in an increasingly globalized trade.

CHAPTER II

TRENDS IN INTERNATIONAL SHIPPING

The twentieth century was a turbulent time for the shipping industry. Largely a labor-intensive, nationalist business at the beginning of the century, by the year 2000 the shipping business would not be recognizable to the owners and charterers of the early 1900s. The flag of convenience was not the only noteworthy development impacting seafarers; each introduction of new technology focused on lowering operating costs in the industry resulted in more American jobs lost at a time when the industry was already witnessing a decline in the demand for American sea-going labor. After understanding the impacts of cycles and rates on shipping business decisions and structure, key trends must be discussed in order to fully understand the context in which flags of convenience are deployed.

The internationalization of the American fleet is largely a result of the shipping industry's own successes. So successful at internationalization due to reduced costs and improved efficiency, globalization itself would not be possible were the international fleet missing. New technology and constant innovation in search of lowest operating cost resulted in new methods to contain goods, finance and plan the industry. Containerization dramatically altered the labor-intensive ship service industry, and new developments in global finance changed the way companies are structured.

Globalization and Shipping: an Interdependent Relationship

Shipping was essential to the globalization experienced during the twentieth century, impacting the standard of living and wage rates for workers across industries. In most modern business studies, shipping is viewed simply as a "facilitator" of economic development, but this myopic view fails to credit the transportation industry for creating the *ability* to effectively implement a truly global supply chain.[1] Upon close review it becomes clear quickly that without shipping, none of the effects of globalization, nor globalization itself, would have been possible. It is important not to discount this role by referring to it as only a secondary concern when it is referred to only as a facilitator and granted a cursory study.

Shipping was more than a facilitator to the outsourcing wave that hit the globe in the second half of the twentieth century. It is an enabler but also an encourager. Once the transaction costs and transport costs were lowered in other industries and trade barriers removed, manufacturing's boom around the world resulted in a significant demand for shipping. Raw materials and finished goods could now be sourced from foreign lands much easier and more affordably than before. This created a derived demand for vessels and shipping firms to handle the transportation of these products.[2] When the shipping firms were not only able to

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[1] Majbritt Greve, Michael Wendelboe Hansen and Henrik Schaumburg-Mueller, *Container Shipping and Economic Development* (Copenhagen: Copenhagen Business School Press, 2007), 10.

[2] James J. Corbett and James Winebrake, *The Impacts of Globalization on International Maritime Transport Activity* (Guadalajara: International Transport Forum, 2008), 7.

comply with these new demands but make them appear to be only minor concerns, the wave grew in force, and outsourcing was in full swing.

Maritime transportation in particular has been instrumental in the expansion of global trade. Governments around the globe began to reduce trade barriers and create a truly open system in which international business could operate, and manufacturing quickly became a global business.[3] As a manufacturing boom began to occur across the developing world in the second half through last quarter of the twentieth century, countries with access to cheap labor did not necessarily have access to cheap raw materials yet suddenly needed them. The quickest supply solution would have been to source using airfreight, a costly but rapid mode of transport. The "low unit value" of some of the goods manufactured in the developing world, however, would not support this mode of transportation, making maritime shipping a natural fit (particularly given that three-quarters of the earth is covered in water, making sea lanes effective from almost every corner of the globe).[4]

The global maritime trade system today comprises over 3,000 operating ports, with the busiest ports in North America, Western Europe and Asia.[5] Incredibly, it is now possible for a container ship traveling at 23 knots, an average speed, to circumnavigate the globe in a mere 47 days, the quickest since the

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[3] Ahmed El-Masry, Mojisola Olugbode and John Pointon, "The Exposure of Shipping Firms' Stock Returns to Financial Risks and Oil Prices: A Global Perspective," *Maritime Policy and Management* 7, no. 5 (September 2010): 453-473.

[4] Buckley, *The Business of Shipping*, 8.

[5] Stopford, *Maritime Economics*, 349.

development of the steam engine. This is an important component to the increased globalized trade system.[6] Significant not only because it reduces time from origin to destination of goods, but the capability of lines to run profitably at these speeds has contributed to the development of just-in-time delivery and lean manufacturing, a topic discussed in greater detail below. With American maritime trade expected to exceed 7.5 billion tons by 2028, the industry is increasingly important to all global citizens. Both consumers and producers *outside* the industry are impacted by the events and developments *within* the industry. All consumers share in the responsibility for optimization of supply chains due to their demand for goods.

Globalization and the maritime trade's successes have had a very positive impact on the world's population. Not only has globalization created increased opportunities for wealth in developing regions, but it has also increased the purchasing power of citizens in developed countries. There are interesting correlations to the gross domestic product of a nation and the volume of imports. For example, according to Stopford's data, the United States GDP was $11.66 trillion in 2009, and ocean imports totaled a staggering 956.2 million tons of freight that same year. Compare this to Cyprus, a nation with a gross domestic product of $15 billion, and a sea import total of only 5.1 million tons of freight. A reasonable conclusion is that the larger a country's economy, the greater the need for shipping services.

[6]Ibid., 351.

Another interesting indicator of the benefits to globalization is an index created by the World Bank known as the "Logistics Performance Index," a critical analysis of the transport systems and accompanying infrastructure components in all countries. The World Bank weighs the below six points to determine rankings:

1. "Efficiency of [customs] clearance"
2. Port, rail, road, and other transport infrastructure state
3. Presence of competition in logistics pricing
4. "Competence and quality of logistics services," an admittedly vague characteristic not fully fleshed out by the World Bank
5. Tracking capabilities for freight
6. Accuracy of time-definite deliveries

Each item is ranked one to five, and then a weighted average is compiled. The Bank allows for comparisons by region, entire world, and income groups.[7] An interesting trend starts to appear when viewing the data from a global perspective: the countries with the top ten highest logistics performance rankings are also very developed states (in order): Singapore, Hong Kong, Finland, Germany, Netherlands, Denmark, Belgium, Japan, United States, and United Kingdom. This is certainly no accident. Worth noting briefly are also the ten lowest-ranked states, beginning with Comoros, Eritrea, Sudan, Democratic Republic of Congo, Sierra Leone, Nepal, Chad, Haiti, Djibouti, and Burundi. States that are touched the most by world trade benefit from its upwardly mobile forces, and those removed from it fail to enjoy the benefits

[7] World Bank, *Connecting to Compete: The Logistics Performance Index and Its Indicators* (Washington: World Bank, 2012), 8.

of wider markets and improved access to goods and services. Well developed countries benefiting from globalization aer by default forced to develop solid shipping sectors, and this serves as a motivator for some states to develop a seafaring labor force.

"The Box That Made the World Small:"[8] Merchant Shipping Before and After the Container

Prior to the broad international introduction of the shipping container in the 1950s by a shipping entrepreneur in New York City the liner freight transport industry was an expensive, labor-intensive business requiring a massive human element and characterized by steep operating costs. The situation was not getting any better. According to Levinson, 1.9 hours of longshore manpower were needed to load a single ton of freight in the Port of New York in 1950, but by 1956 the number had increased to 2.5 for the same ton of freight.[9] There are many reasons for this. Aging infrastructure, difficult labor relations on the docks and increased trade volume resulted in a general decrease of longshoreman efficiency. With millions employed on the docks across the United States, stevedore labor was important to the economies of both the port cities and the nation as a whole.

Costs to shippers were extremely high during this period. In keeping with the business's focus on cost per unit shipped, the Joint Economic Committee of Congress reported in 1961 that freight costs were "more significant in many cases

[8] This phrase is attributed to Marc Levinson, and is modification of his book's title and a very appropriate analysis of the container's global impact.

[9] Marc Levinson, *The Box: How the Shipping Container Made the World Smaller and the World Economy Bigger* (Princeton: Princeton University Press, 2006), 28.

than governmental trade barriers," as the average American import tariff at the time was 7%, while freight rates for exports equaled 12% of the value of goods exported and import rates totaled 10% of the value of imports.[10] Compared with a widely accepted industry standard today of around three percent, this number is staggeringly high and created a difficult environment for global trade.

Following World War II, the labor situation on the docks was not any better than the operating costs. During World War I global dock operators and stevedore firms sought to dismantle dockworker unions and decrease wages across the globe, while at the same time reducing the working hours. This was not limited solely to the American operators. In many ports in Australia, for example, shifts, previously a full day, were cut to a half-shift, a major blow to a huge union accomplishment of guaranteeing a full shift if called to work. Not only did this union-busting damage morale, it also had a significant impact on the living standards of union dockworkers. In New Orleans for example, the wage rate was slashed by a full fifty percent. On the West Coast of the United States, rates were slashed, and in Marseilles, France, the entire longshoremen's union was crushed by 1950.[11]

Levinson relates two major results of the fierce anti-union sentiment in the middle of the twentieth century. The first, theft, is an interesting consideration given the "deteriorating economic conditions," but not likely motivated solely for economic reasons. Relates Levinson: "Longshoremen prided themselves on such

[10] Levinson, *The Box*, 9.

[11] Ibid., 27.

arcane skills as the ability to tap whiskey from a sealed cask stowed safely in a ship's hold."[12] The dock operators and vessel owners were understandably upset by these actions, but they gradually became understood as a part of the business and measures taken to protect against it (such as more accurate weighing of cargo, etc).

Dockworkers also developed an "intense suspicion of employers" when discussing any topic or innovation likely to reduce manpower requirements on the docks. If a development appeared to eliminate working hours or lower wages, unions would immediately respond to the initiatives by demanding new contractual agreements to safeguard employment and protect what was left of longshoreman rights (an ever decreasing list). Productivity had decreased rapidly internationally: according to data compiled by Levinson, the Port of Los Angeles witnessed a staggering 75 percent decrease in productivity on its piers from 1928 to 1954. Similar situations were unfolding in ports all across the industrialized world, from New York to Liverpool.

Containerization was viewed by many as a means to repair this broken system of disorganized loading and unloading of vessels while also securing the goods. Common for many years prior to the 1956 intermodal system introduction, containerization at its core initially began by simply loading crates instead of loading individual items onto a vessel. There were all sorts of systems in place to move the cargo from the dock into the vessel, differing by location, and in most

[12] Ibid.

cases the crates still had to be held in place with lumber and ropes.[13] Not difficult to believe, the single largest expense to ship owners at this point were the labor wages, as it took an army of laborers to handle the unloading and loading of individual cartons and crates.

As a means of lowering costs, shippers using containers could effectively limit their prices dramatically by reducing the labor and time required to load and unload a ship, while at the same time increasing service levels to the customer.[14] This is a success for shippers, but a major loss for longshoremen. Longshoremen began to feel the impacts of containerization's boom almost immediately, and waterfront communities around the globe were impacted.

New York, the birthplace of the modern container, is an interesting port with which to view the impact of containerization on the longshoremen and port-associated industries such as logistics and manufacturing. The container, allowing for easy multimodal transport, made it possible for New York's factories to pick up and move inland where operating costs were cheaper. Levinson notes in his economic study of the Port of New York before and after the container's arrival that stevedores in New York City handled a full third of the nationwide shipping traffic during the 1950s.[15] Despite the rapid changes soon to occur, not many in the Port

[13] Marc Levinson, "Container Shipping and the Decline of New York, 1955-1975," *Business History Review* (2006): 49-80.

[14] Alan E. Branch, *Elements of Shipping*, 7th Edition (Abingdon: Routledge, 2005), 400.

[15] Levinson, "Container Shipping and the Decline of New York," 50.

saw the container as a threat to employment and many in the upper levels of the City's management ignored it as a simple development without far-reaching results.

Blindness on the part of officials was likely due to the sheer size of the payrolls depending on the port. With over a hundred thousand jobs tied directly to the piers, another hundred thousand in the manufacturing jobs linked to shipping, and another 300,000 loosely tied to industries related to maritime trade, there were more than a half million employed in positions dependent on a thriving waterfront pier service.[16]

In disrepair by the 1950s and rife with labor disputes, the waterfront situation was becoming a difficulty for shippers. "Some or all of the docks were closed by strikes in 1945, 1948, 1951, and 1954. Between 1945 and 1955 the ILA . . . battled with the Communist-backed National Maritime Union," labor disputes which all "encouraged shippers to use other ports" to move their goods.[17] As discussed above, many in the labor unions feared the container's arrival. They were perhaps the only part of the maritime community making an accurate assessment of the impact on the Port of New York.

By 1956, trucking rates in the United States were high, and the industry was well regulated. Malcom McLean, a trucking company owner seeking an innovative way to lower his operating costs, is credited with developing the modern multimodal system through the use of fixed-specification shipping containers and

[16] Ibid., 51.

[17] Ibid., 55.

associated equipment. Through a series of complicated commercial transactions he acquired trucks, vessels and containers sufficient to allow him to move cargo in a container aboard a vessel within the United States, an unconventional idea during a time when coastal shipping was in decline.[18] Originally he had planned to drive trucks in New England straight onto the vessels, sail them to the south and Gulf of Mexico, and drive the trucks off. Realizing the wheel chassis would waste valuable space aboard the vessel, he developed a specialized trailer which could be lowered to the ship by a crane and then removed and loaded onto a custom built trailer once at the destination port. The modern container was invented, and a truly multimodal system's foundation poured.

McLean's system had immediate appeal to shippers but took some time to implement fully. The results were obvious without delay: a "study soon showed that a container of beer packed at the brewery would cost 94 percent less to load aboard ship than the same quantity loaded as traditional breakbulk cargo." Another study found that conventional cargo shipping could see a 39 to 74 percent reduction in freight costs.[19] Within a decade, the devastation to the workforce was equally apparent. A strong source of employment originally, 1.75 million workers were hired between 1957-58 at the hiring centers operated by the Waterfront Commission, but by 1965 this number had fallen to 1.25 million, a loss of half a million dock jobs. Efficiency, however, increased almost overnight. Between 1966

[18] Levinson, *The Box*, 58.

[19] Ibid., 59.

and 1970, the Port of New York saw a 38 percent increase in freight handled in a man-hour. This attracted ship owners immediately, as the average freight cost per ton dropped significantly and response time improved.[20]

Labor consistently must react to changes in the maritime trade, and the container's development is no different from developments in flag registry or other innovations. Little attention is given to the impact the worker felt when containerization rapidly changed one of the oldest industries in the world. Instead, business reports are written proclaiming the wonderful impact on freight costs, supply chain lead times and other developments. All of these developments are truly successes and should be treated as such. Attention can be paid to the benefits of containerization and should be. But, acknowledging and examining the impact on labor must also occur, and it can be accomplished without diminishing the great success and wonderful contribution trade innovation has made to the world. The container's impact on the labor force should have also served as a foreshadowing of larger trends in the industry and indicated that innovation would be encouraged in all aspects, from packing to finance to flagging.

Developments in Shipping Finance: Quicker Return on Capital Rises in Importance

Ship finance, once dominated by European banks catering to specific clients and regions within the industry, is now as globalized as the vessels the niche industry funds. Known by most outside as a selective industry with its own sets of

[20]Ibid.

rules and policies, the internationalization of the field has drawn more attention (and regulation) to it in recent years. Fresh sources of capital are quickly rendering nation- or company-focused banks obsolete. In the recent economic downturn shipping finance suffered as much (if not more) as all other sectors and are collectively reacting.

For a clear view of the current state of the shipping finance sector, an overview of the industry as a whole is essential. The practice of financing vessel operations has changed in recent years, with the capital being more diverse and increasingly focused on short term returns. Ship finance was traditionally an industry for the specialized investor, but as more deals are financed in conventional methods, the developments stand to impact all consumers of internationally sourced goods. The market for ship finance is quickly becoming impatient and less interested in long-term growth.

As noted in earlier discussions, shipping is one of the world's most capital-intensive businesses.[21] When a firm seeks to expand its operations, there are only two ways to do so: purchase more ships from a shipyard as new vessels, or purchase used vessels from a current owner, both of which promise to be extraordinarily expensive. In the case of new ships, a made to order modern tanker vessel can run as high as $150 million depending on the type and yard building. Used sales often exceed expectations as well.[22] A used tanker built in 1990, the *Pacific Harmony,* sold

[21] Branch, *Elements of Shipping*, 318.

[22] Stopford, *Maritime Economics*, 259.

in July of 2012 for $20 million to undisclosed buyers, a staggering sum considering she is 22 years old and likely in need of modernizing to comply with current safety regulations (to be discussed later).[23]

Historically shipping has been funded by personal wealth and by joint stock companies formed using family relationships or close friendships, with outside stockholders severely limited in their control and voice in the company. Public listings still occurred, but the limitations and the milder returns did not immediately attract new investors. The reliance on family funding was not necessarily a bad thing: Stopford notes that while it may have resulted in a conservatism which failed to entice private investors not traditionally familiar with shipping (a welcome result for the vintage ship owning families), it also prevented any of the shipping recessions of the sort we have seen in the past five years: cash-funded expansion, rather than debt-funded expansion, motivated firms to make sound long-term investments focused on sustainable growth rather than quick gains on investments. Eventually by the 1950s and 1960s, ship owners became more comfortable with debt financing, but even then they frequently sought security in the form a specific time charter agreement (which could be used as collateral with the bank) before ordering a new vessel. Unlike the recent expansion where ship owners had to estimate if the ship would be employed when it was completed and entered the market, vessel owners employing charters as collateral knew before they even

[23] Clarkson Hellas, "Sale and Purchase Reports," *Hellenic Shipping News Daily*, July 16, 2012, http://www.hellenicshippingnews.com/ (accessed July 17, 2012).

placed an order that the ship would be profitable when it was delivered, as a major company (likely an oil or other commodity company) had already agreed to charter the ship.

Today's ship finance market still holds some of the old world feel in that specialized banks are present, but there is a move toward more conventional loan financing. Self-funding is still a major source of start-up capital in the industry but bank loans have become the largest single source of sustaining capital in shipping finance, with syndicated loans dominating the market.[24] According to data compiled by ABN AMRO, a major Dutch bank with heavy interests in the shipping capital markets, syndicated loans (that is, a loan with one borrower, an arranger in the form of an investment bank, and a group of investors offering funds) today account for 40.2% of shipping loans across the industry. Bilateral loans (a more traditional loan with one lender and one borrower) are also an important piece of today's shipping finance markets, with approximately 36.2% of the shipping loan market sustained with bilateral loans.

The remaining 24% of financing comes from a myriad portfolio of resources, including equity markets, most of which are focused on short-term gains. To help understand this, we must turn to ABN AMRO's "ship financing cycle," a 9-step process that accurately projects the cycle process from the standpoint of a lender (summarized here to focus on steps key to the shipping firm). Initially, high returns

[24] Joep Gorgels, "Shipping Finance and Investment," *Current Trends in Ship Finance*, Istanbul: ABN AMRO (2011): 4-12. The figures in the rest of this section are from Gorgels' work.

in shipping become the norm rather than exception and interest by traditional banks is aroused, causing them to enter the market and offer loans to ship owners. Due to the presence of traditional banks in the shipping sector, competition for deals increases and the margins for traditional shipping banks are reduced. There is then an increase in borrowing due to the availability of low interest financing (offered by the traditional/non-shipping specific bankers), which ultimately results in an excess of tonnage as ship owners build more vessels than they need (recall Stopford's shipping market cycle discussed in chapter one). The market will collapse, and then the traditional banks will become nervous and pull out of the market. The final step in the bank's cycle is a return to higher margins for shipping banks as credit tightens and lending capacity is severely limited, pushing many ship owners back to the well experienced shipping banks that are more familiar and prepared for shipping market cycles.

A new entrant to this market is the specialized fund, seen as both sovereign wealth funds and Islamic bond markets have demonstrated interest in shipping. Private equity is also increasing in both capacity and willingness to enter, but will typically become impatient very quickly as they have a horizon of approximately three to five years and expect very high returns on investment (compared to much longer tenors from shipping banks). Many governments have begun to extend financial assistance to their shipping markets as a form of stimulus as well as investment, most with excellent tenors. The Korea Export Import Bank, for example, has offered ship owners funds with up to 12-year tenors to help fund expansion, and the loans are not reserved solely to domestic (Korean) owners.[25] The Chinese commercial banks are also entering the market, with a very critical eye toward the industry (selecting very strong shipping firms to invest in, as opposed to distressed debt investors such as hedge funds). The most unique entrant is the Islamic fund, with QInvest and ABN AMRO creating in 2011 the first completely Shariah-compliant investment fund focusing on the shipping industry. Unusually small for the industry at only $100 million (recall this is not enough for even one new tanker vessel), the fund aims to target specific sections of the industry initially and will mostly consist of mezzanine financing (combination of equity and debt) and restructuring.[26]

Private Equity and Labor

The biggest impact to the labor forces on the changes in shipping finance must result from the increasing interest of private equity funds on the industry. When the industry is in a whirlwind situation like the one we are currently experiencing, private equity infusions can be essential to survival for a company. This sheer necessity places the shipping company in a difficult position though, as private equity firms will seek a short term, rapid gain on investment and then wish to divest them. Unlike traditional shipping banks offering long tenors and flexibility to restructure without the costs and efforts of bankruptcy filings, private equity has but one interest: return on capital. While this is good for the private equity

[25] Gorgels, "Shipping Finance and Investment," 16.

[26] Ibid.

investors, it poses a risk to the laborers employed by firms acquired by private equity firms. Creditors are likely to arrest vessels rather than restructure, as attempted by creditors to Sanko Steamship recently. Sanko is among the largest shipping firms in Japan and has filed for bankruptcy protection under Chapter 15 in the United States like many firms, after an attempt by creditors to arrest and seize the *Sanko Mineral* while she was docked at the Port of Baltimore.[27] Impatient private equity investors may be tempted to follow this model.

The bankruptcy trend, combined with interest by private equity and a natural motivation by the industry to drive prices as low as possible to maintain bottom dollar freight rates, should serve as a warning sign for the industry as a whole and the American seafarer in particular. Shipping stands to lose much of its historical character, and the seafarers stand to lose when this happens. As banks begin to swallow up companies, there will be a renewed interest in operating costs as the ships themselves are often off limits (aside from financial restructuring) by the very nature of the business. A wave of bankruptcies hit the industry in the past four years, none as significant as that of General Maritime, the second largest American owner of oil tankers.[28] General Maritime failed to secure charter rates high enough to support the new vessels ordered during the shipping market's pinnacle in 2007 (again, recall Stopford's four-point cycle). When the vessels

[27] Robert Wright, "Tankers: Frontline and General Maritime Weathered the Storm by Different Routes," *Financial Times,* May 18, 2012, http://www.ft.com/cms/s/0/73d62c5c-991a-11e1-948a-00144feabdc0.html#axzz21O5sLCeK (accessed July 16, 2012).

[28] Ibid.

General Maritime purchased at the peak entered the market during the next phase of the cycle, the rates were already collapsing and credit was becoming increasingly difficult to obtain. The executives at the firm had no choice but to accept capital injections from outside investors to stay afloat, in particular a large injection from private equity firm Oaktree. Oaktree will now control 98% of the company's finances when it emerges from Chapter 11 protection later this year. The *Financial Times* declared in May that it "remains unclear how the company will operate under Oaktree's control."[29]

An informed observer can only draw one conclusion: General Maritime will be forced to focus on rapid returns on investment, with a window of less than five years to perform or face a potential sale. The intense focus on short term investments by some of the newcomers to the shipping finance community will ensure that operating costs and regulations remain a constant topic of discussion in the boardrooms. Focus on rapid returns will likely result in an increase in the use of open registries to keep labor costs as low as possible while the industry struggles to recover from the terrifying crash of the past cycle.

Trends in Salaries and the Link to the Foreign Flag

When discussing widespread motivation to seek the lowest operating cost in shipping to offer in turn the lowest rates possible to customers one quickly comes to the wage rates paid to seafarers. After ship financing, wage rates and taxes are very

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[29] Phil Milford, Tiffany Kary and Alaric Nightingale, "General Maritime Files for Bankruptcy After Freight Rates Slump," *Business Week,* November 17, 2011, http://www.businessweek.com/news/2011-11-30/general-maritime-files-for-bankruptcy-after-freight-rates-slump.html (accessed July 14, 2012).

important expenses to ship owners and operators. As we have seen, they are one of the few things the firm can have direct control over. Wage rates, discussed in greater detail in further chapters, are one of the primary motivators for flagging a vessel in an open registry state as a means to lower overall operating cots. Simply put, a move to lower labor wage rates leads to a foreign flag. The legal and ethical discussions surrounding wholesale mariner outsourcing will be expanded in subsequent chapters but it is important to discuss briefly the financial aspect following a discussion of maritime capital market developments.

Excellent sources of data on seafarer salaries are the "Maritime Salary Review" reports published monthly by Faststream, the leading maritime recruitment and vessel staffing service. Headquartered in Southampton in the UK, the organization has offices in Singapore, Australia and the United States and has quickly become a powerhouse name in the industry. Their most recent report, from July of this year, studied over 4,000 seafarers to develop trends. Several interesting themes emerged, and demonstrate the condition of the market for seafarers.

First and foremost, the economy clearly impacted the maritime industry as much as all others across the globe. According to Faststream, 30% of seafarers saw wage reductions in the past year, with 12% remaining static. The remaining 58% saw modest increases depending on the type of vessel employed on; with the title of Master Mariner on passenger service vessels receiving the largest average increase (an average of 22%). Important to note is that this is an officer's rank.

Another key statistic from July's report will be integral to the coming discussions. When salaries are viewed not by vessel type but rather by the seafarer's origin and converted into percentages, an interesting trend develops. Master Mariners from Asia, for example, earn approximately 20% less than counterparts from Western Europe. This trend of significant wage differences is continued in other ranks aboard the ship.[30]

Differences in wage rates by seafarer origin are an important point to note, as they begin the discussion to open registries and flags of convenience. The likely registration status of the vessels employing Asian and other foreign seafarers for lower rates is of convenience: many western registries require employment of nationals aboard their vessels, so an owner wishing to save twenty percent or more in his labor costs would need to flag his vessel in an open registry.

[30] Faststream Recruitment Group, "2012 Maritime Salary Review," July 12, 2012, http://www.faststream.com/faststream_recruitment_news/ (accessed July 15, 2012).

CHAPTER III

DEVELOPMENT OF FLAGS OF CONVENIENCE AND THE DECLINE OF NATIONAL LABOR FORCES

The international maritime industry experienced a dramatic shift in management style during the twentieth century. As we have seen in the previous discussions of technological and financial innovations, the legal framework supporting a rapid outsourcing of shipboard labor became commonplace and widely accepted. The flag of convenience may have been born out of isolated uses in different parts of the globe, but its use quickly led to a reduction of national seafarer employment and allowed for a dangerous decline in safety regulation.

According to Ioannis Tsamourgelis, the maritime industry is currently characterized by a "gradual decline of the labor force consisting of national seafarers and an extensive replacement of the former by seamen originating from less developed or developing countries," a situation resulting from the internationalization of fleet registry.[1] What promoted this internationalization? We already know that a focus on rates drove many ship owners to flag out vessels in their fleet, but ship owners choosing open registries over national registries also gain other benefits. One major benefit to the ship owner other than low wages is a lack of seafarer bargaining power, which combined with the low wages can encourage less than ideal working conditions for the seafarer. This will be discussed in greater detail below.

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[1] Ioannis Tsamourgelis, "Selective Replacement of National by Non-National Seafarers in OECD Countries and Employment Function in Maritime Sector," *Maritime Policy & Management* (October 2009): 458.

We must further define the flag of convenience and open registry, and view it from a different angle. Previously discussed as a tool for lowering rates by gaining favorable labor and tax status, the role of a flag of convenience in dismantling organized onboard labor is a key discussion point when examining the flag as an ethical consideration in maritime business. Regrettably, labor standards are often glossed over by shipping executives when publicly discussing flags of convenience; despite their widespread use as a means of avoiding labor regulations and implementing relaxed safety rules aboard a ship.[2] Labor relations on board a ship are very important and should receive considerable executive attention. However, they are often not viewed as a determining factor in flag selection (unless, as mentioned, it is so the ship owner may avoid regulation).

Important to keep in mind as we begin a discussion of flag development is the contrast between an open registry and a closed registry. The closed registry, as discussed earlier, restricts registration to citizens of its own country (a Chinese ship owner could not register his vessel in the United States, for example). In contrast, an open registry is a flag state that allows any nationality to register vessels in the country, often with ease and relatively little labor on the part of the ship owner. Once registered in the new state, the ship owner gains access to that country's laws and regulations and no longer needs to abide by the laws of his country, including tax and labor regulations. Bonacich notes that this became a tool for companies to

[2] Kenneth J. Blume, *Historical Dictionary of the U.S. Maritime Industry* (Lanham: The Scarecrow Press, 2012), 211.

"escape U.S. regulation and strong seafaring unions" and select countries with "weak to nonexistent" laws on the books.[3] Effectively rendering national laws unenforceable aboard the ship has great advantages for the cost-driven owner: he can "circumvent the labour and maritime laws" of his home state, while enjoying all of the benefits of operating from his home office (such as access to capital).[4]

Widely accepted international maritime law holds that "ships shall sail under the flag of one country only and shall be subject to that flag's exclusive jurisdiction," a point very important when a ship owner decides to strategically flag his ship.[5] Flag status not only affords shipboard benefits but also grants protection while a vessel is berthed. Toh indicates that a ship is indeed subject to the law of the country whose water it is in, but this is secondary to the flag state: the flag's regulations are usually dominant to the port of call's regulations and will certainly be dominant when discussing matters of crewing and labor relations.

It would seem to a casual observer that the use of a registration flag to circumvent national regulations could not be legal. How is it possible that a country such as the United States or the United Kingdom would not only allow their ship owners to blatantly refuse to follow their laws at the expense of their own tax collection and safety of laboring work force, but also seemingly endorse the practice

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[3] Edna Bonacich and Jake B Wilson, *Getting the Goods* (New York: Cornell University Press, 2008), 85.

[4] Shaun Ruggunan, "The Global Labour Market for Filipino and South African Seafarers in the Merhcant Navy," *South African Review of Sociology* 42 (2011): 81.

[5] Rex Toh and Phang Sock-Yong, "Quasi-Flag of Convenience Shipping: The Wave of the Future," *Transportation Journal* (1993): 31.

by not attempting to prevent flagging out within the national fleet? The internationalization of the fleet has ancient roots, centered on an inherent right of each state to trade with each other state, and these ancient doctrines contribute to the current situation.

Internationalization of the Fleet and Shipboard Labor

Under international law, ships are "regarded as part of the territory of the flag state—an extension of the [registering] country, " with the vessel registration serving as "a bridge between the ship and the mainland" and the source of vessel "nationality."[6] International maritime law is careful to ensure an equal right for both landlocked states and coastal states to sail and register ships: all states, notes Ademun Odeke, possess a "right to sail ships," and by default have a right to grant nationality to oceangoing vessels.[7]

Nationality of a vessel therefore becomes clear and defined at the time the vessel is registered by a particular state, choosing to exercise her sovereign right to sail the high seas.[8] Interestingly, discussion and critical scholarly debate about nationality of vessels is not a new legal development, with the first cases of vessel registration being brought before courts as early as 1905, and the first registry

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[6] Ademun Odeke, "An Examination of Bareboat Charter Registries and Flag of Convenience Registries in International Law," *Ocean Development and International Law* 36 (2005): 341.

[7] Ibid.

[8] Awni Behnam, "The Ocean Trade in the New Economy: A Keynote Address," *Ocean Development and International Law* 35 (2004): 118.

dating to 1660 in England.[9] There are even early cases of Omani dhows, a type of vessel, choosing to fly European flags dating to the 1900s in the records of European courts. Referred to as "Freedom of the Seas doctrine," the simple declaration that every country can trade with every other country has been the basis of practice for selective registry since the beginning of ocean trade. Each state maintains a right to determine those admitted to the national register.[10]

More recently, the open registry system has operated through the wide acceptance of provisions in international maritime law covered in the 1958 Geneva High Seas Convention. Declaring, "ships shall sail under the flag of only one state and save in exceptional cases expressly provided for in international treaties . . . shall be subject to its exclusive jurisdiction," this document has guided most of the developments on the topic since passing in 1958. Article 6 of the Convention implies an acceptance of open registries.[11]

The greatest difference between early use of selective registration and the current model centers on the motivation for registering, and through an examination of the secondary changes to the vessel (secondary being all of those following the change in her registration) we begin to view not only the extent of the ethical dilemma, but the means by which it self-perpetuates. Central to a discussion of registry is the aforementioned national seafaring crew, and whether they will be

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[9] H. Edwin Anderson, "The Nationality of Ships and Flags of Convenience: Economics, Politics and Alternatives," *Tulane Maritime Law Journal* 21 (1996): 144.

[10] Behnam, "The Ocean Trade in the New Economy," 118.

[11] Odeke, "An Examination of Bareboat Charter Registries," 342.

present or not following registry. As highlighted earlier, a vessel registered in a closed registry will have certain parameters placed on it, and usually one of these is the hiring of national seafarers for the shipboard labor. Frequently this restriction is missing from an open registry state, and usually a rapid secondary change to a vessel following the primary change of registration is a complete overhaul of her crew, from officer all the way down to able seaman (also referred to as a "rating" in some countries). The absence of a "genuine link" between country of owner's origin and the seafarer's national origin or, even more importantly, the country of owner and the country of registration, makes it much easier to replace an entire crew and is a key point of consideration when an owner is looking to replace a more costly Western crew with a cheaper international crew. The topic of genuine link has been discussed by several international conventions, but none of these are able to concretely define or enforce the term in a way capable of preventing the replacement of crew through the use of flags of convenience.[12]

The Freedom of the Seas doctrine discussed earlier, when coupled with a lack of clear definition on topics such as genuine links to vessels, creates a clear "governance vacuum" in the maritime industry.[13] This vacuum and lack of enforcement are some of the reasons the open registry system can be so attractive to a ship owner. Once all of the regulation demanding a national labor force paid at

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[12] Elizabeth R. DeSombre, *Flagging Standards: Globalization and Environmental, Safety, and Labor Regulations at Sea* (Cambridge: The MIT Press, 2006).

[13] Behnam, "The Ocean Trade in the New Economy,"115.

sustainable wages and covered by firm safety programs are removed at the stroke of a pen, it is up to the ship owner to make a hard decision regarding crewing.

In 1998 the global fleet became majority-flagged in open registries for the first time. The fleet in 1998 became dominated by flags of convenience, with 51.3% of vessels around the globe flying the flag of an open registry.[14] At the same time, the annual global freight bill more than doubled from 1980 to 2001, a staggering increase signifying the dramatic increase in global trade and the rise in derived demand of the shipping sector.[15] As freight rates ballooned, competition would be on the minds of all ship owners, each with a clear motivation to lower operating costs.

Economics of Registration

As we have seen, labor rates are the single greatest operating cost a ship owner retains some control over during the course of normal vessel operations. The owner is able to change the hiring structure to include bonuses, offer his employees incentives when they do a good job or perhaps implement a profit sharing program with the officers of the ship. Now, due to their acceptance by international law, a ship owner in a major maritime state is also able to significantly *lower* his operating costs by simply re-registering his vessel to an open registry and immediately lower his operating costs significantly through the outsourcing of shipboard labor.

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[14] Tony Alderton and Nik Winchester, "Flag States and Safety: 1997-1999," *Maritime Policy & Management* 29 (2002): 151.

[15]Behnam, "The Ocean Trade in the New Economy," 116.

Should a vessel owner re-flag to lower his costs simply because he can? Many owners from developed countries refer to the flag of convenience somewhat mockingly as a "flag of necessity," declaring that the high costs of labor and tax structure found in western closed maritime registries are what drives them away and into the arms of the various open registries.[16] According to several sources, there is some level of hard truth to this. DeSombre, one of the few authors covering this topic, has noted that "from the beginning, the modern FOC phenomenon was partly driven by the desire of the shipowners to avoid the costs and restrictions associated with ships registered in the major maritime states," continuing to declare that ship owners interviewed discussing Panamanian registration often cite the immediate relief from frequent inspections and regulations on crew quarters and sustenance, a costly piece of ship owning.[17]

Empirical data about the wage rates of seafarers demonstrates the impact internationalization of shipboard labor can have on a ship's operating cost. Owners "from developed countries are more likely to choose a foreign flag than those from countries with a lower GDP per capita" as higher wage rates "scare away" the owners.[18] According to data compiled by Tsamourgelis, seafarers from the OECD states are "paid well above the minimum rates, whereas their non-OECD colleagues" make substantially less, which coupled with low bargaining power creates for them

[16] Bonacich, *Getting the Goods*, 80.

[17] DeSombre, *Flagging Standards,* 72.

[18] Jan Hoffman, Ricardo J Sanchez and Wayne K Talley, "Determinants of Vessel Flag," in *Shipping Economics*, ed. Kevin Cullinane (Boston: Elsevier, 2005), 205.

"the position of passive wage-takers as opposed to the wider bargaining margin granted to nationals." The idea of a seafaring wage-taker being the outcome of a decision by the owner is intriguing, as it presents a new view on the move to avoid labor law.

By seeking to create a wage-taker in place of a wage maker, a ship owner is declaring that he and only he will determine how much labor is worth on his vessel. The owner effectively eliminates any upward mobility across the industry, not just in his company. If a ship owner in company X flags out to lower labor costs, then his freight rates will be lower, and the rate-driven customer will leave a higher cost vessel and come to company X. This will cause company Z to do everything possible to lower freight rates and remain competitive, so company Z will have to flag out and lower labor rates to ensure their rates are in line with the rest of the industry. Immediately freight rates drop and customer pressure ensures ship owners will not be able to significantly increase wages for the laborers, as doing so will dramatically increase their operating costs and effectively reduce operating margin. This dilemma is compounded by the incredible ease with which it can be done. Unlike in a traditional business such as manufacturing, where outsourcing can take months or years, an entire shipping company can be outsourced in a matter of minutes.[19]

What is to prevent an owner from choosing lowest operating cost over highest safety? An owner must determine that safety and labor conditions are more

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[19] Peter Marlow and Kyriaki Mitroussi, "Shipping Taxation," in *The Blackwell Companion to Maritime Economics*, ed. Wayne K. Tally (West Chester: Wiley-Blackwell, 2012), 317.

important than overall operating cost. Unfortunately, trends in the industry do not show this to be happening. Ruggunnan notes that in order for a vessel re-registration to be successful, "there has to be a substantive impact on labour costs." These costs, according to Ruggunnan, include everything from wages to benefits, food quantity, and quality.[20] A dramatic reduction in the percentage of operating costs consumed by crewing demonstrates clearly that the average owner chooses lower rates over any other concern: in 1973, crew costs were between 40 and 50% of a vessel's operating costs, whereas today 30% would "often [be] considered too high."[21] Such a reduction in a short period of time is at once both remarkable and alarming.

Idea to Action: The Development of the Flag of Convenience

The modern flag of convenience, while designed to provide maximum economic benefits to the ship owner, also affords some very minor levels of protection as a flag in general (although far short of those of the national flags). The flag state offering the registry is still required to abide by certain levels of responsibility, but these levels and the duties undertaken by the various states are what can set one state apart from the others in terms of cost, regulation and benefit to seafarers. As could be expected, the development of tighter regulations within some flag states was not organic: it was mostly the result of pressure from other

[20] Ruggunnan, "The Global Labour Market for Seafarers," 83.

[21] Ibid.

states. This becomes clear when we examine the rapid development of several prominent ship registries.

Ship registries, regardless of convenience status, carry with them a certain set of responsibilities. We now know from earlier discussions that a ship is viewed under international maritime law as an extension of the country granting flag registry, and as such that country has duties and obligations towards the ship. These are executed with varying levels of precision depending on the flag state, but universally a state is expected to " issue documents, exercise effective jurisdiction, take measures to ensure safety," of which we could draw the conclusion that seafarer licensing, etc would be the responsibility of the flag state, as are shipboard labor standards and safety. The responsibilities continue with certain international responsibilities, including that the state "takes measures to protect the marine environment, exercise penal judgment in matters of collision or other incidents of navigations, render assistance, prohibit transport of slaves, and cooperate in the repression of piracy," among others.[22] We will see that discussions of laborer safety are of increasing importance in international agreements.

Until about the mid twentieth century, there was a "firm link" between vessel owner nationality and vessel flag state, and the seafarers were almost always an "extension of their nation-states" in the case of national shipping.[23] Once this began to change in the industry as owners sought to circumvent the regulations of their

[22] Odeke, "An Examination of Bareboat Charter Registries," 342.

[23] Ruggunnan, "The Global Labour Market for Seafarers," 81.

home state, certain states became more prominent as open registries for their relaxed tax and labor regulations. Often American companies led the charge to flag out. Many industries, specifically steel, oil and fruit, made the practice generally acceptable in the American business community after they rapidly re-flagged their vessels.[24]

For the purpose of this examination, we will review briefly the historical development of Panama, Liberia, and Singapore, three incredibly important registries and each with a unique set of characteristics and path to development. Panama had traditionally been one of the heavyweights in the industry with little competition until the middle of the twentieth century, when Liberia emerged as a new registry at the urging of an American businessman.[25] Singapore, on the other hand, had a very different purpose for developing: it sought to incentivize national ship owners to return to Singapore, rather than create a tool for ship owners to escape their country's tight restrictions and serves as a unique balance to the motives of other states.

Panama

Panama became a true flag of convenience state following World War II, but this was not the beginning of the open registry system within the country. Panama had a history of open access for business, with the blessing of the United States, for the majority of the twentieth century. A combination of easy registration laws and

[24] DeSombre, *Flagging Standards*, 81.

[25] Ruggunnan, "The Global Labour Market for Seafarers," 81.

wide access facilitated a swift transfer for any owner wishing to reflag his vessel. Such easy access was made possible by a unique section of the registry policy: a ship owner could choose to re-register his vessel at any of the Panamanian consulates across the globe without ever setting foot inside of Panama, allowing access not just to American ship owners in New York and Washington but also to European and Asian ship owners in their respective countries.[26]

Initially when the registry was developed the government limited vessel registrations to ships owned by Panamanian citizens, but by 1916 this had changed and registration was open to any Panamanian-registered corporation, even if owned by a foreigner. This created a unique opportunity for ship owners to register in Panama, and to aid in the attractiveness Panama made English-language contracts legally binding and held in the exact same regard as the Spanish versions.[27] At first glance it may not seem that an American company could benefit from the Panamanian-registered corporation rule, but what developed was a shell company strategy whereby the American owner would create a corporation in Panama for each of his vessels, and then have this corporation held by his multi-national firm. For example, a ship owner might have a vessel named the *M/V Karen Lynne,* owned by a New York company. The *Karen Lynne's* owner creates a corporation in Panama for the vessel, and registers her to the local company. The multi-national in New York would, however, own the shell in Panama, and earn revenue from the vessel

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[26] Carlisle, Rodney P. *Sovereignty for Sale: The Origins and Evolution of the Panamanian and Liberian Flags of Convenience* (Annapolis: Naval Institute Press 1981), 1.

[27] Ibid., 2.

while enjoying access to the Panamanian legal system. Many ship owners also felt that the United States military, due to affiliations with the Panama Canal, would be more likely to offer aid than an alternative open registry, and this led to an unofficial understanding that the Panamanian registry was safer (whether or not this is true in practice is of course a matter of speculation).

Carlisle also notes that the system in Panama became streamlined in the 1920s, and with this reformed legal structure Panama transitioned from "an accidentally discovered haven . . . into a more formal system, specifically and consciously designed to attract shipping," at which point the state became a true open registry.[28]

The United States grew to increasingly accept the flagging out of vessels provided that there was some level of return to the government.[29] In the case of Panama, the United States went so far as to offer assistance in registration tasks in return for Panamanian assistance in policing rum running and smuggling aboard Panamanian flagged vessels during and after Prohibition. Amazingly, the American government agreed to offer aid in the form of registration at American consulates in locations where no Panamanian satellite consulate existed![30] This meant that if a ship owner wanted to transfer his registration from American to Panamanian he could either go to the nearest Panamanian consulate or, if one did not exist nearby,

[28] Carlisle, *Sovereignty for Sale*, 19.

[29] DeSombre, *Flagging Standards,* 78.

[30] Carlisle, *Sovereignty for Sale*, 39.

he could choose to approach a local United States consulate and have his vessel registration completed by American diplomats serving as proxies for the Panamanian government. As can be expected, this resulted in an increased interest and also contributed to the general notion held by ship owners that should their vessels ever experience real hardship at sea, the American government or military would come to their aid.

Even with its increasingly attractive features, the Panamanian registry did not become a powerhouse for American ship owners overnight. Leading the charge was Standard Oil in 1935, the first large American corporation to transfer registration of its fleet. Standard Oil reflagged its fleet to Panama, and aided in the public image of the trend as being acceptable. “Casual recordkeeping,” notes Carlisle, also provided a benefit for ship owners: relaxed filing systems with the Panamanian authorities made it very difficult for outsiders to track these transactions. This granted the ship owners an added level of confidentiality and increased protection from access by Western governments seeking to police their activities on the water.[31] Once Standard Oil set the trend, other nations seemed also to follow, including the Greeks, in an effort to avoid national taxes and other expenses.

Liberia

Liberia’s vessel registry developed later than Panama’s system but it quickly caught up and in some cases exceeded the exploits of its Latin American

[31] Ibid., 52.

counterpart. While Panama's system developed following organic government policies, the West essentially built Liberia's registry from scratch. A brainchild of American businessman and retired Secretary of State Edward Stettinius, the registry was formed not only with the blessing of the United States government but also the direct assistance of it. Stettinius used his corporation, Stettinius Associates of New York, to direct the development of an "open door policy" in Liberia, and the United States Navy participated in the infrastructure development of the Port of Monrovia (through a lend-lease transaction).[32]

The development of Liberia's shipping system was not designed with the overall economic development of Liberia in mind, rather it was seen by Stettinius as a means to circumvent the high labor costs associated with American seafarers. His company had plans to develop the massive iron ore reserves of Liberia, and needed a low cost transportation system to move the goods from Monrovia to Baltimore. At a time when a total American-flagged labor force cost a ship owner just under $30,000 a month, a "white British" crew cost approximately $6,500 per month due to a lack of labor unions. Stettinius sought specifically to lower operating costs by removing access to seafarer labor unions, and as such his firm injected $1 million into a joint venture with the Liberian government to develop maritime operations.[33] Stettinius even went so far as to have his firm assist in the drafting of the maritime

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[32] Sharife, "Flying a Questionable Flag," 115.

[33] Ibid., 114.

legal code, creating a custom-made system that was then reviewed by Bushrod Howard (a director at Standard Oil) before being ratified as law.[34]

Today Liberia is one of the clearest exhibits of the outside pressure placed on countries to open their registries to foreign ship owners. The registry remains incredibly open and has enjoyed considerable attention through its ties to various scandals and political disasters within Liberia. Quickly becoming a powerhouse in the maritime registry system, the large size of its registry (the second largest fleet in the world, behind Panama) demonstrates the sheer volume of owners seeking to shed restrictive policies in favor of more relaxed and favorable legal codes, codes which permit them to hire, treat and fire shipboard labor as they please while paying as little in tax as possible.

Singapore

The experience of Singapore's vessel registry is dramatically different from that of Panama and Liberia. While indeed an open registry, the policy behind the development of the system was focused on national development and retention of control over shipping and trade policy, rather than the development of an international haven for ship owners or a source of revenue for a developing government. This renders Singapore an important comparison to the other flag of convenience states.

Unlike in other states, the Singaporean registry did not begin to develop until the 1970s and grew rapidly in a short period of time. The registry was open only to

[34] Ibid., 116.

Singaporean citizens and Singaporean companies and sought to attract nationals to return with their ships to help Singapore develop. Repatriation of existing assets was an important aspect of the policy.[35]

Viewed as a tool for economic development of *other sectors*, the maritime registry was seen by the government as an essential piece of a much larger export-dominated economy, and viewed as a way to boost employment, limit the amount of foreign exchange used for international shipping, develop a national shipping line, and aid in the transport of domestically produced export products.[36] A key difference here lies in the foreign exchange and job creation aspects: rather than boost foreign currency holdings to use in other sectors, as is common with the traditional flag of convenience, Singapore specifically wanted to limit its own expenditures on international shipping by providing for a local fleet serviced in domestic currency, while creating local jobs for national seafarers rather than internationally sourced, lower cost labor. Singapore accomplished this by providing tax rebates to ship owners who chose to fly the Singapore flag and employ Singaporean seafarers, which coupled with lower registration fees created a very affordable shipping environment.

Management of the overall export-focused economy was a key aspect of Singapore's registry program. Once the nation accomplished its goals of amassing a very large fleet and sufficient employment and foreign exchange goals (within ten

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[35] Stig Tenold, "A Most Convenient Flag: The Basis for the Expansion of the Singapore fleet, 1969-82," *Maritime Policy & Management* (July 2003): 260.

[36] Ibid., 256.

years, the policy had grown Singapore's fleet to the 15th largest in the world) the government began to gradually tighten restrictions for its registry. This is perhaps the single greatest difference in policy between Singapore and the other flag of convenience states: once Singapore became developed, it sought to increase transparency for the registry and also improve the overall technical standards of the fleet. In 1981, registration was limited strictly to Singaporean citizens (removing the corporate loophole), and age restrictions for vessels were introduced as a means of controlling the safety standard on board. Singapore also increased the use of "spot checks" to verify compliance and forced stricter compliance with the national seafarer link, making it much more difficult for a ship owner to hire a cheaper international crew.[37]

Singapore's strategic use of its shipping registry managed to accomplish goals without driving down the quality of life for the seafarer, and through the sunset of the open registry policy arguably *increased* onboard standards for the seafarer through mandates of improved vessel specifications and a firm national link requirement for labor. These policies create a unique contrast to the rest of the world's open registries, and stand as a comparison when viewing motive for development of the shipping havens. It is hard to view another state such as Liberia in the same way as Singapore, despite Liberia's claims that is uses its registry for development purposes.

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[37] Tenold, "A Most Convenient Flag," 264.

Sovereignty for Sale?

Rodney Carlisle, the author of the only major work addressing the importance of flagging to the American system of labor, titled his landmark work *Sovereignty for Sale* in 1981 referencing the presumed selling of access to legal systems by the major flag of convenience states. This presents a unique view to the practice: are countries simply renting access to their laws to the firms with the resources to relocate offshore? Given the pressure from American companies (such as in the case of Liberia) to establish the registers, it seems reasonable that the various flag states have acted in their self-interest considering the income generated by attracting Western business, but is there an alternative view? Is it possible the dynamic maritime business leaders sought to create a global system by which they could not only circumvent their own legal system to achieve favorable tax treatment and avoid costly labor regulations, but also at the same time tailor a custom legal system through indirect feedback? A critical observer can draw no other reasonable conclusion.

The particularly easy access by owners to vessel registry services (when compared to a traditional outsourcing operation such as manufacturing) is what makes the entire process considerably more convenient. This convenience makes it easier to disregard flagging out and view it as less serious to the seafarer and the overall American maritime economy. Possible in some cases even online, unlike in manufacturing total fleet outsourcing can occur during a lunch meeting.[38] National shipping is the most globalized of all industries and has suffered from the very globalization that made it successful: ease of movement makes it economically viable and attractive for an owner to outsource in an afternoon. Since he did not see the physical vessels to begin with he will not be directly confronted with the dramatic difference after he effectively "rents" the laws of another nation, to reduce costs to the lowest possible.[39] The impacts on the seafarer can be severe, and at the same time the nation loses even more of its national fleet.

[38] Ruggunnan, "The Global Labour Market for Seafarers," 82.

[39] Behnam, "The Ocean Trade in the New Economy," 119.

CHAPTER IV

SEAFARER LABOR AND FLAGS OF CONVENIENCE

The global maritime industry touches every consumer in the United States. Take a look in any closet, kitchen or garage and a majority of the goods found in it are likely to be of foreign origin. In an age of hyper-consumerism, lowest cost has motivated the modern retailer to source goods from far off lands, requiring a huge transportation network of vessels and workers to ship the goods from origin to market in a cost effective manner. When a consumer enters his local hypermarket such as Wal-Mart or Carrefour, he is likely selecting an item to purchase based on price, and not thinking about what went into that price.

It is popular in many sectors today for consumers to demand products manufactured in factories with high standards for labor rights, fair wages, and worker safety. We see this not only in major retailers but also in regional settings such as universities, churches, and civic organizations. Selecting one country of origin over another due to industrial relations is a valid means of affecting change as an end user, forcing changes all the way up the supply chain in a given setting. While the consumers are quick to consider the conditions faced by the tailors and packers who are stitching the uniform of their favorite college basketball team, they are unlikely to ever consider the plight of the most integral piece of the supply chain: the workers who transported the goods to them. As we have seen, seafarer labor is one of the most important pieces of the supply chain, and yet it is frequently forgotten or outright neglected as a discussion point when making purchasing decisions.

Executives in the maritime industry are certainly quite content to have this aspect of the otherwise romanticized field of international shipping left out of discussions about global labor rights and working conditions. A decision about flag state is at its core a choice of labor and tax law, and the modern executive, driven by rates, will select the register most appropriate for his financial decision and the operations of his company. As shipboard labor is out of the everyday thoughts of a common shipping executive, he will not be considering it on a day-to-day basis after choosing the laws he wishes to follow. He will select his legal system via the flag, register his vessel, and proceed with business as usual without considering the ethics behind the decision. A decision to outsource registration is a conscious decision to place profit over labor relations.

The decision will have life altering consequences for those employed aboard the firm's vessels and will likely never receive *any* significant attention from average labor rights activists as it is also out of their field of vision. A Nike or adidas factory in which laborers work for 65 hours a week will find media attention quickly, while a vessel aboard which seafarers are forced to work 65 hour work weeks will not gain any attention at all. Never mind the fact that long hours are much more dangerous aboard a vessel, as fatigue will set in and reaction times can become delayed. The conditions of laborers aboard ships owned by profit-driven companies present perhaps the greatest ethical dilemma in modern international business, all the while receiving little or no attention at all.

Before proceeding to discuss the implications for labor of a cost-driven decision, it is important to note that not all ship owners are unethical or lack sympathy for labor. Many ship owners are ethical businessmen and women who choose to fly their own country's flag, pay their taxes as expected, and abide by national labor law. Not all ship owners further their business and personal wealth on the backs of seafarers. Not all ship owners are seeking to break the strength of maritime unions at every professional turn.

Unfortunately, significant populations of owners do indeed operate ignoring the needs of the seafarers while doing everything possible to break the organizing strength of maritime unions. These owners will be the topic of extended discussion. Safety conditions on board a vessel are of paramount concern for seafarers for one simple reason: seafarers, unlike factory workers in the oft-reported textile sweatshop factory, live where they work and depend on the vessel for life. Without a safe vessel, their lives are in direct danger and their working conditions will contribute to their morale, health and wellbeing. Workers on a ship do not leave the ship each day as the tailor in a shirt factory does.

Many of the problems found on flag of convenience vessels seem at first to be relatively basic to the uninformed observer: broken or malfunctioning mustering systems (the systems used to call crew to alert when a crisis occurs), hatches which do not seal completely watertight, or lighting which is inadequate or broken are all problems often plaguing vessels flying flags of convenience. The deficiencies can extend to the kitchen and may include things such as poor quality food, insufficient quantity of calories and nutrients in meals, or food, which is unfamiliar to the laborer or outside of cultural or religious guidelines. Shorter stays at port now also mean the seafarer may have less opportunity to go ashore and interact with humans outside of his vessel.[1]

Each of these issues will have a direct impact on the morale and health of a seafarer. Less time in port means that a seafarer, already starved of opportunities to leave the workplace and clear his mind, will spend even more time aboard the ship and less time on land. Food is also a key aspect of seafarer wellbeing when aboard a vessel: when the men are not able to leave the ship, food may be a final attempt to relax and enjoy some free time and feel comfortable. Imagine the situation for a Hindu seafarer from India asked to eat beef and potatoes, or a Muslim laborer from Malaysia fed pork beans and rice. Proper victualing of the ship's store by the owner is of key importance to wellbeing but often is ignored for the sake of cost when stocking a ship. Less time for seafarers to rest and go ashore, combined with often-poor food conditions, contributes to a higher instance of fatigue aboard ships flying flags of convenience.[2] Owners, expected to repatriate their seafarers, are sometimes guilty of leaving laborers at a random port where the vessel has stopped without enough local currency to fly home. All of this occurs without a universally

[1] International Labour Office: Seafarers International Research Center, *The Global Seafarer* (Geneva: International Labour Organization, 2004), 122.

[2] Ibid., 104.

recognized right to strike, despite a global movement towards seafarer unity (with the assistance of ITF collective bargaining help, to be discussed in greater detail below).

Abandonment of Seafarers and Refused Repatriation

Repatriation, a globally recognized right of seafarers to be returned to the port where they joined their ship, is to be done at the ship owner's expense. The need for repatriation can arise for diverse reasons, including anything from termination of employment contract to poor health. Unfortunately repatriation privileges are sometimes simply ignored by owners employing international, low-cost crews, and often the high costs of international travel can be prohibitive for the seafarer. A seafarer left in a port he did not choose would have little recourse but to seek help from charity or his consulate, if one is nearby, and hope they are able to return him. Abandonment is an issue across all substandard owners seeking to employ low cost crew. An owner bound by the liberal laws of most open registries will not feel as threatened by legal enforcement, and as such there are many horror stories of entire crews being left in a foreign port where they may not speak the language or possess the proper papers for entry into the country. Without enough currency to return to their homelands but almost certainly possessing a large receivable account with their employer, they are rendered instantly destitute.[3] The ILO notes that "abandoned crews and substandard ships tend to travel together,"

[3] Ibid., 159.

pointing out that owners not willing to fix smaller things aboard the vessel are unlikely to provide funds for the crew to be returned when a voyage is complete.[4]

The largest and most public example of seafarer abandonment occurred during the collapse of Adriatic Tankers, a Greek-owned and internationally flagged tanker company. Adriatic Tankers went bankrupt and shut down in the mid-1990s. Hundreds of seafarers were left without recourse, some being stuck at ports for over two months before the International Transport Workers Federation was able to intervene on their behalf with Adriatic to ensure passage back to their homeports.[5]

Any reasonable observer would conclude a seafarer would have a clear right to repatriation if a vessel is arrested or a company closes, but what about a seafarer who decides he wishes to leave of his own accord? A ship, notes Dimitrova, is "not a prison," so a laborer should feel free to leave as he chooses, but due to the nature of shipping this is not always possible. In many cases, a seafarer is taken advantage of due to the sailing pattern of a ship, with an owner using the schedule and difficulty of replacing the particular crewmember as an excuse for not promptly releasing him from the vessel. The owner may create "difficulties with money transfers and communication," to convince a seafarer to remain on board.[6] Typically, notes Dimitrova, a contract will be for a fixed length, but even for sickness or deaths of

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[4] Ibid.

[5] A.D. Couper, C.J. Walsh, B.A. Stanberry and G.L. Boerne, *Voyages of Abuse* (London: Pluto Press, 1999).

[6] Desislava Nikolaeva Dimitrova, *Seafarers' Rights in the Globalized Maritime Industry* (Netherlands: Wolters Kluwer, 2010), 53.

family members a crewmember will not be granted early termination without sacrificing a portion of his wages (and, unofficially, the chance to return to that company in the future).

An alternative to creating difficulties for the crew is to flat out ignore them, and forget them. This is the fate met by crew of the *Rhone,* a Turkish-owned and flagged vessel that had been neglected by her owners physically and financially for some time. The vessel, in severe disrepair, managed to arrive at the Spanish-administered port of Ceuta in Africa, off the coast of Morocco, in September of 2009. When she arrived there was a crew of 14 on board and barely any provisions, as she had sailed under-stocked from Russia. In bad need of repair, the Spanish port authority detained *Rhone* pending sufficient repair of her hull and other aspects of the ship deemed as serious safety violations and risks to laborer health.[7]

Ortak Denizcilik Sanayi ve Ticaret, Ltd, the shipping company who owned the vessel, stressed that the issue would be resolved and tried to calm an anxious crew and captain. They never provided any assistance, despite repeated promises to do so. At this point, the crew was "penniless and forced to rely primarily on the handouts from the Ceuta port authority and local charities," despite a small cash advance from the vessel's mortgage holder. *Rhone*'s crew spent the next five months in this state, lonely, abandoned, and without cash, trapped on board a dilapidated vessel with little to no attention from the owner. Worrying about their

[7] Seafarers' Rights International, "Case Study – 'Rhone,'" December 09, 2011, http://www.seafarersrights.org/seafarers-subjects/abandonment/case-study-the-rhone/ (accessed September 08, 2012).

families, they complained often to the ITF representative who visited them regarding wages (the ITF agent was the only sign of any "human element" during the ordeal, aside from the generosity of the local charities). The crewmembers were owed a combined $233,817 by this point.

In December of the same year, the vessel was arrested by a Spanish court and held for crew's wages. Some crewmembers had personal funds for repatriation, but many had to rely on generosity again where the vessel owner failed them: the Spanish authorities paid repatriation costs for the seafarers not able to afford it. Amazingly after almost three years the case is still not resolved; the crew are still awaiting their pay while the courts in Spain work through the varying legal aspects of the case.

Regrettably, seafarer abandonment happens far too often. According to data compiled by Seafarers' Rights International, an affiliate of the ILO, 1,612 seafarers were abandoned on 136 ships between 2001 and 2010, with a staggering 647 mariners aboard 57 vessels neglected in 2009 alone. The ILO is careful to note that the numbers are likely much larger, as they typically only receive word of crew abandoned when a vessel is "officially abandoned."[8] This means that seafarers left at port because of unfair employment termination, neglect or abuse will likely never be counted as they are unlikely to report their case to the ILO. Abandoned seafarers suffer psychological and financial abuse when left at a port, and they are often

[8] Seafarers' Rights International, "Abandonment of Seafarers," December 09, 2011, http://www.seafarersrights.org/seafarers-subjects/abandonment/ (accessed September 08, 2012).

subjected to horrific conditions. There is no reason at all for abandonment to occur today, and even one abandoned seafarer is far too many. Abandonment is the height of irresponsibility and unethical behavior by an owner focused on dollars and not people.

Failure to guarantee right of return with full wages to seafarers making reasonable requests is tantamount to forced labor, and the withholding of wages is akin to extortion. Forcing a crewmember to stay aboard a vessel or abandoning him at a foreign port to avoid paying costs associated with repatriation does indeed, however, keep a company's freight rates down. This makes all of those shopping for bottom-dollar shipping services accessories in these disgraceful acts. Interestingly, there is a surprising lack of attention paid to this cause by the popular labor rights movements in the West. Perhaps a group of 14 men locked in a sub-standard ship for five months is less attractive on a protest sign than a child forced to work 10 hours a day for a week in a hot factory.

It is unreasonable to think that an owner flying an American or British ensign would even remotely consider the notion of prohibiting his laborers from leaving when they would like to, using methods such as withholding of payment to force them into agreement. Most seafarers aboard internationally registered vessels have families to support and go to great lengths to achieve gainful employment; this makes the fallout from such abandonment or refusal to repatriate much more serious. Such blatant disregard for their personal reasons to leave a ship is disgraceful. Wholesale abandonment of a crew by an owner to avoid paying repatriation costs, perhaps the blackest of stains on the industry, is unconscionable and worthy of greater attention from the labor activist and business communities.

A Statistical Snapshot of the Global Maritime Market

The seafarer of today is most likely an internationally sourced and trained laborer with little or no ties to the flag of his ship or the country of her owner. In this regard he shares a mutual lack of connection with the owner, who likely bears no national connection to the vessel either. In order to understand the impact of flag of convenience shipping on the American labor market, it is important to understand the current global labor market composition for mariners.

Thanks to exquisite data compiled by Dimitrova and Blanpain, a clear picture of the labor market can be achieved after reviewing several data points. Key to our discussion will be four points: largest merchant fleet by nationality of owner; largest merchant fleet by flag of registry; largest merchant fleet by domicile of vessel operator; and largest national source of global seafarers. Comparing these will reveal the magnitude of vessel registration outsourcing not just in the United States, but also across the globe, and will showcase the international legal maze the modern seafarer must confront.

Measurements of the size of fleet by nationality of owner are the most important pieces of data, as this shows where the true financial interests and ultimate control over shipboard decisions rests. This data comes in multiple raw formats, but for our purposes the size of fleet by tonnage (measured in gross weight of vessels, as a measurement of vessel size, and the figure used to determine tax revenue by registries) and by number of ships (which includes all ship sizes and is not separated by tanker, container, etc) are most important to the discussion. Not surprisingly, the United States is a top-ten source of ship owners, with the Americans ranking eighth in the world. American owners have a total of 914 of the world's ships, weighing in at 23,019,000 gross tons of steel sailing the oceans.[9] The top country by nationality of owner is Japan, claiming 4,319 ships and a whopping 109,097,000 gross tons. Singapore ranks thirteenth by tonnage, with 960 vessels weighing 17,245,000 gross tons. Very important to note here are the positions of the two most important global registries, Panama and Liberia. Liberia does not place as a top 25 by nationality of owner, and Panama is ranked at number 16, with nationals possessing only 287 vessels weighing a mere 10,179,000 gross tons.

A close follow up to nationality of owner is data on the domicile of vessel operator, ranked in this instance by number of vessels rather than weight (as voyage income will come from the number of vessels operated, not from the deadweight tons operated). Here, the United States ranks even higher, placing fifth on the list with 1,502 vessels weighing in at 38,412,000 gross tons. Japan again takes the top spot, and Panama places eighteenth with 670 vessels and 1,036,000 gross tons of steel. Liberia finally places in the global top 25 on this list and ranks twenty-fifth. Liberia is operating a mere 175 vessels but weighing in at a very respectable 6,344,000 gross tons under management.

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[9] Dimitrova, *Seafarers' Rights in the Globalized Maritime Industry*, 122. All data in this section comes from raw data charts compiled by Dimitrova.

The most important piece of data to compare to the statistics on owner nationality and operator's state is the rankings based on country of vessel registration. This list is the one that will show the breadth of the outsourcing phenomenon within the maritime industry, and will demonstrate the lengths at which many owners, both American and foreign, will go to avoid labor and tax law. As briefly noted in earlier chapters, Panama claims the largest merchant marine fleet in the world by registry, with 6,367 vessels flying the Panamanian flag and weighing a staggering 163,731,000 gross tons. This is over 22% of the world's fleet by tonnage. Next down the list, Liberia claims a huge portion of the global fleet as well but is far from the size of Panama's registry with 2,021 ships weighing 73,046,000 gross tons. The United States ranks a shocking position twenty on this chart, with only 469 vessels and 8,385,000 tons of the fleet flying the American flag.

This data is of the highest importance, as it demonstrates that a majority of American owners have outsourced their shipboard operations. Using the above figures, American owners have flagged 36% of their gross tonnage in the United States. A large majority, 64% of owners by tonnage, chose to outsource their vessel registry to avoid United States regulations, meaning that on 51% of American-owned vessels American labor law cannot be applied! Keep in mind here that tonnage, rather than ship quantity, is the key measurement when discussing tax as maritime tax is levied based on gross tonnage (similar to real estate tax being levied based on size of property). When discussing ships whose seafarers enjoy guaranteed access to fair labor standards, vessel quantity should be used, as this represents the unique vessels making voyages.

Zhao notes quite correctly that at all countries "with significant coastlines . . . inevitably produce seafarers at some time or other in the course of their . . . development," but our next piece of data demonstrates that a few key countries, notably those which are not fully developed, seem to dominate the field at the expense of the older, established merchant marines of the West.[10] The global maritime business is "just like the world's textile and clothing industries . . . heavily dependent upon labour from the lower income countries."[11] This presents a separate ethical dilemma, unique from the choice of flag. Once an owner selects the most relaxed legal system for his ships to sail under, should he then also select the cheapest seafarer, capitalizing on a weak labor law system? It seems that owners are doing this now, perpetuating a race to the bottom in terms of mariner wage rates.

The single largest source of seafaring labor is the Philippines, providing approximately 230,000 seafarers and claiming 28.1% of the world's oceangoing laborers.[12] America ranks much lower, with only 46,000 seafarers worldwide

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[10] Minghua Zhao and Maragtas S.V. Amante, "Chinese and Filipino Seafarers: A Race to the Top or the Bottom?," *Modern Asian Studies* 39, no. 3 (2005): 535.

[11]Ibid., 538.

[12]Ibid., 537.

(approximately 5.6% of the world market).[13] Panama and Liberia do not provide significant quantities of national seafarers to be rated by current data. As discussed in chapter three, the wage rates are significantly less for these foreign workers, which makes them particularly attractive to owners choosing to outsource.

Working Aboard Flag of Convenience Vessels

With the ship far out of senior management's daily thoughts, the onboard conditions of sub-standard flag of convenience vessels are often less than ideal, and the opportunities for seafarers to escape work both mentally and physically are not always present. Recruiting agencies today source most staff for ships, and these agencies are the first stop for a seafarer looking to work aboard a ship. Often the agency is not related directly to the ship owner. Widespread unethical practices at agencies, particularly in Asia, have been recorded by organizations seeking to advocate for mariners and maritime labor rights.

At the recruitment office, a seafarer will enter into a contract with a ship manager to work aboard a particular vessel for a particular period of time. This contract will include all of the pertinent details of employment: wages, benefits, access to communication, etc. Some of the contract clauses found on flag of convenience vessels are shocking to Western readers, and include stipulations such as medical care will be determined by the vessel master (rather than a doctor), and even some declaring that any laborer "caught being habitually seasick will not receive salary." Perhaps the most important to an owner worried about

[13] Dimitrova, *Seafarers' Rights in the Globalized Maritime Industry*, 128.

unionization are statements in contracts declaring the seafarer will not attempt to seek assistance from the International Transport Workers Federation or any of its affiliates during the contracted time.[14] A frequent clause, closely linked to a prohibition of access to labor organization assistance, relates to overtime: "You will be required to work such hours as will be required by the Master," continuing to state that "you will perform any such overtime work without any addition or extra payment." The ship recruitment agencies frequently then charge a very high fee for their placement services and loan the cost to the seafarer, creating a situation where the laborer is already facing significant debt before he even boards the vessel. Some fees, according to Couper, can be as high as $3,000, and until it is paid most agencies will not help a seafarer find another job (assuming it is not paid in full during the first voyage).[15]

Unfair recruiting practices aboard flag of convenience vessels occurring before the laborer joins the vessels at port are further examples of employment situations comparable to forced labor. A Filipino seafarer with a sizable debt to a recruiting agency in Manila may conceivably work his entire first voyage to repay it, certainly concerned that should he lose that position for any reason he will meet financial ruin, as agencies will not again place him in another position if he has any unpaid debts.

[14] Couper, *Voyages of Abuse*, 55.

[15] Ibid., 57.

The now effectively indentured seafarer, likely working on a Western-owned vessel, is the same seafarer transporting consumer goods. Perhaps he is helping to ship those same Nike shoes or adidas jerseys everyone immediately gravitates to when discussing industrial relations in the developing world? He will ensure your Christmas gifts arrive on time, provided he doesn't lose his job for "getting caught" being sea sick, or daring to fall ill.

Once aboard, the sailing situation will not help mitigate the stresses of the hiring. The seafarer will fear unfair dismissal for things such as demanding fair wages or attempting to seek union protection, and will also likely be fed food which is either out of his cultural comfort zone, or lacking in nutrients, taste and variety.[16] Fatigue, perhaps the most serious threat to the safety of all on board, is a constant problem on FOC vessels: 62% of seafarers typically work more than 60 hours per week, and 27% work between 12 and 15 hours each day, with insufficient opportunity to rest.[17] In addition to long hours, Dimitrova notes seafarers aboard flag of convenience vessels face "unsanitary and unhygienic accommodation, lack of medical care and provisions, physical and sexual assaults, [and] underpayment." The fatigue will have long-term health consequences, in addition to the very real threat of safety concerns while sailing. Fatigued sailors cannot react as quickly as well rested ones; should an accident occur such as a fire or an engine failure the men may not be able to respond as swiftly and efficiently. This puts all men aboard at

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[16] Ibid., 53.

[17] Dimitrova, *Seafarers' Rights in the Globalized Maritime Industry*, 56.

risk. Frequently the only body investigating these claims by sailors is the ITF, the very body many owners prohibit the seafarer from contacting, and there are seldom enforcement methods in place to rectify the situation.

American Labor Law at Sea

American labor law at sea is a very unique area of industrial policy, perhaps the best in the world in terms of protection for the seafarer, and with both historical significance and modern relevance. Despite Americans being the minority at sea, it is essential to understand American maritime labor law, as this is frequently a key component of what American fleet owners are avoiding when they choose to fly a foreign flag.

Fifty years ago, the United States employed 70,000 men at sea, a quarter of all trade was on American vessels, and the American flag still flew over the largest fleet in the world.[18]   Today that situation is very different, but the strong rights afforded to workers aboard American vessels remain a mainstay of the United States Merchant Marine.

American flagged ships afford seafarers all of the rights of American labor law ashore (recall that the flag grants nationality to the vessel). This includes the right to freedom of association, right to collective bargaining, and a right to strike. It is important to note that these rights are afforded to all members of the crew,

[18] Richard J. Dodson, "United States," in *Seafarers' Rights*, ed. D. Fitzpatrick and M. Anderson (Oxford: Oxford University Press, 2005), 513-522.

including foreign citizens, provided that the vessel flies the American flag.[19] American maritime labor law requires that unlicensed crew not comprise more than 25% of the staff, and that all officers be United States citizens. The National Labor Relations Act *does* apply to vessels flying the American flag, regardless of international port or sailing destination.

Unionism among American seafarers soared following World War II, with the National Maritime Union, a subsidiary of the Congress of Industrial Organizations, seeing its membership nearly double to 100,000 members.[20] This would wane in the coming years though, as American businessmen sought to outsource greater numbers of vessels in a move to block the application of American protection aboard their ships. The dominance of unionized American seafarers began to wane by the 1960s, and we continue to see a decline to this day as owners seek to avoid the very protections that once made the American Merchant Marine a powerful global force.

Existing U.S. law is not silent on the issue of applicability of the National Labor Relations Act aboard vessels with foreign flags, and this touches to the heart of the vessel labor outsourcing issue: guaranteed right to organize and strike. The United States Supreme Court has held in several cases that the National Labor Relations Act *does not* apply to foreign flagged ships, the most notable case being *Incres Steamship Company Ltd. v International Maritime Workers' Union*, in which the

[19] Ibid., 516.

[20] Leon Fink, *Sweatshops at Sea* (Chapel Hill: The University of North Carolina Press, 2011), 164.

court declared that "Congress had not intended U.S. labor statutes to reach foreign interest and, as such, U.S. law could not be invoked by labour groups . . . " aboard foreign flagged ships notes Dodson. This case legitimized outsourcing of regulation and created an environment where it was at the very least legally acceptable to avoid application of labor laws by registering a vessel outside of the United States.

The Maritime Labour Convention of 2006: Progress, But Not Enough

The Maritime Labour Convention of 2006, passed with the goal of being something akin to a "Seafarer Bill of Rights," sought to bring "social justice and fair competition to the maritime world," a tall order in today's global industry.[21] The agreement contains articles and regulations, split into five chapters or "titles." Each section covers an overdue and important set of topics and is designed to combine the vast menu of international conventions into one widely accepted document. This Convention would then serve as the global foundation for seafarer rights. Once ratified by a state, the Convention will be a "basic obligation" of those ratifying it.[22]

Title one is labeled "Minimum Requirements for Seafarers to Work on a Ship" and covers some of the most basic human rights and ethical issues faced in global seafaring today: age, and health requirements. This section seeks to address employment by minors, or employment by those not fit for sea duty but pushed to it by mounting debts and the like. Title two, "Conditions of Employment," will be of the utmost concern to flag states and ship owners equally, as it sets the standard for

[21] Moira L. McConnell, Dominick Devlin and Cleopatra Doumbia-Henry, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime* (Leiden: Martinus Nijhoff), 1.

[22] Ibid., 590.

wages, establishes mandatory overtime pay at a rate higher than normal wages, and sets a timeline for wages to be paid at a minimum once a month. This section also mandates written work agreements between the seafarer and the employer, something likely to provide great benefits to the laborer in terms of protection and guarantees. The following title, “Accommodation, Recreational Facilities, Food and Catering,” covers many topics related to worker living arrangements and comfort, but most important for our discussion it requires all ship owners to make arrangements for cultural and religious sensibility when setting up kitchens and living arrangements. This is a huge success for seafarers possessing no way to relax and feel at home, save for the kitchen mess and their bunk. Title four is named “Health, Protection, Medical Care, Welfare, and Social Security Protection” and provides for protection from lost wages and termination in the event a seafarer falls ill. It also mandates that appropriate medical treatment be provided to mariners if required. The last title, “Compliance and Enforcement,” provides for a rather weak system of enforcement whereby certified vessels will carry a documentation card on board declaring they comply with the requirements laid out in the Convention.[23] This is not as strict as it should be, but it is nonetheless a step towards universal application through continued monitoring.

In a discussion of shipboard business ethics, some of the early articles are the most important. Article II under the heading “Fundamental rights and principles”

[23] Paul J. Bauer, "The Maritime Labour Convention: An Adequate Guarantee of Seafarer Rights, or an Impediemnt to True Reforms?," *Chicago Journal of International Law* (Winter 2008): 643-659.

speaks to collective bargaining, mandating a freedom of association, and "elimination of all forms of forced or compulsory labor," a major step towards global acceptance of and protection for unionized seafarers. Article IV, also covering rights of seafarers, declares that all mariners have " the right to a safe and secure workplace that complies with safety standards," along with a right to "decent working and living conditions on board ship" and a "fair wage." Each of these is a huge advancement as they are all, for once, declared in a single document rather than a collection of 68 various conventions, the situation prior to 2006.[24]

The Maritime Labour Convention is a major success for seafarer rights. This is the first time that the International Labor Organization sought to create a consolidated document, addressing the major human rights and ethics violations occurring aboard the world's international fleet. This was no small feat. As noted, there had already been 68 previous agreements or memorandums of understanding related to issues of seafarer affairs.[25] What is particularly bold about this document is the emphasis it places on human dignity in a time when ship finance and ownership trends are aligned towards even greater cost cutting and budget reductions. The human element is too often forgotten in labor agreements related to shipping, and the Convention's focus on these details is an excellent step forward for all seafarers.

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[24] McConnell, *The Maritime Labour Convention*, 582.

[25] Bauer, "The Maritime Labour Convention," 646.

The greatest challenge to the Maritime Labour Convention of 2006 becoming the powerhouse that it could is not in any of the Convention's declaration, but rather in what it does not declare: nowhere in the Convention is a strict punishment system for noncompliant states. The document fails to provide for anything beyond a review board to check on compliance. This board will not have authority or responsibility for "directly enforceable legal obligations," and due to this absence the Convention becomes a set of highly regarded and excellent recommendations, subject to "self-enforcement" and with no real teeth behind it.[26]

Another drawback is the slow pace at which the Convention has been accepted. Requiring ratification by 30 ILO member states to enter into force, this number was finally achieved on August 20, 2012 when the Philippines ratified the agreement.[27] Many, including Bauer, have noted that it is fitting for the Philippines to ratify it and cause enforcement, due to the large size of the Filipino seafarer labor force, but unfortunate that it took so long. The speed at which member states have moved to ratify demonstrates the level of importance placed on business ethics and seafarer rights within the global community. The ratification list is telling for those missing as well as those ratified: the United States, for one, is missing.[28] Finally

[26] Ibid., 649.

[27] International Labour Organization, "Philippines Ratification Marks Global Milestone for Decent Work for Seafarers," August 20, 2012, http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_187712/lang--en/index.htm (accessed September 05, 2012).

[28] Full list of those ratifying the Maritime Labour Convention of 2006, according to ILO: Antigua and Barbuda, Australia, Bahamas, Benin, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Denmark, Gabon, Kiribati, Latvia, Liberia, Luxembourg, Marshall Islands, Netherlands,

ratified though, the Maritime Labour Convention of 2006 will now cover approximately 60% of the world's fleet by gross tonnage and 30% of all ILO member states.

The most significant absence from the Maritime Labour Convention though is not the enforcement system; lack of enforcement is not entirely surprising. Rather the most tragic is an absence of a guaranteed right to strike. The right to strike is not enumerated under the Convention and as such it is unlikely the member states ratifying the agreement will feel any need to implement it on their own. The right to strike is essential in seafarer industrial relations, because it renders the collective bargaining process powerful. Without threat of strike, a ship owner can simply ignore the demands of his workers at sea and the seafarers will have little recourse. Many flag of convenience registries currently accept the right of seafarers to collectively bargain, while not guaranteeing a right to strike, and the MLC of 2006 seems to follow the flag states' lead on this topic. A guaranteed right to strike is just as essential aboard a vessel as it is on land: without it, management may not take seafarers seriously when they speak up for their rights regarding living conditions or difficulty with payment of wages. Despite all of the wonderful advancements contained in the Convention, until a right to strike is guaranteed for all seafarers, not just those sailing on vessels flying established flags, abuse of labor aboard vessels will likely continue to be a threat.

Norway, Palau, Panama, Philippines, Poland, Russian Federation, Saint Kittes and Nevis, Saint Vincent and the Grenadines, Singapore, Spain, Sweden, Switzerland, Togo, and Tuvalu.

International Labor Law at Sea

The legal codes of flag of convenience states, note Fitzpatrick and Anderson, are comprised of laws "promulgated largely to accommodate shipowners," focused on a policy promoting foreign vessel registration; in these states "protection of seafarers is likely to be of secondary importance."[29] What is interesting is that in many states such as Liberia there is lip service paid to seafarer rights. It would seem that ratification of agreements such as the previously mentioned Maritime Labour Convention of 2006 is done so in an effort to not seem overly relaxed legally. The laws on the books in flag of convenience states will grant the right to form unions in some cases, for example, but may not have a policy for enforcement or a method to ensure management recognizes the unions. Panama and Liberia, our investigative bodies thus far, are good candidates for further discussion regarding the most significant topics discussed: collective bargaining, strike ability, and dispute resolution.[30]

Liberia

Liberia has a very interesting labor law, one mixed with seemingly pro-laborer passages, quickly negated later by other sections or rendered useless due to lack of enforcement. Based on a legal system with ties to the West, there are many similarities to the laws of the United States. Liberia adopted part of its legal code

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[29] D. Fitzpatrick and M. Anderson, eds., *Seafarers' Rights* (Oxford: Oxford University Press, 2005).

[30] For details on further aspects of the maritime code in each country, please reference the excellent work by Fitzpatrick and Anderson, the first and only comprehensive legal treatise on global seafarer rights.

from America, and when maritime code in Liberia is silent on an issue, the government has law in place to allow the adoption of American code if there are not items contrary to existing Liberian law (even allowing cases to be heard at times and under certain circumstances in U.S. courts). The ties to American law are two-fold: as noted earlier, there was a heavy steering by American businessmen in the formation of the maritime code, but the legal history dates to earlier than that. Freed American slaves had formed Liberia in the nineteenth century, beginning a long and very unique legal tradition, and they were familiar with American law and used it as a foundation.[31]

Unfortunately for the seafarers sailing under Liberia's colors, labor codes are an aspect of American law *not* adopted by Liberia. Liberia's labor law does provide for things such as a right to collectively bargain, but it is incredibly vague in other areas. Noteworthy in a discussion on flags of convenience, Liberia's maritime code does not mandate a national link to the vessel for seafarer origin.[32] Also, it is very strict with regard to seafarer wage forfeiture, providing many opportunities for a mariner to lose his pay if disagreeable aboard the ship.[33] Freedom of association is guaranteed, both by domestic policies and international agreements to which Liberia subscribes. However, as is usually the case with Liberian labor law, a seemingly benign section of code has a twist: coercion *is not* forbidden in business,

[31] John W. deGravelles, "Liberia," in *Seafarers' Rights*, ed. D. Fitzpatrick and M. Anderson (Oxford: Oxford University Press, 2005), 331-355.

[32] Ibid., 343.

[33] Ibid., 351.

unlike in American labor law. When discussing agreements entered into between an employer and employees "unless the action is otherwise prohibited by Liberian law. . . the use of coercion would not, in and of itself, be deemed unlawful or an infringement on the right of freedom of association."

To a Western observer it is frightening to think coercion is permitted if it aids in the completion of an agreed work contract, as it presents an opportunity for workers to be bound to agreements that may or may not be in their best interest, likely to the benefit of international management. One immediately thinks back to the earlier discussion of seafarers forced to stay aboard a ship when they wish to leave, coerced with threats over payment if they leave, even when sick or in the case of deceased family members. Unfortunately, this is another detail that an international businessman choosing Liberia for its relaxed laws is unlikely to see as a negative when registering in Liberia, but it is a serious ethical dilemma that deserves full consideration by the owner. An owner may not even be aware a seafarer aboard his ship is being coerced to stay by a captain hired to command his ship.

International protections for bargaining rights are still very important, and Liberia has at least ratified the ILO Right to Organize and Collective Bargaining Convention, as well as the ILO Freedom of Association and Protection of the Right to Organize Convention.[34] The right to collectively bargain is enumerated in Liberia's own code as well, providing a high level of protection, however there is a stipulation

[34] Ibid., 338.

that details of contracts reached cannot contain anything contrary to the laws of Liberia, which will come into play during the discussion of strikes.

The only true recourse for seafarers seeking attention and resolution of disputes, the strike, is heavily restricted in Liberia. In order to strike aboard a vessel in Liberia, a majority of seafarers must have voted for the strike by secret ballot, and then 30 days' notice must be provided to the vessel Master and/or employer. According to deGravelles, an expert on the Liberian code, the laborers must have already satisfied all requirements in section 359 of the labor code, which provides for the following timeline:

1. Five days after a labor dispute arises, the seafarer must notify the Master, who will have five more days to resolve the issue.

2. If not resolved by the vessel Master to the mariner's satisfaction within ten days, the Master must take the issue to the vessel owner. The vessel owner has twenty days to resolve the dispute.

3. If not resolved by the owner in twenty days, the owner or the mariner may seek mediation before the Commissioner or Deputy Commissioner for Maritime Affairs. The mediation will have 30 days to succeed or fail.

4. If, after 30 days, mediation is unsuccessful the parties may demand arbitration. Each side will be permitted to vote on an arbitrator, and if an agreement cannot be reached, each will appoint one, and these two arbitrators will select a third to begin proceedings.

Only after these steps have been satisfied and an agreement is still reached which is satisfactory to the seafarer, are they permitted to strike, and Liberian law is very careful to note that "compliance with the stated procedures will not give legitimacy to any strike, picketing, boycott or like interference . . . if such action is contrary to any existing labour contract or contract for seafaring labour."[35] Once again, a critical analyst will recall the frequent cases where flag of convenience vessels attempt to hold mariners against their will, citing an existing work agreement as a valid cause for not permitting them to leave the vessel. If a mariner has an existing contract and still cannot resolve a dispute, he will not be permitted to strike. There is also the possibility that the owner or vessel Master would be tempted to find reasons to terminate the frustrated employee's position during the proceedings.

Note well that no exception to this lengthy (and likely impossible to complete) process is made for strikes concerning safety and wellness issues, making *any* work stoppage illegal under Liberian law if all above conditions are not met. This is a highly unethical regulation that can serve little purpose but to provide owners of sub-standard ships, for which flag states such as Liberia have been shown to often represent, a haven free from the concerns of regular maintenance and occupational health and safety procedures. The existing law creates an environment where collective bargaining is indeed permitted, but it is essentially impossible to strike aboard a Liberian flagged vessel.

Panama

Panama is similar to Liberia in the sense that the maritime labor legal code is separated from the general legal system in order to retain its attractiveness to international ship owners and investors, but unlike Liberia it is less restrictive to

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[35] Ibid., 341.

seafarers in its written code, choosing instead to embrace ambiguity.[36] Specifically, seafarers are separated from the general labor laws covering land-based employees, however in the event the maritime legal code is silent on an issue the Panamanian courts may, on a case by case basis, allow the entry of the standard labor code into the maritime courts. Also like Liberia, there is no requirement for a national link of seafarers to the vessels registered in Panama.

In a contrast to Liberia and most Western states, the maritime labor code in Panama *does not* provide for an enumerated freedom of association and right to collective bargaining. The law makes reference to "unions" and "collective agreements," but as the right to organize is not expressly granted the courts must analyze any disputes individually. Panama has ratified several ILO statues recognizing a right to form unions and prohibiting any sort of discrimination against union members, but national law will take precedence over ILO agreements during disputes. Additionally, while a group of mariners may be permitted to organize, there is no legal obligation on behalf of the ship owner to enter into a collective agreement, only an option to negotiate if he or she so chooses. [37]

The Panamanian maritime legal code is silent on the right to strike, but as the land-based legal code grants a right to strike to all workers, the courts will resolve disputes involving strikes individually with close analysis. This is an important distinction from the maritime code of Liberia: while not expressly permitted,

[36] Enrique Cajigas, "Panama," in *Seafarers' Rights*, ed. D. Fitzpatrick and M. Anderson (Oxford: Oxford University Press, 2005), 381-406.

[37] Cajigas, "Panama," 385.

strikes are also not expressly prohibited. If there were a scorecard between Liberia and Panama regarding rights for seafarers, Panama would seem to register one point here.

An implied right to strike and an implied right to collectively bargain (if we stretch the case-by-case resolution of relevant disputes), while an improvement over many flag of convenience states, is unlikely to enable a seafarer to successfully defend against shipboard abuse. To begin with, in order to mount a successful strike likely to affect change on board the vessel, a single seafarer will need to lead a unionization effort on board his vessel. As this is not protected activity, he may well be terminated before he is able to achieve any followers. Without a group of subscribers, the same seafarer is unlikely to assemble a group prepared to strike, so the threat of strike to the owner is very low. On a Panamanian flagged vessel, an owner worried about threats to strike may well decide to terminate the employment of the seafarers voicing disagreement and take his chances in a court. The application of law on a case by case basis may provide him some level of assurance he can win a case with the proper resources. The same owner is also not bound by any legal obligation to enter into an agreement with a mariner's union formed aboard his vessel. For these reasons, Panama appears to be quite attractive to a shipping executive seeking to have maximum control of his expenses and his laborers at the same time, ignoring the ethical questions that arise in the process.

The World Needs International Unions at Sea

Nathan Lillie notes that ship owners flying flags of convenience are seeking to break free from the restrictions of their home states, and that most "no longer crew their vessels with the highly unionized seafarers of the traditional maritime countries," choosing instead to seek low-wage non-union workers from developing countries, a decision which will directly impact the owner's national labor force.[38] This confirms earlier discussions that relate to an owner's focus on lowering his freight rates, but it also opens an ethical discussion on the very existence of a right to collectively bargain. Do owners step too hard on the rights of workers when they seek to flag out? Should an owner be allowed to choose the individual labor law he wishes to follow, and if he does, what does this say about his own ethics? An owner seeking to avoid taxes by registering in Panama is certainly entertaining an ethical dilemma as well, but when that same owner seeks to break the backs of organized labor on his vessels; he is crossing a line he may not even realize exists. Without the protection of a union at sea, the seafarers aboard his vessel are not only devoid of protection from his own low wages, but they are also without a voice to speak against abusive masters, unsafe working environments or poor health conditions. Depriving them of the privilege to associate freely and bargain as a unified body makes any upward mobility highly unlikely and creates an environment in which the worker will potentially always lose, and the owner always wins, in labor

[38] Nathan Lillie, *A Global Union for Global Workers: Collective Bargaining and Regulatory Politics in Maritime Shipping* (New York: Routledge, 2006), 40.

negotiations. The problem for the seafarer is compounded by the difficulty to strike aboard flag of convenience vessels: even if a seafarer is on a ship where collective bargaining is permitted, he is most likely forbidden from striking for any of the reasons discussed earlier, rendering the union powerless in the face of management. With global maritime union density at approximately 27%, a wide majority of seafarers are not able to enjoy protection by a union.[39] These union members mostly belong to the ITF, and while they have been able to influence some union-free owners to pay respectable wages in order to "avoid problems" with other members, it is not a guarantee and many outsourcing owners are unlikely to be influenced by such a small percentage of owners paying living wages to their imported labor.

Global seafarers have an interesting claim to history. Contrary to assertions by Henry Meyerson in 2005 that the Union Network International was the first truly global union, seafarers in fact lay claim to the first multi-national network of laborers and environment of global labor competition. The 1990s were not the first period of international business interests threatening the bargaining power of employees, as declared by Meyerson, and despite comments by Andy Stern, president of the Service Employees International Union at the time, the concept of international solidarity was not new.[40] The first truly global network of labor unions was the International Federation of Ship, Dock, and River Workers, founded in 1896,

[39]Ibid., 41.

[40] Fink, *Sweatshops at Sea,* 117.

which eventually evolved into today's International Transport Workers' Federation (ITF).[41] The ITF is one of the most important bodies in the global maritime labor rights arena, and often is the only organization working for the seafarer when situations with owners become tense. The ITF's importance cannot be understated: it is the body all seafarers can count on to assist them in times of crisis, even if no one else will. Additionally, the ITF is likely responsible for global seafarer wages not completely collapsing: much as unions have done in other trades around the globe, a union wage on one ship can influence a non-union owner to raise his wages so as not to lose quality laborers. Regrettably, ITF pressure does not seem to have a major impact on a right to strike though, and this is an area (through their flag of convenience campaigns) where resources must be focused in the future if the ITF wishes to affect real change.

The Importance of Strikes to the Seafarer

The right to strike is important to all workers in all industries. A strike is often the last tool employees have when they feel abused or unheard. In a vessel sailing internationally, with no media to report on conditions and likely very few advocates aware of their situation, seafarers must have an enumerated right to strike in order to address the often unethical actions management may take in flag of convenience shipping. Mariners have a very distinct operating circumstance which separates them from other trade groups and renders them especially vulnerable to abuse: they are almost never able to leave their place of employment

[41] Ibid., 118.

at will. This is not meant to discount the harsh realities faced by factory workers and other industrial trade groups; they too face difficult periods at times where a right to strike is essential. It is very important for observers to note that a seafarer facing an unsafe working condition such as a failing muster system or inoperable lifeboat can complain to his vessel's Master but must then remain on the same vessel, regardless if she is repaired or not!

The absence of an enumerated right to strike in open registries has been demonstrated to be a key attraction for owners, and this is one of the greatest threats to the global maritime industry. As we have seen earlier, open registries now claim a majority of gross tonnage in the world, and as the global economic situation remains stagnant at best owners will increasingly seek the lowest operating costs possible to keep their companies profitable. If global shipping consumers (such as manufacturers) continue to demand the lowest price for services, owners will continue to find ways to provide the lowest freight rates. Without a doubt, it will be the global seafarer who pays this price physically, emotionally and economically. He will be forced to do it quietly, without the ability to call attention to his plight through a safe, organized, and legally protected strike.

CHAPTER V

A ROBUST AMERICAN MERCHANT MARINE IS QUICKLY FADING INTO THE HORIZON

The American Merchant Marine as a component of the global seafaring labor force has, as we have now seen, become a barely noticeable minority so unimportant in global supply and demand that it rarely registers on anyone's data sheets. In a matter of only several decades a labor force once employing a small army has now faded, while at the same time American owners remain a major force in the shipping community. American owners are outsourcing tonnage rapidly and without considering the implications for the American seafarers, focusing on their own operating costs. As demonstrated in chapters one and two, a focus on rates combined with the volatility of the maritime industry's economic cycle have made the American seafarer simply too expensive. What remains of the American fleet is largely comprised of Jones' Act and protected-industry cargo carriers, to be elaborated on later in this chapter.

The move by American businessmen to influence the creation of alternative jurisdictions, in pursuit of savings and more favorable labor systems, seems to have been a success. American owners have for the most part successfully circumvented the American regulatory agencies they view as increasing the cost of business. If the owners are winners, who are the losers? In this case, no reasonable conclusion can be drawn other than to declare the American Merchant Marine as an institution to be the loser. The international seafarer fares little better. The Merchant Mariners are not the only losers though. As the American fleet diminishes, the average America citizen also loses. Reading the reports by the United States Department of Transportation's Maritime Administration, the body charged with promoting American-flagged maritime business, it is hard not to notice a certain level of self-awareness within the writing. American operators choosing to still fly American flags and employ Americans are paying dramatically more to operate, and possess an aging, small fleet. American owners seem to shrug off the ethical dilemma created here, appearing to forget the human element to shipping. The reliance on global labor aboard American-owned vessels also creates a national security issue, to be discussed later.

American Cabotage Protection and Cargo Preference Laws

The American mariner has one remaining significant source of demand, which cannot easily be outsourced: the cabotage trade. Cabotage trade is the intra-coastal transit between American ports. Coastal trade is protected in most countries, and the United States is no different.[1] The Maritime Administration of the United States, an Executive-branch body, is the greatest source of information relating to cabotage statistics. Reading through their reports, a critical observer notices that the data often speaks to a military use for the Merchant Marine, and this is easy to understand: vessels are useful in ordinary trade, but during a time of war

[1] U.S. Department of Transportation, *U.S. Cabotage Laws*, Policy Paper (Washington: Maritime Administration, 2011).

they are essential. The Maritime Administration is pointed out as an Executive branch body to remind that in the future, it may be subject to political influence.

The most important piece of protective legislation for today's seafarers is the Merchant Marine Act of 1920. This Act sought to preserve the merchant fleet, as it was integral for both international trade and military activities. The Jones Act, as section 27 of the Merchant marine Act of 1920 is commonly referred, is the landmark commercial code relating to the modern seafarer. This section explicitly declares that American built, flagged and crewed vessels shall perform all coastal trade in America. Recall from earlier discussions that there are allowances for permanent residents to work aboard ships as well.

Cabotage rules are easy for unfamiliar observers to see when they are critiquing the itinerary of their favorite cruise line. Cruises originating at an American port, and then sailing for another American port, will be required to make a stop at a foreign port in between if they are flying a foreign flag. For example, imagine a cruise originating at the Port of Los Angeles bound for Hawaii. If the cruise ship is flying under a flag of convenience, the vessel will make a stop in Mexico for a few hours or perhaps a day, and then sail on to Hawaii. If the ship did not make a stop in Mexico, she would be turned away by authorities before ever reaching Hawaii, and barred from berthing. If, however, the same vessel were flying an American flag she could sail direct from Los Angeles to Hawaii without stopping. Keep this in mind when selecting vacations; no cruise ship stops for provisions or fuel or any other common misconception at a foreign port, she is only stopping to ensure unrestricted access to the next American port. Such stops are telltale signs of a flag of convenience, and one look at the crew and officers once aboard should confirm any suspicions.

According to the Maritime Administration, this Act has led to a sustained and respectable internal fleet and labor force (that is, not trading internationally) and a modest international fleet. Specifically, there were approximately " . . . 13 ocean-going vessels, 183 tugs, 3,942 barges, 64 offshore supply vessels and 69 ferries" purchased in the past five years for coastal and protected trade, employing American laborers.[2] Without the protection of the Jones Act, foreign crew would have likely overtaken the American cabotage market, much as they did the international trade.

The Jones Act is not the only important piece of legislation worth noting. In addition to protections for the specific lanes provided by the Merchant Marine Act of 1920, the Cargo Preference Act of 1954 affords a certain level of preference for the American seaman based on the cargo carried, independent of the trade lane.[3] This is accomplished by requiring that a minimum of 50% of goods being shipped as a result of United States government programs be placed on U.S.-flag vessels, with higher percentages for certain commodities and programs. The third piece of legislation that helps attract American ship owners to register their vessels in the United States is the Maritime Security Act of 1996. This Act guarantees " . . .

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[2]Ibid.

[3] Murray A. Bloom, "The Cargo Preference Act of 1954 and Related Legislation," *Journal of Maritime Law & Commerce* 39, no. 3 (July 2008): 289-313.

financial support to American–flag vessels in return for their support of the U.S. Department of Defense during times of war," often a situation beneficial to both owners and the government.[4] In return for direct payments paid by the Maritime Security Program, vessel owners will make their fleet available to the government as needed during the period of crisis to support American interest. This allows the American military planners guaranteed access to American-crewed and managed operational support vessels to carry food or equipment as needed, without needing to charter foreign vessels.

The American regulations providing for cargo preference and trade lane restriction are supporting a key piece of the maritime economy, and protecting American jobs. Without these protections, it is hard to conceive that American shipyards, mariner unions, seafarers and dry docks would have a sustainable income. Naturally, organic growth and sustainable business practices by shipping executives are the preferred method of preserving the American merchant mariner's employment prospects. When the industry has demonstrated it is not willing to consider the human aspect of shipping, it is important for the American government to advocate on behalf of the mariner. The Department of Transportation, through its subsidiary department the Maritime Administration, is doing an excellent job of advancing the seaman's message but more needs to be done. Particularly in an era of increased modernization and optimization of

[4] PricewaterhouseCoopers LLP, *Study of the Impediments to U.S.-Flag Registry*, (PricewaterhouseCoopers, 2011), 8.

economics of scale (resulting in less seafarers need than ever before[5]), advocates for the American flag will face a difficult task. The American Merchant Marine has decreased to less than two percent of world trade volume from 25% of the global market in just fifty years, and unless its plight receives attention it is likely to continue the downward trend.[6]

Economic Benefits for the Future

Not only is the Merchant Marine important for the seafarers who work aboard American–flagged ships, but it is also vitally important to the communities in which it operates. Major shipping cities such as Baltimore and New York have already been shown to benefit from the secondary services associated with being a port town (recall the earlier discussion on the impacts of innovations in stevedoring resulting from the introduction of the container, and the impact on New York City). Associated industries such as trucking and repair work tied to the port cities are just as essential to the American economy. If we remember that in order to fly an American flag a vessel must have been built or received major reconditioning in an American shipyard, any observer would see the large number of skilled labor careers that are supported by American shipping and shipbuilding: welders, steamfitters, electricians, and sheet metal fabricators, to name only the obvious. Owners choosing to fly a foreign flag on their ships are also choosing to have their

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[5] U.S. Department of Transportation, *Foreign-Flag Crewing Practices*, (Washington: U.S. Department of Transportation, 2006), 31.

[6] American Maritime Congress, "Modern Merchant Marine," April 2011, http://www.americanmaritime.org/merchant/ (accessed September 19, 2012).

ship built, and most likely serviced, overseas, and as a result are choosing shore-based skilled laborers from developing countries just as they are choosing outsourced shipboard labor, whether they are immediately aware of it or not.

The wages rates, touched on in an earlier chapter, are very important to the American economy. Shipping wages provide a living wage to all those involved: from unskilled shipboard laborer all the way up to officer. A ship flying an American flag receives much higher charter rates when hired by a customer: according to Maritime Administration data, in 2009 an American-flagged tanker would earn a gross revenue of $34,900 per day, compared to an international-flag average of $2,700 per day.[7] Compare this with the average crew costs for each: an American crew costs on average $13,655 per day and an international crew requires an average of $2,590 per day.[8] This means an American crew is over five times the cost of an outsourced crew, and that crewing costs represent well over 50% of the daily operating cost. It is clear that the American-flagged vessels return more money to the U.S. economy both in terms of seafarer labor and the secondary industries the fleet supports, but it also cannot be ignored that from a business standpoint they are priced extremely high.

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[7] U.S. Department of Transportation Maritime Administration, *Coastal Tank Vessel Snapshot, 2009*, Policy Paper, Office of Policy and Plans (Washington: U.S. Department of Transportation, 2010), 8.

[8] U.S. Department of Transportation Maritime Administration, *Comparison of U.S. and Foreign-Flag Operating Costs*, Economic Analysis (Washington: U.S. Department of Transportation, 2011), 6.

A very interesting piece of data tracked by the Maritime Administration is the average age of vessels calling American ports, and when separated by flag state is telling of the overall competitiveness of American seafarers internationally. Despite the higher daily rates earned by American ship owners, the American-owned and American-flagged vessels are typically much older than their international counterparts. In 2010, the average age of U.S.-flag ships was 16.7 years, compared to an average age of foreign-flagged ships of 9.0 years.[9] Recall from chapter one Martin Stopford's shipping cycle and a theory emerges. If an American shipping executive feels he may not be able to support his vessel fleet with the market rates, he will not likely purchase new vessels. Given that adding new tonnage to a fleet is required to reduce the average age, we can see that the foreign-flagged fleets are adding new ships quicker than the American-flagged fleets, a statement as to their strength in global trade.

Role of the United States Merchant Marine in National Security

The American Merchant Marine provides a valuable service to the international trading community, but it also is a resource for American military planners desiring a stable and reliable alternative tonnage source in times of crisis. World War II demonstrated the importance of a viable fleet for supply and logistics operations, giving birth to the famed Liberty Ships. Liberty Ships were needed in such great supply to transport equipment that they were mass-produced

[9] U.S. Department of Transportation Maritime Administration, *Vessel Calls Snapshot, 2010*, (Washington: U.S. Department of Transportation, 2011), 9.

(sometimes to the distaste of the mariners aboard), eventually so well organized that a ship could be built and assembled in as little as 40 days.[10] This need for vessels is still present, and explains the Military Security Payment agreement mentioned earlier. The current United States-flagged fleet boasts an incredible figure: 85% is "militarily useful" if needed, and as such it is vitally important that the American flag be protected aboard the fleet.[11]

Calls to Repeal the Jones Act Must Be Pushed Back

The Jones Act has long been "lambasted as a classic protectionist measure" by free-market capitalists, and every so often calls to repeal it grow loud enough that Congress begins to introduce legislation to modify or alter it, frequently without much success.[12] Typically, this occurs when there is a GOP-led Congress, notes Wildavsky, and the maritime unions are forced to fight back against strong rhetoric and often misinformation.[13]

The most recent battle between maritime unions, Jones Act supporters, and a Republican Congress occurred in 2010 during the aftermath of the Gulf of Mexico oil spill. There were calls from many within the business community to repeal the Jones Act, including everything from letters to the editor to dedicated segments on major networks. Citing a need for more vessels, many unfamiliar with the

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[10] Stephen Wilkinson, "America's Instant Fleet," *Military History* (January 2008): 38.

[11] U.S. Department of Transportation, *U.S. Cabotage Laws*, 2.

[12] Ben Wildavsky, "Jones Act overdue for an overhaul?," *National Journal* (June 1996): 1262.

[13] Ibid.

importance of the Act led calls for its repeal, even going so far as to directly accuse President Obama of "protecting the pocketbooks of his union allies by keeping foreign vessels at bay."[14] Of course, such rhetoric ignores the significant safety and security concerns associated with the widespread outsourcing and replacement of coastal petroleum seafaring workers with much cheaper foreign workers. American-flagged and inspected vessels would also then be replaced with foreign-flagged vessels, of which the United States would have little ability to police for safety and health violations. During the same period, the Maritime Cabotage Task Force was careful to remind anyone who would listen that were the Jones Act to be repealed "tens of thousands of U.S. mariners" would be out of work in the Gulf of Mexico short-sea trade.[15]

Calls to end the Jones Act fail to take into account the importance of the Act, and its success in many lanes. There are certainly reports of Jones Act carriers experiencing hardship or going out of business all together as a result of the economic pressures present in American short-sea shipping.[16] But at the same time, there are many success stories in which American-flagged fleets are able to not only survive but also thrive in cabotage trade, employing thousands of workers. One

[14] Robert Bluey, "Why Won't Obama Waive the Jones Act?" *Fox News Online,* June 21, 2010, http://www.foxnews.com/opinion/2010/06/21/robert-bluey-gulf-spill-katrina-jones-act-waive-obama/ (accessed September 18, 2012).

[15] Matthew Murray, "Mariners, Unions Fight Call to Alter Jones Act," *Roll Call*, July 26, 2010: 1.

[16] Peter T. Leach, "American Feeder Lines Going Out of Business," *The Journal of Commerce,* April 27, 2012, http://www.joc.com/short-seabarge/american-feeder-lines-going-out-business (accessed September 18, 2012).

such company deserving of public attention is Matson Navigation, the leading Jones Act carrier. Matson, now a publicly traded company, has been in continuous business since 1882 and trades in the Pacific coastal trade. Matson operates 17 vessels in selected lanes, servicing a niche market very successfully.[17] While they may be the largest of the pack, their success demonstrates that American-flagged lines can function with proper leadership even in today's business environment, and their success challenges the claims of American owners seeking to outsource labor aboard their entire fleets.

Conclusion: Will the Sun Set on the American Seafarer?

By now we have critically reviewed every major component to a ship owner's decision regarding flag registry and have determined that American ship owners are seeking greatest utility of capital when they outsource shipboard labor at the expense of American mariners. An often-neglected foreign labor force replaces the outsourced American seafarers. Why should this matter to the average citizen? Quite simply, this should matter because we, as global consumers, are partly responsible for the race to the bottom present in the global maritime trade. By developing a culture of lowest price wins, we have contributed indirectly to the abuse of international seafarer labor and decline in relevance of the American mariner. Cabotage laws such as the Merchant Marine Act of 1920 are the only reason America still possesses a minor level of importance in the maritime trade,

[17] Joseph Bonney, "Matson Begins Trading As Independent Company," *The Journal of Commerce*, July 02, 2012, http://www.joc.com/container-lines/matson-begins-trading-independent-company (accessed September 17, 2012).

and without this Act, Americans would be completely shore based. This should worry American citizens. Without competent American mariners sailing aboard American-flagged ships, the United States may be faced with a very difficult circumstance if a major conflict ever demands steady access to vessels. Imagine the scenario if America needed to transport large amounts of food or supplies to troops somewhere, but could not acquire enough vessels flying the American flag? In this case, American military supplies would be transported aboard foreign vessels, with foreign laborers handling the goods.

The American seafarer is one of the most important skilled laborers in America and sadly a force receiving no significant attention. Much like the seafarer aboard a foreign flag who is working long hours, few are aware of their plight. Until unions grow aboard foreign-flagged vessels, the foreign seafarer will continue to experience hardship, all the while increasing in importance and continuing to take market share from the traditional Western states. In addition to growing union support internationally, it is essential that more be done to attract owners to the American maritime registry. There are many thoughts on this, and many good ideas, all which should be explored. One idea could be to strengthen the support of the domestic system through improved payment and financing systems. Or perhaps the United States could take a cue from Singapore and seek new tax codes to adjust the impact to ship owners, making it more favorable to flag in the United States. If the Western flag states become more involved in international seafarer welfare, all seafarers will benefit from the upward forces. Much like the unions aboard ITF-organized vessels have positively impact the wages of non-unionized vessels, greater representation and involvement on the high seas by the traditional maritime states will have an upward effect on all seafarers. Anything resulting in increased awareness of the situation internationally will also contribute to an improving overall situation. Organizations cited in this thesis such as Seafarers Rights International or the International Labor Organization, and certainly the International Transport Workers Federation, offer massive volumes of information for anyone willing to read it, and guidance for action to anyone prepared to take it.

The average citizen must pay closer attention to the calls by the ITF and the various American labor organizations publicizing the plight of the seafarer. After all, American consumer demand helped to create the current situation. We should at least grant it the attention it deserves.

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