

Trade Union Regime Formation Under the Conditions of Globalization in the Transport Sector: Attempts at Transnational Trade Union Regulation of Flag-of-Convenience Shipping

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SUMMARY: The article deals with an outstanding example of transnational trade union cooperation in the transport industry. It analyses the attempts of trade unions organized in the International Transportworkers' Federation (ITF) to establish a system of multinational industrial relations and collective bargaining in the flags-of-convenience shipping, which integrated national trade unions and their politics in international problematic interdependencies. Although based on egoistic national special interests and without formal restrictions on national sovereignty the cooperation leads to an international regime. It regulates the rights to organize and represent crews on ships of convenience in industrial relations, it lays down minimum standards for working conditions and incomes, and procedures for the multinational decision-making process and management of conflicts. The trade unions succeeded in regulating about 29 per cent of flags-of-convenience shipping and in establishing a multinational control of national collective bargaining, which is integrated in a system of international governance in the trade union sphere of activities. It is based on an imbalance of power between trade union organizations of industrialized and developing countries within the ITF and on specific conditions in transport industry, and therefore not transferable to other industries.

Globalization is one of the major challenges facing trade unions on the threshold of the twenty-first century. Worldwide economic interconnections render national economies vulnerable to external developments which are not susceptible to political control at the level of the nation-state. Consequently national governments and also national trade unions are increasingly losing their capacity to act in central political spheres which are coming under pressure from global market competition and international movements of capital. But as yet the unions have hardly made any moves to internationalize their activities in response to these restrictions on primarily nationally oriented interest politics. While there is today a system of trade union internationals differentiated by sector, territory and ideology, even after 100 years of existence these are still under-resourced associations with limited competence, which are "powerless" both towards their own auton-

omous member unions and towards nation-states and employers. And transnational trade union cooperation largely goes no further than declamatory actionism, unspectacular exchange of information and the provision of services for national interest politics.¹

The assessment of the future development of international trade union cooperation against the background of globalization is extremely controversial in academic analysis. In the political sciences subdiscipline of international relations – and here particularly within regime theory² – it is generally assumed that the increasing loss of sovereignty forces national actors acting rationally, and thus also the trade unions, into international cooperation and regulation in globally interlinked political spheres. Trade union research oriented towards conflict theory outlines similarly optimistic prospects for internationalism in the already classic thesis of delayed integration. Here the existence of a global opposition between capital and labour guarantees the process of a belated internationalization of trade unions to catch up with the avant-garde international economic integration. The most extreme case even expects the nineteenth-century centralizing processes within the nation states to be repeated at the international level; in this reading, the formation of a supranational trade union power³ and multinational labour relations based on a central hierarchy are on the agenda for the twenty-first century.⁴

1. Kurt P. Tudyka, Tom Etty and Marian Sucha (eds), *Macht ohne Grenzen und grenzenlose Ohnmacht. Arbeitnehmerbewußtsein und die Bedingungen gewerkschaftlicher Gegenstrategien in multinationalen Konzernen* (Frankfurt a. M., 1978), pp. 154–159; Kurt P. Tudyka, “Internationale Berufssekretariate”, in Siegfried Mielke (ed.), *Internationales Gewerkschaftshandbuch* (Opladen, 1983), pp. 35–36; Peter Rütters, *Chancen internationaler Gewerkschaftspolitik. Struktur und Einfluß der Internationalen Union der Lebens- und Genussmittelarbeiter-Gewerkschaften (1945–1985)* (Cologne, 1989), pp. 9–13, 264; idem, *Der Internationale Bergarbeiterverband 1890 bis 1993. Entwicklung und Politik* (Cologne, 1995), p. 13; John P. Windmuller, “International Trade Union Organizations. Structure. Functions. Limitations”, in S. Barkin *et al.* (eds), *International Labor* (New York and London, 1967), pp. 92–100; John P. Windmuller, *International Trade Union Movement* (Deventer, 1982), pp. 444–449; idem, *International Trade Secretariats: The Industrial Trade Union Internationals* (Washington, 1995), p. 45.

2. See Otto Keck, “Der neue Internationalismus in der Theorie der Internationalen Politik”, *Politische Vierteljahresschrift*, 4 (1991), pp. 635–653; Beate Kohler-Koch, “Inselillusion und Interdependenz: Nationales Regieren unter den Bedingungen von ‘international governance’”, in Bernhard Blanke and Helmut Wollmann (eds), *Die alte Bundesrepublik. Kontinuität und Wandel (= Leviathan, Sonderheft 12)* (Opladen, 1991), pp. 45–67; Beate Kohler-Koch, “Zur Empirie und Theorie internationaler Regime”, in idem (ed.), *Regime in den internationalen Beziehungen* (Baden-Baden, 1989), pp. 17–21.

3. Otto Jacobi, “Supranationale Arbeitsbeziehungen in Europa. Ein Literaturbericht”, in Ulrich Mückenberger, Eberhardt Schmidt and Rainer Zoll (eds), *Die Modernisierung der Gewerkschaften in Europa* (Münster, 1996), p. 189.

4. Already suggested by Edo Fimmen, *Vereinigte Staaten Europas oder Europa AG* (Jena, n.d. [1925]); Wolfgang Lecher and Hans-Wolfgang Platzer (eds), *Europäische Union – Europäische Arbeitsbeziehungen? Nationale Voraussetzungen und internationaler Rahmen* (Cologne, 1994), pp. 28–35; Rainer Hoffmann, “Europäisierung als Modernisierung”, in Mückenberger *et al.*, *Modernisierung*, pp. 292–304.

By contrast, the pessimistic end of the scale hardly holds out any chance of effective trade union internationalization despite all the interconnections in the global economy. Historical and empirical studies have identified a large number of barriers which have so far persistently prevented international trade union cooperation. These include national trade union inflexibility or conservatism⁵ as well as the heterogeneity of worldwide employee organizations which is rooted structurally in their specific national organizational environments;⁶ these organizations differ in their format, their internal decision-making structures, levels of organization, powers to act and their relationships to employers and the state just as much as they do in their ideological orientation, party links, long-term political options or even their short-term wage policy objectives.⁷ In addition, employees or their representative organization from high-standard and low-standard countries have competing material interests.⁸ And finally there is not even the basis of an institutionalized system of political decision-making, central state power and industrial conflict management⁹ on the international level which could provide opportunities for trade union intervention.

Against this background, trade union internationalism appears to be condemned in future too to “boundless powerlessness”¹⁰ or at least to a minimalist service function. It is always qualified as impotent (both from the viewpoint of conflict theory and from the empirical-pragmatic viewpoint) when the analysis is oriented to models of national trade union functions and trade union practices. On the other hand, the “pragmatic internationalist”¹¹ approach, proceeding from the logic of international politics, reaches

5. From the viewpoint of actor theory, these are responsible for the failure to remove national defensive barrier mentalities: Ulrich Mückenberger, Cornelia Stroh and Rainer Zoll, “Die Modernisierung der Gewerkschaften in der Europäischen Union”, in Mückenberger *et al.* *Modernisierung*, p. 24.

6. Such as different industrial relations, legal systems and the ways in which trade unions are tied into or excluded from the political system of the relevant nation-state.

7. Jelle Visser and Bernhard Ebbinghaus, “Barrieren und Wege ‘grenzenloser Solidarität’. Gewerkschaften und Europäische Integration”, in Wolfgang Streeck (ed.), *Staat und Verbände (= Politische Vierteljahresschrift, Sonderheft 25)* (Opladen, 1994), pp. 223–255; Klaus Armingeon, *Staat und Arbeitsbeziehungen. Ein internationaler Vergleich* (Opladen, 1994); Reinhard Bispink and Wolfgang Lecher (eds), *Tarifpolitik und Tarifsysteme in Europa. Ein Handbuch über 14 Länder und europäische Kollektivverhandlungen* (Cologne, 1993).

8. Windmüller, *Movement*, pp. 439–441; Marion F. Hellmann and Werner Olle, “Die Internationale Textil-, Bekleidungs- und Lederarbeiter Vereinigung (ITBLV) – Internationale Zusammenarbeit der Gewerkschaften unter den Bedingungen einer ‘neuen Weltarbeitsteilung’”, in Werner Olle (ed.), *Einführung in die internationale Gewerkschaftspolitik. Vol. 1, Ansatzpunkte gewerkschaftlicher Internationalisierung* (Berlin, 1978), pp. 130–150; Eckart Hildebrandt, Werner Olle and Wolfgang Schoeller, “National unterschiedliche Produktionsbedingungen als Schranke einer gewerkschaftlichen Internationalisierung”, *Probleme des Klassenkampfes*, 24 (1976), pp. 27–57.

9. Rütters, *Bergarbeiterverband*, pp. 12, 14; Visser and Ebbinghaus, “Barrieren”, pp. 245, 248–249.

10. Tudyka *et al.*, *Ohnmacht*, pp. 11, 37.

11. Werner Reutter, “Internationale Berufssekretariate. Organisationsstrukturen und Politik gegenüber Multinationalen Konzernen”, *WSI-Mitteilungen*, 9 (1996), p. 591.

the conclusion that in principle the expectations for international trade union cooperation are minimal. In this interpretation, trade union internationalism proves incapable of intervention outside internal trade union structures, and is limited to the provision of services by international associations for national organizations and their interest politics.¹²

In this paper, I wish to analyse an unusual example of multinational trade union cooperation¹³ which has developed in the transport sector, and specifically in maritime shipping, and has been practically ignored in the research.¹⁴ This is the attempt by the seafarers' unions affiliated to the ITF to regulate flag-of-convenience shipping as a reaction to the challenge of globalization processes in merchant shipping. This case study serves to illustrate the fact that the mode of operation of trade union internationalism is not to be understood by analogy with models of national interest organization, nor must it necessarily be reduced to an impotent service function. The focus on national action models adopted by trade union studies has formed the basis for misinterpretations over many years and for high expectations of international cooperation which are inappropriate to the specifics of action on the international level. These expect the creation of an active international collective actor which will represent workers' interests to capital and the state by means of legal enactments and wage agreements, and will obtain the institutionalization of industrial relations or alternative power structures. This is possible on the basis of universalist aims, shared values (such as solidarity across borders) or the allegedly homogenous interests of an ideal collective international employee which are produced by the transfer of the capital-labour conflict to the international level.¹⁵ But there is no empirical evidence for this, and there are a number of serious barriers to it. Consequently, international trade union cooperation remains deficient and

12. Rütters, *Chancen*, pp. 9–11, 264–267; idem, *Bergarbeiterverband*, pp. 13; Reutter, “Berufssekretariate”, pp. 591–592; similarly also Windmüller, *Movement*, pp. 444–449; idem, *Secretariats*, p. 45.

13. Treated in detail in Sigrid Koch-Baumgarten, *Konstitutionsbedingungen und Funktionsmechanismen gewerkschaftlichen Internationalismus am Beispiel der Internationalen Transportarbeiterföderation 1896–1995* (Habilitation dissertation, FU Berlin, 1996), pp. 324–388, which primarily makes use of ITF organizational files from the ITF collection (MSS 159) of the Modern Records Centre (MRC) of the University of Warwick, UK.

14. There only exists one now dated study based on limited material: Herbert R. Northrup and Richard L. Rowan, *The International Transport Workers' Federation and Flag of Convenience Shipping* (Philadelphia, 1983); this met with very little response from trade union studies. One reason for the long neglect of this area in research could be the “exclusivity” of merchant shipping – practically an “exotic sector” for trade union studies. The transport industry in general has never formed the focus of trade union analyses, and general statements are usually based on models from the metal industry or other manufacturing sectors.

15. See Lewis L. Lorwin, *Die Internationale der Arbeit. Geschichte und Ausblick* (Berlin, 1930); Hans Gottfurcht, *Die internationale Gewerkschaftsbewegung im Weltgeschehen* (Cologne, 1962); Ernst Piehl, *Multinationale Konzerne und internationale Gewerkschaftsbewegung* (Düsseldorf, 1973); Kurt P. Tudyka (ed.), *Multinationale Konzerne und Gewerkschaftsstrategie* (Hamburg, 1974); Lecher and Platzer, *Union*.

impotent when measured against national interest politics. This pessimistic approach follows from trade union studies' implicit premises, which distort the view of forms and outcomes of cooperation which exist beyond the bounds of nation-state "normality". Or with an eye to the specifics of international politics these are limited to service provision, which does not endanger the decades-long primacy of national trade union politics.

In my study, I orient myself on models of international politics and particularly on regime research. The factors described, which in trade union studies are seen as structural barriers to international cooperation, are taken here as the actual basis of multinational cooperation. This develops between autonomous and self-interested national trade unions representing divergent national special interests. It arises voluntarily under the conditions of anarchy, which knows no central power or superordinate authority. It is not driven by altruistic or solidaristic considerations but by the national actors' interest in minimizing their own vulnerability in interdependent political spheres.¹⁶ This results in the creation of regimes which are defined outside any formal (collective) contracts as "sets of implicit or explicit principles, norms, rules, and decision-making processes around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Decision-making procedures are prevailing practices for making and implementing collective choice".¹⁷ For their part, they may become "intervening variables" at the level of nation-state politics and impose restrictions on national actors, so that national policy formation is tied into an international governance.¹⁸

In the post-war years, the rise of the flags of convenience created an international, deregulated and non-unionized segment of merchant shipping, which as a competitor on the global market had far-reaching consequences for the nation-state-based organization of the maritime transport sector, for the national fleets of the industrial countries, and for central national trade union activities (from economic and wage bargaining policies to organizational policies). Despite their primarily national and self-interested orientation, competing national trade options and conflicting material interests (between trade unions in capital-exporting countries and those in labour-exporting countries), a trade union regulation regime has come into being here which "translates" the instruments of national interest politics (organization, minimum standards through collective contracts and legal enactment) to the international level. It lays down criteria for determining flags of convenience and regulates the rights of trade union

16. Keck, "Internationalismus", p. 637; Kohler-Koch, "Empirie", pp. 22–23.

17. Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables", in idem (ed.), *International Regimes* (Ithaca, NY, and London 1983), p. 2.

18. Kohler-Koch, "Empirie", p. 20; idem, "Inselillusion", pp. 48–50.

organization and representation on their ships, it sets collective international minimum standards, procedures for their implementation and control and for the regulation of conflicts, and institutionalizes decision-making processes in a new organizational section under the umbrella of the ITF.

My paper is intended not only as an examination of the origin and development of the trade union cheap flag regime on the basis of the changing constellations of actors and its results; it also considers the question whether this hitherto unique example of transnational cooperation results from features specific to the maritime transport sector, or whether it is also transferable to other branches of industry.

ORIGIN AND DEVELOPMENT OF FLAG-OF-CONVENIENCE SHIPPING

Like other branches of transport or industry, maritime shipping is on the one hand organized on nation-state lines. Ships on the high seas are floating parts of the territories of the nation-states whose flags they carry and under whose legal system they come. "Real" national fleets show a "genuine link" between the flag state and the ships of its merchant fleet; they are mostly owned by national capital, are largely crewed by national seafarers,¹⁹ operate out of national ports and are used to transport national economic products; they are subject to national law (company law, employment law, welfare law, collective bargaining law) and are embedded in national industrial relations. The nation-state and the national trade union are capable of applying and supervising legal and collective standards on the ships under their national flag.

Alongside this national segment of merchant ships, an international, deregulated and initially non-unionized segment of maritime shipping has developed since the inter-war years in the cheap flags or flags of convenience (FOC). These refer to international open registries in developing countries without their own seafaring traditions and interests, which grant their national flags to international capital or multinational enterprises from the

19. Although widely differing national engagement reserves are laid down in national laws of the flag, varying between 25 per cent and 75 per cent for crews and usually 100 per cent for officers and captains; Marco Nuñez-Müller, *Die Staatszugehörigkeit von Handelsschiffen im Völkerrecht: Voraussetzungen und Rechtsfolgen der Flaggenverleihung unter besonderer Berücksichtigung der sogenannten Billigflaggen* (Berlin, 1994), p. 137; Boleslaw A. Boszek, *Flags of Convenience. An International Legal Study* (Cambridge, MA, 1962), pp. 30–31; Heinrich Schulte, *Die "billigen Flaggen" im Völkerrecht. Zur Frage des "genuine link"* (Frankfurt a.M. and Berlin, 1962), pp. 68–69, 115; Nikolaos Skourtos, *Billig-Flaggen-Praxis und staatliche Verleihungsfreiheit* (Cologne [etc.], 1990), pp. 16–17, 60–62, 79.

industrial states²⁰ for a small registration fee²¹ and practically without restriction on access. These are tax havens which effectively grant freedom from taxation.²² They have no employment reservations for national labour. There are extensive shortcomings in their maritime law (particularly in labour law and welfare law²³) and the flag state is unable (or unwilling) to guarantee its sovereignty rights on ships of its fleet. Even where laws exist, their observance is often neither checked nor enforced. Finally there are no collective labour standards, or trade unions which could implement and supervise them.²⁴

To that extent, flags of convenience are comparable to “free” – i.e. deregulated and international – production zones. They are used by international shipping capital, particularly from the high-standard regions, which ensure their international competitiveness by escaping with the change of flag from national laws (taxes, welfare benefits) and collective wage standards (compulsory collective bargaining), so that they can combine the lowest-cost factors of production internationally. The central motive for a change of flag – the maritime form of relocation of production – is the reduction in tax and wage costs. In place of expensive national labour, cheap seafarers from low-wage regions (Europe in the 1950s; South-east Asia and Eastern Europe today) are hired on an international labour market.²⁵

Thus ships under these “non-genuine” flags have no connection to their flag states going beyond the administrative act of registering the ship. For

20. For instance, in the three most important FOC countries Liberia, Panama and Cyprus in the early 1980s, 99.8 per cent, 87.6 per cent and 90 per cent respectively of the ships sailing under their national flags were owned by international capital: Table 11 in ITF, *European Merchant Shipping. Towards a Common Maritime Transport Policy* (London, 1985), p. 13.

21. This is what made the proposition attractive to the providing states (and in some cases still does today); by creating shipping registries they can open up a source of revenue without any great advance investment. In the final analysis they are practising a “commercial exploitation” of state sovereignty: Skourtos, *Billig-Flaggen-Praxis*, pp. 11, 182–183; P. Biebig, W. Althof and N. Wegener, *Seeverkehrswirtschaft* (Munich and Vienna, 1994), p. 39; Martin Stopford, *Maritime Economics* (London, 1988), p. 160.

22. Biebig *et al.*, *Seeverkehrswirtschaft*, pp. 40, 121.

23. Friedrich Leffler, *Das Heuerverhältnis auf ausgeflaggten deutschen Schiffen* (Berlin, 1977).

24. See also the recent survey of FOC definitions in Nuñez-Müller, *Staatsangehörigkeit*, pp. 48–49; also Basil N. Metaxas, *Flags of Convenience – A Study of Internationalism* (Aldershot, 1985).

25. For example, in the 1950s monthly wage costs for the same size of ship varied from \$29,400 in the United States to \$10,300 in the Nordic countries and \$5,500/6,400 in the United Kingdom, despite the considerably lower crew numbers (48 against 80) on US ships: Alan W. Cafruny, *Ruling the Waves. The Political Economy of International Shipping* (Berkeley, Los Angeles and London, 1987), p. 94. In the 1980s the costs for an Asian crew were less than 30 per cent of those for a US crew: Chung H. Lee and Seij Naya, *Trade and Investment in Services in the Asia-Pacific Region* (Inha University, Korea, 1988), p. 109. On German ships, FOC registration cut costs by between one-third and one-half: Jürgen Basedow, “Billigflaggen, Zweitregister, Kollisionsrecht in der deutschen Schifffahrtspolitik”, in Ulrich Drobnig, Jürgen Basedow and Rüdiger Wolfrum, *Recht der Flaggen und “Billige Flaggen”. Neuere Entwicklungen im Internationalen Privatrecht und Völkerrecht* (Heidelberg, 1990), pp. 79–80.

the most part they are owned by foreign capital; the companies' registered offices are in other countries; they are crewed by multinational labour. They operate globally, often without ever putting in at a port in their flag state. A typical FOC ship²⁶ under the flag of Liberia might for instance be a "modern supertanker, which may be owned by a Greek national through a Liberian company. The ship may well have been built in Japan, but powered by Danish engines. It will no doubt be staffed by a crew of mixed nationality, including for example some Italian officers and Filipino ratings. It may have been financed through a New York bank and insured in London, time chartered to an oil multinational corporation for three years to carry Saudi Arabian crude oil from the Gulf to Rotterdam [. . .]".²⁷

The first international open registries were set up in Honduras, Panama and Costa Rica in the early 1920s at the initiative of US multinationals in the interest of reducing their transport costs.²⁸ After the Second World War an unprecedented expansion of the FOC sector took place under the political protection of the United States, which supported the flags of convenience as a specific state subvention policy despite initial resistance from Europe.²⁹ This eventually led to the erosion of national merchant fleets in the classic maritime countries. While the transfer of sea-going capital to flags of convenience was initially concentrated in the United States and Greece – in 1958 these countries owned a 90 per cent share of the FOC states' fleets – it spread from the 1970s on to Europe, Japan and the sea-going countries among the emerging economic powers in Asia.³⁰ For example, in 1972 only 5 per cent of German ships sailed under flags of convenience, while in the late 1980s the proportion of ships under these flags was 59 per cent for Germany, 56 per cent for the United States and 41 per cent in Japan.³¹ The share of flags of convenience in the world's mer-

26. Cafruny, *Ruling the Waves*, pp. 92, 94, 106; Skourtos, *Billig-Flaggen-Praxis*, p. 6; Ulrich Drobniq, "Billige Flaggen im Internationalen Privatrecht", in Drobniq *et al.*, *Recht der Flagge*, p. 33; Metaxas, *Study*, pp. 10, 41–42. Nevertheless flags of convenience are not a synonym for extremely substandard ships, as is suggested by the trade union side. Only a part of FOC shipping consists of "floating coffins" operated by "hyenas of the sea" (*Internationale Transportarbeiterzeitung (ITZ)*, 7/8–1950, p. 4; *ITF-Journal*, 1/2–1949, pp. 1–3), i.e. obsolete or even scarcely seaworthy ships with appalling crew accommodation and safety provision and extremely poor pay and working conditions. In part they are "highly professional and enforce international conventions on safety": Stopford, *Economics*, pp. 160, 161. Legal standards and legal reality are poor only by comparison with the advanced industrial countries, but not when compared with the national registries of other developing countries or the former COMECON states: Metaxas, *Study*, pp. 40–45; Boszek, *Flags*, pp. 67–68.

27. N. Ademuni-Odeke, *Protectionism and the Future of International Shipping. The Nature, Development and Role of Flag Discriminations and Preferences, Cargo Reservations and Cabotage Restrictions* (Dordrecht, Boston and Lancaster, 1984), p. 10.

28. Stopford, *Economics*, pp. 158–160; Boszek, *Flags*, pp. 10–12; 26–30.

29. Cafruny, *Ruling the Waves*, pp. 89–90, 113, 267.

30. ITF, *Seafarers' Bulletin*, 1992, p. 47; *ITF-news*, 2/1988, p. 9.

31. Drobniq, "Privatrecht", p. 34.

chant fleet rose from just 1.2 per cent in 1939-1945 to 4.5 per cent in 1950, 18.1 per cent in 1970 and 41.8 per cent in 1992.³²

Along with the growth in demand, the supply side also expanded; in addition to the classic FOC states of Panama, Honduras and Liberia, in 1997 the ITF also listed as flags of convenience Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bermuda, Burma, Canary Islands, Cayman Islands, Cook Islands, Cyprus, German Second Registry (GIS), Gibraltar, Kambodia, Lebanon, Luxemburg, Malta, Marshall Islands, Mauritius, Netherlands Antilles, St Vincent, Sri Lanka, Tuvalu and Vanuatu.³³ And, in addition, in the 1980s the pressure of competition from the flags of convenience resulted in a whole series of deregulated secondary or offshore registries being established in the traditional European sea-going countries themselves. These are a cross between the FOCs and the national registries; they provide national shipping companies with tax concessions and above all with the possibility of evading national collective bargaining and labour laws to secure international competitiveness: they permit seafarers recruited on the international labour market to be employed at the levels of pay applying in their home markets. The establishment of these offshore registries met with at times bitter resistance from the trade unions.³⁴

Finally, the demand for cheap labour from FOC shipping has contributed to the globalization of the maritime labour market. The closures of the national labour markets (under national flag law) which had only just – and belatedly – been put through by the trade unions were reversed again as a result. Whereas initially FOC seafarers were recruited from a “cheap sector” in Europe, exploiting the wage differences between Europe and the United States,³⁵ labour shortages and the raising of European wage levels led to the systematic export of labour by the emerging countries in Asia, which started to offer low-qualified but cheap seafarers worldwide through shipping agencies³⁶ in the 1970s. According to data provided by the International Labour Organisation (ILO), 150,000 seafarers from non-industrialized countries were working on flag-of-convenience ships at the start of the 1980s. Statistics from the International Shipping Federation give their number as 500,000 in 1991. These FOC crews originate from a number of different countries (19 in total) – in 1991 the greater part came from South-east Asia, but also partly from former state socialist countries. Of the 500,000 FOC seafarers in the statistics, 38 per cent came from the Philip-

32. Biebig *et al.*, *Seeverkehrswirtschaft*, p. 38; Metaxas, *Study*, p. 18.

33. ITF, *Seeleute-Bulletin*, 1993, p. 4; *ITF-news*, 4/1997, p. 13.

34. Such as strikes in France and complaints to the constitutional court in Germany: Drobniig, “Privatrecht”, pp. 37, 58–62; *ITF-news*, 6/1986, p. 16, 4/1990, p. 12; ITF, *Seeleute-Bulletin*, 1991, p. 21; Wolfgang Däubler, *Das Zweite Schiffsregister. Völkerrechtliche und verfassungsrechtliche Probleme einer deutschen “Billig-Flagge”* (Baden-Baden, 1988), pp. 9–11.

35. Cafruny, *Ruling the Waves*, pp. 94, 106.

36. ITF, *Seeleute-Bulletin*, 1986, p. 3.

piners, 16 per cent from Indonesia, 10 per cent from India, 8 per cent from South Korea, 6 per cent from Taiwan, 4 per cent from Burma, 3 per cent from China and 1.4 per cent from Poland.³⁷

Thus the FOC registries have resulted in a growing capital transfer from the traditional sea-going countries, and finally in partial deregulation there. In the last analysis, they have led to the interlinking of international capital, and generally to the extensive breakdown of national shipping structures. Accordingly, particular processes of globalization have imposed themselves on maritime shipping, with major consequences for national trade unions' ability to take action.

CONSEQUENCES OF THE FLAGS OF CONVENIENCE FOR TRADE UNION INTEREST POLITICS

The triumph of the flags of convenience brought far-reaching consequences for the trade unions. First, the capital transfer motivated by the FOC registries together with rationalization measures due to technological change and economic fluctuations have led to a dramatic long-term *reduction in employment* in traditional maritime countries. On a multinational labour market, unskilled seafarers from the high-standard countries without relative advantages from their level of qualification³⁸ can no longer compete against the much "cheaper" seafarers from Asia or Eastern Europe. Workers and trade unions across the high-wage regions – first in the United States, followed by Europe – therefore see the formation of a global labour market as *displacement competition*, which can be countered only by closing the market by transnational trade union cooperation to set international minimum standards for wages and working conditions.

Second, the reduction in employment has led to a fall in union membership and so in part to the erosion of *trade union organizational strength* within the merchant shipping of many traditional seafaring countries. It increases the trade unions' need for complementary transnational organizational strength and international conflict support which is laid down as a duty of membership in the ITF statutes and was applied for instance within merchant shipping in the 1980s in Germany, Norway and the United Kingdom for the enforcement of collective wage agreements.³⁹

Third, the competitive pressure from FOC shipping restricted national freedom of action in industrial relations in the high-standard regions. It "defined the upper limits of labor costs" and "held wages in check and limited national and intergovernmental attempts to impose safety regu-

37. *Ibid.*, 1991, p. 12.

38. Basedow, "Billigflaggen", p. 110.

39. Discussed in detail in Koch-Baumgarten, *Konstitutionsbedingungen*, pp. 299–302, 362.

lation".⁴⁰ So through the global market it influenced the entire spectrum of trade union interest politics, even without national fleets being transferred to other flags. And fourth, it also limited the national associations' chances of political influence: it blocked national regulation of merchant shipping, progressively undermined trade union preferences for government subsidies to protect jobs and national employment guarantees, and encouraged the adoption of deregulatory policies outside the United States. The establishment of secondary registries in central European states in the 1980s is a clear example of this, as are EU plans for a EUROS flag which makes no provision for reserved employment of EU seafarers as called for by the unions and can be seen as a shock treatment to restore international competitiveness.⁴¹

Fifth, trade union rights of representation and the extent of collective bargaining regulation are coming under increasing pressure in the countries using flags of convenience. The FOC registries, and more recently the secondary registries with the introduction of autonomy for the parties, provide shippers with the opportunity of removing themselves from national wage bargaining agreements and the influence of national trade unions through the employment of multinational crews, by moving either (less often) into a union-free area (by employing seafarers from countries without unions or with only weak unions) or (more often) into an area covered by another union, where different collective standards (corresponding to the seafarers' nationality) apply. This gave rise to the problem of competing trade union competences on FOC ships (the trade unions of the flag state, the workplace or employer's country, and the employee's country⁴²) which was a major motivating factor in the need for the ITF unions to cooperate transnationally and form a regime on flags of convenience.

However, the flags of convenience have no effects which can be generalized for worldwide seafarers' organizations. Just as the formation of an international labour market creates displacement competition for high-standard countries, it also creates employment opportunities for seafarers from low-wage regions, so that the flags of convenience are perceived by Asian trade unions as "flags of need".⁴³ A further reason for this is that although the transfer of capital threatens jobs in the industrialized countries,

40. Cafruny, *Ruling the Waves*, pp. 108–109, 267.

41. *ITF-news*, 5/1994, p. 21; ITF, *Merchant Shipping*; Berthold Busch, *Die Verkehrspolitik der EG unter dem Einfluß der Binnenmarktvollendung* (Cologne, 1991), pp. 21–22.

42. On corresponding problems with the application of national legal systems in adjudication and international law, see Leffler, *Heuverhältnis*, pp. 11, 81, 89–90; Däubler, *Zweite Schiffsregister*, pp. 22, 25; Rolf Birk, *Die Rechtmäßigkeit des Streiks auf ausländischen Schiffen in deutschen Häfen* (London, 1982), pp. 34–36; Basedow, "Billigflaggen", pp. 81–83.

43. ITF, Asian Seafarers' Conference, Hong Kong, 6–8 March 1980, Report, p. 2 (Doc. 80/S2/Rpt); speech by C.V. Devan Nair, General Secretary of the Singapore Trade Union Congress at international seafarers' conference of the Asian ITF member associations on 28/29 April 1979 in Singapore, excerpts printed in ITF Circular 61/S11/D3 of 24 May 1979, both in MRC 159/nn.

it is seen by the associations in the emerging economies of Asia (with their corporate links) as a prerequisite for strategies of modernization or economic development. The reduction in trade union organizational strength in the traditional sea-going countries runs in parallel with the build-up of trade union organizations due to the expansion in the employment of seafarers in the new maritime countries on the one hand and of FOC states on the other hand. For instance, in 1993 there were 138,000 members of ITF seafarers' unions from those Asian countries (Hong Kong, India, Indonesia, South Korea, the Philippines) which supply a large proportion of FOC crews. The loss of representation rights on the one hand corresponds to an increase in representation rights on the other.⁴⁴

Against this background, there is, sixth, a serious conflict in interest between unions in the capital-exporting and labour-exporting countries. While the sides in the conflict may change (United States versus Western Europe; Europe and the United States versus Asia; Western Europe versus Eastern Europe) the axis of conflict remains constant: *employment opportunities, rights of trade union representation and economic policies*. This conflict in its turn gives rise to the need for transnational trade union regulation.

FROM THE FAILED INTERNATIONAL BOYCOTT TO THE CONSTRUCTION OF INTERNATIONALLY COORDINATED COLLECTIVE BARGAINING REGULATION

Trade union regime formation for the regulation of the flags of convenience was developed within the ITF. In 1993 this International Trade Secretariat (ITS),⁴⁵ founded in 1896, had 398 affiliated unions worldwide, with just on 4.3 million members from all the transport sectors: railway workers (32 per cent of the membership); inland shipping workers, fishing workers and tourist industry employees (1 per cent each), road transport workers (31 per cent), civil aviation employees (10 per cent), and dockworkers (7 per cent) and seafarers (16 per cent). Like all ITSs, the ITF is an association of individual autonomous and heterogeneous unions, and therefore an organization of the trade union elites with only minimal feedback to national membership levels. The decisive power groups within the organization are the influential, well-funded, large-membership unions of the industrial countries of

44. For Germany, Däubler, *Zweite Schiffsregister*, p. 14; Basedow, "Billigflaggen", pp. 98–100; Drobnič, "Privatrecht", pp. 64–66.

45. Alongside ideologically differentiated trade union umbrella organizations, such as the International Confederation of Free Trade Unions (ICFTU), the second column of international trade union organizations is formed by International Trade Associations, including the ITSs which are loosely associated with the ICFTU. In 1993–1994 there were 15 ITSs with more than 100 million members.

Western Europe (56 per cent of membership) and North America (9 per cent);⁴⁶ unions from the developing countries only make up around one-fifth of the membership, and are underrepresented on the decision-making bodies or structurally disadvantaged as a result of democracy deficits.⁴⁷ The ITF's complex organizational structure is differentiated both by region and by sector; alongside the central decision-making bodies (world congress, executive committee and management committee) and the executive secretariat (based in London), regional organizations and sector-specific sections with their own semi-autonomous representative bodies have been formed. To that extent, the policy area of flags of convenience comes largely within the competence of the ITF's two maritime sections, seafarers and dockworkers, which have their own legislative and executive structures with section conferences, section committees, executives and attached secretaries but are accountable to their superordinate central bodies. In 1993 these trade sections organized 680,000 seafarers (1955: 376,000) and 30,000 dockworkers (1955: 229,000) worldwide. The main focus of the organization is in Europe; however, an increase in the importance of the emerging countries in Asia, with a current membership share of 20 per cent, can be seen in the seafarers' section.

Trade union cooperation against flags of convenience goes back to the post-war years. It was initiated by unions from the Nordic countries and the United States, which represented the fundamental trade union opposition to the institution of internationally open ship registries and the high-standard countries of the time. Their national fleets were the first either to be affected by capital transfers and loss of jobs⁴⁸ or threatened in their competitiveness

46. For decades, the US unions in particular played a special extra-constitutional role within the organization which effectively included a right of veto. Aside from a brief intermezzo before 1914, US unions did not join the ITF until 1942 (Seamen's International Union) and in the post-war years (Railway Labor Executive Association, National Maritime Union). From 1950–1976 they were constantly the national group with the highest membership and operated more or less as the trade union hegemonial power of the West. FOC policies apart, they were not interested in international cooperation in pursuit of industrial interests. They primarily pursued a political international unionism, focusing on anti-communist containment policy in areas of trade union activity in the conflict between the systems. On the foreign policy of the US trade unions, see Gary K. Busch, *The Political Role of International Trade Unions* (London, 1983); Philip Taft, *Gewerkschaftliche Außenpolitik. Das Beispiel der amerikanischen Gewerkschaften* (Cologne, 1975); Horst Lademacher (ed.), *Die Gewerkschaften im Ost-West-Konflikt. Die Politik der AFL im Europa der Nachkriegszeit* (Melsungen, 1982).

47. For instance, until 1990 the allocation of mandates and voting rights to member unions was linked not to their membership numbers but to the amounts they paid in contributions; this effectively created a two-class membership which proved a barrier to the representation and participation of poorer unions from the developing and emerging countries of Asia, Africa and Latin America: *Konstitutionsbedingungen*, pp. 267–268. The brief presentation of the ITF in the present study is based on the detailed organizational analysis given there on pp. 243–293.

48. In 1949 the fleet of Panama, the largest flag of convenience in the 1940s, consisted of 306 US ships and 90 British, 20 Greek and 16 Norwegian ships: Boszek, *Flags*, pp. 12, 66. According to ITF sources, 11 Norwegian and 18 Swedish ships were under foreign flags: ITF, International

on the global market and so in their collective labour standards by the creation of the flags of convenience. The Nordic and US trade unions therefore argued in domestic politics for a prohibition of changes of flag by national maritime capital, or at least for statutory regulation, and for national closure of the maritime labour market. They attempted to enforce the return of FOC ships to their national flags. They had a definite interest in a transnational trade union cooperation in the flag-of-convenience sector going beyond national interest politics, and called on the unions in the ITF from labour-exporting countries to prevent the hiring of crews for FOC ships within their areas of influence. This was to be a copy of measures taken in the United States and Finland, where union members faced exclusion from the organization if they took work on an FOC ship.⁴⁹ At the same time they argued for the use of the *ultima ratio* of international trade union politics, the implementation of an international boycott, in order to provoke state countermeasures against the flags of convenience (up to and including the prohibition of a flag transfer).⁵⁰

The other European member unions of the ITF, as representatives of the low-wage region of the time, showed little interest in taking action. Their national fleets were scarcely threatened by competition from the flags of convenience, and capital transfers had not yet proved to be a problem. Instead, national seafarers found attractive work opportunities on FOC ships. To that extent, the unions in the labour-exporting European countries would have been in conflict with the employment interests of their national seafarers on FOC ships if they had tried to stop them being taken on, as the US and Nordic unions were demanding. Particularly the British, who were very influential within the organization, put forward strong opposition to demonstrative union action against the FOC institution. For employment policy reasons they had no interest in sanctions against flag transfers, as the British flag as a national open registry was traditionally used as a cheap flag by foreign shipping capital, particularly from the United States.⁵¹

Seafarers' Conference, Geneva, 23–24 November 1948, Secretary's Report (Doc. 1 SC–2a), in MRC 159/1/5/18.

49. ITF, *Protokoll Kongress Oslo 1948*, p. 259.

50. ITF, Minutes of the International Seafarers' Conference, London, 28–30 October 1946, p. 33, and Geneva, 23–24 November 1948, p. 5, in MRC 159/1/5/16(2) and 159/1/5/29. Also see ITF, transfers to Panama Registry, Circular to affiliated Seafarers' Unions, Oldenbroek, 21 April 1947, in MRC 159/3/D/257; SIU statement in opposition to the continued transfer of American-built flag vessels to Panamanian and Honduran Registry, Lundebergh, 3 January 1950, in MRC 159/1/5/B/15/2.

51. Boszek, *Flags*, p. 24. The flag transfer from high-standard countries to other national registries is a traditional form of change of flag which is still common today and exists independently of the FOC phenomenon. For instance, US ships currently sail under 36 different flags, Greek and Japanese ships under 23; Biebig *et al.*, *Seeverkehrswirtschaft*, p. 39. On the British attitude, see ITF, Management Committee, Minutes of Meeting, 12–13 April 1949, p. 3, in MRC 159/1/4/56, and

The British feared that sanctions against the open registries in Panama, Honduras and Costa Rica provoked by an international boycott could mean incalculable risks for the British flag and so for the jobs of British seafarers. They voted for collective contractual regulation in the FOC sector, which in its early days was largely deregulated and union-free; that is, for British (unorganized) FOC crews and FOC ships to be made subject to British collective agreement provisions. Beyond this, coordinated international trade union initiatives were to be limited to the imposition of ILO minimum standards, codified in several conventions passed in 1946,⁵² in the FOC states – in other words, the creation of maritime legislation.

Under pressure from the US Seafarers' International Union (SIU), supported by the Nordics and despite British resistance, the 1948 ITF World Congress condemned flag transfer to the registries of Panama, Costa Rica, Honduras and Liberia as "unlawful capital export" for the avoidance of statutory and collective bargaining regulations, which provided FOC ship-owners with unfair international competitive advantages over the national fleets and might lead to the "undermining of the whole structure of standards in shipping". A one-week international boycott of the flags of convenience was decided on, to encourage government measures to prevent capital transfer to the international open registries and bring about the return of transferred ships to the national registries. In addition, the exclusion of the Panamanian fleet from transports under the European Recovery Programme was called for but was not achievable.⁵³

However, the boycott, planned for the first week in May 1949, failed due to the differences in trade union interests which had not been dealt with by the boycott resolution of 1948. At the end of April, the SIU withdrew its participation, citing legal problems under the Taft Hartley Act.⁵⁴ But in fact the Americans did not see any basis of joint interest for an internationally coordinated trade union action aimed at preventing flag transfer by US maritime capital generally in the United States. They feared that a boycott would not have the intended result of bringing the US tonnage back on to the US registry, but instead would result in its re-registration

ITF, International Seafarers' Conference, Geneva, 23–24 November 1948 (Doc. 1 SC–2e), in MRC 159/1/5/18.

52. ITF, *Flags of Convenience – The ITF's Campaign* (London, n.d. [1993]), pp. 39–40 (hereafter ITF, *FOC*); Northrup and Rowan, *ITF*, pp. 32–33; Bob Reinalda (ed.), *The International Transport Workers' Federation (ITF) 1914–1945. The Edo Fimmens Era* (Amsterdam, 1997), pp. 138–140.

53. ITF, *Protokoll Weltkongress Oslo 1948*, pp. 250, 259–260; ITF, International Seafarers' Conference, Geneva, 23–24 November 1948, Issue of Panamanian Registry (Doc. 1 SC–2), pp. 6, 8, in MRC 159/1/5/29, and ITF, Joint Conference of Dock Workers and Seafarers, London, 15–17 February 1949; Die Frage unlauteren Flaggenwechsels, Der Osloer Beschluß (Doc. 1 DS–1), in MRC 159/1/5/F/3.

54. ITF, Minutes of Boycott Committee Meeting, London, 29–30 April 1949 and Rotterdam, 28 August 1949, in MRC 159/1/5/B/1.

under “cheap” European national flags, particularly the British flag; this would be in the one-sided interest of European employment.⁵⁵ On the other hand, European – and particularly British – participation in the boycott remained dubious right up to the end, as there was no guarantee that trade union actions in the United States would be limited to the Panlibhonco⁵⁶ registries.

In the early 1950s, after the failed boycott, the seafarers’ unions in the ITF attempted to set up transnationally coordinated collective bargaining regulation of the flag-of-convenience sector, which then employed around 40,000 mainly unorganized seafarers of various nationalities.⁵⁷ The need for transnational regulation arose against the background of conflicting national approaches and conflicts between competing trade unions for representation on flags of convenience. On ships under national flags, the flag principle governed national sovereignty rights, including trade union rights; they came under the competence of national law and therefore also under the organizational and collective bargaining competence of the respective national unions. On the one hand, the trade unions of the owner countries of the FOC tonnage (i.e. US or Nordic unions) claimed representation rights on FOC ships and tried to bring them under national collective agreements and crewing regulations (employment reservations).⁵⁸ They had an interest in international minimum standards in line with the high national collective agreement provisions, to weaken the pressure of a maritime (European) low-wage region on the national labour market, and on the employment opportunities for national seafarers and their collective standard. If national collective levels could also be imposed on the flag-of-convenience fleets, this would remove the shipowners’ motivation for transferring flags (reduction in wage costs) and alleviate competitive pressure on the ships of the national fleet, and indirectly on industrial relations. In addition, they called (in vain) on the unions of the European labour-exporting countries to support their efforts to impose national employment reservations. These unions were to oppose the recruitment of European seafarers for flags of convenience.⁵⁹ On the other hand, the trade unions of the crews of the FOC ships, i.e. British and Belgian unions for example,

55. ITF, Minutes of Management Committee Meeting, 12–13 April 1949, pp. 3–4, in MRC 159/1/4/56; ITF, Protokoll Exekutivkomitee, Antwerp Session, 11–12 May 1949, Flaggenwechsel (Doc. 11 EC–10), in MRC 159/1/3/62.

56. The trade union abbreviation for the first international open registries of Panama, Liberia, Honduras and Costa Rica; ITF, *Panlibhonco. The Modern Shipping Problem* (London, n.d. [1957]). In detail in Koch-Baumgarten, *Konstitutionsbedingungen*, pp. 335–340.

57. ITF, *Report on Activities 1952–53*, p. 98.

58. For the Nordic countries: ITF, Report by the Secretariat on the conference of the Seafarers’ Section in London, 29 June 1951, in MRC 159/1/5/B/2; ITF, Boycott Committee Meeting, 28–29 April 1952, Report of the Secretariat (Doc. BC 52–1), p. 6, in MRC 159/1/5/B/3.

59. Lundebergh (SIU), in ITF, Minutes of General Council, Copenhagen Meeting, July 1953, in MRC 159/1/2/38, and Minutes of Executive Committee, Bern, May 1950, in MRC 159/1/3/65.

raised competing claims to the right to represent and organize seafarers of their nationality on FOC ships owned by foreign capital. For their part they had already begun to organize FOC crews and bring them within the competence of their national collective bargaining law.⁶⁰

It was against this background of competing national options for action that a first FOC regime was formed in the ITF in the early 1950s. It resulted in an obligatory standardization of trade union representation rights, and for the first time in trade union internationalism it recognized the principle of multinational collective bargaining regulation by laying down international collective bargaining competencies and introducing multinational supervision of national collective bargaining policies in the FOC sector. Under pressure from the British representatives, the explicit recognition of the flag principle for nation-state sovereignty rights outside the flag-of-convenience sector (limited to the Panlibhonco registries) meant that flag transfers between national registries were exempted from transnational regulation.⁶¹ As a supplement to the collective bargaining competence of unions from the owner states of the FOC tonnage (the employer principle), the employee principle was also recognized as legitimate for those ships where the majority of the crew were from one country and regularly operated out of ports in their home country. Their national trade unions had the right to conclude collective bargaining agreements; however, these were linked to supplementary international guidelines. The national unions were to undertake to observe the minimum standards agreed by the ITF, which were recorded in a model international collective agreement.⁶² A minimum margin in line with the high-standard countries (US standards) proved unacceptable; it failed due to resistance from the unions from European low-standard countries, which saw it as neither achievable nor appropriate to general European living and wage standards.⁶³ Instead it was based on the (lower) British collective bargaining standard. Second, general compensatory contributions to offset savings in tax and social security contributions were determined for all agreements in the flag-of-convenience sector, to balance out FOC shipowners' advantages over the national fleets. Initially wage surcharges of between 20 and 60 per cent were envisaged, but these were soon abandoned as they would have given the (unorganized) FOC crews an

60. ITF, Executive Committee, 29–30 January 1951 (Doc. 16 EC–2), in MRC 159/1/3/67; International Committee for the Promotion of Fair Practices, 3rd Meeting, London, 15–16 March 1954: Conclusion of Collective Agreements (Doc. 54/FP1/2d), in MRC 159/1/5/24.

61. Agreement on "Foreign employed seamen", in ITF, *Report on Activities 1952–53*, pp. 95–96. The following remarks on standardization of collective bargaining rights in the FOC sector are also based on this source.

62. First drafts of an international collective agreement in MRC 159/1/5/B/3.

63. ITF, Boycott Committee Meeting, 15 January 1951 in London. Explanatory Report from the Secretariat (Doc. 1–BC), in MRC 159/1/5/22; ITF, Circular 19/25 April 1950, Richtlinien für das Vorgehen gegen den Normen nicht entsprechende Schiffe, p. 4f., in MRC 159/3/D/266.

advantage over the (organized) crews employed on national fleets, who formed the trade unions' traditional clientele. The principle of wage surcharges was replaced by payments (shipowners' contributions) to the newly founded Seafarers' International Assistance, Welfare and Protection Fund (SIAWF), to be used to finance welfare projects with trade union involvement.⁶⁴

Finally, the ITF was recognized as the collective bargaining partner for those ships which were staffed with multinational crews and could not be clearly allocated to the organizational area of an ITF member association. Thus the ITF's competence in collective bargaining matters remained restricted to a section of the FOC sector without existing trade union organizational interests, and so there was no need for any formal transfer of competence from the national to the international level of organization; such transfers have hitherto proved an insurmountable obstacle to transnational collective bargaining policy in all trade union internationals.⁶⁵ This section came within the competence of an ITF collective agreement which was to be effected by affiliated ITF member unions, and which still regulates holidays, wages, working hours and crewing standards and lays down payments to the SIAWF and trade union contributions. A multinational membership section was founded within the ITF to organize these FOC crews: the Special Seafarers' Section (SSS), which is still unique within the international trade union organizations to this day. Seafarers on FOC ships belong to the SSS either as individual members or collectively, through special sections for FOC seafarers in ITF member unions. In view of the difficulty of organizing the FOC seafarers, the original principle of voluntary membership was soon replaced (in 1953-1954) by the principle of compulsory membership, which takes effect automatically when an ITF collective agreement is concluded. Since then, membership contributions together with an admission fee have been financed by the shipowners of FOC ships with an ITF collective agreement (through an automatic deduction from wages). In 1953 289 FOC seafarers were members of the SSS; this rose to 514 in 1954 and around 600 in 1955.⁶⁶

Decision-making procedures for the transnational regulation of the flag-of-convenience sector were institutionalized at the same time. The Boycott

64. ITF, Circulars 31/5.8.1952 and 50/S22/5.1.1956, in MRC 159/3/D/275 and 283.

65. Reutter, "Berufsekretariate", p. 590; Wolfgang Lecher, "Perspektiven europäischer Kollektivverhandlungen", in Bispink and Lecher, *Tarifsysteme*, p. 402.

66. ITF, Special Seafarers' Section Rules 1980 (Doc. EB/Jul 80/min), copy in author's possession; ITF, *FOC*, p. 14; materials of the ITF Boycott Committee and the Seafarers' Section 1952-1954, in MRC 159/5/B/3-5, MRC 159/1/5/24, 33. The ITF only theoretically gives this multinational membership section, unique in the ITS, organizational authority independent of the national member unions. In practice it is a dead organization section with no representational or participatory structures for its membership. The decision-making bodies of the SSS are made up of representatives of national seafarers' unions. Detailed treatment in Koch-Baumgarten, *Konstitutionsbedingungen*, pp. 260-62, 277-278; Northrup and Rowan, *ITF*, pp. 124-132.

Committee set up in 1948 to prepare the international boycott was transformed into the International Campaign Committee for the Promotion of Fair Practices (FPC), composed of representatives of national seafarers' and dockworkers' unions,⁶⁷ the ITF general secretary and the president of the seafarers' section. It operates as a multinational collective bargaining committee, agreeing the ITF collective bargaining agreement and international minimum standards and supervising national collective bargaining agreements. It is also a legislative body and decides the guidelines of FOC policy.⁶⁸ The FPC in the 1950s was made up mainly of representatives of European labour-exporting countries, which had a clear majority with eight seats (two each for Belgium, the Netherlands, the United Kingdom and Germany) over the capital-exporting countries (with only two seats, Sweden and Norway, after the SIU's withdrawal).

To that extent, the first FOC regime under the organizational hegemony of the United Kingdom primarily pursued the interests of the unions in the European low-standard regions, which had employment interests in the flag-of-convenience sector. These managed to achieve the recognition of the crew nationality principle and set a minimum standard lower than the collective standards in the United States or the Nordic countries, with the result that the flight of maritime capital from the high-standard countries could scarcely be dammed effectively. The measures were aimed at restricting flag transfers to the recognized national registries, defending European employment interests on FOC ships, determining compensatory social security contributions for FOC ships and therefore at defending European national fleets against the "unfair" competition from the flags of convenience. Accordingly, the US trade unions withdrew from ITF FOC politics until 1957.

However, within the power structure of national and international organizations this led to a considerable growth in the importance of the ITF,

67. Dockworkers' unions are integrated as central actors in the ITF's FOC policy because they implement the boycott measures against flags of convenience to enforce collective bargaining agreements. This deputizing policy is the consequence of the compulsory membership of FOC crews, who showed no interest in organizing themselves (indeed there is evidence of their resistance to trade union organization in the 1950s) and took no initiative in concluding ITF collective bargaining agreements: Letter of L. Passalski to O. Becu, 23 April 1953, in MRC 159/3/D/111; ITF, General Council Meeting, Helsinki, 15–17 June 1955, Report on Activities, pp. 37–38, in MRC 159/1/2/39. Since the 1980s the ITF has striven to create incentives to organize with the introduction of welfare assistance for members: see ITF, Seafarers' International Assistance, Welfare and Protection Fund, Rules, Annex 2, ITF, Executive Board, Minutes, Meeting, 25 July 1980 (Doc. EB/25 Jul 80/Min), in MRC 159/1/nn; *ITF-news* 6/7–1991, p. 12. The transnational trade union regulation of the FOC sector is not motivated primarily by representation of FOC crews' interests. What is at stake is rather the representation of the interests of the regular ITF member unions, which as representatives of the organized sector of the maritime labour market (the "insiders") are defending their employment and wage interests by externally organizing and standardizing the unorganized section of that market (the "outsiders").

68. ITF, *Report on Activities 1952–53*, p. 99; ITF, *FOC*, pp. 6, 14.

which had been recognized as an international collective bargaining party and as a forum for multinational supervision of national collective bargaining policies. In addition, the introduction of social security payments and contributions financed by the shipowners opened up a funding source for it which was independent of the membership and provided it with unparalleled organizational resources. The ITF is the only ITS which is funded both from internal membership contributions and from external employer payments. These are made up on the one hand of contribution payments (representing the contribution mode of automatic wage deduction for compulsory FOC union members), and on the other hand of administrative charges which are withdrawn from the SIAWF (independent since 1957) in favour of the ITF budget designated for use for welfare benefits. These charges grew from £7,345 in 1961 to £386,000 in 1981, and in that year the contribution payments financed by shipowners amounted to £330,000, so that together they exceeded the ITS's income from ordinary membership in 1981 (£612,000).⁶⁹

PROBLEMS IN THE IMPLEMENTATION OF THE TRADE UNION FOC REGIME

Between 1951 and 1958 the number of collective agreements in the FOC sector rose from 10 to a total of 95. In 1957 they covered 57 of the total of 1,420 ships under flags of convenience. That corresponded to a coverage of 4 per cent. There were 19 boycott actions aimed at establishing collective agreements; the ITF had drawn up a list of ships to be boycotted, totalling 42 ships in 1952 and 122 ships in 1957.⁷⁰

So the results for collective agreement regulation of the flags of convenience were modest, and the expansion of the FOC sector – to 13.6 per cent of world merchant shipping in 1959 – could not be held back. Structural limits on the transnational coordination of trade union collective bargaining policies soon made themselves evident too. First, the ITF's inability to place binding obligations on its member unions became clear. National collective standards were imposed, so that a structure of standards differentiated along national crew boundaries was maintained rather than international standardization being achieved. Unified overall wage supplements or payments to the SIAWF could not be achieved. In 1950 the Greek Pan-Hellenic Seamen's Union (PNO) demanded a special arrangement for 60 Greek FOC ships, the reduction of SIAWF contributions by two-thirds and

69. Northrup and Rowan, *ITF*, pp. 140–141.

70. ITF, FPC, Meeting, 13–14 March 1958 and Meeting, Stockholm, 4 March 1957, Special Officer's Report and minutes, in MRC 159/1/5/B/7 and 159/1/5/24; ITF, International Campaign Committee for the Promotion of Fair Practices, 3rd Meeting, 15–16 March 1954, Conclusion of Collective Agreements (Doc. 54/FP1/2d), in MRC 159/1/5/24; the ITF collection of collective agreements on FOC ships, in MRC 159/3/D/286 and 159/1/5/15.

exemption from contributions to the SSS, which the Greek shipowners refused to pay on principle.⁷¹

Second, the shipowners refused to recognize the ITF as a party in collective bargaining. While there was an international employers' organization in the shape of the International Shipping Federation (ISF), it neither represented the FOC shipowners nor had collective bargaining powers. Greek FOC shipowners only proved ready to conclude an ITF collective agreement in 1959, when they came under the threat of boycott by US unions which were claiming representation rights and demanding considerably higher US collective standards.⁷² But it was not just resistance from the employers that proved a block to the negotiation of a total of 17 ITF collective agreements for multinational crews. The national trade unions were hesitant too, in view of legitimization problems – based on national employment interests and resistance from FOC crews – and legal problems.⁷³ The lack of willingness to organize among FOC crews and the principle of compulsory membership constantly blocked the option of membership support in collective bargaining negotiations, and to that extent the ITF also lacked the ability to impose external obligations and sanctions to guarantee that collective agreements would be observed. They were frequently broken as soon as the ship left the port in which they had been put through by an ITF member union.⁷⁴

CORPORATIST INTERLUDE: THE INTERNATIONAL TRADE UNION BOYCOTT OF THE FLAGS OF CONVENIENCE IN 1959

Under the pressure of competition from the flags of convenience and against the background of a crisis of overcapacity in merchant shipping, with ships laid up in the traditional European maritime countries, the possibility of a political solution began to emerge in the 1950s, with the formation of a corporatist anti-FOC alliance of European governments, shipowners of the national fleets and trade unions, including the US unions. Thus trans-

71. ITF, Report on the conference of the seafarers' section in Ostend, 3–4 October 1955 (Doc. 55/S2/13), in MRC 159/1/5/25 and FPC, Meeting, Stockholm, 14–16 May 1957: Reduction of Rate of Welfare Fund Contributions, in MRC 159/1/5/B/7; submissions by PNO to the FPC, undated, around 1956/1957), in MRC 159/1/5/B/8.

72. ITF, Executive Committee, Meeting, 18–20 November 1959, Rome (Doc. 38 EC–2), and Copenhagen, 6–8 August 1959 (Doc. 37 EC–8), in MRC 159/1/3/90 and 88; ITF, FPC, Meeting, 13–14 April 1959, Report, and Antwerp, 30 November–2 December 1959, Report and Minutes; Preliminary Meeting Subcommittee, Athens, 23–24 October 1959, in MRC 159/1/5/B/12–14; ITF, *Tätigkeitsbericht 1958–59*, pp. 70–71; Materials of ITF Seafarers' Conference, Geneva, 22 September 1961, in MRC 159/3/D/82.

73. See Northrup and Rowan, *ITF*, pp. 59–90; Birk, *Rechtmäßigkeit*, pp. 42–43.

74. ITF, Boycott Committee, Meeting, London, 28–29 April 1952, Report of the Secretariat (Doc. BC S2–1), in MRC 159/1/5/B/3 and ITF, Circular 2/24.1.1952, in MRC 159/3/D/274.

national trade union cooperation was shifted from the industrial to the political level. In 1956 the ITF World Congress threatened industrial action and called for internationally coordinated government sanctions against the flags of convenience, including statutory prohibitions on employment on FOCs or a withdrawal of subsidies to industrial enterprises using FOC transport.⁷⁵ At the same time, the ITF trade unions sponsored the embodiment of a “genuine link” principle in the international law of the sea,⁷⁶ which was intended to lead to the FOC registries drying up or being transformed into closed national registries. Although this was also supported by the European governments, it failed because of resistance from the United States, which protected the flags of convenience as a political strategy to subsidize US shipping capital.⁷⁷ The tripartite anti-FOC alliance achieved successes only in the ILO, where an intergovernmental regulation of merchant shipping was established on the basis of shared interests in protecting national shipping companies from international competitive pressure. However, the ILO’s minimum standards for safety, crewing and qualifications (and later also for wages) fell far short of trade union demands, national government regulations or ITF collective standards.⁷⁸ To force the United States to abandon its powerful, but isolated, support of the FOC institution, the ITF World Congress in 1958 resolved to implement a one-week international boycott of the flags of convenience. This industrial action was intended to accompany diplomatic pressure on the United States from Europe. As in 1948, the initiative for the new boycott resolution came from the US unions, which had again become involved in the ITF’s decision-making processes in 1957. As they had been unable to achieve any change in the US government’s position through domestic politics, they were interested both in the supporting diplomatic pressure from the European governments and in trade union support for their efforts to bring US ships under flags of convenience back under the control of US collective standards and crewing regulations.⁷⁹ The boycott resolution was supported by the Nordics but opposed by the British, who continued to fear the effects of a boycott on the US ships sailing under the British flag, namely attempts by the US unions to return them to the US registry, and its effects on the employment of British seafarers on FOC ships. Accordingly, the Amsterdam decision

75. ITF, *Protokoll Kongreß Wien 1956*, pp. 360, 353.

76. ITF, *Panlibhonco*.

77. Schulte, *Völkerrecht*, pp. 65–67; Boszek, *Flags*, pp. 73–75; Cafruny, *Ruling the Waves*, pp. 99–100.

78. Boszek, *Flags*, pp. 73–75; ITF, *FOC*, pp. 39–40; Northrup and Rowan, *ITF*, p. 32.

79. On the ITF decision-making process: ITF, *Protokoll Kongreß Amsterdam 1958*, pp. 265–269, 282–285; ITF, *Protokoll Kongreß Bern 1960*, pp. 193–195, 202–203, 289, 296; ITF, FPC, Meeting, 13–14 March 1958 and 15–17 May 1957, in MRC 159/1/5/B/7 and 8; ITF, Memorandum on Panlibhonco Shipping 1959, in MRC 159/1/5/B/16; ITF, Executive Committee, Meeting, Copenhagen, 6–8 August 1959 (Doc. 37 EC–10 (Minutes) and Doc. 37 EC–8); on the US unions’ FOC policy see also the report of the American Committee of the ITF (1958), in MRC 159/1/5/B/9.

explicitly excluded ships with a European collective bargaining agreement from the boycott.

The international boycott of the flags of convenience from 30 November to 4 December 1958 was successful, with trade union action against 205–233 FOC ships. Around 12 per cent of the total FOC fleet was covered, and according to ITF statements as much as 90 per cent of the ships accessible to ITF member unions. However, it was carried on primarily by its initiators, the US associations; 70 per cent of the boycott activities were in the United States, and 84 per cent in North and Central America (including Cuba and Canada). In Europe, only 28 ships had measures taken against them. The different trade union motivations also emerged clearly in the boycott, when US associations boycotted ten US-owned FOC ships which had agreed European collective agreements and were therefore exempted from the action under the ITF resolution.⁸⁰

In the final outcome, though, the international boycott was unsuccessful. It achieved neither a change in the US government position nor effective national government measures outside the Nordic countries. Instead the tripartite anti-FOC alliance collapsed when European shipowners and governments also decided that they wanted to keep open the option of a change of flag to secure the international competitiveness of their national shipping companies.⁸¹ By the 1980s, the resistance to the embodiment of the genuine link concept in the international law of the sea had widened to include the OECD states in general.⁸² Flag transfers to international open registries and the introduction of deregulation policies were applied successively in Europe too, despite trade union opposition.

The previous ITF FOC regime collapsed under the pressure of the national interest politics of the US seafarers' unions, the Seafarers' International Union (SIU) and the National Maritime Union (NMU). When the US unions directed their efforts to enforcing US collective agreements on all flags of convenience operating from US ports, on traditional US routes or in US ownership, they also claimed organizing and representation rights for foreign FOC crews and FOC ships and even set up a special trade union, the International Maritime Workers' Union (IMWU), for the crews of such ships, in competition with the ITF and the European unions.⁸³ At

80. ITF, Executive Committee, Meeting, London, 16–17 December 1958 (Doc. 35 EC–9), in MRC 159/1/3/85; ITF, Report on Conferences of Seafarers' and Dockers' Sections in London, 13–23 January 1959, in MRC 159/1/5/B/15; ITF, Circular 44/SS12 of 23 October 1958, in MRC 159/3/D/285; ITF, *Tätigkeitsbericht 1958–59*, pp. 63–65. The different numbers given for boycotted ships are taken from different ITF sources. ITF, *FOC*, p. 19, even speaks of 300–400: see also Northrup and Rowan, *ITF*, p. 47.

81. Cafruny, *Ruling the Waves*, p. 112.

82. Dierk Lindemann, *Das Übereinkommen Nr. 147 von der ILO vom 29. Oktober 1976 über Mindestnormen auf Handelsschiffen: Vorgeschichte, Inhalt, Völkerrechtsfragen* (Baden-Baden, 1983), pp. 36–40; Skourtos, *Billig-Flaggen-Praxis*, pp. 240–242.

83. Boszek, *Flags*, pp. 79–80; Northrup and Rowan, *ITF*, pp. 49–50.

the same time, in 1959 they put through a revision of the ITF's FOC arrangement in support of their national interest politics and favouring the owner principle, despite fierce resistance from the Europeans. Flags of convenience were to come within the competence of the unions of the country where the actual business management of the ship's deployment took place. Previously concluded national collective bargaining agreements became "custodian agreements" which would cease to be valid immediately the unions in the country conducting the business management demanded representation rights. In 1961, sanctions were also brought in for the first time against flag transfers to national registries, where shipowners were attempting to escape from collectively agreed regulation by this means. ITF member unions were forbidden to conclude collective agreements or provide crews.⁸⁴

When FOC shipowners started to re-register their ships on "cheap" European national registries (particularly Greece and the United Kingdom⁸⁵) and enter into collective bargaining negotiations with European trade unions as representatives of their FOC crews⁸⁶ to escape the jurisdiction of the US unions, the new arrangement of the FOC regime proved unsustainable. The British National Union of Seamen (NUS) and the Greek PNO refused to recognize the SIU's and NMU's owner principle and collective bargaining rights for FOC seafarers from their countries. The consequence was that the simmering conflict between the unions of the capital-exporting United States and the labour-exporting Greece and the United Kingdom boiled up within the ITF. When US unions intervened on Canadian FOC ships with British crews under NUS collective agreements, the British representatives pushed through the temporary exclusion of the SIU from the ITF "for interference in the domestic affairs of the British National Union of Seafarers".⁸⁷ And the Greek seafarers' union concluded a collective agreement at Greek levels for ships of the Niarchos fleet for which the US unions also claimed collective bargaining rights. In doing so the Greek union snubbed

84. ITF, FPC, Meeting, London, 13–14 April 1959, Resolution, Report and Minutes, in MRC 159/1/3/87, MRC 159/1/5/B/11 and 14; FPC, Meeting, Antwerp, 30 November–2 December 1959, in MRC 159/1/5/B/15; ITF, *Tätigkeitsbericht 1958–59*, pp. 64–65; ITF, Report on Conferences of Seafarers' and Dockers' Sections in London, 13–23 January 1959, in MRC 159/1/5/B/15; ITF, *Tätigkeitsbericht 1960–61*, p. 67.

85. Northrup and Rowan, *ITF*, pp. 53–54.

86. The number of FOCs covered by collective agreements actually rose from 95 in 1958 to 171 in 1959 and 300 in 1961: Koch-Baumgarten, *Konstitutionsbedingungen*, Table 6.6, p. 418. For example, in summer 1959 the Niarchos shipping consortium offered ITF member unions collective negotiations and payment of charges to the SIAWF for 206 FOC ships, on some of which US unions were also claiming representation rights: ITF, Executive Committee, Meeting, 18–20 November 1959, Rome (Doc. EC–2), and Copenhagen, 6–8 August 1959 (Doc. 37 EC–8), in MRC 159/1/3/90 and 88.

87. Boszek, *Flags*, pp. 79–80; ITF, *Report on Activities 1962–64*, pp. 43–45; ITF, *Tätigkeitsbericht 1960–61*, p. 59.

not only the US unions but also the ITF, as apart from not observing the US claims it also undercut the international minimum standard.⁸⁸ It was not possible to achieve any new FOC regime within the ITF which would bind its members, given the balance of power within the organization between the two trade union hegemonies from the United States and the United Kingdom, with their divergent interests. Subsequently international trade union cooperation on flags of convenience became dormant in the 1960s, also partly due to a cyclical easing of the maritime labour market and growing legal problems for trade union FOC politics in the United States.⁸⁹

FORMATION OF A PROTECTIONIST FOC REGIME UNDER THE HEGEMONY OF THE EUROPEAN TRADE UNIONS

From the 1970s on there was a revival in transnational industrial trade union activity against the flags of convenience due to the pressure of a renewed recession in merchant shipping and under fundamentally different conditions. The flags of convenience had expanded to cover one-fifth of the world's merchant shipping, and Europe had been transformed from a labour-exporting to a capital-exporting high-standard region. The traditional European ITF member unions, including the United Kingdom, were also now under pressure from flag transfers, reductions in employment which at times threatened the existence of maritime unions, and from the 1980s government deregulation policies. As had previously happened to the US seafarers, European sailors were now becoming uncompetitive on the multinational labour market, which was being flooded by cheap labour from Asia.⁹⁰ By contrast to the 1950s and 1960s, there was no longer an internal conflict within the traditional trade union countries of the industrialized world between unions from capital-exporting and labour-exporting countries, which had formerly been split into two equally powerful and equally well-resourced interest blocs, causing the failure of the first FOC regime. This time a broad interest-based coalition of the influential trade unions of the capital-exporting OECD countries faced only a few – uninfluential –

88. ITF, FPC, Meetings, London and Antwerp, 1959 (n. 72); ITF, FPC, Preliminary Meeting Subcommittee, Athens, 23–24 October 1959, in MRC 159/1/5/B/12–14; ITF, *Tätigkeitsbericht 1960–61*, p. 59; ITF, *Tätigkeitsbericht 1958–59*, pp. 70–71; ITF, *Yearbook 1965*, pp. 43–45; Materials of ITF Seafarers' Conference in Geneva, 22 September 1961, in MRC 159/3/D/82; Boszek, *Flags*, pp. 78–79.

89. Northrup and Rowan, *ITF*, pp. 48–53.

90. They also compete for jobs with national seafarers on the national fleets – in a section excluded from national occupation reservations (also see n. 19) – and particularly on the ships of the second registries. The ITF regards them as “crews of convenience” where they are employed at conditions below national collective agreement provisions. Its aim is to bring them within the competence of national collective bargaining law.

associations from developing and emerging countries in Asia as the representatives of employment interests on flags of convenience and later also on second registries.

These associations were underrepresented on the ITF's decision-making bodies. Until the late 1970s they were not represented on the FPC, which has developed from a small body with 24 representatives from 13 countries in 1973 to a multifunctional ITF decision centre with 66 trade union representatives from 36 countries today. Therefore the reformulation of trade union policy on flags of convenience took place without any participation by unions from the labour-exporting Asian countries. These were only integrated into the FPC in the early 1980s, after internal conflicts on FOC policies which almost split the organization; in 1993 they achieved a share of 29 per cent on the FPC. Europe was (and is) the bloc with the greatest influence on decision-making (1993: 47 per cent); it also coordinates interests outside the ITF-SSS, in the maritime section of the European Transport Committee (EFTU). A comparable agglomeration of regional interests has only recently become possible in Asia after Asian unions set up regional structures in a process of defensive regionalization to win rights of representation and participation in the ITS.⁹¹

Thus the formation of a new regime for the internationally coordinated regulation of the FOC sector by collective agreements took place under the organizational hegemony of the trade unions in the capital-exporting countries and was directed towards closing the labour market to the Asian newcomers. Rights of representation and collective bargaining in the FOC sector (and later also in the European second registries) were finally settled in favour of the owner principle. Trade unions of the capital-exporting countries have the principal right to organize and represent sailors on FOC ships; immediately they claim collective bargaining rights, already existing collective agreements made by unions from the crew's country of origin or the FOC-state lose their validity. These also need to be ratified internationally by the ITF's FPC to be recognized as interim agreements, and this is dependent on observance of the minimum standards laid down in the international ITF collective agreement. If national associations accept less than the ITF standards in their agreements, all their collective bargaining rights can be revoked; all ITF member unions are then entitled to enforce ITF minimum standards for the ships in question. As the ITF was confirmed as the collective bargaining party for these crews which are not represented by a member union of the ITS, all the affiliated organizations are entitled to conclude the ITF agreement for these crews on its behalf.⁹² This is the formal equivalent of an international works agreement; the areas regulated cover pay matters (including overtime and holiday rates), holiday

91. Koch-Baumgarten, *Konstitutionsbedingungen*, pp. 288, 291, 365, Tables 6.1–6.4, pp. 416–417.

92. ITF, *FOC*, pp. 22–23.

entitlement, provision for emergencies and sickness, crewing standards, period of employment, working hours and repatriation, as well as SIAWF and trade union contributions.⁹³ The ITF standards have been set according to northern European average standards since 1972, and since 1980 at a “weighted” average value of the collective standards of the owner countries of the FOC tonnage; as such they are far above the national Asian wage level, but also above the ILO’s minimum standards.⁹⁴ Therefore, unlike the low British international standards of the 1950s, their effect is to close the market and defend the competitiveness of expensive labour from the high-standard countries on the multinational labour market of the FOC sector, or protect it against capital transfers motivated by wage cost cutting.

As a result, national trade union sovereignty in the central area of collective bargaining policies was restricted for the first time and replaced by an international governance. This was reinforced by the introduction of port trade union controls as a major innovation of the ITF regime,⁹⁵ providing FOC policies with effective sanctions for imposing and inspecting international collective agreement provisions, with the ability to impose obligations both internally and externally. A global network of inspectors was set up in important ports (1989: 42 in 18 countries; 1998: 111 in 39 countries). These check whether FOC ships have a recognized collective bargaining agreement, and whether it is observed. If not, the relevant port unions use a range of actions appropriate to the national legal situation (from involvement of the port authorities or mobilization of the FOC crew to a boycott of the ship) to bring about the conclusion of an ITF collective bargaining agreement or payment of additional wages, i.e. to bring the national collective agreement provisions into line with international standards. Such payments amounted to \$145 million in the period 1974–1991. In 1992, there were 150–165 ITF agreements in force; a clear rise over the modest 17 international agreements at the end of the 1950s.⁹⁶

The port controls have an external and an internal function. On the one hand, they operate as an instrument of interest politics against FOC ship-owners (establishment and observance of collective agreements). On the

93. ITF, *Collective Agreement for Crews on Flag of Convenience Ships* (n.p., n.d. [1987]).

94. In the early 1990s the ILO’s minimum standard wage (\$356 per month for a qualified seafarer) is only 43.4 per cent of the ITF minimum (up to \$821); ITF, *FOC*, pp. 7–8. The latter will be increased in 1998 to \$1,400: *ITF-news*, 4/1997, p. 13.

95. These copy the port state controls embodied in international law (Skourtos, *Billig-Flaggen-Praxis*, pp. 240–241, 284–285; Lindemann, *Übereinkommen*, pp. 27–30), which limit the flag state’s sovereignty to the ships of its fleet and authorize port states to inspect international legal standards on their territories. However, the ITF criticizes shortcomings in state controls, particularly on welfare matters: ITF, *FOC*, p. 37; *ITF-news*, 2/1988, p. 12; 9/1988, p. 15; 8/1987, pp. 3–4.

96. The achievement of collective agreements on FOC ships depends very much on the use of the boycott; of 2,200 existing collective agreements in 1980–1982, 250 had been achieved only with the use or threat of a boycott: ITF, *Report on Activities 1980–1982*, p. 142; ITF, *FOC*, pp. 12–13, 45; ITF, *Seeleute-Bulletin*, 1993, p. 20.

other hand, they are an instrument for enforcing international minimum standards against oppositional member unions which refuse to accept an obligation based on norms (international solidarity). This unique range of sanctions in trade union hands is fundamental to the FOC regime's operation, as it places its supporters (from the industrial countries) in a position to be able to enforce international minimum standards within their national organizational environment, even against the resistance of autonomous trade unions (with employment interests on flags of convenience) outside their sovereign territory. However, this is only imaginable in the transport sector, with mobile production units which, by contrast to relocation of industrial production, do not escape the organizational grasp of national interest groups in the capital-exporting country when the capital is transferred from one flag to another. A further precondition is the existence of well-funded trade unions ready to mobilize and take action and with clear interests in doing so, which can enforce the international collective standards in a favourable labour-law environment and implement the port controls in practice. Australia, the United Kingdom (until the introduction of new trade union laws by the Thatcher government) and the Nordic countries formed these so-called ITF regions.

From the beginning, resistance to this protectionist regime was articulated by unions from the new low-standard regions, Asia and also Cyprus, Malta and Eastern Europe, which represented employment interests in international open registries (but also on national fleets and second registers of the traditional maritime countries). They reject the ownership principle for the regulation of collective bargaining and organization rights on FOC shipping in principle and oppose the transnational control of national collective bargaining policies, seeing it as control from outside. They claim the exclusive right to organize sailors from their countries of origin and represent them in collective bargaining, on all ships irrespective of the flag they sail under. The standards laid down in the ITF agreements are rejected as inappropriate to the regional wage and price conditions and as instruments of market closure. The much lower ILO minimum standards are accepted as the highest margins, and reduced special rates for Asian crews on FOC ships and national and second registries are demanded to defend the region's comparative wage cost advantage on the multinational labour market.⁹⁷ The FOC institution is also supported; capital transfers are welcomed as a necessary part of plans for economic modernization, particularly by trade unions in emerging Asian countries such as Singapore, which are involved in au-

97. This resistance refutes the harmonistic assumptions in trade union studies that employees' organizations have a general interest in setting minimum international standards oriented towards the most advanced standards. See, for instance, Michael Wortmann, *Gewerkschaftliche Solidarität mit der Dritten Welt. Veränderte Interessen in der neuen internationalen Arbeitsteilung* (Saarbrücken and Fort Lauderdale, 1984), pp. 1, 42–53.

thoritarian or corporatist labour relations.⁹⁸ They fear that the ITF's FOC policy could set a protectionist example against foreign investment in the region.⁹⁹

To that extent ITF's internal collective bargaining policy is accompanied by an ongoing conflict within the organization on its political content and decision-making processes. Thus the oppositional Asian unions refuse to recognize the FOC guidelines or cooperate in their implementation. They have attempted to extend their political influence through an alignment of interests within the region and expanded rights of representation on ITF decision-making bodies. It took an escalation of the conflict in 1979-1980 (which almost split the organization) to achieve this. This was provoked by two FOC ships with Indian crews being boycotted in the United Kingdom to achieve an ITF collective agreement which replaced an existing collective agreement of the National Union of Seafarers of India (NUSI) which was below the ITF minimum standard. When the NUSI became involved in a corporatist counter-intervention in India¹⁰⁰ (cancellation of the new ITF agreements, disciplining of the crews of the boycotted ships and public condemnation of the ITF's FOC policy) it was expelled from the ITF. Two regional conferences of the Asian member unions not only declared solidarity with the NUSI but made fierce attacks on the ITF and its FOC policy and threatened their own boycott measures against European and Australian ships in Asian ports.¹⁰¹

The ITF was forced into concessions as a result: the reversal of the NUSI's expulsion, an increase in the seats for Asia on the ITF bodies and a reduction in the international collective standard for the Asian region. Reduced special rates for Asian crews were conceded, so-called Total Crew Cost Agreements (TCCA¹⁰²) and Funding Arrangements replacing payments to the ITF's SIAWF by contributions to new welfare funds to be set up in Asia itself. Recently, national quotas on FOC ships, a concept spon-

98. C. Leggett, "Corporatist Trade Unionism in Singapore", in Stephen Frenkel (ed.), *Organized Labor in the Asia-Pacific Region. A Comparative Study of Trade Unionism in Nine Countries* (Ithaca, NY, 1993), p. 224.

99. ITF, Concluding Statement, ITF Asian Pacific Seafarers' Committee, Taipei, 10-12 April 1984, appendix to Doc. 84/S5/6-1, in MRC 159/nn; *ITF-news*, 3/1987, p. 7, 1/1990, p. 17; ITF, Asian Seafarers' Regional Committee, Meeting, Singapore, 17-19 September 1980 (Doc. 80/S7/Rpt), p. 6; Asia Pacific Regional Conference, New Delhi, 2-5 March 1982: Report, in MRC 159/nn.

100. Until the intervention of the ASEAN governments against ITF regional policy in Asia in the ILO in 1980.

101. In detail in Koch-Baumgarten, *Konstitutionsbedingungen*, pp. 374-376; generally also Lennart Johnsson, *Funny Flags. ITF's Campaign - Past, Present, Future* (Falköping, 1996), pp. 56-57, 63-65.

102. TCCAs replace individual monthly wage rates measured by qualifications by total wage costs for a ship. Ultimately they recognize national Asian collective agreements and wage levels; their wage standards are 61 per cent of the levels in the ITF standard agreements: ITF, *FOC*, pp. 22-23; Johnsson, *Funny Flags*, pp. 269, 306.

sored by the Asian associations, have also been under discussion as a solution to the employment conflict.

In turn, there is pressure to review these compromises from the Europeans, who defend national employment opportunities on ships under flags of convenience, call for an alignment to ITF standards and argue for withdrawing collective bargaining rights from those associations in Asia which have no autonomy to act within authoritarian or corporatist labour relations or which break the rules. For Asian seafarers' unions, for instance in South Korea, the Philippines or the Maldives, do effectively undermine the international agreements. They conclude collective agreements at national wage and condition levels below the recognized ITF minimum provisions. The trade unions connive in double bookkeeping by the shipping companies to ensure that these national agreements are recognized by the ITF and so to avoid the port union controls and the conclusion of new ITF collective agreements.¹⁰³ They are also prepared to conclude bilateral agreements for national seafarers at Asian collective standards even for ships from European second registries or national registers, which under ITF regulations come under the competence of the flag trade unions and to which the flag standards apply. Accordingly, there are often conflicts when the European unions carry out port union controls and overrule the bilateral agreements or double bookkeeping by concluding ITF agreements or enforcing supplementary wage payments.¹⁰⁴

RESULTS AND PROBLEMS

Generally, collective regulation of the flag-of-convenience sector has expanded considerably since 1972. The number of collective bargaining agreements recognized by the ITF rose from 95 in 1972 and 2,300 in 1992, including 150-165 ITF agreements, to 4,500 in 1998. There were 7,916 FOC ships in 1990, and of these 1,533 had concluded a collective agreement – a proportion of 20 per cent, representing a five-fold increase over 1957 (4 per cent). Today the quota is about 29 per cent.¹⁰⁵ Admittedly there are justified doubts whether all those collective agreements which on occasions concealed lower standards by double bookkeeping are properly implemented. Breaches of the agreements are also common; clear evidence of this is the amount of supplementary wage payments enforced by the port unions (see above). To that extent, regulation by collective agreements only has a limited effect as an instrument to close the market and safeguard the collective standards of the high-standard regions. It has not proved possible to prevent the deregulation and internationalization of merchant shipping.

103. *ITF-news*, 11/12-1988, p. 2; 1/2-1993, p. 19; ITF, *Seeleute-Bulletin*, 1986, pp. 3, 17; ITF, *FOC*, p. 8; Johnsson, *Funny Flags*, pp. 55, 59.

104. *ITF-news*, 7/8-1988, p. 9; 12/1991, p. 21.

105. Johnsson, *Funny Flags*, p. 94; *ITF-news*, 3/1998, p. 9.

Nevertheless, a partial international trade union counterweight has been created in the FOC sector and has set minimum standards in working conditions and pay which, while not comparable with the level of regulation in collective bargaining agreements in northern Europe, can stand comparison with decentralized industrial systems in the United States or in developing countries. Additionally, a minimal level of intergovernmental regulation has been achieved in the ILO. This is relatively high by comparison with other branches of industry, and was initiated by the trade unions, which were the first to break through the FOC sector's immunity to sanctions. Finally, quite considerable redistribution processes were involved when at least a small part of the FOC companies' extra profits from tax and social security savings were recovered for organized labour in the form of the payments to the SIAWF. Up to 1998, \$100 million were distributed from the ITF welfare fund to welfare projects supported or co-managed by the trade unions. Funding Arrangements in collective agreements which agree shipping company payments to new welfare funds to be set up in Asia work in the same direction.¹⁰⁶ Not least, the transnational regulation of the FOC sector is a stimulus to the expansion of trade union organizations and industrial relations in the emerging countries in Asia. The ITF's existence as a multinational collective bargaining party is the reason for government and employer interest in the existence of competing national associations with collective bargaining powers. The erosion of the power of action of US or European trade unions could not be prevented; at most it could be delayed or weakened.

However, the ITF's FOC regime is under pressure of various kinds. The opposing interests create considerable tensions within the organization and lead to attempts by individual associations to escape from transnational regulation by breaking the rules.¹⁰⁷ Its international collective bargaining powers and boycott activities meet with many legal problems; trade union FOC policies are accompanied by numerous legal disputes.¹⁰⁸ In Asia, authoritarian government counter-interventions have been developed, ranging from a complaint to the ILO against the ITF's regional policy in 1980, cancellation of ITF agreements, collection of supplementary wage payments and disciplinary action against seafarers involved in the boycotts (dismissal, or even arrest in Burma and the Philippines) to the prohibition of ITF membership and no-strike clauses in contracts of employment.¹⁰⁹ Not least, the erosion of trade union organization power in the OECD countries is a

106. Northrup and Rowan, *ITF*, pp. 98/99; *ITF-news*, 3/1998, p. 9.

107. *ITF-news*, 6/7-1992, p. 10; 1/1994, p. 11; 3/1990, pp. 15-16 and ITF, *Seeleute-Bulletin*, 1993, pp. 5-12.

108. Northrup and Rowan, *ITF*, pp. 55-96; ITF, *Seeleute-Bulletin*, 1993, pp. 5-12.

109. ITF, *FOC*, p. 8; Birk, *Rechtmäßigkeit*, p. 31; *ITF-news*, 7/8-1988, p. 9, 7/1989, pp. 1-2; 9/1989, p. 13; 10/1992, p. 12; 3/1993, p. 12; Northrup and Rowan, *ITF*, p. 100; Johnsson, *Funny Flags*, pp. 96, 156-157.

threat to the capabilities of those ITF member unions which are fundamental to the operation of the transnational regulation. Accordingly, its future prospects may be viewed with some pessimism.

SUMMARY: IMPORTANCE OF THE CASE EXAMPLE FOR
TRADE UNION STUDIES

The case example shows clearly that trade union internationalism need not necessarily remain powerless or exhaust itself in the provision of domestically oriented services. Merchant shipping has seen the creation of a unique transnational trade union cooperation for the regulation of FOC shipping which embeds national trade union politics in a system of transnational decision-making and control processes. In an internationally structured section of merchant shipping, this international governance has resulted in an effective if unintended loss of sovereignty for national unions.

At the same time, trade union cooperation is not guaranteed either by normative orientations (e.g. solidarity) or by shared material interests arising from an international conflict between capital and labour. Contrary to widespread assumptions within trade union studies, this line of social conflict is scarcely applicable as a basis for collective action beyond national borders. The lines of conflict between capital-exporting and labour-exporting regions are more relevant for the explanation of international trade union action. They spontaneously give rise to cross-class coalitions¹¹⁰ and serious differences of interest on organizational and employment policy within the trade union camp. Cooperation between trade unions must overcome these factors, and for this, not only economic but above all political preconditions are essential.

In other words, economic processes of internationalization are a necessary but not a sufficient condition for trade union regime formation. Thus the thesis that trade union structures will catch up on internationalization in the wake of economic integration processes is wide of the mark. Specifically, three political preconditions are central to the establishment of the ITF's FOC regime. They also show that international cooperation under the conditions of incompatible economic structures, i.e. extreme differences in economic development, involves high political costs.

First, the transfer of competence for collective bargaining policies within the sector from the national unions to the ITF historically required a trade union-free space without existing national trade union organizational interests. Because initially no unions existed in the countries with international open registries and neither the associations in the capital-exporting countries

110. In the case example, between FOC shipowners from the industrial countries and trade unions and seafarers from the labour-exporting countries, and between shipowners of the national fleets and trade unions of the capital-exporting countries.

nor those in the labour-exporting countries claimed representation rights for unorganized *multinational* crews, an international collective bargaining party could be established in this power vacuum without formal transfers of power from the national to the international level. There was thus no need for national trade unions to renounce any sovereignty intentionally; that would have formed just as insurmountable a barrier in merchant shipping as in other branches of industry.

Second, in view of the conflicting interests of the cooperating partners, *structural power imbalances* within the ITF were necessary for the regime formation and the establishment of general international minimum standards and port trade union powers. Blocking of the transnational aggregation of interests was avoided only because representatives of the labour-exporting low-standard countries were excluded from the political decision-making processes in the early 1970s. As long as the parties in the fundamental conflict from labour-exporting and capital-exporting regions represented the traditional trade union regions of Europe and North America, with equally powerful and well-funded unions which were equally influential within the organization, the balance of power between two trade union hegemonial powers (the United States and the United Kingdom) in the 1960s blocked both internal decision-making processes and the implementation of the transnational arrangement. It was only once the lines of the conflict had shifted from the centre of the traditional trade union region to its periphery that the international collective bargaining system with high minimum standards and multinational controls could be established – though at the cost of persistent organizational conflict and a lack of democratic legitimation.

Third, in the absence of any supranational government authority which could guarantee the implementation of national collective bargaining provisions and minimum standards, the diverging interests require a range of trade union-controlled sanctions which are directed both internally (at conflicts between trade unions) and externally (at FOC employers). The port union controls take the place of the ability to achieve common obligations within a collective actor which depends not on employees' homogeneous interests but on a trade union hegemonial power (Europe). However, the system of port union controls is again based on factors specific to merchant shipping. It assumes production sites which are not territorially fixed and cannot escape from the organizational grasp of the national interest groupings of the capital-exporting country when their capital is transferred from one flag to another in the way that relocations of industrial production can. The unions of the capital-exporting country can impose international minimum standards in their organizational environment for seafarers of other countries, even against the opposition of these seafarers' sovereign national associations. This is hardly imaginable in the context of relocation of industrial production from one nation-state to another, when the pro-

duction site is transferred from the area of influence of one state and one national union to that of another. To that extent, the ITF example of transnational collective agreement regulation can scarcely be translated to other industries.