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Impact of Open International Competition on U.S. Maritime Labor

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The FOC System

- International maritime transportation system is dominated by the Flag of Convenience (FOC) system
- An FOC ship is defined as one where there is no genuine link between the beneficial owner of the ship and the country of registration
- 34 countries, primarily in the third world economy, have registries that are open to ships of any owner regardless of nationality



Origins of the FOC System

Reaction to National Regulation



Andrew Furuseth, Senator Robert La Follette, Lincoln Steffens—architects of the Seaman's Act of 1915

Early 20TH Century U.S. Federal Maritime Regulations & Policies

- La Follette Seaman's Act of 1915 (Labor-Safety Protections)
- Hull & Boiler Inspections
- Merchant Marine Act of 1920
- Selective sale by Federal Government of WWI Surplus Tonnage to U.S. interests free of U.S. regulations
- Prohibition-Passenger Vessel Service



Reaction

- In the early 1920s U.S. owned tonnage transferred to flags of:
 - Panama
 - Honduras
- Examples
 - Standard Oil of New Jersey (ESSO)
 - United Fruit Company
- Outcomes
 - Avoid U.S. Seaman's Act requirements
 - Hire Multinational Crews
 - Avoid U.S. construction/inspection requirements
 - Pay at lower foreign Seaman's Wage Scale



“The real difficulty in starting an American merchant marine, is, first, the La Follette Bill, which insists upon one-half to two-thirds of the deck and engine departments being composed of American citizens; second, all sorts of interference by government and labor unions, the eight hour law, etc.; and third, the captain should be in absolute control of his ship three miles from shore. It would take so long to convince any collection of politicians of these facts that a simple demonstration would be to sell a number of our ships with the privilege of allowing the owners to sail them under the Panama flag. The ships could then be run on the same plane as our old merchant marine, unhampered by labor unions and ‘sea lawyers’ and when the captain called any or all hands there would be no question of overtime.”

—Congressman Robert Bacon, 1922



The FOC System

- The FOC countries view ship registration as a revenue source, rather than as a means of effective national regulation of shipping
- There is considerable competition among FOC countries to attract shipping companies to their registry based on:
 - Low Manning Levels
 - Low National Regulatory Standards
 - Lax Enforcement of International Standards
 - Freedom from Taxation on Income of Owners and Crew



The FOC System

- A ship owner under an FOC flag enjoys all the rights under international law of a ship flying the flag of a sovereign nation, with none of the obligations of national taxes or national laws that protect labor and social conditions.
- It is not surprising that the vast majority of shipping companies in international trades operate under FOC registries to avoid national taxation and regulation. UNCTAD estimates that more than **73%** of the world fleet is registered under FOC countries.* This number continues to grow.

*UNCTAD 2013 based on Deadweight Tonnage (DWT)



**The Following 34 Countries Have Been Declared FOCs by the ITF's
Fair Practices Committee (A Joint Committee of ITF Seafarers' and
Dockers' Unions), Which Runs the ITF Campaign Against FOCs**

ANTIGUA AND BARBUDA

BAHAMAS

BARBADOS

BELIZE

BERMUDA

BOLIVIA

BURMA

CAMBODIA

CAYMAN ISLANDS

COMOROS

CYPRUS

EQUATORIAL GUINEA

FAROE ISLANDS

FRENCH INTERNATIONAL SHIP REGISTER(FIS)

GERMAN INTERNATIONAL SHIP REGISTER(GIS)

GEORGIA

GILBRALTAR

HONDURAS

JAMAICA

LEBANON

LIBERIA

MALTA

MARSHALL ISLANDS

MAURITIUS

MOLDOVA

MONGOLIA

NETHERLANDS ANTILLES

NORTH KOREA

PANAMA

SAO TOME AND PRINCIPE

ST VINCENT

SRI LANKA

TONGA

VANUATU



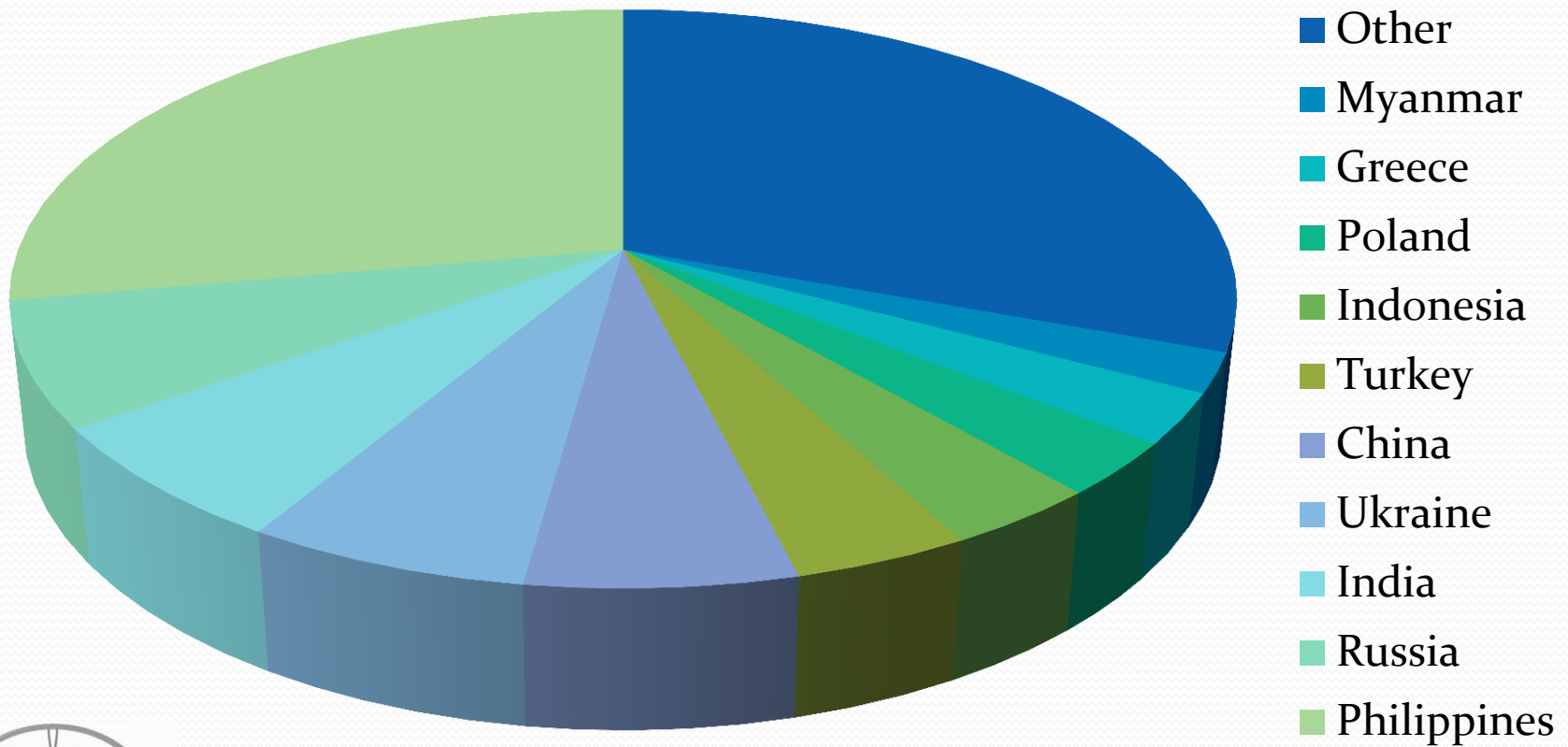
Impact of FOC System on U.S. International Trade

- Total number of ships in U.S. international trade 7,836 *
- Number of U.S. ships in U.S. international trade 89
- Percentage of port calls by U.S. ships 1.5%
- The small number of U.S. ships are not in open competition, but survive through subsidies or cargo preference programs established under a government policy to maintain a core base of maritime skills and ships to serve national security interests

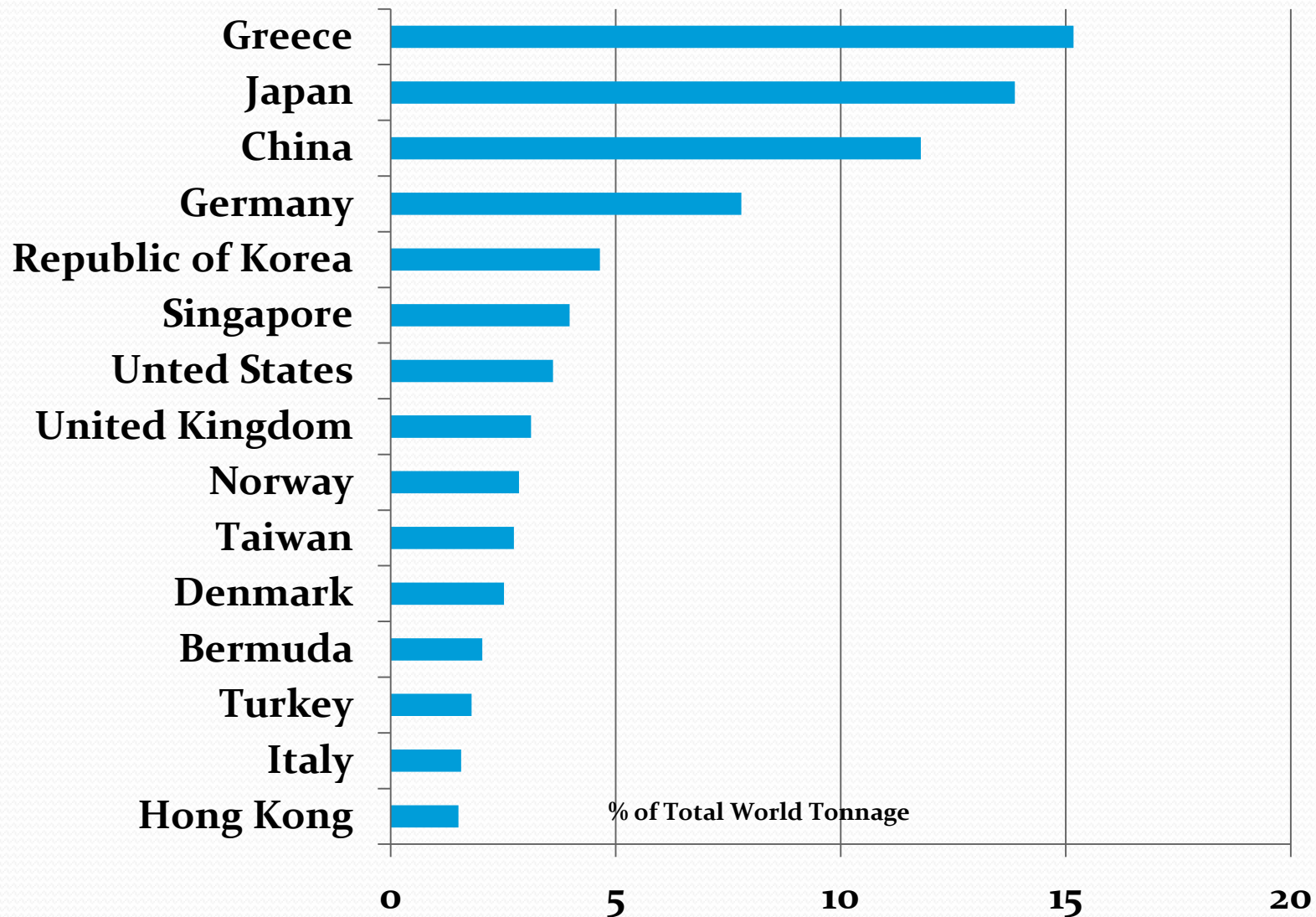
* MARAD 2011 Data



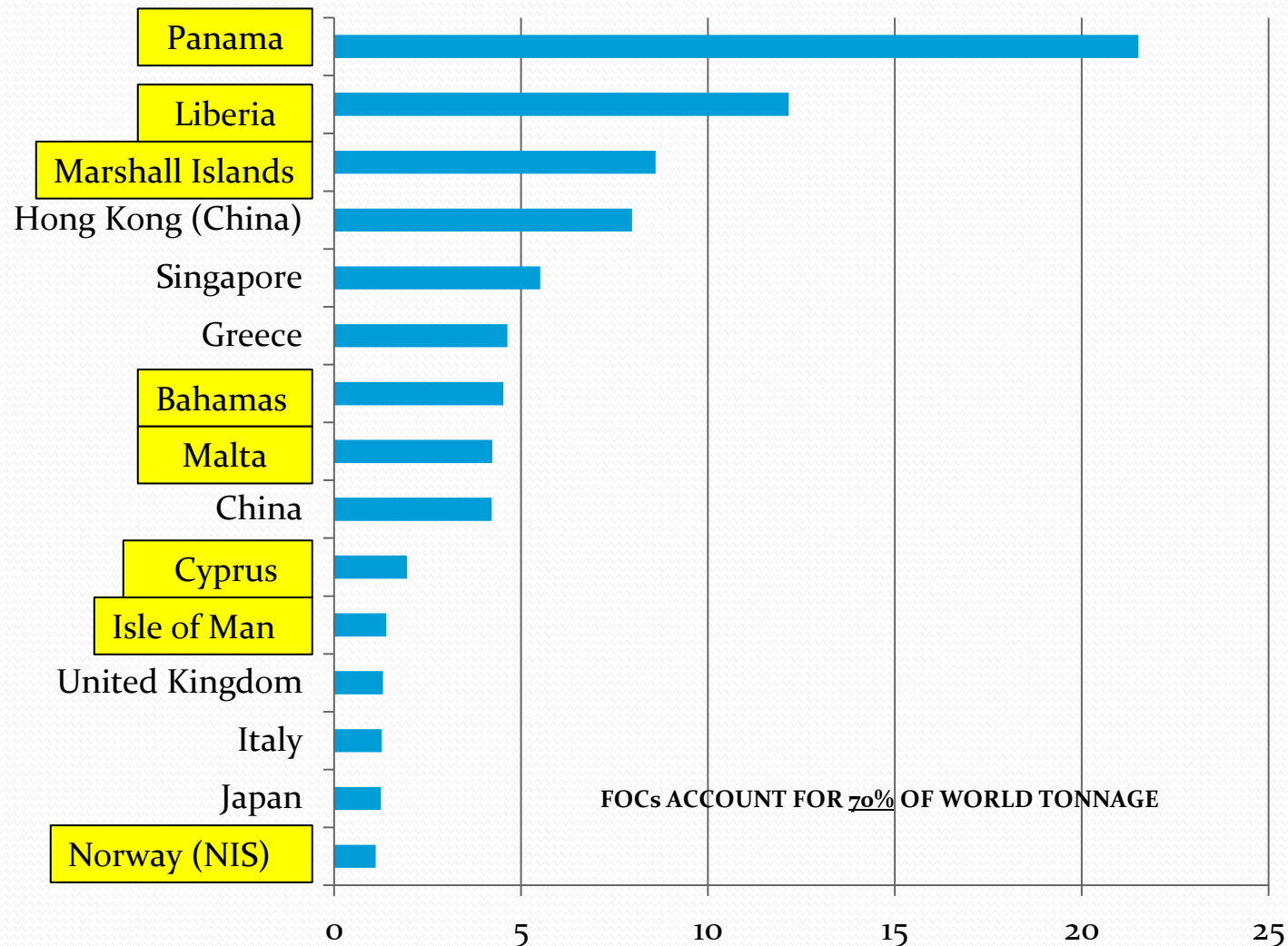
Top 10 Seafarer Nationalities



Top Fifteen Beneficial Owners Globally



Top Fifteen Flags of Registration (FOCs highlighted)



What FOC Means to Seafarers

- Unsafe vessels — aging badly and not maintained to basic safety levels
- Unprotected seafarers in the event of injury or death
- Wages often go unpaid with little or no recourse for the seafarer
- Seafarers are undervalued and treated poorly
- Insecure work agreements



Impact on National Companies and Labor

- In a multi-national playing field where there are few restrictions on moving assets or operations between nations, companies will shift operations to the country with the lowest taxes and wages, and the least regulations
- The competitive advantage of FOC ships in avoiding national taxes and labor standards creates an environment where regulated and taxed national shipping companies and labor cannot survive in an unregulated free global market



Other Social and Legal Factors Affecting U.S. Labor

- Many EU countries exempt EU officers from taxes
- EU officers covered under national health care programs
- U.S. officers health care costs of \$65-95 per day carried as employment cost
- U.S. legal regime provides more liberal protection to maritime workers injured in shipboard accidents





International Regulation of Shipping

- The FOC system created an industry outside of national regulatory control
- Resulting in a large number of substandard ships and crews in international trade
- The response has been a move toward greater international regulation of shipping under United Nations organizations

Concealed Ownership

- The Flag of Convenience system allows shipping companies to establish complex ownership structures that are characterized by lack of administrative and managerial accountability and transparency
- Corporate structures are often multi-layered, spread across numerous jurisdictions and may make the beneficial owner “almost impenetrable” to law enforcements officials and taxation. (2004 UN report on Flag State Implementation)
- Facilitates:
 - **Criminal Activity:** smuggling/illegal arms trade/human trafficking
 - **Avoidance of Environmental and Resource Protections:** e.g., pollution/fishing
 - **Potential for Terrorism:** Transporting personnel/equipment, oil tanker/LNG carrier as a weapon



Call for International Regulation



M/V ERIKA: 1999, Brittany



MALTA

**M/V AMOCO CADIZ:
1978, Brittany**



LIBERIA



**S/S TORREY CANYON: 1967,
England/France/Spain**



LIBERIA



M/V PRESTIGE: 2002, Spain



BAHAMAS



Global “Free Trade” vs. Regulation

- Tax Avoidance
- Choice of Regulatory Compliance Based on Choice of FOC
- Avoidance of Labor/Social Benefit Obligations
- Reduced Cost of Operation/Registrations Fees/Expenses
- Privacy of Ownership

Cheap Shipping Keeps Major Maritime Powers Content to Support FOC System

Responsibility Delegated to:

International Organizations

Port States

Insurance (P&I) Clubs

Classification Societies

Ship Owner Clubs





International Regulation of Shipping

- The International Maritime Organization establishes safety standards for the operation of ships and for the training and certification standards for crews
- The International Labour Organization establishes minimum working conditions for maritime labor
- These organizations have no means to directly regulate but provide a forum for the drafting of international documents or conventions
- The signatory countries then have a treaty obligation to bring their national laws into conformity with the conventions

UN Convention of the Law of the Sea (UNCLOS)

GENERALLY ACCEPTED INTERNATIONAL RULES AND STANDARDS

UNCLOS, ARTICLE 94, PARAGRAPH 5:

- Each Flag State is required to “conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.”
- Numerous International Conventions including those affecting labor and maritime safety are considered to be generally accepted international rules under UNCLOS—even if the particular Flag State in question has not ratified the particular labor or safety convention in question: example: 2006 Maritime Labor Convention (MLC)
- Regarding the MLC, Port States are charged with enforcement if they are signatories to the agreement and are obligated to give “no more favorable treatment” to non-signatories of the agreement than they do to signatories.
- **Generally Accepted International Rules and Standards: often the result of Political Pressures against the FOC system due to environmental disasters or labor/safety standards abuses as well as minimum standards for Insurance underwriting.**
- **RESULT: “RACE TO THE MIDDLE”**





Unions in the International Arena

- The rights of labor to organize in unions is a matter of national legislation
- There is no right for a national union to organize labor on a ship under the flag of another country
- The International Transport Workers' Federation (ITF) has a campaign to organize labor on FOC ships
 - Such organizing is neither assisted nor supported by any national or international labor laws



Unions in the International Arena

- There are approximately 80,000 ships in the world fleet
- About 73% of the world fleet operate under the FOC system
- The ITF has organized and has under labor CBAs about 12,300* ships
- The penetration of union labor in the FOC fleet is 25%*

* International Transport Workers' Federation, 2013

FOC in Aviation

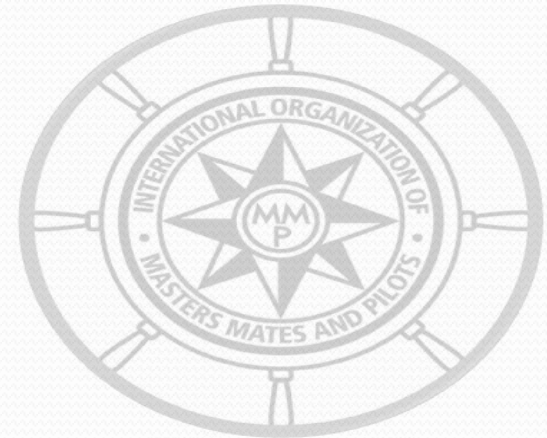
- Will FOC concept be unleashed within aviation?
- The EU made up of 28 countries at last count. Of these several have second registries. Cyprus and Malta, within EU, are considered FOC states. Would airlines migrate to the least taxed, least regulated and lowest wage cost countries? What would this mean for protection of wages, benefits and social conditions?
- One of the top open registries in FOC shipping is Malta. Malta is establishing an open registry for aircraft based on the FOC model in shipping. The implications for aviation are troubling.





***The Need to Work
Together is Essential***

—Thank You—





Questions?