
INTERNATIONAL LABOUR ORGANIZATION
Sectoral Activities Programme

**Meeting of Experts on Working and
Living Conditions of Seafarers on board
Ships in International Registers**

Supplementary paper

Geneva, 2002



INTERNATIONAL LABOUR OFFICE GENEVA

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Supplementary paper to Reports I and II submitted
for discussion at the Meeting of Experts on Working
and Living Conditions of Seafarers on board Ships in
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Contents

Acknowledgements	v
1. Introduction.....	1
2. Importance of open registers.....	2
3. Comparison of open and other registers.....	3
4. Enforcement of regulations.....	5
5. Conclusions.....	6

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1. Introduction

This paper seeks to draw some conclusions from the global study¹ submitted to the Meeting, as well as from the case studies on specific countries² which examines the conditions of work of seafarers resulting from their employment on ships registered in the international registers as compared with the rest of the shipping industry. The paper consists of five sections. This introductory section briefly describes the problems of definition and is followed by a discussion of the development and importance of these registers in section 2. Both of these sections serve as a background to section 3 which makes a comparison between seafarers' working conditions in open registers as compared with those on vessels under other registers. This analysis draws heavily on replies to an ILO questionnaire on the living and working conditions of seafarers.³ Section 4 is concerned with the enforcement of regulation, while the final section puts forward conclusions.

The registration of vessels in countries other than the nationality of their owners has always presented the industry, lawyers and academics with a problem of terminology concerning such terms as open registry, flags of convenience and second and international registers. For example, an open registry has been defined as: "countries (sic) whose law allows – and indeed, makes it easy for, ships owned by foreign nationals or companies to fly their flags". However, this is in contrast to the practice in the maritime countries (and in many others) where the right to fly the national flag is subject to "stringent conditions and involves far reaching obligations".

An earlier ILO report⁴ suggested that the main purpose of these flags was to provide "flexibility in the operation of ships" with cost reduction as the main objective. Already in 1970, the Rochdale Inquiry into Shipping referred to certain characteristics which could be attributed to most open registries:

- (i) the country of registry allows ownership and/or control of its merchant vessels by non-citizens;
- (ii) access to the registry is easy. A ship may usually be registered at a consul's office abroad. Equally important, transfer from the registry at the owner's option is not restricted;
- (iii) taxes on the income from the ships are not levied locally or are low. A registry fee and an annual fee, based on tonnage, are normally the only charges made. A guarantee or acceptable understanding regarding future freedom from taxation may also be given;
- (iv) the country of registry is a small power with no national requirement under any foreseeable circumstances for all the shipping registered (but receipts from very small charges on a large tonnage *may* produce a substantial effect on its national income and balance of payments);

¹ ILO: *Report for discussion at the Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers*, Report I (Geneva, 2002).

² ILO: *Report for discussion at the Meeting of Experts on Working and Living Conditions of Seafarers on board Ships in International Registers: Case studies*, Report II (Geneva, 2002).

³ ILO: Report I, op. cit., Appendix I.

⁴ ILO: *The impact on seafarers' living and working conditions of changes in the structure of the shipping industry*, Report for discussion at the 29th Session of the Joint Maritime Commission (Geneva, 2001).

- (v) manning of ships by non-nationals is freely permitted; and
- (vi) the country of registry has neither the power nor the administrative machinery effectively to impose any government or international regulations; nor has the country the wish or the power to control the companies themselves.

Many open registers have a low participation of national shipowners in their fleet. Table I shows three clearly delineated groups: a first group of countries such as Panama, Liberia and Vanuatu, where there is a complete absence of national owners in their fleet; a second group consisting of Cyprus, Bahamas and Malta, with a small percentage of tonnage owned by nationals; and a final group comprising those countries where the register was specifically designed as a “second register” to retain or reattract tonnage “flagged out” elsewhere. In this last group, the percentage held by nationals in the fleet is extremely high – as in the case of the Norwegian International Register (NIS) and the Danish International Register (DIS). These “second registers” do not usually exclude non-national shipowners – although this is the exception rather than the rule.

Table I. Percentage share of tonnage owned by nationals in the most important second and open registers

Country of register	1995	2000
Panama	0.0	0.0
Liberia	0.0	0.0
Vanuatu	0.0	0.0
Cyprus	2.7	2.1
Bahamas	0.6	0.7
Malta	0.8	0.1
Norway (NIS)	89.2	84.5
Denmark (DIS)	97.7	98.5

Source: UNCTAD: *Review of maritime transport* (1995 and 2000).

2. Importance of open registers

Open registers form a large proportion of the world fleet and thus employ a considerable share of seafaring labour throughout the world. The *BIMCO/ISF Manpower Update 2000* showed that open registers account for some 28 per cent of seafarers employed worldwide and for only 4.6 per cent of the supply. There is little connection between these seafarers, citizens of labour-supplying countries and the flag State. Their employment is facilitated by their country of origin. The costs of training these seafarers are not being covered by the open register countries or by the shipowners concerned, but are met by the labour-supplying countries – and in the main by the individual seafarers themselves.

A large majority of today’s seafarers are akin to migrants. They come from countries with high unemployment where the development of employment opportunities is of the highest priority for the governments concerned. In the Philippines, for example, the Philippine Overseas Employment Administration (POEA) aggressively pursues employment opportunities for its seafarers who bring home foreign exchange through remittances – and these are extremely important to the Philippine economy.

A report by the Seafarers International Research Centre (SIRC) pointed out that many open registers are almost inevitably attached to States with no or little indigenous maritime

industry, which cannot supply crews for ships using their flags. In the late 1990s, among crews of 1,700 ships under 62 flags, there were no nationals among the 898 crew members of vessels under the Bahamian flag, no Panamanian among the 1,346 seafarers on Panamanian ships and no Liberians among the 1,004 seafarers on Liberian ships. Second registers were not altogether different, with 13 per cent of seafarers on NIS ships being Norwegian.⁵

This absence of an indigenous seafaring labour force on open register ships has two important consequences: first, there is a lack of institutional provisions for the protection of seafarers in the countries concerned; and second, contrary to migrant workers, serving foreign seafarers have no residence in the State in which they “legally” work, and therefore no line of communication or political influence within that State. In short, seafarers employed in the international labour market often have difficulty in pursuing their legal claims in the flag State for various reasons, including against an absent shipowner or in the absence of local assets. Although in a legal sense they work in a specific country and should therefore come under the jurisdiction of that State, they are unable to have their rights enforced. In other words, seafarers working aboard open register vessels have limited access to state institutions or processes in the flag State that might provide them with protection in cases of abuse or potential abuse.

Seafarers are also unable to participate in conventional political processes and cannot expect much in the way of protection from the State representative of the flag flown by their ship in third countries. This vulnerability highlights the need for promoting the adoption of enforceable regulations in the flag States covering both national and non-national seafarers, and for internationally enforceable regulations with regards to the conditions of work of seafarers.

3. Comparison of open and other registers

Most of the information on which this paper is based was collected by means of the questionnaire mentioned earlier in the text. Most of the replies were from governments. This methodology resulted in much of the information received being of a descriptive and/or qualitative rather than a quantitative nature.

The survey requested, amongst other things, information on the following areas: general questions concerned with the inspection of living and working conditions; restrictions on the use of foreign seafarers; legislation and collective agreements for nationals and non-nationals; and employment conditions within flag States with questions focused on recruitment issues, minimum age, wages, health and social security.

The following analysis is based on the replies received from the Bahamas, Lebanon, Liberia, Malta, the Marshall Islands, Panama and Vanuatu as well as the case study of Panama.

The analysis of seafarers’ conditions in the seven open register countries is compared with the rest of the sample of 53 countries and presented in the following tables. Where the percentage response relates to a question, the figure shown represents affirmative answers.

⁵ T. Lane: *Crewing of the world’s merchant ships*, report of a survey of the nationality and age structure of the crews of ships flying national and flag of convenience (Seafarers International Research Centre, Cardiff), 1996, p. 28.

Table II. Inspection

	Open registers (%)	Others (%)
Government responsibility for inspection	100	96
Specific training given to inspectors	14	51
Can complaints lead to an inspection?	71	62
Sanctions on shipowners	100	87

Table II indicates the extent of government responsibility for the inspection process. It suggests that the degree of acceptance of responsibility for inspection is higher in open register States. Complaints procedures and their ability to lead to inspection were also evident in the majority of responses from open registers, except in the case of Lebanon and Panama. Further, in all open registers regulations appear to provide for some kind of sanction on shipowners for the non-provision of adequate living and working conditions, which range from fines to detention of ships. As concerns the inspection of living and working conditions, only Liberia claimed to provide specific training for inspectors.

Table III. Laws and collective bargaining

	Open registers (%)	Others (%)
Does national legislation cover seafarers?	57	77
Does national legislation cover non-national seafarers?	28	60
Are seafarers covered by CBAs?	43	62

The questions relating to national legislation produced a less positive response from the open registers. Only 57 per cent indicated that they had national legislation covering seafarers either in whole or in part, compared to 77 per cent for the other registers. Furthermore, national legislation rarely, if ever, covered non-national seafarers, although the ships concerned were much more likely to carry such crew.

Collective bargaining agreements covering all nationalities were less prevalent in the open registers, the only cases being Bahamas, Panama and the Marshall Islands. Despite the positive response of Panama to this question, there is currently some dispute as to the role of collective bargaining in relation to Legislative Decree No. 8 adopted in 1998.⁶

Table IV. Recruitment

	Open registers (%)	Others (%)
Minimum age under 16	29	17
Can non-nationals be members of union?	43	51
Recruitment regulated by law	14	74
Medical required	86	74

Open registers see recruitment issues as outside their sphere of influence. Hence, the regulation surrounding this area is minimal. They also restrict the membership of unions,

⁶ Legislative Decree No. 8 of 1998: "Whereby work at sea and in navigable waterways is regulated, and other resources are dictated" (26 Feb. 1998).

preventing non-nationals from joining their national unions. Open membership was only available in Bahamas, Liberia and Malta.

Table V. Conditions of employment

	Open registers (%)	Others (%)
Is there a statutory minimum wage?	43	53
Are hours regulated by law?	86	75
Is the employer responsible for repatriation?	43	66

Few registers have a statutory minimum wage, but open registers are even less likely to have one. They are, however, more likely to regulate working hours than the rest of the sample.

The area of “conditions of employment” covers a wide range of topics, some of which have not been included in this paper. The reasons for this are the complexity of the subject and the range of interpretations by respondents of the questions asked. For instance, questions relating to maximum hours of work and minimum hours of rest resulted in replies on normal hours and hours inclusive of overtime. Diversity in the nature of replies did not allow for any meaningful comparison. The same applied to the section on annual leave; some replies were clearly referring to the statutory annual holiday and others the total time ashore, which again made comparisons impossible.

In open registers, the employer is only responsible for repatriation of the seafarer in 43 per cent of – or three – cases (Lebanon, Liberia and Panama). Despite the existence of this regulation in Panama, a number of difficulties have been experienced in the area of abandonment of crews by some defaulting shipowners.

Table VI. Laws relating to health, welfare and social security

	Open registers (%)	Others (%)
Law relating to food	71	62
Law relating to accommodation	71	62
Law relating to welfare	71	45
Law relating to accident prevention	71	53
Does social security cover seafarers?	57	75
Is there a separate system?	0	15

From the legislative point of view, open registers performed better than other registers, indicating that they had laws relating to food, accommodation, welfare and accident prevention. All States except Lebanon and Vanuatu indicated that they had such regulations. However, as concerns social security, the open registers have little or no provision under the domestic general system and no separate system for the coverage of seafarers.

4. Enforcement of regulations

The above empirical evaluations are concerned with the broad framework of laws and regulations existing in open, as compared with other registers. They illustrate the impact of the regulatory structure on the different types of registry. It may be assumed that such regulatory intervention is of considerable value to the seafaring labour force, for it prevents potential and real abuses and contributes to the creation of an acceptable working

environment. The question of the degree of enforcement is therefore paramount. This analysis, virtually by definition, cannot ascertain the extent and effectiveness of the regulations or of enforcement procedures. The general presumption must be that the vast majority of other registers have in place an effective administration and provide for effective enforcement of their laws and regulations upon vessels operating under their flag. That is to say, they operate within the traditional parameters of international maritime law, exercising effective jurisdiction and other control over their ships.

While the United Nations Convention on the Law of the Sea places an obligation on States to exercise effective jurisdiction and control over their ships, each individual State is free to determine the conditions under which this will occur. At the same time, registration confers nationality to ships. Yet there is no restriction upon States to only register vessels which are owned, operated and crewed by their own citizens. Open registers exercise their sovereignty to register foreign tonnage, but the evidence indicates that they do not fully exercise effective control over vessels operating under the flag. Ships being mobile assets can be shifted from one flag to another to escape unwanted control.

The lack of effective jurisdiction and control is sometimes attributed to the limited size of the fleet. In other instances, it is obviously to make the flags relatively more attractive. A clear example of such a case is the absence of labour regulation and legislation or non-existent or weak enforcement where such regulations exist. Some open registry States are arguably unable or unwilling to assert their control over some of the specific issues linked to shipboard working and living conditions. In the worst cases, the register is simply a practical business arrangement with a reasonable exchange of revenue for tonnage registered. Some shipowners see benefits in the registration of ships in a custom-made legislation/regulation-free environment, which might be regarded as a regime of quasi-immunity. As the OEEC pointed out: “Where a shipping company has no assets in the flag state, and the owners, directors and managers are not nationals, it is useless to have recourse to the courts in those countries, as they cannot enforce their decisions. It is significant that even the owners of vessels of open registry prefer to have their disputes settled in the courts of traditional maritime countries.”⁷ A seafarer sailing on an open register vessel will suffer from the fact that legal disputes, e.g. in the breach of the seaman’s contract, will normally have to be pursued either in the country of registration or in another designated country where the seafarer has the disadvantage of not being a citizen. In certain cases, where indeed a dispute is pursued in the country of origin of the seafarer, this may also be less advantageous to the seafarer, resulting in forum shopping.

5. Conclusions

Both the preceding discussion and analysis serve to emphasize some of the key aspects of the open register system. Underpinning this system is the principle that the register has its own identity and characteristics and no two registers are identical. The characteristics of a register are determined by the authority of the State concerned and the degree of authority (jurisdiction and control) it wishes to exercise over its fleet. A comparative analysis indicates that open registers, with some exceptions, possess a substantial body of shipping legislation which in fact do implement a number of international maritime conventions – especially those relating to technical aspects of safety at sea. Such an elaborate regulatory structure often seems to fall short on certain specific social issues, especially as concerns enforcement. However, the question arises as to

⁷ Organisation for European Economic Co-operation (OEEC), *Maritime Transport Committee: Maritime Transport* (Paris, December 1954), p. 11.

whether the flag State has the capability or desire to intervene in order to enforce its own regulations on shipping which may ship away to other flags. The important maritime open registry States are mostly developing countries with limited administrative capabilities and few technical staff. Some do not appear to possess the minimum level of resources for policy enforcement in such a highly specialized and mobile sector as international shipping. Despite this obvious resource deficiency, many governments are acting to maintain or increase their share of international shipping, believing that ship registration is a profitable industry or that it is an essential service as part of a package of offshore financial services.

As concern laws relating to food, accommodation, accident prevention and welfare and the inspection of these items, most open registers seem to have a regulatory framework comparable with other registers. Some, however, appear to lack adequate provision in key areas. Inspectors of vessels do not receive specific training for inspection of living and working conditions. Specific legislation relating to seafarers exists in 57 per cent of cases and – more often than not – does not cover non-nationals. Collective bargaining agreements are considerably less prevalent than in the rest of the sample.

Recruitment is also an area of concern in the open register States, where there is an extremely low level of regulation. This is perhaps more understandable as the seafarers are recruited outside the jurisdiction of these States. Statutory minimum wages rarely exist compared with the non-open registers. In the case of Panama, where it did exist, it was very low at just over \$1 per hour. In many cases it was not clear who was responsible for repatriation of the seafarers at the end of the voyage.

The questionnaire did not address the degree of enforcement of regulations. Open registers provide little employment to their own nationals. Experience in Panama suggests that despite legislation stating that preference should be given to nationals, the unions in Panama claimed that such positive discrimination did not occur and that there was significant unemployment amongst Panamanian seafarers. It was also clear from discussion that not all manning agencies in Panama had the proper authorization to operate. Enforcement was clearly identified as a problem and this would be one of the responsibilities of the recently formed Panama Maritime Authority. A concern among unions, employers and the wider maritime community was that the Legislative Decree was too broad and non-prescriptive and that regulations were needed to define how the law should be applied. Much of the detail surrounding terms and conditions of employment on board Panamanian flag ships was left to the determination of the shipowning company. In this area, there is a need for more prescriptive regulation and for effective enforcement measures for the adequate protection of the seafarer.

A further study of the relationship between law and practice and between regulation and enforcement would seem pertinent. Policy-makers within open register States have clearly been aware of the need to establish a flexible legislative framework responding to the requirements of certain shipowners in terms of flexibility and application of international standards. A discussion of open registers should therefore focus not only on the existence of regulation but on its implementation and enforcement.

It goes without saying that the national aspirations of States to maintain a successful register must be combined with enforceable international conventions which are supported by the worldwide shipowning community.