



International maritime legal regime and the escalation of flags of convenience practices

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Abstract

International maritime law is governed by several international treaties and conventions, foremost of which are the UNCLOS III and the Law of the Sea. There are other international laws supporting the provisions of these major international treaties that should have made maritime operations and navigation in international waters and the high seas secure and safe. In the past several decades, however, there is an observable escalation of the practice called flags of convenience. Flags of convenience are so called because ships are flying the flag of a state foreign to its owners or operators. This results from the open registry maritime practice in which a vessel is free to register in any state that it chooses. As a necessary result of such registration, a ship is accorded the nationality of the state and granted the right to fly its flag. Under international law, a ship flying the flag of a certain state is accorded respect as part of the family of states and the ship is considered an extension of the state's jurisdiction. In itself this is not bad if not for the fact that states do not have equal treatment of maritime laws. Some states are more stringent in their approach to ensure that the ship whose flag it carries are not only safe and seaworthy, but abides by the state's basic principles of integrity and honesty. Furthermore, some states impose higher taxes than others. Other states, however, are quite lax not only in regulatory measures but in imposing them on ships carrying their flags. This is where the problem lies, as proven by statistics showing most of the ships committing criminal activities are affiliated or carry flags of convenience.

Keywords: international maritime laws, flags of convenience, open registries, flagging out, flag states, UNCLOS III, geneva convention on the high seas, SOLAS

1. Introduction

Various international treaties and conventions have been adopted in the past pertaining to the conduct of ships and shipping in international seas. The Convention on the High Seas in 1958 gave to the flag state the power to control and regulate ships registered under its name as well as impose penalties for violations thereof^[1] In 1982, the UN adopted the newest version of UNCLOS, which is another regulatory measure in international maritime that purports to be an umbrella instrument of all other maritime laws^[2]. Just before the UNCLOS was adopted, however, a revised version of the International Convention for the Safety of Life at Sea (SOLAS) was adopted in 1974. This law chiefly addresses the safety of the ship and its crew at sea and imposes upon the flag state the duty to ensure the ship's seaworthiness and other safety measures.³ Despite the establishment of these various treaties and conventions on international maritime law, the industry is being threatened by the proliferation of the so-called flags of convenience^[4]. This practice allows any ship owner to register his ship to a foreign state for the purpose of taking advantage of that state's more lax regulations or taxes

^[5] It is believed, for example, that Osama bin Laden exploited this practice to transport arms and goods without revealing his identity^[6]. Flagging out or open registries, thus, bring about certain risks as well as possible violations of criminal, civil and labour laws as well as human rights. Pending today is a treaty called 1986 UN Convention on Condition for Registration of Ships, which sets limit on ship registration, but it has not yet reached the necessary minimum number of signatories.

2. International Maritime Legal Regime

The Geneva Convention on the High Seas, which was adopted by the United Nations on 29 April 1958^[7] is a codification of the international laws on the high seas. Some of the salient provisions of this treaty are the following: Article 4 on the right of the state to be a flag-state; Article 5 on the obligations of a flag-state to ships registered to it; Article 6 on the limitation on ships to sail with only one state flag; Article 10 on duty of a flag state to ensure seaworthiness of ships registered to it as well as the labour conditions of their

1. Herman Meyers, *The Nationality of Ships* (Springer, 2012).
2. Alexander Orakhelashvili and Sarah Williams, 40 Years of the Vienna Convention on the Law of Treaties (BIICL, 2010).
3. Ruwantissa Abeyratne, *Convention on International Civil Aviation: A Commentary* (Springer, 2013).
4. Michael Richardson, *A time Bomb Global Trade: Maritime-Related Terrorism* (Institute of Southeast Asian Studies, 2004).

5. Rita Abrahmsen and Anna Leander, *Routledge Handbook of Private Security Studies* (Routledge, 2015).
6. Dennis Rumley and Sanjay Chaturvedi, *Geopolitical Orientations, Regionalism and Security in the Indian Ocean* (Routledge, 2015).
7. UNTC, 'Convention on the High Seas' (United Nations Treaty Collections, 2017) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-2&chapter=21&clang=_en> accessed 28 July 2017.

crewmen; and Article 11 on jurisdiction in case of collision [8]. In 1982, the United Nations adopted the Third Convention on the Law of the Sea or UNCLOS III. Previous to this, there was the UCLOS I in 1958 and the UNCLOS II in 1960. The previous were deemed inadequate to modern maritime and needed to be replaced with a new one [9]. There are, to date, 168 state signatories to UNCLOS III with the Azerbaijan as the latest signatory in 2016. The UK signed the Convention in 1997, but the US has yet to ratify the law to this day [10]. The law is divided into 17 Parts, some of the most salient of which are Part II on Territorial Sea and Contiguous Zone, Part III on Straits Used for International Navigation and Part VII on High Seas [11].

UNCLOS III delineated coastal states, port states, flag states, register states and flag of convenience states [12] although definitions are not explicit. Article 91, paragraph 1 of UNCLOS III provides for the grant of nationality to states and that the nationality of a ship is determined by the flag it carries. It provides further that the State and the ship must have 'genuine link' [13] to each other. In the same article under the second paragraph, the law, by implication, allows a ship to fly more than one flag for convenience, but in such a case it loses the protection of the other states when a claim is made against it by any of those states [14]. The phrase 'genuine link' is, however, vague and needs to be clarified by domestic jurisdictions and supranational courts, such as the ECJ [15]. It is considered merely a 'buzzword' because its meaning has never been clarified [16]. A flag state, or the state upon whose flag a ship carries, [17] has both duties to and obligations from the ship. Some of its duties are to exercise supervision and control over the ship applying for that purpose the state's internal law, as well as ensure its seaworthiness and the conditions of the labourers therein [18].

8. NOAA, 'Convention on the High Seas' (National Oceanic and Atmospheric Administration, 1958) <http://www.gc.noaa.gov/documents/8_1_1958_high_seas.pdf> accessed 29 July 2017.
9. UNLAW, 'The Law of the Sea Treaty' (United Nations Law of the Sea Treaty Information Center, 2017) <<http://www.unlawoftheseatreaty.org/>> accessed 29 July 2017.
10. OLOTS, 'Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements' (United Nations, Oceans and Law of the Sea, 2017). <http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm> accessed 30 July 2017.
11. Admiralty and Maritime Law Guide, 'United Nations Convention on the Law of the Seas' (Virtual Library, 2010) <<http://www.admiraltylawguide.com/conven/unclosable.html>> accessed 31 July 2017.
12. Arnd Bernaets, *Bernaerts' Guide to the 1982 United Nations Convention on the Law of the Sea* (Trafford Publishing, 2006).
13. UN, 'United Nations Convention on the Law of the Sea' (UN.org) <http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf> 27 July 2017.
14. Ibid.
15. Ronald Rodriguez, 'Flags Of Convenience Regulation Within The European Union And Its Future On International Trade' (Revista Republicana, 2011: 15-19).
16. Hamad Bakar Hamad, 'Flag of Convenience Practice: A Threat to Maritime Safety and Security' (1 Journal of Social Science and Humanities Research 8, 2016).
17. George Walker, *Definitions for the Law of the Sea: Terms not Defined by the 1982 Convention* (Martinus Nijhoff Publishers, 2011).
18. UN, 'United Nations Convention on the Law of the Sea'.
19. UNTC, 'Navigation: United Nations Convention on Conditions for Registration of Ships' (United Nations Treaty Collection, 2017) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-7&chapter=12&clang=_en> accessed 28 July 2017.
20. UNCTAD, 'United Nations Convention on Conditions for Registration of Ships' (United Nations Conference on Trade and Development, 1986) <http://unctad.org/en/PublicationsLibrary/tdrsconf23_en.pdf> accessed 30 July 2017.
21. Arctic Portal, 'International Convention for the Safety of Life at Sea' (Library Arctic Portal, 2004) <http://library.arcticportal.org/1696/1/SOLAS_consolidated_edition2004.pdf> accessed 1 August 2017.
22. Gudrun Petursdottir, Olafur Hannibalsson and Jeremy Turner, 'International Conventions and Guidelines on Safety of the Sea' (UN Food and Agriculture Organization) <<http://www.fao.org/docrep/003/x9656e/X9656E01.htm>> accessed 30 July 2017.
23. IUCN, 'International Convention for the Safety of Life at Sea' (Ecolex, 2017) <<https://www.ecolex.org/details/treaty/international-convention-for-the-safety-of-life-at-sea-solas-tre-000115/>> accessed 31 July 2017.
24. Tina Shaughnessy and Ellen Tobin, 'Flags of Inconvenience: Freedom and Insecurity on the High Seas' (5 *Journal of International Law & Policy*, 2005-2006).
25. ICS, 'The Regulation of International Shipping' (international Chamber of Shipping, 2017) <<http://www.ics-shipping.org/shipping-facts/safety-and-regulation/the-regulation-of-international-shipping>> 29 July 2017.
26. UN Treaties, 'Treaties and international agreements' (UN Treaties, 2004) <<https://treaties.un.org/doc/publication/unts/volume%201184/volume-1184-i-18961-english.pdf>> accessed 31 July 2017.

The 1986 UN Convention on Condition for Registration of Ships was finalized and adopted by the UN in Geneva on 7 February 1986. However, there are only 27 state signatories to date, which is why it is not yet in force. A requisite of at least 40 signatories is required before the law can take effect twelve month later [19]. Under Article 4, paragraph 3, the law specifically limits a ship's flag to that of one state only. Furthermore, the law also provides that a ship can only change its flag during a voyage or while in a port of call, if there is actual change of registry or transfer of ownership [20].

Prior to the adoption of UNCLOS III, the UN has already adopted the International Convention for the Safety of Life at Sea in 1974, which took effect on 25 May 1980 [21]. The first SOLAS in 1914 was said to have been triggered by the Titanic disaster of 1911. SOLAS underwent amendments in 1929, 1948, 1960 and finally in 1980 [22]. This Convention obligates all flag-states to give effect to its provisions. Some of the topics covered by the law are: fire protection, various installations in the ship, navigational safety, among others. The objective of the law is to ensure that the ship is safe at all times on the high seas [23]. However, one of the mechanisms under this law allows signatories to opt for the application of domestic laws where an UNCLOS provision is contentious greatly diminishing its impact [24].

The International Maritime Organization or IMO – an agency of the United Nations based in London – is charged with the development of international shipping regulations. However, flag states are chiefly responsible for enforcing such regulations. Nonetheless, the Port State Control of every country can also inspect foreign ships docked in their ports to ensure that they comply with IMO regulations [25]. This Convention has a very long text, but its chief goal is to obligate contracting governments or governments whose flags are being flown by a ship or ships. The obligation extends to regulating, surveying and inspecting ships, among others [26].

3. The Legal Concept of Flags of Convenience (Law of the Flag)

The shipping industry is a vital cog to the world economy. Accordingly, it constitutes about 90% of the world's commercial trading^[27]. The practice of flags of convenience, which carries a big impact on the industry, deserves to be scrutinised. The term according to Bocze, refers to the "flag of any country allowing the registration of foreign-owned and foreign-controlled vessels under conditions which, for whatever reasons, are convenient and opportune for the persons registering the vessels."^[28] Van Fossen, on the other hand, was more acerbic in his definition of the term: "devices by which weak and small states rent aspects of their sovereignty to capitalists."^[29] It, thus, refers to any flag carried by a ship other than its own country of ownership. The term began to be used in the 1940s as a pejorative term in line with the International Transport Workers' Federation or ITF's campaign against poor labour conditions in ships^[30].

The usual motivations for registering a ship to a foreign country are usually cheap labour and/or lower or no taxes or to avoid their own state's rigid laws^[31]. The ITF lists 35 countries as flags of conveniences, hereinafter referred to as FOCs, and they include the following: Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda (UK), Bolivia, Cambodia, Cayman Islands, Comoros, Cyprus, Equatorial Guinea, Faroe Islands (FAS), French International Ship Register (FIS), German International Ship Register (GIS), Georgia, Gibraltar (UK), Honduras, Jamaica, Lebanon, Liberia, Malta, Madeira, Marshall Islands (USA), Mauritius, Moldova, Mongolia, Myanmar, Netherlands Antilles, North Korea, Panama, Sao Tome and Príncipe, St Vincent, Sri Lanka, Tonga and Vanuatu^[32]. The top open registers in the world are Panama, Liberia, and Marshall Islands^[33]. Panama, which has a population of about three million, has shipping fleets that number more than those of the US and China combined^[34].

The practice of flagging out or open registries for ships started in 1950 when US-based ship owners began to fly the flags of Honduras or Panama to evade US maritime laws that have

27. Tony Alderton and Nik Winchester, 'Globalisation and de-regulation in the maritime industry' (26 *Marine Policy*, 2002: 35-43).
28. Richard Coles and Edward Watt, *Ship Registration: Law and Practice* (Taylor & Francis, 2013).
29. Ella Lawton, 'Flags of Convenience: Legal Issues in relation to Fishing the Southern Ocean' (GCAS, 2016) <<http://www.anta.canterbury.ac.nz/documents/GCAS%20electronic%20projects/Ella%20Lawton%20Review.pdf>> accessed 30 July 2017.
30. Ross Dowling and Claire Weeden, *Cruise Ship*, 2nd edition (CABI, 2017).
31. SR Tolofari, *Open Registry Shipping: A Comparative Study of Costs and Freight Rates* (CRC, 1989).
32. ITF, 'Current Registries Listed as FOCs' (International Transport Workers' Federation, 2017) <<http://www.itfseafarers.org/foc-registries.cfm>> 30 July 2017.
33. Committee Secretary, AN INQUIRY INTO THE INCREASING USE OF SO-CALLED FLAG OF CONVENIENCE SHIPPING IN AUSTRALIA' (International Chamber of Shipping, 2015) <http://www.ics-shipping.org/docs/default-source/Submissions/Other/australian-senate-inquiry-on-so-called-flag-of-convenience-shipping--submission-by-the-international-chamber-of-shipping.pdf?sfvrsn=2> accessed 2 August 2017.
34. Carlos Felipe Negret, 'Pretending to be Liberian and Panamanian; Flags of Convenience and the Weakening of the Nation State on the High Seas' (47 *Journal of Maritime Law & Commerce* 1, 2016: 1-28).

become stricter and more costly^[35]. Statistics in 2016 showed that 70.552% of the top 35 ship-owning countries are foreign-flagged. Greece, for example, which has a total number of 4,136 ships has 3,408 of those ships flag-out in foreign countries and a total deadweight tonnage of 293,087,231 has 228,383,091 of that flagged out to foreign countries^[36]. It has also been reported that FOC vessels have increased since the 1920s and that more than half of the world's three shipping states – Japan, Greece and the US – are flying foreign flags^[37].

4. Escalation of flag of convenience practices

4.1 Theoretical Underpinnings

4.1.1 State Sovereignty

The concept of state sovereignty essentially states that it is a state's inherent power to deal with its own internal and external affairs.^[38] This is a principle upon which international law and international relations are anchored on^[39]. Under international law, a ship carrying a state's flag is an extension of that state, which means that the ship can be subjected only to the state's laws and authorities, even on the high seas^[40]. Under international law, the flag is a symbol of nationality and any ship that carries a flag of a state is deemed a representative of that state and, therefore, any ship without a flag is stateless. Recently, international law has declared such ship to be a pirate ship^[41].

As a sovereign, a state has duties and obligation towards its citizens and its jurisdiction. As a ship carrying its flag is an extension of that jurisdiction, a state must be able to provide both security and safety through laws and regulations over such ship. However, there is a perceived massive and widespread failure of states over their ships due to open registries and the practice of flags of convenience. The result is maritime threat foisted against the world in general and especially to coastal states^[42].

4.1.2 National Security

Every state has a right to defend itself from internal and

35. Patrizia Heidegger, Ingvild Jensen, etc, 'What a difference a flag makes' (NGO Shipbreaking Platform, 2015) <http://www.shipbreakingplatform.org/shipbrea_wp2011/wp-content/uploads/2015/04/FoCBriefing NGO-Shipbreaking-Platform - April-2015.pdf> accessed 31 July 2017.
36. UNCTAD, 'Review of Maritime Transport 2016 (United Nations Conference on Trade and Development, 2016) <http://unctad.org/en/PublicationsLibrary/rmt2016_en.pdf> accessed 1 August 2017.
37. Paul Hinckley, 'Raising the Spector of Discrimination: The Case for Disregarding "Flags of Convenience" In The Application of U.S. Anti-Discrimination Laws to Cruise Ships' (The Modern American, Summer-Fall, 2007: 75-82).
38. Zewei Yang, 'The End of State Sovereignty? – From a Chinese Perspective,' edited by Per Sevastik, *Aspects of sovereignty: Sino-Swedish Reflections* (Martinus Nijhoff Publishers, 2013).
39. Ersun Kurtulus, *State Sovereignty: Concept, Phenomenon and Ramifications* (Springer 2005).
40. Barak Mendelsohn, *Combating Jihadism: American Hegemony and Interstate Cooperation in the War on Terrorism* (University of Chicago Press, 2009).
41. JNK Mansell, 'Flag State Responsibility' (Springer, 2009).
42. NA Makhutov and GB Baecher, *Comparative Analysis of Technological and Intelligent Terrorism Impacts on Complex Technical Systems* (IOS Press, 2013).

external threats. As a matter of fact, it is this duty and capability that the state has legitimate existence to society^[43]. National security is left on the balance, however, because of the practice of flagging out as it results in the capability of ships to hide the true identities of their owners^[44]. This loophole can give rise to opportunities for terrorist activities or criminality in the high seas, such as piracy, or drug and human trafficking. Thus, open registries or flagging out practices may provide a window of exploitation to terrorists and criminal elements^[45]. Fig. 1 shows that 12 of the top 14 ships associated with criminal activities are flying flags of states with open registries. Panama, which is the number one on the list, is the world's largest national registry shipping industry in the world. It holds the record of being the first state to practice an open registry for shipping^[46]. An Australian government report stated that FOCs are a risk to national security because of reduced transparency involved, which could open to risks of smuggling and other illegal activities^[47].

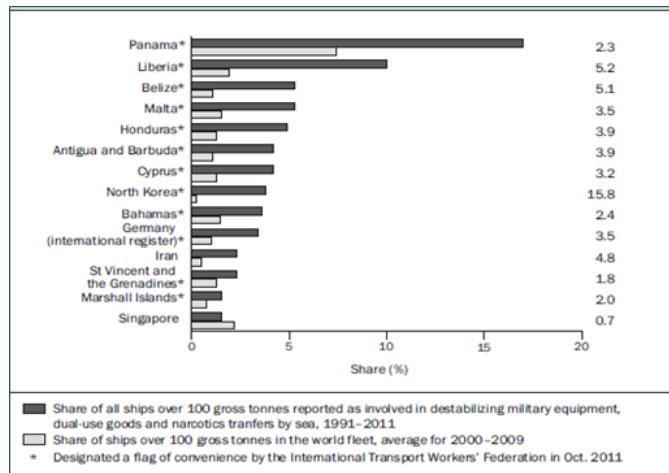


Fig 1: Flag states frequently associated with criminal activities^[48]

4.2 Judicial Underpinnings

4.2.1 Case Law

A) The Case of the S.S. "Lotus" (Fr. v. Turk)^[49].

The SS Lotus case, which was decided by the Permanent Court of International Justice in 1927, involved two ships: Lotus, a French ship, and Boz-Kourt, a Turkish vessel. The

43. Markus Kienscherf, *US Domestic and International Regimes of Security: Pacifying the Globe, Securing the Homeland* (Routledge, 2013).
44. Kwa Kwa Chong Guan and John Skogan, *Maritime Security in Southeast Asia* (Routledge, 2007).
45. Valerio de Diviis, 'Maritime Terrorism,' edited by NA Makhutov and GB Baecher in *Comparative Analysis of Technological and Intelligent Terrorism Impacts on Complex Technical Systems* (IOS Press, 2013).
46. Hugh Griffiths and Michael Jenks, 'Maritime Transport and Destabilizing Commodity Flows' (SIPRI Policy Paper 32, January 2012) <http://books.sipri.org/files/PP/SIPRIPP32.pdf> accessed 2 August 2017.
47. Senate Standing Committee, 'Increasing use of so-called Flag of Convenience shipping in Australia' (Commonwealth of Australia, 2016) <https://d3n8a8pro7vhmx.cloudfront.net/muanational/pages/3968/attachments/original/1474249338/124T1325.pdf?1474249338> accessed 31 July 2017.
48. Griffiths and Jenks, 'Maritime Transport and Destabilizing Commodity Flows.'
49. 'Lotus Case' (1927) P. I. J. (Ser. A.) No. 10 (Public International Law 2015) <https://ruwanthikagunaratne.wordpress.com/2012/07/27/lotus-case-summary/> accessed 31 July 2017.

vessels collided on the high seas resulting in the sinking of Boz-Kourt and the death of ten of its crew. Lotus brought the survivors of Boz-Kourt to Turkey, which filed a case against the officers-in-charge of the two ships. The French officer-in-charge was found guilty and was given a sentence of 80 days plus a fine. France objected and the case was referred to the PCIJ.

The issue before the Court was whether Turkey erred in deciding a case involving a French national for a crime committed not in Turkey, but on the high seas. The PCIJ held that no violation of international law was committed because Turkey and France had concurrent jurisdiction over the case. Despite the fact that Lotus flew the French flag, the negligent act of Demons – the French officer-in-charge – that took place within French territory had impacted and affected Turkish territory by reason of the Turkish nationality of Boz-Kourt, which, therefore, gives Turkey the jurisdiction to try the case. The act of Demons in Lotus and the effect of such act in Boz-Kourt were inseparable because without the other no crime exists. Both these acts were constitutive element of the crime, and since one of them was committed inside Boz_Kourt, Turkey had jurisdiction over the crime^[50].

B) *McCulloch v. Sociedad Nacional*^[51].

The United States National Labor Relations Board ordered representation elections for the crew members of ships owned by United Fruit - a corporation doing business in the US. The ships all fly foreign flags and their respective crew were all foreigners and already represented by foreign unions. These ships also regularly plied the US, Latin American ports and other foreign ports. The companies brought an action in a federal US court to enjoin the NLRB from ordering representation elections on the crew of the ships^[52].

The issue in this case was whether the US NLRB had jurisdiction over the crewmembers of the ships, despite the fact that they were flying foreign flags. The Court held that the NLRB had no such jurisdiction by reasons of the fact that they were of foreign citizenship employed by foreign-flag ships. The Court also held that it there is a longstanding respect under US jurisdiction of the international principle that the internal affairs of a ship are governed by the laws and regulations of the flag state^[53].

C) *US v. Royal Caribbean Cruises Ltd*^[54]

In 1993, the US Coastguard inspected the Nordic Empress, which was flying under the Liberian flag, while it docked in Miami, Florida from the Bahamas. Using the Forward Looking infra-red Radar, the Coastguard determined that the ship discharged oil from the vessel, but its Oil Record Book

50. PCIJ, 'The Case of the SS Lotus: France v Turkey' (Permanent Court of International Justice, 1927) http://www.worldcourts.com/pcij/eng/decisions/1927.09.07_lotus.htm accessed 31 July 2017.
51. Justia, 'McCulloch v. Sociedad Nacional 372 U.S. 10 (1963)' (Justia US Supreme Court, 2017) <https://supreme.justia.com/cases/federal/us/372/10/> 31 July 2017.
52. Justia, 'McCulloch v. Sociedad Nacional 372 U.S. 10 (1963)' (Justia US Supreme Court, 2017) <https://supreme.justia.com/cases/federal/us/372/10/> 31 July 2017.
53. *McCulloch v Sociedad Nacional* 372 US 10 (1963).
54. *US v. Royal Caribbean Cruises Ltd* (1998), 11 F Supp 2d (1998).

does not reflect this fact. The ship owner moved to dismiss the case on the grounds that the US has no jurisdiction over the case because the alleged act occurred beyond its territory by a foreign ship. The US federal court ruled against the Nordic Empress on the grounds that there was malicious attempt to conceal entries to its Book. As the Coastguard was within his right, under international law, to board the ship and inspect it, the falsity of the entry is, therefore, actionable in the US^[55]. The following year, the Nordic Empress operator RCCL settled with the US for \$18 million^[56].

4.2.2 Jurisdiction over registered vessels

A vessel that is registered to a state in accordance to its laws is subject to the jurisdiction of that state. This means that the flag state can regulate the ship and subject it to its laws, whether it is within its territory or on the high seas^[57]. The jurisdiction of the flag-state over a ship carrying its flag is exclusive and other states are obligated not to interfere with such ship when it is on the high seas. This principle is derived from the principle of the freedom on the high seas and the concept of state sovereignty^[58]. This exclusive nature of jurisdiction is cited in both the UNCLOS and the 1958 Geneva Convention on the High Seas^[59].

4.2.3 Enforcement

Registration of a ship to a state results in the acquisition of that state of jurisdiction over it. This means, among other things, that the state must enforce its laws over the internal affairs of the state. It also implies that the state must enforce its laws regarding seaworthiness, maritime and labour laws and other regulations and rules pertaining to the ship and its crew^[60]. It is, thus, the chief responsibility of the flag state to adopt shipping standards in accordance with international law treaties and conventions, such as UNCLOS and Law of the Sea, and enforce them on ships registered to them and carrying their flags^[61]. Notwithstanding, a state can enforce its domestic laws over a ship flying a foreign flag if the crime is committed within its territory – such as when the ship is docked in its ports - and it impacts on its peace and order. This can also happen when one of the citizens of the host state is involved in the crime and in heinous crimes, such as piracy^[62]. Due to the competition brought about by open registries,

55. Justia, 'US v. Royal Caribbean Cruises' (Justia US Law, 2017) <http://law.justia.com/cases/federal/district-courts/FSupp2/11/1358/2289259/> accessed 31 July 2017.

56. Shaun Gehan, 'United States V. Royal Caribbean Cruises, Ltd.: Use Of Federal "False Statements Act" To Extend Jurisdiction Over Polluting Incidents Into Territorial Seas Of Foreign States' (7 *Ocean and Coastal Law Journal* 1, 2001: 167-184).

57. Malcolm Evans, *International Law* (Oxford University Press, 2014).

58. Rosemary Gail Rayfuse, 'Non-Flag State Enforcement in High Seas Fisheries' (Martinus Nijhoff Publishers, 2004).

59. Alla Pozdnakova, *Criminal Jurisdiction over Perpetrators of Ship-Source Pollution* (Martinus Nijhoff Publishers, 2012).

60. Rhea Rogers, 'Ship Registration: A Critical Analysis' (World Maritime University Dissertations, 2010: 447-472).

61. Myron Nordquist, *et al.*, *The Law of the Sea Convention* (Martinus Nijhoff Publishers, 2012).

62. APH, 'Troubled Waters Inquiry into the Arrangements Surrounding Crimes Committed at Sea' (The Parliament of the Commonwealth of Australia, 2013) <http://www.aph.gov.au/parliamentary-business/committees/house_

freights are kept down at all cost, relegating such matters that are essential to maritime workers' conditions. To do this, shipping companies restrict the right of workers to form unions^[63].

4.2.4 Human Rights

Open registries or flagging out has often been linked to the exploitation of cheap labour offered by flag states where labour laws are weak and poor. The 'Panamanian' or 'Liberian' ship registries are known to be an exploitation of the less stringent labour and tax laws of these countries.^[64] Maritime workers in flagged out ships are, thus, exposed to exploitation through inadequate remuneration as well working conditions that are below decent standards. Many ship owners have also been found to be non-compliant with contracts of employments^[65].

5. Vessel Registration Requirements

5.1 The Administrative Process that Connects a Vessel with a State

Shipping register may either be 'closed' as practiced in more traditional states or 'open' as being followed in some states that allow themselves to be called flags of convenience or FOC. Upon registration, the details of a ship are entered into the state's public records. Upon entry of such details and compliance of other requirements, such as fees, the ship becomes a national of that state and the latter gains jurisdiction over it wherever it goes. It also authorizes the ship to fly the state's flag^[66]. It is a prerequisite under international maritime law that a ship must have a genuine link to the state, which, thus, allows the latter to acquire not jurisdiction over it, but also exercise supervision and control in matters administrative, social and technological^[67]. Furthermore, the 1986 UN Convention on Condition for Registration of Ships requires that flag states establish a national maritime administration to ensure that its regulatory and other measures are complied with strictly by the ships^[68].

of_representatives_committees?url=spla/crimes%20at%20sea/report.htm > accessed 2 August 2017.

63. William Gregory, 'Flags Of Convenience: The Development of Open Registries in the Global Maritime Business and Implications for Modern Seafarers' (Georgetown University DG, 2012). <https://webcache.googleusercontent.com/search?q=cache:fu5LCe7ZIXYJ:https://repository.library.georgetown.edu/handle/10822/557688+&cd=1&hl=en&ct=clnk&gl=ph> accessed 2 August 2017.

64. Darren Prokop, *The Business of Transportation* (ABC-CLIO, 2014).

65. Louis Bellemare, 'Flags of Convenience' (New Maritime World, 2017) http://nm-maritime.com/en/flags-of-convenience/> accessed 1 august 2017.

66. Michael Galley, 'Flagging Interest: Ship Registration, Owner Anonymity, and Sub-standard Shipping' (14 Mountbatten Journal of Legal Studies 1/2, 2013:87-109).

67. Yi-Chi Chang, 'Concept of Ship Registration' (National Kaoshiung Marine University, 2017) <http://web.idv.nkmu.edu.tw/~hgyang/mp-e3.pdf> accessed 1 August 2017.

68. Nivedita Hosanee, *A Critical Analysis Of Flag State Duties As Laid Down Under Article 94 Of The 1982 United Nations Convention On The Law Of The Sea* (UN Division for Ocean Affairs, 2009) <http://www.un.org/depts/los/nippon/unnnf_programme_home/fellows_pages/fellows_papers/hosanee_0910_mauritius.pdf> accessed 2 August 2017.

5.2 Vessel owner's legal obligation to register

Ship registration is a process through which a ship is provided documentation of its nationality. Under international treaties and conventions, all merchant ships must be registered to a state in order for them to have a 'passport' to travel in international seas^[69]. The importance of registration was exemplified in the case of *R v. Bolden and Dean*^[70] (*The Battlestar*). In that case the Plymouth Crown Court held that it is registration or the entry in the public register of a state that determined the nationality of the ship. The absence of such registration made the vessel in question stateless despite the fact that its owners are Americans, it was issued a US certification and flew its flag^[71].

5.3. State control of domestic registration requirements

Under international law, states are required to develop and impose their registration requirement, but in accordance to the minimum standards set by the International Maritime Organization or IMO to meet the provisions of UNCLOS^[72]. This is because under international law, the flag principle is the dominant concept where a ship should be placed under the jurisdiction of the state whose flag it flies. Accordingly, states must control requirements for the registration of ships based on its own internal or domestic law^[73].

5.4. International recognition of foreign registration

Under international law, states must recognise foreign registration of ships and accord them with respect the way a state respects another state. This is the underpinning principle of cases such as *McCulloch v Sociedad Nacional* where the US Supreme Court rejected the US NLRB's jurisdiction over the labour manpower of ships owned by a corporation doing business in the US, but flying foreign flags^[74]. In the Virginis incident, which took place in 1873, Spain captured the vessel Virginis on the high seas despite the ship flying the American flag. Spain had been trying to capture the ship for a couple of years allegedly because it was helping Cuban's insurrection against Spain and it alleged that it had registered in the US fraudulently. Spain executed some of the crew and passenger, including the captain who was an American citizen^[75]. During negotiations after a diplomatic crisis arose, the US contended that Spain had no right to capture a ship flying a foreign flag and if the allegation about fraud was true, it was only the US that could decide whether there was fraud or not^[76].

6. Conclusion

International maritime laws are important because they help arrest threats on the high seas and international waters. This is especially true when piracy and other forms of crimes in the high seas were prevalent^[77]. With international legislations and treaties now governing international maritime, such as UNCLOS III, the SOLAS Law of the Sea and other lesser known international laws, such as the ISM Code, the STCW Convention, the MARPOL Convention and the ISPS Code,^[78] maritime navigation should be generally safe. However, the practice of flags of convenience, also known as open registries or flagging out, is complicating international marine safety and integrity and is seen as promoting "anarchy in the high seas."^[79] Under international maritime law, states are given the freedom to establish their own registry requirements and conduct their own inspections,^[80] and as a result there is an unequal treatment of domestic maritime laws by states. In the US, prior to the decision of the US Supreme Court in the McCulloch case, the practice was diminishing because the NLRB took the side of labour's campaign against the practice. The decision in the said case had reversed the tide for them^[81]. In the UK, the Cunard – a cruise liner – that has carried the British flag for about 171 years has recently decided to shift to Bermuda as its flag state. It has been acknowledged that the reason for the shift was to evade certain British regulations prohibiting certain ceremonies at sea as well as its stringent labour laws on wages and other labour conditions^[82]. There is a need for a law that must arrest the ill effects of the practice of flags of convenience, something like a universal law that governs matters like labour conditions, safety and security in the high seas and similar issues.

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