INTERNATIONAL IMPLICATIONS CONCERNING THE LEGAL REGIME AND POLICY OF SHIP REGISTRATION

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ABSTRACT

The legal concept of the nationality and registration of ships has been controversial throughout its existence. This ambiguous legal situation in the maritime realm appears to prevail even in nowadays. Furthermore, open registration regime has been criticized based on numerous important issues such as the legislative framework, safety, security, and employment. On the other hand, close registries, which implement stringent regulations concerning ownership, manning, management and administration and involve a genuine connection by virtue of national, economical and social ties among the ship-owner and its State, generally are considered effective. In light of these considerations, the authors will discuss the ship's nationality and registration from the legal perspective as well as the possible safety implications that close and open registries may cause, which in turn could contribute towards substandard shipping. The authors argue that there are legal issues currently vis-a-vis ship's registration and nationality, and that several open and close registry States are being efficient in legal and safety aspects while other States have shown deficiencies in this respect.

Keywords: *Maritime law, international law, ship nationality, registration of ships, opens registries, close registries, safety at sea.*

1. INTRODUCTION

The freedom of the high seas is considered one of the most important principles within the domain of the public international law. Hence, the vessels of all nations, have unrestricted rights upon the waters outside the national jurisdiction of any coastal State. With the purpose of preventing the disorder and misuse that may derive from the exercise of such freedoms, in the international law is established a structure of regulatory instruments which authorizes the sovereign States to ensure the compliance of these regulations in respect to the applications of these freedoms by their national vessels. Reasons such as the prevention of the maritime accidents and the suppression of the piracy compelled the States to restrict their authority over ships, which subsequently created a sense of balance among the freedom of navigation and the protection of the law and order on the high seas. All vessels accessing the international waters must possess a national character and every State has exclusive jurisdiction and control over their national vessels. The failure to apply these rules can lead to a stateless vessel which according to the international law enjoys no protection. Accordingly, every State under the international law has the jurisdiction to establish the standards for the grant of nationality to their flag vessels, recognizing accountability for it and obtaining authority over it.

Perceived as an important element of the international maritime law and policy, ship's registration and nationality plays an imperative function towards safety and security of the maritime realm as well as significantly contributes towards the protection and preservation of the maritime environment. For that reason, ship registration system, predominantly close and open registry, has been subject of many studies and research in order to analyze and better clarify the main issues regarding these essential legal components. Considering the complexity, difficulty and sensibility that ship registration system and nationality represents currently in the maritime industry, it is in the opinion of these authors that yet there are legal issues that need to be tackled. Taken under considerations these concerns, the aim of this study is to analyse some legal aspects of nationality and registration of ships as well as safety and security issues pertaining to ship registration system. Hence, in order to have a comprehensive discussion of this central theme; first it will be analysed the legal notion of nationality and registration of ships and; then, the discussion will focus on the legal regime of close registries as well as on open registration system and its potential impact on substandard shipping.

2. THE LEGAL CONCEPT OF NATIONALITY

The globalization of the shipping industry in the 20th century necessitated the need for vessels to sail in international waters in order to carry out their task. This situation brought as a result several legal implications to the law governing these ships in high seas, since these waters are considered *mare liberum*, i.e. common heritage of the mankind and no State has jurisdiction over it. It is understandable that in their national waters every State has the right to exercise jurisdiction over the vessels, but if these vessels are navigating in high seas, then it appears that they are floating in a legal vacuum (Mukherjee, 2007). Nonetheless, the unique character of the vessel which implies a legal personality is recognized by national laws worldwide (Pamborides, 1999). For these reasons, a legal regime is required in order to regulate the relationship among the personnel onboard as well as the legal situations emanated from international relation with other entities. Without the nationality it will be impossible for a vessel to have the legal right to visit

foreign ports; to engage in international trade and; can also be a critical factor in the dispute resolution involving private parties (Sohn & Noyes, 2004). From this standpoint, it appears that the nationality of the vessel is a significant theoretical notion of substantive law in the public international law (Mukherjee, 2007). In this respect, it may be relevant to point out the *Lotus* case (1927), where the Permanent Court of International Justice held that only the flag State can exercise its jurisdiction over its vessels in the international waters. Another important case where the *floating island theory* was forwarded, underlying the significance of ship's nationality with respect to crimes onboard, was *R. v. Anderson* (1868), where the court judgment was that a vessel on the international waters, hoisting a national flag, is part of the territory of that State whose flag she carries. Both cases indicate the significance of granting the nationality to a vessel which is sometimes regarded also as the "extension of territory" theory (Mukherjee, 2007, p.2).

Although the flag State has exclusive jurisdiction over its vessels on the high seas, the situation differs when the same vessel is situated within the jurisdictional waters of another State. In this case, both States may apply their jurisdiction over this vessel, i.e. the given ship may be subject of parallel jurisdictions (Mukherjee, 2007), which may complicate the legal issues in jurisdictional disputes. At any rate, from the legal and practical point of view, the flag State is primarily responsible and has substantial authority for its vessel even in the national waters of another State. Another concern regarding ship's nationality is the complexity towards the determination of the appropriate law to be applied when there is a collision on the high seas, in cases of parallel flagging, or when a vessel flies a flag of convenience (Tetley, 1994). These issues yet appear to be ambiguous in the international law, resulting in legal implications in the context of dispute resolutions.

The codification of the customary maritime laws in the 1958 Geneva Convention on the High Seas, laid down formally for the first time in the international law the basic principles of the nationality and registration, which allows the vessel to possess the nationality of the State on which it belongs, upon registration (UN, 1958). The Convention was the first international legal instrument which provides that every State has the right to set the conditions for granting nationality to their national vessels (Article 5). According to the Convention, the term nationality is defined as the relationship between the flag State and its vessel, within which a genuine link is required in order for the vessel's nationality to be effective (Article 5 & 6). The flag State's principle in the Convention underlies the theory that the jurisdiction of other States upon its vessel is essentially restricted (Sohn & Noyes, 2004). Similarly, the LOS Convention 1982, in Article 91 and Article 92, provides that the right to fix the conditions for the grant of the nationality to its vessels as well as for the registration of its national vessels and their right to hoist its flag is depending solely upon every sovereign State (UN, 1983). A genuine link must exist between the flag State and the ship, which should fly the flag of that State only and must be subject to its exclusive jurisdiction on international waters (UN, 1983). The Article 87 of the Convention highlights that the freedom of the high seas must be exercised with due regards to the welfare of other States, and Article 94 lay down certain requirements for the flag States in order to effectively maintain the jurisdiction and control upon their vessels (UN, 1983).

The genuine link principle was evolved in the law of the sea based on the deliberations of the ICJ in the 1955 *Nottebohm* case, which normally concerned a person's nationality. When taken into account the concept of genuine link in relation to the nationality of the ships, it must be noted that this principle is still unclear in the international law due to the absence of the description of this concept in terms of preconditions for the grant of the nationality and sanctions applied in the absence of such link (Coles, 2002). The advisory decisions of ICJ in relation to the constitution of MSC of IMCO in 1960, appeared to confuse the issue even more (Coles, 2002), revealing the diversity and the controversial viewpoints of different States regarding genuine link concept, which remains a debate currently. Vienna Convention on Diplomatic Relations (1961), is another international treaty which forwarded the basic principle that "in the present state of international law, questions of nationality are in principle within the domain reserved to the States" (UN, 2005, Article 20). Although that several international legal instruments bring to the fore the aforementioned principle, this does not mean that the granting of nationality is totally an unlimited right of every sovereign State. The Hague Convention on Conflicts of Nationality (1930) provides that "it is for each State to determine under its own law who are is nationals; the law shall be recognized by other States insofar as it is consistent with international conventions, international customary law and the principles of law generally recognized with regard to nationality" (Article 1). This is an essential legal point which may be applied to legal issues pertaining to the nationality and registration of vessels.

As previously stated, the international law allows each State to set the conditions for granting nationality to their vessels and for entering in the national registry. A dispute resolution concerning ship's nationality normally involves the applications of both international and domestic laws. As a rule, the international courts such as LOS Tribunal, according to the Article 293 of the LOS Convention, should apply the provisions of the Convention and the international law which is compatible with the Convention *per se* (UN, 1983). However, in the case of ship's nationality issue the court must also consider the national laws, which are different in many States. This issue it appears that may lead to a considerable interpretative challenges and ambiguity which may obscure the dispute resolution by the court (*Belize v. France, 2001*). Generally, the terms nationality, documentation, flag and registration are perceived as underlying the same connotation. Nonetheless, every one of these legal terms encompasses a different meaning in connection to the recognition and exercise of the authority over vessels (Farthing & Brownrigg, 1997). In this regard, the application and the interpretation of the law of the sea and the international

conventions may be difficult and can lead to substantial perplexity and ambiguity, due to the possibility of the incorrect employment of these terms (Ready, 1998). In order to avoid these legal implications, the disparity and the interrelationship between these significant terms must be clearly comprehended (Mukherjee, 2007).

3. LEGAL ISSUES CONCERNING REGISTRATION

The flag of the vessel is an external demonstration of the nationality of that vessel, and it is also utilized for other purposes such as courtesy, to determine the status of the ship, and so forth. As a legal element in the dispute resolution the vessel's flag is an important factor, but it appears that is only one of many components towards the establishment of the governing law (Tetley, 1994). Another point of the ship's flag is that save the cases when the flag serves as a mean of identification, the international law does not provide mandatory rules for ship's flag to be flown continuously on the high seas (Farthing & Brownrigg, 1997). The permission to fly the State's flag may be *prima facie* evidence that a vessel possesses the nationality of that State, but the flag *per se* is not a proof of nationality. Therefore, the national character of the vessel is attributed solely to the registration act, which can be defined as the admission of the vessel in the public records of a State Registry (Coles, 2002). In general, this is considered a satisfactory connecting factor for concerning the vessel as possessing that State's nationality (Ready, 1998). Registration act is considered a procedural law opposed to the nationality which is substantive law (Mukherjee, 2007). Although the flag characterizes the nationality of the vessel, from the legal point of view, the registration is the conclusive evidence of the nationality and ownership (Coles, 2002). Boczek (1962, p.2) supports this opinion by stressing that "the real proof of a ship's nationality lies in its registration in the flag State, which fact is recorded in the documents carried on board the ship". For that reason, the registration is the procedural machine through which nationality as well as collateral rights and responsibilities are conferred on a vessel (Özcayir, 2001). Registration proves the ownership's title to the vessel and in addition provides the legal foundation for the effective statute of mortgages the other right *in rem* on the vessel (Hill, 2003). Through the registration, the ship enjoys the privileges granted by the flag State, but on the other hand empowers the flag to enforce national and international regulations (Giles et al, 2003). Another advantage of the registration is that it provides the legal bases for giving a specific name to the vessel for trade, legal and navigation purposes.

Obviously, a distinction between documentation and registration should be clarified, because both terms play significant roles in the legal functionalities of the vessels. Registration, as it was previously explained, contains the ownership title as well as serves as a conclusive evidence of the nationality of the vessel. On the other hand, the documentation entitles the vessel the right to fly the national flag (Ready, 1998), and can arguably confirm the national character of the ship (Coles, 2002). Before the customary maritime law was codified, the documents of the vessel were regarded generally as an important factor in dispute resolution. In the *Meritt* case (1873), the US Supreme Court held that the most satisfactory evidence of the ship's nationality is the documentation the vessel carries onboard. The Article 94, (2-a), of the LOS Convention 1982, provides the legal platform for registration system specifying that "each State should maintain a register of ships containing the names and their particulars of ship flying its flag" (UN, 1983). Similar provisions are found in the United Nations Convention on the Conditions for Registration of Ships (1986), which stipulates that "a state of registration shall establish a register of ships flying its flag, which should be maintained in a manner, determined by that State and the provisions of this Convention" (Article 11).

The ship's registration *per se* involves both public and private law dimensions. The Justinian in ancient Rome described these two dimensions as "*Publicum ius est quod ad rei Romanae spectat: privatum quod ad singulorum utilitatem"* (Ready, 1998, p.6). When considering the two-fold roles of the registration, it is crucial to point out that the public law aspect deals with administrative and regulatory matters pertaining to national welfare (Mukherjee, 2007). The main functions of the public law aspect are as follows (Ready, 1998):

1. granting of nationality and the right to fly the national flag;
2. subjections of the vessel to the State's jurisdiction for the purpose of safety regulations, crewing and discipline onboard, pollution matters;
3. privileges to engage in maritime activities within the territorial waters of the flag State; and
4. the right for naval and political protection, as well as the right of the flag State to utilize the ship's services in war situations

The private law functions below involve private proprietary interests in vessels (Mukherjee, 2007):

1. providing *prima facie* evidence of title and ownership;
2. protecting the title and the ownership rights; and
3. preservation of priorities between individuals holding security interests over the ship, such as mortgages

Accordingly, it may be submitted that the public law side considers the ship some sort of floating community which reflects the sovereignty of the flag State; and the private law perceives the vessel as a movable property over which certain individuals may have rights upon it (Ready, 1998). Yet, it seems that both law functions of the ship's registration involve public policy implications as the national interest and the ownership identification in the registry towards the public are subject of public policy.

4. THE LEGISLATIVE REGIME OF CLOSE REGISTRIES

The close registry, which sometimes is regarded as traditional or national registry, are by definition those registries which involves a real connection by virtue of national, economical and social ties among the owner of the vessel on one hand, and its State on the other (Ready,

1998). Normally, close registries' States lay down stringent conditions as regards ownership, manning, management and administration in order for a vessel to enter in their registries. The vessel in these regimes is subject to the jurisdiction and control of the flag State, which ensures that its flag ship comply with the international treaties ratified by that State. Additionally, the ship in close registry is subject to stringent rules in connection to the fiscal regime applicable in that particular State (Ready, 1998). The fundamental principle on which the close registry is established is based on the policy of conferring nationality to the ship only if it owned by the nationals of that State (Mukherjee, 1993).

In general, a close registry includes requirements such as the beneficial owners and the majority of the share holders must be nationals of the flag State; the ship-owning company *per se* must be situated in the territory of the State; the personnel onboard should also be nationals of the flag State and; in some countries such as USA, the vessel must be build by that country's ship-building company (Mukherjee, 2007). These prerequisites may vary in a number of close registry countries (Li & Wonham, 2001), and there are varying levels of strictness among these registries (Mukherjee, 1993). Whereas in several close registry States the ship-owner must be a natural born citizen to be qualified for the registration - in other countries, a national can simply be a domicile or a resident without necessarily being a citizen of that State (Li & Wonham, 2001). Hence, among the regimes of close registries prevails an immense diversity of requirements, laws and regulations rather than a consistent legal approach. In the past, the main reasons why close registries was preferable, was probably due to States' national protection; lack of profit taxes as well as for nationalistic factors (Ready, 1998). Other significant elements were that the globalization was not a major characteristic of the maritime trade and perhaps the employment of the national seafarers was not regarded as a problematic issue as it is presently. It appears that in time memorial the close registries were fairly preferred by the nationals of the State of registry.

During the years 1930-50, the maritime world experienced a major fleet transfer from closed registries towards other flag States which implemented more lax regulations in terms of registration (Ready, 1998). This main event of course was stemmed from the globalization of the maritime business which began to develop at that time. The progress of the global trade entailed the need for changes in maritime laws, registration requirements and predominantly in shipping business which eventually developed in order to cope with the situation. Only in the UK, the deadweight tonnage of the fleet reduced dramatically from nearly 43 million tonnes in 1980, towards 4.5 million tonnes in 1990 (Ready, 1998). Other major merchant fleets of the traditional maritime powers such as Spain, USA, Netherlands and France were reduced considerably in terms of deadweight tonnage. These figures indicate that except from the benefits that globalization of trade brought, the operational expenses, taxes, stringent regulatory requirements and other administrative rules implied by the national flag States towards the shipping industry increased steadily and became a financial burden particularly for the ship-owners, which strived to find alternative options in order to stay in business (Ready, 1998). The majority of the European countries for instance, have generally strict criterion pertaining to the employment of the nationals and ownership, i.e. in order to be qualifying for a registration the vessel should be manned and owned mainly by nationals of that State (ICSOM, 2006).

The U.S.A and China are considered among the most classical closed registries implementing strict policies (Li & Wonham, 2001). According to Chinese Ship Registration Regulation (1994), the vessel must be owned by a citizen of the PRC whose residence and its place of business are situated within its territory. The Chinese crewing regulations are rigorous, allowing thus Chinese ship-owners to employ only Chinese crews, save exceptional cases when foreign crews can be employed with special permission from the P.R.C Bureau of Harbour Superintendence. Similarly, the US registration system applies stringent regulation in connection with the ownership, enterprises and crewing of its national vessels. In order to be qualified for the US registry the ship-owner should be a citizen of the United States (Li & Wonham, 2001). All the members of the ship-owning association or joint venture must be citizens of the US and their place of business is required to be located within its territory (Li & Wonham, 2001).

According to the Report of the UNCTAD Secretariat (1982), other States which apply stringent rules regarding the ownership and crewing, and require the principal business to be situated in their territory are Belgium, Russia, Poland, India, Colombia, Argentina and Mexico. The same source cites that 28 flag States require 100% national crew in their ships; some 52 flag States require the principal place of the ship-owning company or their office to be located in their territory as well as the manager and the chair must be present in the State of registry (UNCTAD, 1982). The vessels in close registries are subject to the fiscal regime of the flag States, which generally imposes high taxes, including commercial and operational taxes to the ship-owners (Ready, 1998). Another issue which has influenced the immense transfer of ships from the close registry is the situation of the economical and political issues of the original State of registry. This situation may not allow the ship-owner to benefit from the financing institution, forcing him to register to another flag State which may have a comprehensive legal system more acceptable for the financial institution to normally enforce its security (Coles, 2002).

Even though that close registries are perceived as efficient legal approaches in terms of vessel's safety, stringent security measures, better employment conditions and wages as well as lowest percentage of maritime disasters, the point is that even among these registries there are States, particularly developing countries, which lack substantially safety and security measures, and substandard ships comprise a considerable percentage of their fleets. It is apparent that an absence of uniformity and harmonization exists among the maritime legal systems of close registry States, which may lead to possible consequences in term of safety and

legal issues in the maritime industry. On one hand, several close registry States such as Canada (Canada Shipping Act, 2001), have in place an efficient legal system and enforce their regulation in a satisfactory level, minimizing effectively sub-standardization in shipping. Albania and North Korea, on the other hand, lack significantly the aforementioned features and are considered the poorest performing flags recently (Paris MOU, 2007-2008), resulting in a situation when sub-standard ships are a serious concern in national and regional level. The situation is aggravated more when taken into account that the definition of ship's nationality at the international level lacks uniformity, let alone considering this concern at a national level, which appears to be more complicated and the nationality of the ship is generally defined according to the interests and objectives of each State.

When bearing in mind the financial situation of current shipping industry, it is obvious that the considerable employment expenses and the operational costs incurred by the strict requirements of the close registry States are unfavourable for the ship-owners' economical interests, particularly for minor shipping companies, wherein in order to survive, hunt for another alternative flag State. Hence, the labour expenses for a UK registered 30 000 deadweight bulk carrier with British crew, were approximately twice as much as compared with Philippine crew ITF approved rates (Ready, 1998) which evidences the fact that the shipping industry is suffering financially due to stringent labour regulations established by the close registry States. High taxes imposed by the national registry's authorities are extra financial burden for the ship-owners, which again find themselves forced to flee to other flag States with more flexible registration policies (Ready, 1998). All these stringent regulatory rules, high taxes and employment expenses as well as other running costs incurred to the shipping industry by the close registry States, seems to render the competition among the ship-owners considerably hard, particularly when taken into account that their partners in open registry States enjoy many of financial advantages. Another concern revealed recently pertaining to close registries, is that older vessels unclassified by IACS members are more likely to be nationally flag rather than foreign flag (Hoffman et al, 2005). This is an interesting fact since historically national registries are considered safe and secure regimes.

What it may be submitted at this point, is that the legal regime of close registry appears to reflect a multi-standardization legislative approach, and to a large extend diversified, where dissimilar regulations, laws, requirements and implementation policies may lead to obstacles and legal implications in respect to financial matters, competitiveness and dispute resolution within the shipping industry. The current situation of these registries suggests that generally the safety matters are considered problematic issues in many of these flag States, which appear to have some deficiencies in this respect.

5. OPEN REGISTRIES IN LIGHT OF LEGAL AND SAFETY CONCERNS

Open registry development is among the most controversial issues that the maritime industry has known recently. The frequent utilization of open registry appears to be a 20th century phenomenon, having its genesis most likely in August 1919 when the Canadian cargo ship *Belen Quezada* in an effort to avert American alcohol prohibition laws was transfer to the Panamanian flag (Coles, 2002). The commercial and financial impact of open registries caused apprehension among traditional maritime powers only after 1940's, when the shipping industry experienced an immense transfer of tonnage from long-established national registries towards open registries or flags of convenience (Pamborides, 1999). Panama and Liberia (Ready, 1998) are considered the first open registries which started to use this regime in order to attract foreign vessels under their flags by implementing flexible registration policies. An important issue in connection with the open registries is that other terms which are often used synonymously such as flags of convenience, flags of refuges and flags of necessity can lead to confusion and controversy over this matter. In this paper in order to avoid complexity, only the phrase open registry will be utilized.

The definition of open registries, it appears to represent a difficult matter which lacks a universal standard and, therefore these registries are easier to differentiate than to explain. Nonetheless, according to Mukjerjee (1993, p.33) open registries generally may be described as the "….national flags of those states with whom ship-owners register their vessels in order to avoid, firstly, the fiscal obligation, and secondly, the conditions and the terms of employment or factors of production that would have been applicable if their tonnage was entered in the register of their own country". Yet again, even though this particular definition mirrors an essential progress concerning the legal regime of open registries, in light of recent technological, legal and economical developments, it seems that there are also other important issues currently which need to reconsider in order to obtain a universal and comprehensive definition of the regime of these registries.

When taking into consideration the international organizations, may be relevant to cite the UN definition in 1985, which describes open registry as a "device enabled the traditional maritime countries to maintain ownership and control over world shipping despite the fact that they could not operate ships economically under their own flags" (Li & Wonham, 2001). UNCTAD, on the other hand, has defined open registries as the "conferment of national character upon ships regardless of ownership, control and manning" (Li & Wonham, 2001). One important fact pertaining to the definition of the open registries is that nowhere in the IMO's conventions or documents is found a definition which would formalize this organization's position on open registries. This would subsequently indicate that IMO is somehow circumventing this important issue which involves substantial political and economical aspects. The classical statement which contained a

comprehensive way of describing the characteristic of the open registries is the Rochdale Committee in 1970. According to this committee the open registry system reflects these main elements (Ready, 1998):

- The country of registry permits ownerships of its ships by non nationals
- Access to their registry is normally easy
- The registration payment, and a tonnage base annual fee are generally the only charges
- Revenue taxes are not a requirement or are very low
- The country of registry is a small maritime power with no national requirements
- The employment of its ships with non-nationals is allowed
- The state of registration lacks an effective MARAD which imposes compliance to their vessels with national and international rules

This definition is alleged to be extremely narrow (Sturmey, 1983), because presently open registry States such as Cyprus imposes rules regarding age limit of the ships and the survey of the vessels as conditions for entering in their registries. Moreover, many open registries flag States such as Panama has improved the compliance with the regulatory instruments by their vessels. It is noteworthy, however, to mention that currently there are scholars that consider many points of the Rochdale Committee's definition relevant, and hence, ships operating under open registries according to them mirror deficiencies in safety measures, pollution deterrence as well as manning competency standards (Pamborides, 1999). In this respect, it appears to be a fact that the maritime disasters in the last decades have had as the main actor ships registered under open registry flags. Hence, Torrey Canyon accident in 1967, Amoco Cadiz in 1978 (Barton, 1998), Exxon Valdez in 1989, Scandinavian Star in 1990, Sea Empress in 1996 (Coles, 2002), Erika in 1999 and Prestige in 2002 (Llacer, 2003), involved all ships operating under open registry States. Another evidence is that the casualty report of open registry fleets exposes a higher substantial rate of losses compared with the close registry countries (Coles, 2002).

The open registry regime has been in the focal point of criticism since in the initiation of its existence and this disapproval is based on several issues such as safety, economic distortion and employment. The first action against the regime of open registries was initiated in the Geneva Convention in 1958 when the political and legal mechanisms were putted forward to stop the operation of these registries. The legal implications regarding open registries in IMO gained impetus in 1959 when an attempt was made to block the Panamanian and Liberian claim for a membership on the Maritime Safety Committee, which consequently showed once again the reaction of traditional maritime countries pro the abolishment the of the open registries system (Pamborides, 1999). Similarly, the objective of the UN Convention on the Conditions for Registration of Ships in 1986 was to undermine the open registry States, but in reality this purpose was not achieved due to the strong disagreement by the open registry countries.

The main criticism regarding open registries is that there is no genuine and substantial connection between the flag State and its vessel, thus, making this link a pure profit oriented rather than a genuine link. Despite the fact that the concept of genuine link is still vague in international law, yet, the term imply that the vessels should be owned by nationals of the flag State; the principal place of business of the management or the chair must be located in that State; the flag State should exercise final control by subjecting the profits of the shipping company to taxation and; the State of registry must exercise absolute control over the safety standards and employment matters of the vessel (Tolofari, 1989). This is not simply the case in the open registries which appears to operate partially or fully in absence of the aforementioned elements. Countries such as Cyprus, Panama, Liberia, Malta, Bahamas, and Belize, usually, are implementing diverse and lax registration policies which reveal the theory that there is no genuine link in connection to their flag ships.

One of the most controversial issues on open registries' States is that the vessels under their flags are characterized by substantial deficiencies on safety and security standards. The UNCTAD Secretariat in 1981 released a report wherein were classified several reasons why the issues on safety standards are probably greater under open registries rather than in the close registration system (Coles, 2002):

- Real owners are not identifiable and can alter their identity by manipulating brass-plate companies
- The crew can avoid legal actions since are not nationals of the flag State
- Ship-owners in open registries and the flag State may lack collaboration since they do not share similar interests
- Since owners reside outside the flag State territory can refuse to testify at an inquiry aimed for safety issues and subsequently avert prosecution
- Open registries shipping operates in absence of union structure which is crucial to the application of safety and social standards onboard
- Ship-owners can easily exert pressure on the master and the officers to undertake risk decisions, because there is no appropriate government to which the personnel can protest
- Any signs of militancy among personnel onboard can be broken by the ship-owners due to policy freedom to change nationality of crew at whim
- The Port State Control influence is weaker because the sub-standard ships reported are not in factual authority and control of its flag State
- Since the sole objective in open registries is making profit the enforcement of standards over their vessels is basically inconsistent with the operation of the registration system

Although, the overall situation of safety in open registry vessels somehow is improved, most of the deficiencies stressed in the above report appear to have some rational basis, a fact which in the view of these authors indicates that there are currently safety issues with the vessels operating under some of the open registry countries. On other hand, in light of the criticism

revealed recently regarding open registry issues, many States such as Panama have consolidating their rules, regulation and safety measures on ships under their flag, reflecting as a result a better and comprehensive approach towards the eradication of all the issues previously stated. Cyprus and Malta have also made progress in fulfilling all the international maritime standards concerning safety and security of ships operating under their flag, which in the opinion of these authors have resulted to be efficient measures towards largely improving the safety and security situation.

6. CONCLUSIONS

Consequently, it may be submitted that the legal concept of parallel jurisdiction and the complexity towards the establishment of the appropriate legislation to be implemented when there is a accident on the high seas, in cases of parallel flagging, appears to be ambiguous in the international law, resulting in legal implications. The genuine link concept is even more ambiguous in the international law due to the absence of the description of this concept in terms of preconditions for the grant of the nationality and sanctions applied in view of the nonexistence of such link. The unclear and confounded decision of ICJ, revealed the diversity and controversial perspective of different States regarding genuine link concept, which yet remains a debate presently. Even though a number of international legal instruments underline that in the international law, questions of nationality are in principle within the domain reserved to the States, this does not mean that the granting of nationality is totally an unlimited right of every State since this law shall be recognized by other States insofar as it is consistent with international conventions and international customary law.

It is significant to emphasize that among the legal regimes of close registries prevails an immense diversity of requirements, laws and regulations rather than a uniform legal approach. The situation is aggravated more when considering that the definition of ship's nationality at universal level lacks uniformity, let alone considering this issue in a national level, wherein the nationality is defined in a way that is best suitable for State's own interests. Thus**,** the legal regime of close registry appears to reflects a multi-standardization legislative approach, and to a large extend diversified, where dissimilar regulations, laws, requirements and implementation policies may lead to obstacles and legal implications in respect to financial matters, competitiveness and dispute resolution within the shipping industry. What is more important, this study has revealed that even among these registries, perceived as efficient and comprehensive legal approaches, there are States which lack substantially safety and security measures, and substandard ships comprise a large percentage of their fleets**.**

The definition of open registries, which appears to be a complicated matter, lacks a common standard and for that reason these registries are easier to differentiate than to describe. Nowhere in international maritime conventions or documents is established a definition which would formalize IMO's position on open registries which implies that this organization is circumventing this smatter which involves vital political and economical features. Furthermore, the maritime disasters in the last decades have had as the major actor ships registered under open registry flags. UNCTAD's casualty report of open registry fleets reveals a higher substantial rate of fatalities in comparison with the close registry States based on several important reasons. The majority of these deficiencies emerge to have some realistic foundation, a piece of evidence which may point out that there are safety and security issues with vessels operating under several open registry flags. Nonetheless, many open registry States recently have consolidating their rules, regulation and safety and security measures on ships under their flag, exposing perhaps an improved and comprehensive approach towards the eradication of all the issues formerly underlined.

7. REFERENCES

[1] Barton, J.R. (1998). *Flags of Convenience': Geoeconomics and Regulatory Minimisation*. Review of Reviewed Item. Royal Dutch Geographical Society KNAG.
[2] Boczek, B.A. (1962). *Flags of Convenience: An International Legal Study*. Cambridge: Harvard U.P.
[3] Canada Shipping Act (2001). *Regulatory Reforms: Part 2, Registration, Listing and Recording.* Canada
[4] Coles, R.M.F. (2002). *Ship Registration: Law and Practice*. London: ed, LLP.
[5] Farthing, B. & Brownrigg, M. (I997). *International Shipping*. 3rd ed, Business on Shipping. London: Hong Kong: LLP.
[6] Giles, O.C. Gaskell, N.J.J. Debatista C. & Swatton, R.J. (2003). *Chorley and Giles Shipping Law*. 8th ed. London: Financial Times Pitman Publishing,.
[7] Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws. 1930.
[8] Hill, C. (2003). *Maritime Law*. 6th ed. London; Hong Kong: LLP.
[9] Hoffman, J. Sanchez, R. J. & Talley, W.K. (2005). "Determinants of Vessel Flag." In *Shippings Economics: Research in Transportation Economics*, 173-219: Elsevier Ltd.
[10] I.C.S.O.M. (2006). *Ship Operation and Management*. London: Witherby & Co. Ltd.
[11] *Lauritzen Vs Larsen*, 345 U.S 571 (1953).
[12] Llacer, J. M. F. (2003). "Open Registers: Past, Present and Future." Review of Reviewed Item. *Marine Policy*, no. 6.
[13] Li, K.X. & Wonham, J. (2001). *The Role of States in Maritime Employment & Safety: A Legal and Economic Study*. Dalian: Dalian Maritime University Press.
[14] *Liechtenstein V. Guatemala*, I.C.J. Rep. p. 4 (1955).
[15] Mukherjee, P.K. (2007). *The Changing Face of the Flag State Implementation: Experience with Alternative Registries. 30*: World Maritime University.
[16] Mukherjee, P.K. (1993). "Flagging Options: Legal and Other Considerations." *Mariner*, no. January/March: 31-37.
[17] Mukherjee, P.K. (2007). *Nationality, Registration and Ownership of Ships. 9:* Unpublished Lecture: World Maritime University.

[18] *Naim Molvan Vs. Attorney General for Palestine*, A.C. 351 (1948).
[19] Özcayir, Z.Oya. (2001). *Port State Control*. London; Hong Kong: LLP.
[20] Paris M.O.U. on Port State (2007). *Paris M.O.U. Announce New Black-Grey-White-List.*In Paris MOU.(accessed 2008).
[21] Pamborides, G.P. (1999). *International Shipping Law: Legislation and Enforcement*. The Hague, Boston, Athens: Kluwer Law International.
[22] Ready, N.P (1998). *Ship Registration*. 3rd ed. London; Hong Kong: LLP.
[23] *R. V. Anderson*, II Cox Crim. Cas. 198 (1868).
[24] Ship Registration Regulation of P.R.C. *(*1994).
[25] *S.S. Lotus*, P.C.I.J. Series A, No. 10 at 25 (1927).
[26] Sturmey, S.G. (1983). *The Open Registry Controversy and the Development Issue*. 8 vols. Bremen: Institute of Shipping Economics.
[27] Sohn, L.B & Noyes, J.E. (2004). *Cases and Materials on the Law of the Sea*. Ardsley, NY: Transnational Publishers.
[28] Tetley, W. (1994). *International Conflict of Laws: Common, Civil and Maritime*. Montreal, Quebec: Blais & International Shipping Publications.
[29] The "Grand Prince" *(Belize V. France).* (2001), *Judgement. ITLOS Case No.8*.
[30] Tolofari, S.R. (1989). *Open Registry Shipping: A Comparative Study of Costs and Freight Rates.*
[31] *The Meritt*, 84 U.S. (17 Wall.) 582 582 (1873).
[32] U.N. (1958). *Geneva Convention on the High Seas*. In, U.N. (accessed 10 May, 2008).United Nation Publication
[33] U.N. (1983). *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea*. London; New York: Croom Helm; St. Martin`s Press.
[34] U.N. (1986). *United Nations Convention on the Conditions for Registration of Ships*: UNCTAD. United Nation Publication
[35] U.N. (2005). Vienna Convention on Diplomatic Relations 1961. United Nations, Treaty Series, vol. 500, p. 95.
[36] UNCTAD/TDR/2. (1982). *Trade and Development Report 1982:* Report by the U.N.C.T.A.D Secretariat," (Vol. I).