Registration of Vessels

New Developments in Ship Registration

Introduction

In international law, each state is allowed to determine the requirements by which a vessel may enter its registry and fly its flag. This principle was recognised in 1905 by the Hague Court of Permanent Arbitration in the Muscat Dhows Case (France v Great Britain), in which the Court stated: "generally speaking it belongs to every sovereign to decide to whom he will accord the right to fly his flag and to prescribe the rules governing such grants." This principle was followed by the USA Supreme Court in case of Lauritzen v Larsen, in which the Court stated:

"Each State under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag. The USA has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering state."

The principle was restated in the 1958 Geneva Convention on the High Seas. However, the right to set conditions for ship registration is not absolute under international law. The 1958 High Seas Convention provides that:

"Each State shall fix the conditions for the grant of nationality to ships for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There

2 Ibid., p. 101.
3 Lauritzen v Larsen, 345 US 571, 1953 AMC 1210 (1953).
4 Ibid.

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must exist a genuine link\textsuperscript{6} between the State and the ship; in particular, the
State must effectively exercise its jurisdiction and control in administrative,
technical and social matters over ships flying its flag.\textsuperscript{7}

This principle was adopted by the 1982 United Nations Convention on the Law
of the Sea in the same language.\textsuperscript{8} Another attempt at setting international
standards for granting nationality to a ship resulted in the adoption of the
(UN Registration Convention),\textsuperscript{9} in which the term “genuine link” is forgone in
favour of a set of specific economic criteria.\textsuperscript{10} The aim, however, remains the
same. One of the objectives of the UN Registration Convention is “ensuring or,
as the case may be, strengthening the genuine link between a State and ships
flying its flag”.\textsuperscript{11}

Notwithstanding the efforts at unification of the conditions on ship
registration in the above noted conventions, there are great differences among
different ship registration regimes in the world. There is no question of the
legality of each state being able to set its own requirements for ship registration.
The advisory opinion of the International Court of Justice (ICJ) on the
constitution of the Maritime Safety Committee of the International Maritime
Consultative Organisation (IMCO), now the International Maritime Organisa-
tion (IMO), confirmed and strengthened the legal position of an open registry.\textsuperscript{12}
Thus, the “legality of open registers should not be challenged”.\textsuperscript{13}

To define different registry regimes and to classify each register can be useful
both for shipping practice and theoretical research. By examining the criteria
utilised by nations for registering vessels, such as the ownership, management
and manning of the vessel and company background, one can categorise the

\textsuperscript{6} The concept of a “genuine link” was enunciated in 1955 by ICJ in the Nottebohm case, in which
the court held that Liechtenstein did not have standing to bring the action because there was no
genuine link between Nottebohm and Liechtenstein, i.e. no “legal bond having as its basis a
social fact of attachment, a genuine connection of existence, interests and sentiments, together

\textsuperscript{7} Art. 5(1) of the Geneva Convention on the High Seas.

\textsuperscript{8} Art. 91(1) of the LOS Convention.

\textsuperscript{9} UN Doc. No. TD/RS/CONF/23 adopted by the UN Conference on Conditions for Registration
of Ships on 7 February 1986. For an introduction to and the background of the Convention, see

\textsuperscript{10} Arts. 7, 8 and 9 of the UN Registration Convention.

\textsuperscript{11} Art. 1 of the UN Registration Convention.

\textsuperscript{12} The ICJ held that the registered tonnage was the only test in determining the eight “largest”
ship-owning nations referred to Art. 28(a) of the International Maritime Consultative
Organisation Convention. The ICJ rejected the test of the nationality of the beneficial owners
of the ships, which was found to have “no basis in international practice”. (1960) ICJ Rep 160–
170.