

IMO

International Maritime Organization

Flags of Convenience

Overview

As the backbone of our globalized economy, the international shipping industry transports more than 80 percent of global trade.¹ Since the early 20th century, the industry has seen an incredible increase in the number of ships registering in a country other than the country of actual ownership, a phenomenon known as Flags of Convenience. The purpose of this controversial practice stems from shipowners seeking to avoid stringent shipping standards, regulations, taxes, and controls. Ships taking advantage of flags of convenience (FOC) have been found engaging in criminal activity, illegal fishing, polluting the ocean, and offering inadequate working conditions to those onboard, among other illegal practices.² In efforts to reduce these practices, the international community and individual countries have imposed sanctions on states commonly involved in such trade as well as developing comprehensive databases of ship registries and histories. Nongovernmental organizations (NGOs) are also critical to the fight against illegal maritime practices since governments are far too often facilitators of the corruption that flags of convenience can cause.

The International Maritime Organization

Established in 1948, the International Maritime Organization (IMO) is the United Nations' specialized agency responsible for all aspects of international shipping regulation from ship design to disposal and everything in between. More specifically, it focuses on the safety and security of international shipping, while preventing marine and atmospheric pollution by ships. Its main role is to create a regulatory framework for the international shipping industry that is effective and fair. The IMO Assembly meets every two years and adopts a Strategic Plan for the Organization that covers a six-year period.³ The International Convention for the Safety of Life

¹ Statista Research Department, "Ocean Shipping Worldwide - Statistics & Facts," Statista, October 27, 2023, <https://www.statista.com/topics/1728/ocean-shipping/#topicOverview>

² Michael Richardson, "Crimes Under Flags of Convenience," Crimes Under Flags of Convenience | YaleGlobal Online, May 19, 2003, <https://archive-yaleglobal.yale.edu/content/crimes-under-flags-convenience>

³ The IMO, "Strategic Plan for the Organization," International Maritime Organization, 2019, <https://www.imo.org/en/About/Strategy/Pages/Default.aspx>.

at Sea (SOLAS) is an example of an international maritime treaty that sets minimum safety standards for all stages of a merchant ship's life. To create globally sustainable, environmentally sound, and efficient shipping practices, the IMO considers the relevant legal matters for effective universal application of their policies. The issue of FOC, wherein ships completely avoid regulation and oversight, is a regulatory concern that falls directly within the jurisdiction of the IMO and its objective to keep international shipping safe, effective, and fair.⁴

Legal Context

Article 5(1) of the Convention of the High Seas, 1958, says:

“Each State shall fix the conditions for the grant of its 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 must exist a genuine link 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.”⁵

Much of the controversy surrounding FOC can be traced back to just a few words in the above excerpt, that there must exist a genuine link between a State and a ship flying its flag. A ship's flag state has regulatory control over that vessel and, ideally, the state will conduct regular inspections of the equipment and crew, ensure safety, and prevent environmental hazards. The organization registering a ship is called its registry which can be run by governmental or private agencies.

In the 1986 UN Convention on Conditions for Registration of Ships, specific international standards for registering vessels were set forth, as criteria for what constitutes a genuine link, the practical role of a flag state in international shipping, and more. The convention did not enter into force, however, because it would require 40 parties holding at least 25% of the world's cargo to ratify the convention. Currently, there are only 15 contracting parties that have ratified. (Ibid.)

⁴ The IMO, “Registration of Ships and Fraudulent Registration Matters,” International Maritime Organization, 2021, <https://www.imo.org/en/OurWork/Legal/Pages/Registration-of-ships-and-fraudulent-registration-matters.aspx#>

⁵ Ariella D’Andrea, “The ‘Genuine Link’ Concept in Responsible Fisheries: Legal Aspects and Recent Developments,” FAO LEGAL PAPERS ONLINE 61 (November 2006): 1–21, <https://doi.org/http://www.fao.org/legal/prs-ol/paper-e.htm>.

For those countries that interpret “genuine link” in the most fundamental sense, they operate registries that do not have nationality or residency requirements for registration, and these states are operating what’s called an “open registry”, like Liberia, for example. These states offer easy registration, the ability to employ cheap foreign labour and exemption of income tax. It should be noted that there are legitimate reasons for adopting a flag of convenience, like if a fishing company wants to change locations and open a new fishery. Some countries, though, as will soon be shown, have revealed why flags of convenience have been disproportionately associated with illegal fishing and other misconduct.

The Appeal of Flying Foc & Prevalence

The very first instance of another state's flag being used in shipping was in the 1920s when two U.S. passenger ships registered under Panama’s flag because they wanted to serve alcohol to passengers during the Prohibition era.⁶ The practice of registering a ship under a foreign flag gained traction. In the 1930s, FOCs proliferated even more when American-owned, Panamanian-flagged, ships proved effective in circumventing the U.S.’s own Neutrality Act which prohibits U.S.-flagged ships in a war zone. By registering with a different flag, they were able to supply their allies during the war. The advantages of the Panama registry have since become widespread and many countries like Costa Rica, Honduras, Liberia, and Venezuela followed Panama by providing equally convenient fleets.⁷

Tax avoidance, bypassing national labour and environmental regulations, and reduced costs, are some of the things that make flying these flags so convenient. Closed registries, on the other hand, require the ship to be owned and built in the nation's interests and crewed by its citizens. From a ship owner’s perspective, that can be costly. Using flags of convenience lowers maintenance and registration costs which in turn lowers overall transportation costs.

The United States has seen its flag registration numbers drop significantly since the advent of open registries, which is suspected to be a product of the operating costs of U.S. flagged ships being nearly 3 times higher than foreign-flag equivalents and altogether unable to

⁶ Editors BBC, “Why so Many Shipowners Find Panama’s Flag Convenient,” BBC News, August 5, 2014, <https://www.bbc.com/news/world-latin-america-28558480>.

⁷ Ira Dye, “Flags of Convenience; Maritime Dilemma,” U.S. Naval Institute, October 7, 2022, <https://www.usni.org/magazines/proceedings/1962/february/flags-convenience-maritime-dilemma#>.

compete with countries that operate open registries.⁸ The appeal of FOC, then, comes down to money. More than half the world's merchant ships are registered with open registries, with nearly 40% of the world's fleet, in deadweight tonnage, registered in either Panama, Liberia or the Marshall Islands.⁹

Criticisms

For several reasons, there is a great lack of flag state control over ships. Whether it is from insufficient or poorly enforced regulations, the difficulty in identifying a ship owner to hold them accountable has proven very difficult. As a result, states that enable shipowners to avoid accountability through open registries have been heavily criticized. Flags of convenience are disapproved of for enabling tax avoidance, poor working conditions for seafarers, negatively affecting the environment, and supporting criminal activity and even terrorism.

One of the factors enabling the illicit use of state flags is that shipowners are able, through several means, to conceal their ownership. For instance, actual owners may establish a shell corporation to be the ship's legal owner, effectively hiding the identity of the beneficial owner (the person legally and financially responsible for the ship). Here are a few examples of where the varied criticisms about flags of convenience come from. In 2003, a North Korean freighter "*Pong Su*" smuggling \$50 million worth of heroin into Australia was seized and discovered to be registered in the small South Pacific island-nation of Tuvalu. Also in 2003, another North Korea freighter "*Sosun*" was found carrying 15 warheads and rocket propellant under a cargo of cement, this time flying a Cambodian flag.¹⁰

As for environmental criticisms, flags of convenience ships have been the ones with some of the highest-profile oil spills such as the Marshallese-flagged "Deepwater Horizon," responsible for the tragic environmental disaster known as the "BP Oil Spill." However, illegal fishing is a much more common environmental criticism when it comes to the topic of flags of convenience. Illegal fishing can have drastic economic impacts on the countries whose marine

⁸ U.S. Maritime Administration, "Comparison of U.S. and Foreign Flag Operating Costs - Transportation," Maritime Administration, September 2011, <https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/resources/3651/comparisonofusandforeignflagoperatingcosts.pdf>.

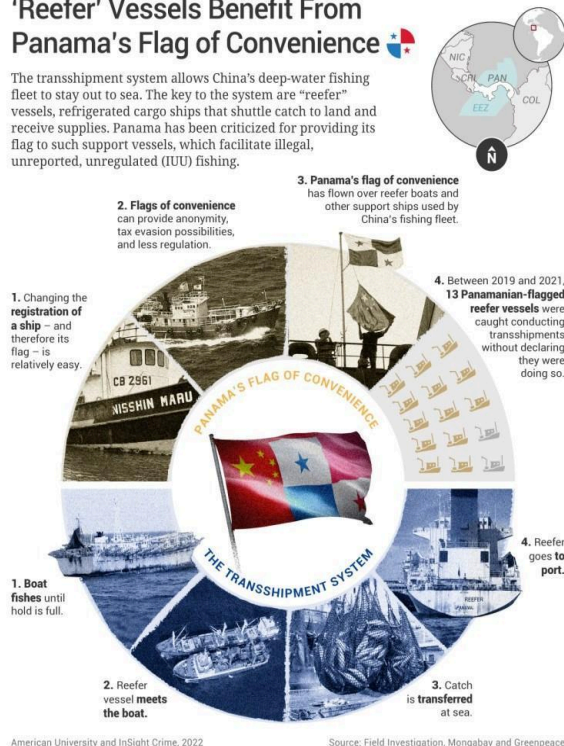
⁹ Anna Fleck and Felix Richter, "Infographic: Flags of Convenience Dominate Maritime Freight," Statista Daily Data, January 11, 2023, <https://www.statista.com/chart/29086/flags-of-convenience/>.

¹⁰ Michael Richardson, "Crimes Under Flags of Convenience," Crimes Under Flags of Convenience | YaleGlobal Online, May 19, 2003, <https://archive-yaleglobal.yale.edu/content/crimes-under-flags-convenience>

resources are being looted. For example, The Democratic Republic of the Congo reported to the IMO in 2017 that approximately 73 vessels were fraudulently using its flag and that the illegal fishing in its waters was causing economic detriment.¹¹

'Reefer' Vessels Benefit From Panama's Flag of Convenience

The transshipment system allows China's deep-water fishing fleet to stay out to sea. The key to the system are "reefer" vessels, refrigerated cargo ships that shuttle catch to land and receive supplies. Panama has been criticized for providing its flag to such support vessels, which facilitate illegal, unreported, unregulated (IUU) fishing.



The Ecuadorian Navy, in 2020, spotted a Chinese fleet flying a Panamanian flag that was shuttling fish to ports and bringing back fuel and supplies. These vessels are known as “reefers”, refrigerated cargo vessels that catch tons of fish and process and package them onboard, thereby making it easy to mix up illegally caught fish with legal ones. This issue is exacerbated by a Chinese fishing system using a process called “transshipment,” which allows ships to stay out at sea for months at a time pillaging countless marine life and damaging local economies. As these fleets operate under the radar of law enforcement, they have also been accused of labour abuses.¹²

In summation, flags of convenience have been criticized for allowing concealed or anonymous ownership (e.g., “Phantom Ships”) which in turn enables more crime (e.g., smuggling, illegal fishing), dangerous working conditions for workers at cheap prices, and environmental negligence (e.g., oil spills and lack of ship maintenance).

Case Study

Panama

Panama has an open registry, which can be completed online, and foreign owners of ships flying the Panamanian flag pay no income tax. Around 8,600 ships fly its flag. In comparison, only 3,400 ships are registered in the U.S. and just over 3,700 in China. The registry

¹¹ The IMO, “Registration of Ships and Fraudulent Registration Matters,” International Maritime Organization, 2021,

<https://www.imo.org/en/OurWork/Legal/Pages/Registration-of-ships-and-fraudulent-registration-matters.aspx#>

¹² Daniel Molina Alarco, “Panama Lending Flag to Most Destructive Fishing Ships,” InSight Crime, October 19, 2023, <https://insightcrime.org/investigations/panama-lending-flag-most-destructive-fishing-ships-iuu/>.

has proven very lucrative, as Panama has generated up to \$150 million a year in services and taxes with registrations alone earning \$87.3 million in 2021. (Ibid.)

Panama has been accused over the years for its flag policies, or lack thereof, harming workers, the environment, and enabling other illegal activities. The International Transport Workers Federation (ITF), for example, claims that Panama turns a blind eye to safety violations and illegal activities so that they can acquire more registrations.¹³ In 2018, Madagascar authorities seized a Panamanian-flagged vessel that was taking marine resources from Madagascar waters, and it wasn't the first time. Labour abuses discovered on these ships and environmental disasters like that of a Greek-owned cargo ship and its massive oil leak stretching 40km have only served to bolster the accusations against states with weak oversight.¹⁴

The EU has served Panama with a warning in 2019 accusing it of being a non-cooperating country in the fight against illegal fishing (IUU). According to the condemnation, if Panama still does not shape up, their seafood exports to Europe will be suspended. However, for Panama, there is little political will for them to increase regulation and introduce roadblocks out of fear of competition from other countries like Liberia with weaker regulations. Illegal fishing is a colossal industry that would be difficult for an economy to part ways with. According to the Food and Agriculture Administration of the United Nations, IUU fishing is the third most lucrative illicit activity in the world right behind weapons and drugs trafficking. IUU fishing catches are estimated to be worth up to \$17 billion annually.¹⁵

Efforts to Strengthen Flag State Jurisdiction

Dating back to 1958, Article 5(1) of the Geneva Convention on the High Seas demands there be a genuine link between a ship's owner and its flag, the flag state needs to exercise "effective jurisdiction" over that ship. The principle was repeated in 1982 in Article 91 of the United Nations Convention on the Law of the Sea (UNCLOS) treaty, and then again in 1986, this time demanding more out of flag states. The United Nations Conference on Trade and

¹³ Editors BBC, "Why so Many Shipowners Find Panama's Flag Convenient," BBC News, August 5, 2014, <https://www.bbc.com/news/world-latin-america-28558480>.

¹⁴ Mary Triny Zea and Michelle Carrere, "Panama: A 'flag of Convenience' for Illegal Fishing and Lack of Control at Sea," Mongabay Environmental News, August 11, 2023, <https://news.mongabay.com/2022/10/panama-a-flag-of-convenience-for-illegal-fishing-and-lack-of-control-at-sea/>.

¹⁵ United Nations Food and Agriculture Organization, "INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING," *Food and Agriculture Organization of the United Nations*, no. 6 (2017): 1–24.

Development, to strengthen the genuine link concept, proposed the United Nations Convention on Conditions for Registration of Ships, which would require a flag state to either be linked to its ship by means of an economic stake in the ship's ownership, or to provide mariners to crew the ships.¹⁶ The treaty would require 40 signatories who, combined, represent 25% of the world's combined shipping tonnage. Only 15 countries have ratified or acceded to the Convention as of 2020 (Albania, Bulgaria, Côte d'Ivoire, Egypt, Georgia, Ghana, Haiti, Hungary, Iraq, Liberia, Libya, Mexico, Morocco, Oman, and Syria) while 9 others have signed the Convention, subject to ratification (Algeria, Bolivia, Cameroon, Czech Republic, Indonesia, Poland, Russian Federation, Senegal, and Slovakia).¹⁷

The IMO has initiated several independent measures to strengthen flag State and port State jurisdiction and enforcement. Among these are resolutions such as the one to prevent registration of "phantom" ships, audit schemes of member states, and others, all of which can be found on the IMO website. In 2019, the U.N. decided that there should be a comprehensive database that records every registration of every ship, a project that the IMO was mandated to work with the U.N. Security Council to establish. To mitigate fraudulent registrations, the IMO has adopted a resolution that implements a procedure for communicating information on ship registries directly to IMO that includes the name of national governmental bodies and entities in charge of registration, the aim of which is to give the IMO Secretariat the ability to verify the information through appropriate channels.¹⁸

Like the Democratic Republic of Congo, many states such as the Federated States of Micronesia, Fiji, the Maldives, Nauru, Samoa, the United Republic of Tanzania and Vanuatu have all reported the fraudulent use of their state's flag without the state's permission. This spurred IMO's Legal Committee in 2018 to work on several resolutions, including increasing access to accurate information about a ship's registration and making it harder to conceal ownership of ships. Other conventions targeting maritime crime include the International Ship

¹⁶ Matthew Gianni, "Real and Present Danger: Flag State Failure and Maritime Security and Safety - ITF Global," ITF Global, 2008, https://www.itfglobal.org/sites/default/files/resources-files/flag_state_performance.pdf.

¹⁷ United Nations, "United Nations Convention on Conditions for Registration of Ships," United Nations Treaty Collection, accessed November 10, 2023, <https://treaties.un.org>.

¹⁸ The IMO, "Registration of Ships and Fraudulent Registration Matters," International Maritime Organization, 2021, <https://www.imo.org/en/OurWork/Legal/Pages/Registration-of-ships-and-fraudulent-registration-matters.aspx#>

and Port Facility (ISPS) code, which works to ensure maritime security on ships and develop frameworks for ship and port assessments.¹⁹

Conclusion

Flags of convenience, as we have seen, have brought significant criticisms for its use stemming from varied concerns including the environment, crime, and safety. There have been many attempts to mitigate those negative effects but not much seems to have changed. How does your country benefit or suffer from flags of convenience and their use or proliferation? Which of the consequences of FOC are the most pressing to deal with? On the other hand, are countries like Liberia and Panama, countries with open registries that generate massive revenue for their economies, at any fault? How should a “genuine link” between a ship and its flag, as described in the Geneva Convention, be interpreted? Please research official attempts or unofficial ideas to mitigate the negative effect of flags of convenience and determine if an entirely new, more radical, attempt should be made to prevent the use of flags of convenience or is the status quo satisfactory, and why?

Questions to Consider

1. What is the significance of the "Flags of Convenience" (FOC) practice in the international shipping industry, and why has it become a controversial issue?
2. How does the International Maritime Organization (IMO) contribute to regulating international shipping, particularly concerning FOC ships, and what are its main objectives?
3. What are some of the legitimate reasons for adopting a flag of convenience, and how do they differ from the illegal or unethical practices associated with FOC?
4. What are the advantages and disadvantages of FOC from the perspectives of ship owners, flag states, and the international community?
5. What are potential solutions or reforms to mitigate the negative effects of FOC, considering both official attempts by international bodies and unofficial proposals from civil society or academic circles.

¹⁹ International Maritime Organization, “Solas XI-2 and the ISPS Code,” International Maritime Organization, 2018, <https://www.imo.org/en/OurWork/Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx>.

Useful Delegate Resources

[Introduction to IMO](#)

[Flags of convenience | ITF Global](#)

[Registration of ships and fraudulent registration matters](#)

[Flags of convenience - NGO Shipbreaking Platform](#)

Bibliography

- Alarco, Daniel Molina. "Panama Lending Flag to Most Destructive Fishing Ships." *InSight Crime*, October 19, 2023.
<https://insightcrime.org/investigations/panama-lending-flag-most-destructive-fishing-ships-iuu/>.
- BBC, Editors. "Why so Many Shipowners Find Panama's Flag Convenient." *BBC News*, August 5, 2014. <https://www.bbc.com/news/world-latin-america-28558480>.
- D'Andrea, Ariella. "The 'Genuine Link' Concept in Responsible Fisheries: Legal Aspects and Recent Developments ." *FAO LEGAL PAPERS ONLINE* 61 (November 2006): 1–21.
<https://doi.org/http://www.fao.org/legal/prs-ol/paper-e.htm>.
- Dye, Ira. "Flags of Convenience; Maritime Dilemma." U.S. Naval Institute, October 7, 2022.
<https://www.usni.org/magazines/proceedings/1962/february/flags-convenience-maritime-dilemma#:~:text=After%20the%20outbreak%20of%20war,of%20supplying%20our%20future%20allies>.
- Fleck, Anna, and Felix Richter. "Infographic: Flags of Convenience Dominate Maritime Freight." *Statista Daily Data*, January 11, 2023.
<https://www.statista.com/chart/29086/flags-of-convenience/>.
- Food and Agriculture Organization, United Nations. "INTERNATIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING." *Food and Agriculture Organization of the United Nations*, no. 6 (2017): 1–24.
- Gianni, Matthew. "Real and Present Danger: Flag State Failure and Maritime Security and Safety - ITF Global." ITF Global, 2008.
https://www.itfglobal.org/sites/default/files/resources-files/flag_state_performance.pdf.

IMO. “Solas XI-2 and the ISPS Code.” International Maritime Organization, 2018.

<https://www.imo.org/en/OurWork/Security/Pages/SOLAS-XI-2%20ISPS%20Code.aspx>.

International Maritime Organization. “Registration of Ships and Fraudulent Registration Matters.” International Maritime Organization, 2021.

<https://www.imo.org/en/OurWork/Legal/Pages/Registration-of-ships-and-fraudulent-registration-matters.aspx>

International Maritime Organization. “Strategic Plan for the Organization.” International

Maritime Organization, 2019. <https://www.imo.org/en/About/Strategy/Pages/Default.aspx>.

Maritime Administration, U.S. “Comparison of U.S. and Foreign Flag Operating Costs - Transportation.” Maritime Administration, September 2011.

<https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/resources/3651/comparisonofusandforeignflagoperatingcosts.pdf>.

Research Department, Statista. “Ocean Shipping Worldwide - Statistics & Facts.” Statista,

October 27, 2023. <https://www.statista.com/topics/1728/ocean-shipping/#>.

Richardson, Michael. “Crimes Under Flags of Convenience.” Crimes Under Flags of Convenience | YaleGlobal Online, May 19, 2003.

<https://archive-yaleglobal.yale.edu/content/crimes-under-flags-convenience>

United Nations. “United Nations Convention on Conditions for Registration of Ships.” United Nations Treaty Collection. Accessed November 10, 2023.

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-7&chapter=12&clang=_en.

Zea, Mary Triny, and Michelle Carrere. “Panama: A ‘flag of Convenience’ for Illegal Fishing and Lack of Control at Sea.” Mongabay Environmental News, August 11, 2023.

<https://news.mongabay.com/2022/10/panama-a-flag-of-convenience-for-illegal-fishing-and-lack-of-control-at-sea/>.