

The Caribbean Maritime Area with regard to the International Frame

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The Open Registers in the Eastern Caribbean

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THE OPEN REGISTERS IN THE EASTERN CARIBBEAN

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I – The common features of the Open Registers (OR)

- 1.1. Fleet Composition (domestic or foreign ownership)
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- 1.2. Goals of shipowners and countries, and means used
 - 1.2.1. Goals
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II – Conditions and development outlook

- 2.1. New requirements implemented by coastal States since 80's
 - 2.1.1. General framework
 - 2.1.2. A quick focus on Safety and Security
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 - 2.2.1. The Growth of OR in the Lesser Antilles (and in the world) continues.
 - 2.2.2. Open Registers as new standards for shipping ?

Just some slides for a quick overview and some assumptions...

Why the Eastern Caribbean ?

- One of the major topics of the Centre of Studies and Research in Economics (CEREGMIA) in relation with
 - > the economic development of small islands
 - > the seas, esp. Regional Seas
 - > and with the European Union
 - . *Regional Co-Operation (INTERREG Prog.)* ;
 - . *Economic Partnership Agreements (EPA)* ;
 - . *EU Regions in the Caribbean* (“Outermost Regions”), etc.

What aren't the Open Registers ?

- Open Registers and Flag of Convenience
- Open Registers and sub-standards vessels

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Rapid analysis of fleet composition of different countries (independent States or autonomous territories)

One principle in the international legal context :

Flag symbolizes sovereignty

(and according to United Nations Convention on the Law of the Sea (UNCLOS) – 1982:

“Article 90 - Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.”)

A condition = a “genuine link” between ship and flag (nationality of owners, or crew, for example)

But no control.

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Repercussions :

-“Every 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.” (Art. 91 § 1 UNCLOS).

- Practically, every State is free to grant its nationality to ships.

- Therefore : many States follow this way, especially by registering (*flagging in*) vessels that belong to non nationals non residing individuals or corporations.

==> initial definition of Flag of Convenience (FOC) (ITF1974): words FOC became step by step synonymous of sub-standards ships.

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FOC = pejorative and complex. Mix of property, nationality, liability, safety, labour law, tax, wages for seafarers, exercise of sovereignty, implementation of international maritime conventions, etc.

Difficult concept to handle.

A new classification has been proposed (Alderton & Winchester, 2002) : 37 countries usually FOC (from Norway to Cambodia) are divided in 5 categories with a special index named FLASCI (FLAG State Conformance Index), but remains complex if not pejorative.

We propose a new classification.

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For a better and simpler understanding of the Open Registers in the Eastern Caribbean, we propose a classification of flags which combines 2 criteria we name

- **"Flagging out factor" =**

vessels owned by nationals under non national flag

Total fleet effectively owned by nationals (under national and non national flags)

- **"Internationalization factor" =**

vessels registered in a country but owned by non residing

Total fleet registered in the flag country

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So what ?

After calculation etc., we can categorize the flag countries like this:

		Flagging out factor	
		Low $0 \leq fof < 0,4$	High $0,4 \leq fof \leq 1$
Internationalization factor	High $0,4 \leq if \leq 1$	Antigua & Barbuda ; Bahamas; Barbade; Belize ; Cambodge; Cayman Is. (UK) ; Former Netherlands Antilles ; Dominique ; Gibraltar (UK) ; Honduras ; Isle of Man (UK) ; Iles Marshall ; Jamaïque ; Kiribati ; Liberia ; Malte ; Mongolia ; Panama ; Philippines ; Sao Tomé & Principe ; Saint-Kitts & Nevis ; Saint-Vincent & the G. ; Tuvalu ; Vanuatu ; Wallis-et-Futuna (FR)	Bermuda ; Cyprus ; Hong-Kong ; Luxembourg ; Singapore ; United-Kingdom (incl. Red Ensign UK)
	Low $0 \leq if < 0,4$	Bangladesh ; Brasil ; India ; Indonesia ; Italy ; Netherlands ; Russia ; South-Korea ; Sri Lanka	Belgium ; Canada ; China ; Denmark (incl. DIS) ; France (incl. RIF) ; Germany (incl. GIS) ; Greece ; Japan ; Lebanon ; Norway (incl. NIS) ; Spain (incl. Canary Is.) ; Sweden ; Taiwan ; Turkey ; USA

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Goals today:

- **Goals of shipowners** (most well known):
 “reducing operating costs”, and especially

- . Crew costs
- . Registration costs
- . Maintenance and repairs.

- **Goals of the countries** (looks like Offshore Financial Centres) :

- . Registration fees (initial and annual)
- . Taxes
- . Local employment
 - > legal aspects of fleet management;
 - > manning.

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Provisions implemented by the Open Registers:

- First idea :

the Register is no more a **legal** tool for State sovereignty, defence, "prestige", but simply a **service** that may be **paid** by a **customer**, in an **economical** context of Supply and Demand.

- Second :

competition between countries to attract corporations, income and employment (See in Europe with fiscality and subsidies). The competition is about Law and Public Regulations, that determine costs.

- Therefore,

every country will be in competition to offer a service to shipowners:

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Demand = Crew costs
Registration costs
Maintenance and repairs

Supply = State (or international) regulations that allow the reduction of operating costs :

- . **Nationality** : shipowner, seafarers, (captain, officers, crew)
- . **Taxes** : low registration fee; tonnage tax; tax exemption on wages earned on board, etc.
- . **Labour Law and Social Security** : for non nationals: labour regulations and contracts, and health service regulations and pension schemes are "freely" chosen
- . **Safety**: minimum safe manning, nationality of seafarers; international conventions; statutory surveys performed by Classification Societies on behalf of Flag State, etc.

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New requirements implemented by **coastal States** since 80's

- General framework : new risks
 - . safety at sea, marine pollution (Shipwrecks, etc.)
 - . terrorism, drug or weapons trafficking, etc.
- Response = a new balance between **Coastal States** and **Flag States**
 - . UNCLOS – 1982 (Rights of protection of the coastal State)
 - . Paris Memorandum Of Understanding on Port State Control (1982)
 - . Provisions taken by Industrialized nations Organisation for Economic Co-Operation and Development (OECD) and others Group of 7 (G7), Group of 8, Group of 20, etc.

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A quick focus on Safety and Security.

-Safety *lato sensu*

(SOLAS Convention 1974, MARPOL 1973/78, STCW 1978/95, Maritime Labour Convention 2006)

-Security

(Rome Convention SUA 1988 (Attack of "Achille Lauro" 1985), and SOLAS Amendments 2002 (esp. since the September 11th Attacks))

- Notwithstanding the substance, we think there is
 - . a **globalization of the rules** (UN, IMO, ILO)
 - . a **general implementation by coastal States** instead of Flag States. *Examples:*
 - > *PSC – Paris MoU; Caribbean MoU 1996;*
 - > *traffic control in territorial seas or high seas, according to UNCLOS;*
 - > *Oil Spills Protocol of the Cartagena Convention 1983 in Wide Caribbean.*

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Paradoxically, perhaps there are **good prospects for Open Registers. Why ?**

First, being pragmatic, the growth of OR in the Lesser Antilles (and in the world) continues.

Example : From 1980 to 2010, the total fleet registered in the Eastern Caribbean countries jumps from 233,000 dwt to 90,330,000 dwt ...

(Data UNCTAD, in thousands deadweight tons; Antigua & Barbuda; Bahamas; Barbados; BVI; Dominica; Former Netherlands Antilles; St. Kitts & Nevis; St. Vincent & the G.)

The trend is general in the world : more countries (to morrow St.Lucia and Saint-Martin (FR)), more tonnage under OR.

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Second, **Open Registers appears as new standards for shipping.**

-Today, International standards (in safety, security, labour, skilling, etc.) are a compromise between States, because international organizations are looking for unanimity.

Examples: SOLAS Amendments 2002, Maritime Labour Convention, etc. adopted by all States.

-Moreover, "Traditional Maritime States" (especially member of OECD, but not only (China, for instance) have developed since the middle 80's their own "Open Registers", so named "International Registers" to stop flagging out towards "genuine" Open Registers :

Examples : Norway (1987), Denmark (1988), Portugal-Madeira (1989), Germany (1989), Spain-Canary Is. (1994), UK (1995), Italy (1998)...

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To conclude,

Our hypothesis is that,

- paradoxically, with the reinforcement of control by coastal States and the globalization of international conventions, the Flag States are more free to develop Open Registers

- we think there's a real economic interest for small island states of Eastern Caribbean in developing this kind of services.

Thank you for your attention.