REPUBLIC OF TURKEY

ANKARA UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

DEPARTMENT OF MARITIME TRANSPORTATION

LAW AND POLITICS

AN ANALYSIS OF FRAUDULENT SHIP REGISTRY

Master's Thesis

EKREM EMRE TOMBAK

Ankara, 2021

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I state that all the information in my master's thesis titled "AN ANALYSIS OF FRAUDULENT SHIP REGISTRY (Ankara.2021)", which I prepared under the supervision of Prof. Dr. Hakan KARAN, was collected and presented in accordance with academic rules and ethical behavior principles, I fully indicated the information I received from other sources in the text and in the bibliography, I declare that I have acted in accordance with the ethical rules, and I will accept any legal consequences in case the contrary arises.

Date: 13/07/2021
Ekrem Emre TOMBAK

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LIST OF ABBREVIATIONS

AIS	Automatic Identification System
Austl & NZ Mar LJ	Australian and New Zealand Maritime Law Journal
Circ.	Circular
CLC	International Convention on Civil Liability for Oil Pollution Damage
CSR	Continuous Synopsis Record
DRC	Democratic Republic of the Congo
ed.	Edition
Eds.	Editors
Envtl Pol'y & L	Environmental Policy and Law
etc.	Et cetera
FSM	Federated States of Micronesia
GISIS	Global Integrated Shipping Information System
ILO	International Labour Organization
IMO	International Maritime Organization
INTERPOL	International Criminal Police Organization
Intervention Convention	International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties
Int'l L	International Lawyer
ISM	International Safety Management
ISPS	International Ship and Port Facility Security
Iss.	Issue
ITF	International Transport Workers' Federation
ITLOS	International Tribunal for the Law of the Sea
IUU Fishing	Illegal, Unreported, and Unregulated Fishing
J Mar L & Com	Journal of Maritime Law and Commerce
LEG	Legal Committee
MARPOL	International Convention for the Prevention of Pollution from Ships
MEPC	Marine Environment Protection Committee
MISR	the Micronesian International Ship Registry
MoU	Memorandum of Understanding
MSC	Maritime Safety Committee
N.C. J. Int'l L. & Com. Reg.	The North Carolina Journal of International Law and Commercial Regulation
NMFT	No More Favourable Treatment
Nordic J Int'l L	Nordic Journal of International Law
Ocean & Coastal LJ	Ocean and Coastal Law Journal
Ocean Dev & Int'l L	Ocean Development and International Law
Ocean L & Pol'y Series	Ocean Law and Policy Series
Ocean YB	Ocean Yearbook
OG	Official Gazette
p.	Page
Pac Rim L & Pol'y J	Pacific Rim Law & Policy Journal

Pace Y.B. Int'l L.	Pace Yearbook of International Law
Res.	Resolution
SOLAS	International Convention for the Safety of Life at Sea
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
Tul Mar LJ	Tulane Maritime Law Journal
UAE	United Arab Emirates
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea, 1982
UNCROS	United Nations Convention on Conditions for Registration of Ships, 1986
UNCTAD	United Nations Conference on Trade and Development
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolutions
UNTS	United Nations Treaty Series
US	United States
Vol.	Volume
WMU	World Maritime University

INTRODUCTION

A) SUBJECT AND PURPOSE OF THE THESIS

In the sea and maritime law, there have been certain essential principles such as the freedom of the high seas. The principle is explained as the unrestricted access presented to the ships, not on any account of the nationality of the ships for any location of the high seas[1].

It has been established and deemed significant throughout history. It is an essential principle due to its contributions, such as communication and transportation, to the international maritime community. It has provided navigational freedom to the vessels.

This freedom is not unlimited. The vessels require authority over them for the protection of the international maritime order under international legal regimes. Since vessels without jurisdiction and control could cause violations, Connection of every ship on the high seas with a State's jurisdiction has appeared feasible and beneficial.

In line therewith, the requirement of nationality for each ship at the high seas has emerged[2] to constitute an authority over vessels. Since there is not any State jurisdiction over a vessel other than the flag State on the high seas, this principle has become significant for the international maritime community.

States have been empowered to determine their ship registration conditions exclusively since it was stated in the "United Nations Convention on the Law of the Sea (UNCLOS)"[3] as well[4]. Vessels have been granted nationalities for the freedom of high seas and have become responsible within their flag States jurisdiction. Their nationalities have become an essential element of the sea and maritime law and in inspections they have been required to prove their nationality to enjoy their freedoms.

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[1] Ademuni-Odeke: *Bareboat Charter (Ship) Registration,* The Hague 1997, p. 7.
[2] *ibid* 20.
[3] United Nations Convention on the Law of the Sea (UNCLOS), Montego Bay, opened for signature on 10 December 1982, entered into force on 16 November 1994, UNTS 31363, Turkey is not a State party to the Convention, <https://treaties.un.org/doc/Treaties/1994/11/19941116%2005-26%20AM/ Ch_XXI_06p.pdf> (accessed on 16/05/2021).
[4] Coles, R. / Watt, E.: *Ship Registration Law and Practice,* 2nd ed., London 2009, p. 7.

Even though flag State jurisdiction has appointed inspection authorities for each registered vessel, there has still been a remarkable deficiency relating to the supervision of ships. Flag State inspections and controls have not been accomplished as planned.

One of the main cause of the deficiency is the lack of adequate power of flag States over vessel owners or operators under the consequences of the internationality of the maritime industry. One of the reasons for this occurrence is the underage of "the genuine link" definition in the sea and maritime law.

Some States, as flag of convenience States, have determined fewer requirements for the registration of vessels than others. So, the owners or operators of vessels have tended to register their vessels to these open registries[5].

The emergence of flag of convenience States has been eventuated the ship owners to hide their true identity and nationality in the occurrences such as political decline, insurrections, prohibition laws, wars, and other circumstances in which the supervision of vessels becomes vital. Such vessels have been registered to gain advantages against the order of law.

Later, it has been realized that flag of convenience is not necessary to gain such advantages. Since, at inspections, the verification of the nationality of vessels and their compliance has not been accomplished through the officials of the registration State, fraudulent methods could be used to deceive the inspection authorities of other States. Thereby fraudulent ship registration concept has arisen.

Considering fraudulent ship registries, there have been similarities concerning the appearances and outcomes of fraudulent ship registries and flag of convenience registries. Both have fewer requirements for the obtainment of the required documents and certain advantages for owners or operators of vessels in the divisions of taxation, seafarers, marine environment, and maritime safety and security.

There are similarities between the prevention methods of both concepts as well. Since these vessels have taken place in the maritime community; to prevent such acts,

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5 *The M/V 'Saiga' Case, St. Vincent and the Grenadines v Guinea*, 1999 ITLOS, p. 2.

they have been required to be spotted, convicted to indemnities, and prosecuted in necessary situations. To spot them, convict them to indemnities, and prosecute them, the inspections would appear elemental.

In this work, fraudulent ship registration is studied. The topic is going to be divided into four parts. The first part includes fraudulent ship registration in the aspects of overview, suffered States, methods of fraudulent ship registration, illegitimate activities associated with fraudulent ship registration, and right of visit.

The second part explains the association of fraudulent ship registries with flag State jurisdiction, the correlation between genuine link and registries, the importance of effective flag State jurisdiction, and the similarities between fraudulent ship registries and flag of convenience. The third part scrutinizes the port State jurisdiction and its connection with fraudulent ship registration. The fourth part deals with measures to prevent fraudulent ship registration with the inclusion of maritime security and maritime safety matters including measures regarding the prevention of fraudulent ship registration.

B) SCOPE AND AIM OF THE THESIS

The scope and aim of the thesis are the determination, explanation, and analysis of the fraudulent ship registration under the cases regarding the States, the suggestions of member States, and the International Maritime Organization (IMO) Legal Committee Meetings[6] with the sea and maritime law concepts such as flag State jurisdiction, port State jurisdiction, genuine link and flag of convenience. Fraudulent ship registration has been an irritant difficulty that has been discerned in recent times and has become essential regarding the States and the IMO as having harmful consequences[7].

To prevent fraudulent ship registries, certain measures have been proposed. Though there has been a prompt response to this situation, the authenticity of this issue has produced the further requirement of evaluation and explanation of these measures.

[6] The issue has been discussed at the 106th IMO Legal Meeting.
[7] The IMO: “LEG 106/7/1”, 15 January 2019, p. 1 (“LEG 106/7/1”).

Hereinafter, fraudulent ship registration is examined in the light of the sea and maritime law.

Hereinbelow, the following questions are addressed:

- What is fraudulent ship registry?
- Which countries suffer from fraudulent ship registry?
- Which methods have been used to defraud at ship registry?
- How may the right of visit under the UNCLOS relating to fraudulently registered ships be interpreted?
- How are flag State jurisdiction and fraudulent ship registry associated?
- What is the significance of the "United Nations Convention on Conditions for the Registration of Ships (UNCROS)"[8] regarding fraudulent ship registry?
- How may port State Control obstruct fraudulent ship registry?

C) METHOD USED IN THE THESIS

In this thesis, the subject has been presented theoretically and practically under the usage of the IMO Legal Committee Reports. The subject has been demonstrated in the consideration of the sea and maritime law, and the concerned regulations will be comparatively analyzed with certain other international regulations, and the topics on the subject of the thesis are discussed.

After examining and explaining the relevant articles of international conventions, laws, and regulations, which are the basic sources of the study, the doctrinal resources have been referred as well. Besides, judicial decisions, reports, and statistical data are used, where the reflective outcomes of the topic may be found in practice.

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[8] United Nations Convention on Conditions for the Registration of Ships (UNCROS), adopted on 7 February 1986, not yet into force, Turkey is not a State party to the Convention, <https://treaties.un.org/doc/Treaties/1986/02/19860207%2008-58%20AM/Ch_XII_07p.pdf> (accessed on 16/05/2021).

I. FRAUDULENT SHIP REGISTRY

A) OVERVIEW

International organizations and States have just focused on fraudulent ship registration[9]. This situation has occurred as a result of the subjection of certain States to fraudulent ship registries.

The topic has been discussed at the IMO Legal Committee. At 105th IMO Legal Committee session, the documents concerning for proposition of prospective precautions to prevent unlawful activities concerning fraudulent ship registration have been considered[10].

At this session, the "United Arab Emirates (UAE)" has submitted a document for the proposal of the new output regarding this issue. The UAE has also stated that, under the advice of the "Federated States of Micronesia (FSM)", it had banned all ships fly the Micronesian flag from its ports and waters[11].

Along with such incidents, at the Legal Committee Meeting, it has been acknowledged that the issue must be scrutinized from its beginning. There have been certain precautions such as information given by the IMO regarding this topic through circular letters and port ban that has been applied by certain States. Yet, they are not sufficient for the prevention of this matter.

To comprehend the subject, the definitions of "fraudulent registration" and "fraudulent registries" are required. As there have been no concluded definitions of these terms, only the suggestions regarding the definitions could be mentioned.

According to the Correspondence Group of the IMO regarding the issue, the suggested definitions of these terms has stated below[12]:

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9 The IMO: "Circular Letter No.3717", 23 March 2017, p. 1 ("Circular Letter No.3717").
10 The IMO, "LEG 106/7/1", 1.
11 The IMO: "LEG 105/11/5", 27 February 2018, p. 2.
12 This definition has been suggested at the IMO Correspondence Group.

> "Fraudulent registration [of a ship] means the intentional misrepresentation of information and documentation by which a ship is given its nationality without the authorization by the Government of the misrepresented flag State;
>
> Fraudulent registry is an unauthorized body or entity that intentionally misrepresents that it is in charge of the registration of ships."

The "fraudulent registration" definition has included certain elements. At first, there should be misrepresentation of information and documentation elements. This misrepresentation should be intentional as well.

The intentional misrepresentation of information and documentation should concern the issue of granting nationality to a ship. This grant should be not accredited by the misrepresented flag State's Government.

The "fraudulent registry" definition has included certain elements as well. There should be an unauthorized body or entity. This unauthorized body should misrepresent itself.

The misrepresentation should be intentional. The misrepresentation should cause the perception that the unauthorized body or entity is in charge of the registration of ships.

There is also another suggestion which Karan has made stated below[13]:

> "Fraudulent registration means the intentional use of a registration, flag and/or documents of registration of a State of Registry in violation or in excess of the authority granted by that State.
>
> Fraudulent registry means any entity or person intentionally purporting to keep the records of ships as a legitimate registry in such a way as to generate fraudulent registration."

He has stated simpler definitions regarding this matter. These definitions include all the elements of the fraudulent registration and the fraudulent registry together.

[13] This definition has been suggested at the IMO Correspondence Group.

Georgia has proposed the definition of the fraudulent registry as stated below[14]:

> "Fraudulent registry is an unauthorized body or entity that intentionally misrepresents that it is in charge of the registration of ships [on behalf of flag state]"

This definition has certain similarities with the definition of the Correspondence Group of the IMO. It has only included the registration process that has been accomplished on behalf of a flag State.

According to the UAE, registration, by itself, means an act or process. The definition of the State is below[15]:

> "Fraudulent registration [of a ship] means the intentional act/process of misrepresentation of information and documentation by which a ship is given its nationality without the authorization by the Government of the misrepresented flag State."

The definition includes the act/process terms. The State has stated that as the registration is an act or a process, it can be included in the definition as well. As for the definition of the fraudulent registry, the State has supported the proposed definition of Georgia.

There are also proposed definitions of World Maritime University (WMU) as follows[16]:

> "Fraudulent registration [of a ship] means the intentional misrepresentation of information and documentation by which a ship is purportedly given its nationality without the authorization by the Government of the misrepresented flag State.

[14] This definition has been suggested at the IMO Correspondence Group.
[15] This definition has been suggested at the IMO Correspondence Group.
[16] This definition has been suggested at the IMO Correspondence Group.

> Fraudulent registry is an unauthorized body or entity that intentionally misrepresents that that it is authorized by the Government of a flag State for the registration of ships."

The "fraudulent registration" definition includes the term "purportedly". The reason for this inclusion is that the ship has not been granted nationality with fraudulent ship registration. The "fraudulent registry" definition includes "that it is authorized by the Government of a flag State for the registration of ships" part. The authorization must be given by a flag State and should concern the registration of ships.

For the discussion relating to the definitions of "fraudulent registration" and "fraudulent registry", it should be considered that the definitions should be simple, clear and include all aspects of the term needing for definitions. Suggested definitions of "fraudulent registration" and "fraudulent registry" are rational and acceptable. However, many of these definitions are elaborate. Karan's definitions are simpler definitions which contains all the elements of the fraudulent registration and the fraudulent registry together. In the light of Karan's definitions, the topic would be discussed more efficiently.

The prevention of fraudulent ship registration requires the inspection of vessels[17]. With such inspections fraudulently registered vessels may be detected. To do so, port State control could be used. Therefore, port State control mechanism may be vital to prevent the matter.

Yet, certain ports have insufficient port State control regarding vessels and their documents. The insufficiency has arisen from both the lack of trained port State control personals and difficulty of obtaining credible and current information concerning the registration of vessels from other States. It has led the current situation to become appealing for fraudulently registered ships as their identification would become more difficult.

The situation has caused an increase in fraudulently registered vessels. Thereby the IMO Legal Committee has drawn its attention to fraudulent ship registration. To fight

[17] The IMO: "LEG 106/7/2", 11 January 2019, p. 4 ("LEG 106/7/2").

against it, certain measures should be adopted. These measures must include a mechanism to centralize States' ship registration information.

The mechanism must contain the information of the accreditation and the identification of authorized legal entities for registration of vessels on account of the States. If it could be established, it may become less complicated for port State control authorities to obtain reliable data regarding the registration information of vessels.

Fraudulent ship registration has other aspects to scrutinize. To analyze the issue, its history should be considered. Problems that occurred from fraudulent ship registration have been stated by the "Democratic Republic of the Congo (DRC)" before the UAE. At 104th IMO Legal Committee Meeting, the DRC stated fraudulent use of the Congolese flag[18]. It has been revealed when the International Criminal Police Organization (INTERPOL) has contacted the DRC for authorization to prosecute two ships that fly the Congolese flag.

The INTERPOL had detained these ships in Spain while transporting illegal narcotics onboard. Later, it was found out that they were not registered to the Congolese registry. They had fraudulently flown the Congolese flag. This incident has caused further investigations to be made regarding the fraudulent ship registries.

The investigations have revealed that there are 73 fraudulently registered ships out of the 84 ships which have been appeared at the Congolese registry since 2015, and only 11 vessels have been legally registered to the registry. The legally registered vessels to the Congolese registry have appeared either in sheltered waters or local traders[19].

B) STATES SUFFERED FROM FRAUDULENT SHIP REGISTRY

Fraudulent ship registration is a serious issue with adverse consequences. The DRC's situation has demonstrated to other States that the matter tends to increase its severity.

[18] The IMO: "LEG 106/7", 27 March 2019, p. 2 ("LEG 106/7").
[19] *ibid* 2.

Fraudulent ship registration has caused to violations of international conventions. Since fraudulently registered vessels are often associated with international criminal activities, all actors of the sea and maritime law will benefit from the obstruction of this phenomenon.

To prevent this incident, certain measures have been considered. All States and international organizations must cooperate to prevent fraudulent ship registries to the fullest extent of their abilities. The measures could become effective, only with the cooperation of the maritime community.

The international community, particularly the IMO, has taken this case more seriously as the importance of fraudulent ship registries has become more widely recognized. The conditions of the situation that arose from fraudulent ship registries have been scrutinized at the 106th IMO Legal Committee Meeting[20].

In the meeting, it has been realized that there are more States which have suffered from fraudulent ship registration. Those States are required to be analyzed for a deeper understanding of this concern. In this assessment, the States that have endured from this phenomenon are going to be listed, and the cases and statistics are going to be explained and examined.

One of the States that has suffered from fraudulent ship registries is the FSM which is not an IMO member State. In the case of the FSM Government's subjection to fraudulent ship registries, the IMO has been contacted by an individual, and this individual alleged to be the MISR director[21]. The individual requested a user id and password for submission and update the maritime administration details of the FSM to the IMO. The IMO requested relevant information from the individual, and the Organization has received the relevant document that is significantly similar to the document which they have been received from the FSM Government previously. In the light of these circumstances, the individual has been provided with a user id and password of an administrator account by the IMO[22]. The individual also made another request

[20] The discussion regarding fraudulent ship registration has continued.
[21] The IMO, "LEG 106/7", 3.
[22] *ibid* 2.

regarding the website link of the maritime administration concerning the online certificate verification of the seafarers and registration of ships [23]. As there has been no doubt regarding the personality of the individual, the IMO has made the update. Later, it has been understood that these acts of the individual, and the document submitted to the IMO were fraudulent. There was not any legislation that has been enacted by the FSM Government regarding the permission of international ship registration using the FSM flag, neither was there any appointed authority to engage in registration activities. In the light of the reveal of such fraudulent activities, the FSM Government has started to work with the IHS Markit for the determination of vessels which fly its flag fraudulently[24].

One of the other victims of fraudulent ship registration has been the Government of Fiji. The Fijian Maritime Safety Authority has reported that there were fraudulently registered ships at the Fijian registry. It has been revealed that 91 vessels have been related to such fraudulent activities[25]. The Fijian Government has requested the IMO to circulate the letter that has been issued by the Authority. The letter has stated that the Government had received certain letters regarding the reports of different States and port State authorities concerning fraudulently registered ships at the Fijian registry[26]. At the letter, the ships which have been fraudulently registered to the Fijian registry have been enlisted. It also has been stated that the Fijian Government has not had any internationally operated vessels registered, and that the Fijian Government has only operated a close registry. Under the reveal of the Fijian Government regarding the fraudulently registered vessels, most of these vessels changed their flags, and some of them have still had an "unknown" flag[27].

It has been reported by the Government of the Republic of Maldives that three foreign vessels have flown the Maldives flag fraudulently with the fraudulent registration documents[28]. The Maldives Government has requested from the IMO to circulate a letter that has been issued by the Maldives Transportation Authority. According to this letter, one of these vessels has been involved in a ship-to-ship transfer with a tanker. The tanker

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23 *ibid* 4.
24 *ibid* 3.
25 *ibid* 3.
26 *ibid* 3.
27 The IMO: "Circular Letter No.3798", 6 October 2017, p. 1.
28 The IMO, "LEG 106/7", 3.

belonged to a State which has been sanctioned with the UN. Also, it has been clarified by the Maldives Government that the State has not maintained any open registry. According to the Maldives Government, two of these vessels have become obliged to change their flags[29].

It has been reported by the Republic of Nauru that a vessel registry website with the name of "Nauru Maritime Administration – International Ship Registry" with the domain name of "www.maritimenauru.com" has been created fraudulently[30]. The fraudulent ship registry website has been included certain misleading information regarding its contents. The website has used the name, the emblem, and the flag of the State without the authorization of the Nauru Government. The actual authorized international ship registration of the Nauru Government is "the National Project Ltd.". It has been based in Hong Kong. The name of the domain of the authorized international ship registry of the Nauru Government has been "www.naurumaritime.com"[31]. There have been certain similarities between the authorized international ship registry of the Nauru Government and fraudulent ship registries. Since the procedures and the authorities of States' ship registrations are complicated for ship-owners and operator, individuals who have operated fraudulent ship registration use this complication for their interest.

Another State which has suffered from fraudulent ship registry is the Government of Samoa. The Samoan Government has notified the IMO of that it has been subjected to fraudulent ship registration because of its former recognized organization[32]. The Samoan Government has reported that they had revoked the authorization of their formal recognized organization which has been named "Ascent Navals". However, despite the revocation of the authorization, it has kept issuing the ship certificates such as "International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)"[33] certificates[34]. The Samoan Government has also informed the IMO

[29] The IMO: "Circular Letter No.3840", 10 April 2018, p. 2.
[30] The IMO, "LEG 106/7", 4.
[31] The IMO: "Circular Letter No.3855", 20 June 2018, p. 1.
[32] The IMO, "LEG 106/7", 5.
[33] International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), adopted on 7 July 1978, entered into force on 28 April 1984, UNTS 23001, Turkey is State party to the Convention, 26 August 2003 dated 6109 numbered Cabinet Decree, 20 April 1990 dated 3539 numbered Act, 28 April 1989 dated 20152 numbered OG, <https://treaties.un.org/doc/Publication/UNTS/Volume%201361/volume-1361-I-23001-English.pdf> (accessed on 16/05/2021).
[34] The IMO: "Circular Letter No.3866", 17 July 2018, p. 1.

regarding its ship registry and vessels which have been fraudulently registered to its registry. The Samoan Government has stated that it has been currently operating a closed registry and it has not had any recognized organizations. The State has also reported that there have been 15 vessels having been duly registered to Samoan registry whereas there have been 18 vessels flying the Samoan flag fraudulently[35].

It also has been reported by the United Republic of Tanzania that there have been vessels that had been fraudulently flown the Tanzanian flag[36]. According to the Tanzanian Government, their former recognized organization which has been named "Philtex Corporation (Belize) Ltd." had fraudulently registered vessels to the Tanzanian ship registry[37]. The corporation had been the recognized organization of the Tanzania Zanzibar Register of Shipping once, but then the authorization was terminated[38]. Thereafter, the corporation had started to illegally register ships and issue fake renewals of certificates on behalf of the Tanzanian flag. The situation has been notified to the IMO by the Tanzanian Government. The Tanzanian Government has also informed the IMO about the 11 fraudulently registered vessels to the Tanzanian registry. This information has been circulated by the IMO through the letter which the Tanzanian Government had issued[39].

It has been reported by the Government of the Republic of Vanuatu that there has been a company which has been named "Ahapi Shipping Agents" that has been involved in the operation of an illegitimate Vanuatu international ship registry. The company had established a website that has the domain name: "http://vanuatu-shipping-registry.com"[40]. The Vanuatu Government has requested from the IMO to circulate the letter which has stated the situation. The letter has also indicated that the duly authorized international registry of Vanuatu is "the Vanuatu Maritime Services Ltd.". It has been operating from New York and has a website under the domain name: "www.vanuatumaritimeships.com"[41]. From all these cases above, it is clear that there have been certain similarities among the cases of fraudulent ship registries.

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35 The IMO: "Circular Letter No.3854", 20 June 2018, p. 1.
36 The IMO, "LEG 106/7", 6.
37 *ibid* 6.
38 The IMO: "Circular Letter No.3597", 15 October 2015, p. 1.
39 The IMO: "Circular Letter No.3876", 4 September 2018, p. 1.
40 The IMO, "LEG 106/7", 6.
41 The IMO: "Circular Letter No.3734", 20 June 2017, p. 1.

Article 91 of the UNCLOS has explicitly stated that all States shall determine the conditions concerning the granting their nationality to ships, registration conditions of ships, and the right to fly their flag. One of the main purposes of the vessel registration is the granting of the State's nationality and to assure an influential flag State jurisdiction over its ships[42]. Yet, due to the complexity of the procedures of the registration and the lack of knowledge concerning the registration authorities; fraudulent parties have established fraudulent ship registries and operated them without encountering any difficulties. They have established their fraudulence on the lack of knowledge of the procedures and the authorities regarding the States' ship registration. Since the official registries had not maintained and protected their registries efficiently and port States have not contacted the registration States to verify the registration of such vessels; fraudulent parties would continue to operate fraudulent ship registries.

C) METHODS OF FRAUDULENT SHIP REGISTRY

Increasing cases of fraudulent ship registration has become concern of the international maritime community and industry. Certain solutions needed to be introduced for the prevention of the matter.

To eliminate fraudulent ship registration, flag State control and port State control may be used as an efficient means if they could be implemented and enforced effectively. However, due to deficiency of available information concerning registration procedures and States' officials, fraudulent ship registries have still actively operated. Though most of the States have efficient ship registration procedures, the insufficiency regarding such control mechanisms caused the decrease in the implementation of the regulations.

Since there has not been adequate knowledge concerning fraudulent ship registration, it has appeared to be difficult to decrease and eradicate this phenomenon effectively. Owing to these circumstances and the discussions regarding fraudulent ship registration which has recently begun, it should be noted that this concept has required more attention and analysis.

[42] Coles / Watt, 11.

The analysis of this issue should also include the methods of fraudulent ship registration. At the 106th the IMO Legal Committee Meeting, this topic has been discussed and certain States have stated their opinions regarding this matter and its methods[43].

The statements have revealed that the actors of the international maritime community may be deceived by the operators of fraudulent ship registration concerning forging fraudulent documents and obtaining information. The companies which operate fraudulent ship registries have a globally widened business. They have attempted to deceive the actors of the maritime community and the IMO with fraudulent documents[44]. They have also created websites that have seemed authentic and have claimed that they are the officially recognized organizations of the States[45]. Since the individuals have resided in different States, the victim States have faced difficulty concerning the institution of any claim against them.

There have been certain States which either have not operated an international ship registry or closed their international ship registries[46]. Even so, due to the lack of knowledge regarding the States' procedures and authorities concerning the ship registration, fraudulent ship registries have been in operation and have still register vessels fraudulently. In certain cases, even though the States have terminated the authorization of recognized organization concerning the registration, there are certain companies which have continued to fraudulent ship registration[47] despite the port detention risk[48].

The matter has been rather complicated due to the actors, methods and other varieties of fraudulent ship registration. Though it has been a complex matter, it has had certain importance concerning the maritime industry and has been therefore required to demonstrate a full consideration. In the maritime commerce world, there have been

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[43] The IMO, "LEG 106/7", 1.
[44] *ibid* 2.
[45] *ibid* 4.
[46] Coles / Watt, 35.
[47] The IMO, "LEG 106/7/2", 2.
[48] Özçayır, O.: *Port State Control*, 2nd ed., London 2004, p. 65.

several factors that could spoil the balance of the industry including fraudulent ship registration.

The lack of communication and information concerning the authorities and procedures of the States' vessel registration results in fraudulent ship registration, and this phenomenon should be scrutinized and classified. There have been two kinds of acts which considered fraudulent ship registration as fraudulent flagging and the operation of fraudulent ship registries[49]. The fraudulent flagging of ships method may be explained as a method of committing fraud in which vessel's owner or operator has changed vessel's flag and identity. Conversely, the other method is a technique of committing fraud that the third parties have represented themselves as authorities and recognized organizations regarding the national ship registries and have issued fraudulent documents.

Moreover, fraudulent registration of vessels and related illegitimate activities including ship registration without the consent or knowledge of the States' registration administration, and several tactics concerned this matter should be explained. These tactics could appear as fraudulently established ship registration websites, forged documents, and shell companies that have fraudulently conducted the functions of flag States[50]. At the 106th IMO Legal Committee meeting, the US has reported some of these tactics[51] as follows:

One of the tactics is the "terminated registry" tactic. This tactic involves a vessel that has the right to fly a State's flag. After termination or expiration of the right to fly the flag, these vessels have continued to fly the flag[52].

The second tactic is the "fraudulent representation to the IMO" tactic. It is a rather sophisticated tactic of fraudulent ship registration[53]. In the tactic, there has been a submission of fraudulent documents to the IMO on behalf of a State. This submission has occurred to obtain relevant IMO documents and a ship identification number. The submitted documents have appeared as original documents with authentic-looking

49 The IMO, "LEG 106/7", 1.
50 The IMO, "LEG 106/7/2", 2.
51 *ibid* 2.
52 *ibid* 2.
53 *ibid* 2.

signatures. The communication between the IMO and the fraudulent party has occurred without flag State's knowledge.

Another tactic is the "broadcasting falsified 'automatic identification system (AIS)' data". In the tactic, vessel's AIS data has been altered or manipulated[54]. This manipulation has occurred to materially alter the identity information of the vessel or to use another ship's data. These tactics of fraudulent registration of ships, the proliferation of fraudulent registries, and related deceptive shipping practices are serious threats to the security and safety of international shipping[55].

There have been several reasons for vessels committing fraudulent ship registration. An important one of these reasons is to commit illicit activities. Fraudulent ship registration has been an efficient means for vessels to conceal their illicit activities onboard. Even, some of these activities have been prohibited by the UN Sanctions[56].

Vessel owners have used several deceptive tactics for the evasion of the UN Sanctions, such as fraudulent ship registration. The tactics that have caused the identity of the vessel to obfuscate are explained below:

"Physical Alteration of Vessel's Identification" has been one of them[57]. "International Convention for the Safety of Life at Sea (SOLAS)"[58] has required vessels that have met a certain tonnage limit to display their names and the IMO number in a visible location. The vessel's IMO number has been regulated as a permanent number[59]. It could not be changed regardless of transfer of ownership or change of the vessel's name.

Even though there has been such a requirement, certain vessels have altered their information regarding their identities such as the name or the IMO number of the vessel.

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54 *ibid* 2.
55 *ibid* 2.
56 *ibid* 3.
57 *ibid* 3.
58 International Convention for the Safety of Life at Sea (SOLAS), adopted on 1 November 1974, entered into force on 25 May 1980, UNTS 18961, Turkey is State party to the Convention, 6 March 1980 dated 522 numbered Cabinet Decree, 25 May 1980 dated 16998 numbered OG, <https://treaties.un.org/doc/Publication/UNTS/Volume%201184/volume-1184-I-18961-English.pdf> (accessed on 16/05/2021).
59 The IMO: "A 30/Res.1117", 18 December 2017, p. 1, ("A 30/Res.1117").

They have committed such infringement to obscure their identity. As a result, they may have passed themselves off as different ships. Such physical alterations have included painting over the IMO number and vessel name with alternate ones.

"Constructive Alteration of Vessel's Identification" as another tactic[60] has included certain other alterations such as alteration through the changing of the vessel's call sign, the new Maritime Mobile Service Identity number adoption, and the omission of the IMO numbers from AIS transmission. One of its following sample cases was discussed at the IMO Legal Committee Meeting[61]:

The M/T YUK TUNG is the vessel in which has incorporated both tactics stated above. She has been observed during the conduction of a UN prohibited ship-to-ship transfer in January 2018. This ship-to-ship transfer has caused a global port ban by the UN Security Council 1718 Sanctions Committee as from 30 March 2018[62]. After the global port ban, the vessel has been observed during her attempt to conceal her identity by way of her operation under a new name "MAIKA" and her sister vessel's IMO number[63] to circumvent the global port ban.

Another case is the M/V XIN SHENG HAI, which has been suspected of violation of the UN Sanctions in 2017[64], as an example of complete alteration of vessel identification, including the obtainment of a new IMO number. The vessel under the investigation of port State control officers has been found out that she received a new IMO number because of the falsified information rendered to the IMO.

The examples explained above have demonstrated some of the negative outcomes of fraudulent ship registration. Fraudulent registration of vessels has undermined the effects of the UN Sanctions. It has threatened vessels, vessel owners, operators, and service providers which have commercial relationships with these ships. The registry of flag State has also been undermined by such acts during the failure of the verification of the identity of the vessels which has been seeking for a new flag.

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60 The IMO, "LEG 106/7/2", 3.
61 *ibid* 3.
62 *ibid* 3.
63 *ibid* 2.
64 *ibid* 3.

D) ILLEGITIMATE ACTS ASSOCIATED WITH FRAUDULENT SHIP REGISTRY

1- Overview

Fraudulent ship registry is an act violating the sea and maritime law. However, it was, by its fraudulent nature, associated with certain illegal activities under the sea and maritime law. Some of them are as follows;

- Acts which have been forbidden with the UN Sanctions
- Illicit narcotics trafficking
- Migrant smuggling
- Illegal, unreported, and unregulated fishing

Fraudulent ship registration may assist to these acts. To demonstrate the connection between fraudulently registered vessels and these acts, the topic has required elaborating.

2- Acts Forbidden with the UN Sanctions

There have been certain individuals who have been seeking to bypass the UN sanctions and have been attempting to benefit from the sanctions. They use fraudulently registered vessels to cover their tracks and evade sanctions. One of the States which have been subjected to the UN Sanctions is the Democratic People's Republic of Korea[65]. The UN Security Council has adopted certain major sanctions and resolutions against the Korean Government as a result of the missile and nuclear activities of the State since 2006.

The Resolutions have also included provisions concerning the interdiction and inspection of the cargoes belonging to the State, afterward the seizure and disposal of the illicit shipments. To elude these sanctions, the Korean Government had developed certain illegitimate tactics regarding the maritime industry for the concealment of the information concerning the vessel's identity, the shipped goods, and the destination or origin of the cargo[66].

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65 UNSCR: "Resolution 2397", 22 December 2017, p. 6, ("Resolution 2397").
66 The IMO: "MSC 100/20", 10 January 2019, p. 61.

One of these tactics is the manipulation and disablement of the AIS system. It has been noted by the UN Security Council Resolution 2397 that the Korean flagged, operated, chartered or controlled ships intentionally ignored the AIS system requirements for evasion from the UN sanctions[67]. The tactic has assisted the ships to cover their tracks regarding the origin or destination of the cargo.

Another tactic is to change the ship's identification physically. The tactic has aided the vessel to hide her identity and demonstrate her as another vessel. Falsified ship and cargo documents have also been used by the Korean Government to conceal the cargo's destination or origin[68].

The ship-to-ship transfer has also been used by the Korean Government for the transfer of illicit cargo from a vessel to another at the sea. It may cover the destination or origin of prohibited coal, crude oil, and refined petroleum by demonstrating a legitimate transfer appearance. Xin Yuan 18 and Xin Sheng Hai which have been fraudulently registered vessels are examples of ship-to-ship transfer with the Korean Government to avoid the UN sanctions[69].

3- Illicit Narcotics Trafficking

Illicit narcotics trafficking is another illicit act associated with fraudulent ship registration. The DRC's situation may be demonstrated as an example.

The DRC Government denounced that their flags had been used fraudulently. The fraud had been revealed with the operation of INTERPOL to two of these vessels which had been intercepted in Spain. These ships had been loaded with a significant amount of illicit narcotics shipments[70].

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67 UNSCR, "Resolution 2397", 5.

68 For more information: Vassalotti, O. / Cameron, T.: "Trainer Fake Flags: At-Sea Sanctions Enforcement and Ship Identity Falsification", <https://thediplomat.com/2018/09/fake-flags-at-sea-sanctions-enforcement-and-ship-identity-falsification/> (accessed on 13/05/2021).

69 US Department of the Treasury: "Updated Guidance on Addressing North Korea's Illicit Shipping Practices", 21 March 2019, p. 5.

70 The IMO: "LEG 105/11", 19 January 2018, p. 1, ("LEG 105/11").

4- Migrant Smuggling

Migrant smuggling at sea is not a new concept. Many humans have attempted to migrate to other countries for various reasons. With this demand, migrant smugglers have had illegal opportunities to make more profit. Migrant smugglers have endangered the lives of humans as well as maritime safety and security. It is one of the vital purposes of the sea and maritime law to restrain migrant smuggling.

Fraudulent ship registration has been in association with migrant smuggling activities. As the crime has severe punishment, the smugglers have attempted to evade such punishments and fraudulent ship registration could be a viable concept for them to use.

5- Illegal, Unreported, and Unregulated Fishing

“Illegal, unreported, and unregulated fishing (IUU Fishing)” is an important menace to marine ecosystem. It has harmed the sustainability of fisheries and causes of extinction of marine species.

It has occurred both on national maritime jurisdictional areas and on the high seas. According to the INTERPOL, it is linked with labor exploitation, money laundering, forgery, and certain other organized crimes. IUU fishing is also in association with fraudulent ship registry[71].

[71] For more information: “Registration of ships and fraudulent registration matters the IMO”, <https://www.imo.org/en/OurWork/Legal/Pages/Registration-of-ships-and-fraudulent-registration-matters.aspx> (accessed on 12/05/2021).

II. PREVENTION OF FRAUDULENT SHIP REGISTRY

A) THE RIGHT OF VISIT AND FRAUDULENTLY REGISTERED SHIP

One of the aspects of fraudulent ship registration is the correlation between fraudulent ship registration and the right of visit. It has been defined as a right conferred upon warships for boarding certain ships in specified conditions arisen from the sea and maritime law. It is an exception for the exclusiveness of the jurisdiction of flag State[72].

Since vessels have been subjected to flag State's jurisdiction exclusively, the exercising of such jurisdiction is not merely discretional for flag States[73]. Even though flag States have been required to exercise their jurisdictions on their vessels, some flag States may fail to exercise such jurisdiction. Besides, fraudulently registered vessels could have the opportunity to circumvent the control and jurisdiction of the flag State as well.

These occurrences have led the sea and maritime law to evolve and adopt "the right of visit". According to the principle, under certain circumstances, a non-flag State may be able to intervene in a foreign-flagged vessel on the high seas[74]. In these cases, flag State's failure to enforce jurisdiction over its vessels has caused a deficit of the implementation of essential regulations and for the preservation of the global commons and other States' interests, it has been considered acceptable to interfere with such vessels to maintain balance and protect the interests of maritime community[75].

Origins of the right of visit principle have commenced from laws of war and this principle has been used as a means to ensure other vessels not carry contraband goods to enemies. This principle has been placed between two sides of the sea and maritime law which are; the freedom of high seas within the exclusive jurisdiction of the flag State and the effective enforcement of the sea and maritime law with supervision. It is of utmost

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72 Klein, N.: "The Right of Visit and the 2005 Protocol on the Suppression of Unlawful Acts against the Safety of Maritime Navigation." Denver Journal of International Law and Policy, 2007, Vol. 35, Iss. 2, p. 287, 289.

73 Allen, C. H.: "Peacetime Right of Approach and Visit", International Law Studies, 2019, Vol. 95, p. 401, 413.

74 Papastavridis, E. D.: "Crimes at Sea: A Law of the Sea Perspective", Report of the Director of Studies, p. 3, 15.

75 Klein, 290.

importance to balance the principle well to use it as an efficient means[76]. The principle has a simplified usage. It has bestowed a right to stop and board the vessel and, if there is a remained suspicion after boarding it, to search the vessel[77].

Only vessels with certain status may be subjected to this principle under the UNCLOS. Article 110 of the UNCLOS has codified that ships that have been granted immunity in conformity with Article 95 and 96 of the UNCLOS have not been subjected to the right of visit principle[78].

Since the Article 110 of the UNCLOS has its roots originated from Article 22 of the 1958 Geneva Convention on the High Seas[79], this Article has been supposed to be referred to as well.[80] The right of visit has been codified at the 1958 Geneva Convention on the High Seas as applicable in three circumstances as piracy, slave trade, and flying a foreign flag or refusing to show the flag whereas the ship has the same nationality of the warship.

The right of visit has been considered as a fundamental principle of the sea and maritime law and it is an exception of exclusive flag State jurisdiction and the principle of freedom of the high seas[81]. Thereby its codification and limitations have not been altered substantially at the UNCLOS either.

The scrutiny of the UNCLOS has demonstrated that vessels may visit and search foreign vessels on the high seas under this right, under certain conditions in Articles 92 and 110 of the UNCLOS. The UNCLOS Article 92 has remarked that vessels may sail under one State's flag only.

The UNCLOS Article 110 remarks that under certain circumstances, a warship that has encountered a foreign ship on the high seas is justified in boarding the ship in definite conditions for suspecting that the vessels is engaged in piracy, slave trade, unauthorized broadcasting and the flag State of the warship has jurisdiction under Article 109, without

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76 Allen, 414.
77 Klein, 298.
78 Allen, 421.
79 Convention on the High Seas, signed on 29 April 1958, entered into force on 30 September 1962, UNTS 6465, Turkey is not a State party to the Convention, <https://treaties.un.org/doc/Treaties/1963/01/19630103%2002-00%20AM/Ch_XXI_01_2_3_4_5p.pdf> (accessed on 16/05/2021).
80 Allen, 419.
81 *ibid* 416.

nationality, or though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship[82].

The UNCLOS has a relatively similar point of consideration along with the 1958 Geneva Convention on the High Seas regarding the codification of the right of visit[83]. The first paragraph of Article 110 of the UNCLOS states the circumstances in which the right of visit is applicable similar to the Geneva Convention on the High Seas with the inclusion of the situations of unauthorized broadcasting and stateless vessels.

The second paragraph of the Article introduces the right of verification similar to the Geneva Convention as well and the compensation right is also granted. Stateless ships could also be visited in pursuance of the UNCLOS[84]. In fraudulent registration of ships' case, the nationality aspect of the ship should be scrutinized.

There are certain aspects of this situation that have required an analysis. First of all, in the cases which fraudulently registered ship has her original flag State other than the fraudulently used flag, as a result of Article 92 of the UNCLOS, it can be stated that the ship is to be assimilated to a stateless ship and should be subjected to the right of visit. On the other hand, in the case of the fraudulently registered ship has not any flag State and has used a fraudulent flag, then she has become subject to the right of visit because of having no nationality.

Fraudulently registered ships may also be used in illicit activities specified in Article 110 of the UNCLOS such as slave trade, piracy or unauthorized broadcasting. Accordingly they may be subject to the right of visit in the light of the UNCLOS.

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82 *ibid* 421.
83 *ibid* 425.
84 Papastavridis, 18.

B) FLAG STATE JURISDICTION

1- Overview

It is possible to prevent fraudulent ship registration by certain controls and inspections one of which is the flag State control[85]. It is an exclusive and essential element of the aversion to illegal activities in maritime sector[86].

Jurisdiction over a ship relates to the nationality of the ship. The ship's nationality indicates the authority of the State over the vessel[87]. Flag State means that the State whose nationality the vessel bears and flies the flag which is the symbol of the nationality[88]. The nationalities for the vessels have been either obtained or verified by the registration of the vessel[89]. Registration is the entrance of an issue in the public records. Registration of the vessel causes the conferral of the nationality as with duties and rights shifted on ships by the sea and maritime law.

Through the developments in the sea and maritime law, it has been regarded that the oceans and seas between States should not be considered as the territories of States[90]. Along with the acceptance of the nationality concept and the principle of the freedom of the high seas, main jurisdiction over a ship on the high seas has become flag State jurisdiction[91].

As with the freedom of high seas and duties of the flag States, in the international waters, the compromise relating to the need for freedom of movement of the vessels and the requirements for the creation and maintenance of the public order at sea had been

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85 Coles / Watt, 11.
86 Ademuni-Odeke, X.: "Port State Control and UK Law", J Mar L & Com, 1997, Vol. 28, p. 657, 658.
87 Zwinge, T.: "Duties of Flag States to Implement and Enforce International Standards and Regulations - and Measures to Counter Their Failure to Do So", Journal of International Business and Law, 2011, Vol. 10, Iss. 2, p. 297, 300.
88 *ibid* 298.
89 Coles / Watt, 7.
90 Becker, M. A.: "The Shifting Public Order of the Oceans: Freedom of Navigation and the Interdiction of Ships at Sea", Harvard International Law Journal, Vol. 46, Iss. 1, p. 131, 168.
91 Sucharitkul, S.: "Liability and Responsibility of the State of Registration or the Flag State in Respect of Sea-Going Vessels, Aircraft and Spacecraft Registered by National Registration Authorities", The American Journal of Comparative Law, Vol. 54, p. 409, 415.

achieved[92]. Flag States have acquired several rights over their ships during the voyage on the high seas along with certain duties while exercising such rights[93].

Under Article 87 of the UNCLOS, the concept of the freedom of the high seas is stated as: "*The high seas are open to all States, whether coastal or land-locked.*". According to the UNCLOS, the high seas may be freely used for navigation, overflight, fishing, scientific research, submarine cables, pipeline laying, constructing artificial islands, and other installations which have been allowed under the sea and maritime law[94]. These freedoms have been main principles of the sea and maritime law and they may be exercised by all States[95].

According to Article 91 of the UNCLOS, deciding for the requirements and conditions to register has been under the States' jurisdictions only[96]. The registration of ships is a crucial element of the inspection and supervision of vessels. The determination of the conditions for the registration of vessels belongs to the States. It is inevitable to avoid complication unless there would be another balancing mechanism. To eliminate the complications arising from the difference of the law of the States, another cardinal principle has become "the genuine link".

2- The Genuine Link and the UNCROS

Flag State control is an important control mechanisms. It has established the authority of flag State over its vessels. Yet it is not as effective as it may be because of lack of sufficient connections between flag States and their vessels. The genuine link is there to establish such connections. It is significant for fraudulent ship registry since efficiency of flag State jurisdiction may be increased with the genuine link. Such an

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92 Becker, 177.

93 Behnam, A. / Faust, P.: "Twilight of Flag State Control", Ocean YB, 2003, Vol. 17, p. 167, 174.

94 Kimball, L. A.: "The International Legal Regime of the High Seas and the Seabed Beyond the Limits of National Jurisdiction and Options for Cooperation for the Establishment of Marine Protected Areas (MPAS) in Marine Areas Beyond the Limits of National Jurisdiction", Secretariat of the Convention on Biological Diversity, 2005, Technical Series no. 19, p. 5.

95 Talhelm, J. L.: "Curbing International Overfishing and the Need for Widespread Ratification of the United Nations Convention on the Law of the Sea", N.C. J. Int'l L. & Com. Reg., 1999, Vol. 25., p. 381, 393.

96 Churchill, R. R. / Hedley, C.: "The Meaning of the "Genuine Link" Requirement in Relation to the Nationality of Ships A Study prepared for the International Transport Workers' Federation", International Transport Workers' Federation, 2020, p. 6.

increase would lead to sufficient inspections and controls and fraudulently registered vessels would become easy to detect. Though its importance of the topic is significant, it had not been defined throughout history because of the complexity of the sea and maritime law.

"The genuine link" was firstly mentioned in Article 5 of the Geneva Convention on the High Seas 1958 requiring the existence of 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.

By the Convention, there must be a genuine link between the registered vessel and the registration State. However, the genuine link was not defined. Subsequently, the UNCTAD cultivated the aspects of genuine link[97].

The UNCTAD remarked that genuine link principle has aimed to ensure a solid connection between States and registering vessels to implement a forcible jurisdiction[98]. Interpretation of genuine link has required to be considered under economic connections between States and registered vessels for an effective jurisdiction and control. An enforceable administrative control of the State could be satisfied if the requirements for the registration of ships have been prepared in the light of economic ties between the vessels and the States[99]. Such an action would increase the impact of flag State jurisdiction and the chance of detection of fraudulently registered vessels.

The UNCTAD had made certain suggestions relating to satisfy sufficient connection. At first, there should be ties between vessel owner and flag State[100]. After that, place of business and the effective management should be in the flag State. The principal officers of the shipping company should be in the flag State. The flag State should be responsible for the final control of the company's taxation. Lastly, the registry State should exercise full and regular control over the vessel and her crew. Such actions would aid to determine individuals who may be held responsible and evade such

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97 *ibid* 29.

98 Kasoulides, G. C.: "The 1986 United Nations Convention on the Conditions for Registration of Vessels and the Question of Open Registry", Ocean Dev & Int'l L, 1989, Vol. 20, p. 543, 557.

99 McConnell, M. L.: "Business as Usual: An Evaluation of the 1986 United Nations Convention on Conditions for Registration of Ships", J Mar L & Com, 1987, Vol. 18, p. 435, 438.

100 Churchill / Hedley, 57.

situations which responsible individuals have not been detected. As with the possibility of detection of responsible individuals, the detections would increase. Therefore, with these connections, fraudulently registered vessels would face certain challenges against themselves since they would become easy to detect within increasing inspections and controls.

The detection of responsible individuals is an important element, but not sufficient. The suggestions confirm that for effective State control over the vessel, the State should have jurisdictional control over the administration of the ship-owner company[101]. If the State does not have a certain amount of control over the owner, sufficient flag State control could not be achieved.

Hence, the UNCTAD has tried to create regulations which the jurisdiction of a State over a ship under its control in administrative, technical, and social matters[102]. The establishment of the genuine link between vessels and States is a vital part of the flag State control.

Though genuine link is essential for flag State control, maritime safety, and security, it could not be defined expressly due to the complication of the agreement method of the sea and maritime law. After the 1958 Geneva Convention on the High Seas, the UNCLOS also introduces the genuine link but not defined expressly[103].

The definition of the genuine link is important for fraudulently registered vessels because such definition would increase the effectiveness of flag State control. Such increase would lead flag States to inspect their vessels and the vessels which have fraudulently registered would be detected more efficiently.

The problem of determining and satisfying a genuine link between States and vessels caused the attempt to find an international solution. Such a solution would have caused the genuine link to be empowered, and flag of convenience States would be eliminated.

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101 *ibid* 71.
102 *ibid* 58.
103 Coglianti-Bantz, V. P.: "Disentangling the Genuine Link: Enquiries in Sea, Air and Space Law", Nordic J Int'l L, 2010, Vol. 79, p. 383, 387.

As a result of this situation, the UNCROS emerged. It was adopted in 1986 to fix the conditions of registering a vessel for State parties. The Convention defines the genuine link and strengthens the link between flag States and vessels[104]. As the connection stiffens, jurisdictional control over vessels could be fulfilled efficiently by flag States. The Convention could have been assistance for the inspection of the administrative, technical and social matters; it also could have been useful for the identification and accountability of ship-owners and operators.

The Convention, however, is not yet in force and is unlikely to be soon. Flag of convenience States have not signed the Convention; consequently registering vessels to a flag of convenience State could not be prevented completely.

Though the Convention is not effective yet, its certain Articles shall be analyzed because they are not only the determining factors of the genuine link, but also a guideline for an effective flag State jurisdiction, the establishment of connection between flag States and their vessels, and the suggestions of preventive methods for fraudulently registered vessels.

Article 5 of the UNCROS includes national maritime administrations. The Article indicates that the flag State shall have an adequate and competent maritime administration and shall implement applicable international rules and standards relating to the safety of vessels and person on board and prevention of pollution of the marine environment. The maritime administration of the flag State is obliged to ensure the compliance of the vessels flying its flag with its regulations and laws regarding registration of vessels and applicable international rules and standards relating to the prevention of pollution of marine environment and safety of vessels and people on board[105].

The vessels are obliged to be surveyed by flag State's authorized surveyors to assure compliance to these convention-based rules and standards according to Article 5 of the UNCROS. The vessels are compelled to carry necessary documents on board to prove the right to fly the flag and other relevant valid documents including the documents required by the international conventions to which the registration State is a party. The registration

[104] McConnell, 441.
[105] *ibid* 444.

State is obliged to require the appropriate data to identify and held accountable completely regarding its ships.

The UNCROS Article 5 placed an obligation both on the maritime administrations to assure compliance with the requirements relating to the registration of the State and on the State to require the relevant and necessary information concerning the identification and accountability of the parties[106]. This rule is significant for fraudulently registered ships since it includes competent jurisdiction, execution of applicable international rules, survey obligations, possession of required documents, identification, and accountability. These aspects matter for fraudulently registered vessels since such methods would decrease the frequency of fraudulently registered vessels as it would be more difficult for parties to act fraudulently.

Article 6 of the UNCROS elaborates on the issue of identification and accountability. It states that the State of registration shall enter necessary information relating to the ship and ship-owner or owners, operators into its register and take such measures to identify persons who can be held accountable easily. It is a method to increase the applicability of flag State control. The increase of the applicability of flag State control would decrease fraudulently registered vessels since it would become easier to detect them due to the increased inspections.

Article 8 of the Convention indicates national participation regarding the ownership of vessels registered in the State registry. This Article mandates the inclusion of the convenient procuration to participate by either the State or its nationals as owners or in the ownership of vessels which flying its flag. These regulations and laws shall suffice to allow flag State to enforce jurisdiction effectively over its vessels[107].

According to Article 10 of the UNCROS, the registry State is obliged to ensure that the ship owning company or subsidiary ship owning company either is established or has its principal place of business within the territory of the State of registration under its regulations and laws before allowing registration of vessels in its registry.

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[106] *ibid* 443.
[107] *ibid* 445.

Article 10 of the UNCROS also provides that if the ship-owner company, the associated company or the ship-owner company's principal place of business is not established within the flag state, it should be assured that there is a manager or representative who is a national or domicile of the registry State before registration of the vessel. The manager or the representative may be a physical person or legal entity who is properly established or incorporated in the flag State and also duly empowered to act on behalf and account of the ship-owner. The manager or representative is compelled to be disposable for any legal procedures and to satisfy the obligations of the vessel owner in pursuance of the regulations and law of the registration State[108].

Article 10 of the Convention states that registration State must assure that the person or people who are responsible for the operation or management of the vessel flying its flag are in a condition to satisfy the financial obligations which may arise from the operation of the vessel to cover the risks which are normally insured in international maritime transportation regarding the damage to third parties[109]. This provision requires control over the ship-owning company's management. The effect of this requirement has been undermined with paragraph 2 of the Article which allows the non-resident ship owning companies that do not have a business presence in the registration State. The only requirement for them is to appoint a manager or representative who is a national or a domicile juridical or natural person. The manager or representative shall be available for the legal process, and that person must be able to satisfy the vessel owner's responsibilities under the laws of the registration State[110]. Articles 8 and 10 are important because of their contribution to accountability of responsible individuals, since a jurisdiction over such individuals would be required for prosecution and liability[111]. They represent a requisite which is not available in fraudulent ship registration. Without responsible individuals, fraudulently registered vessels would not cease.

In the light of these rules, it can be concluded that it is an important attempt to define the genuine link and strengthen the connection between the flag States and registered vessels. The lack of such connection has appeared in fraudulently registered vessels.

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108 *ibid* 447.
109 *ibid* 447.
110 *ibid* 447.
111 Kasoulides, 564.

Fraudulent ship registries demonstrated the damage which unsupervised vessels could cause. To prevent this situation, the genuine link must be defined. Within such actions, sufficient jurisdiction and supervision over vessels would be satisfied and fraudulently registered vessels would become easier to detect due to the increase of rate and effectiveness of inspections and controls.

3- Flag State Control

The flag State is the sole authority over the vessel flying the State's flag and can exclusively exercise legislative rights and jurisdictional enforcement over vessels on the high seas. Flag States shall assure their vessels' compliance with international standards which have been determined by the Conventions to which the flag States have signed. Flag States must inspect their vessels' operations and maintenance in a manner that reduces the risk to seafarers and the marine environment to a minimum level[112]. In fraudulent ship registration there may be no flag State control. Thereby international regimes would become ineffective due to the lack of inspection authority.

Article 90 of the UNCLOS entitles all States to sail their ships flying their flag on the high seas. As an outcome of this right, certain obligations are shifted on the flag States as well. The elemental accepted principle of jurisdiction over vessels is flag State jurisdiction. Flag State jurisdiction is an essential tool for the protection and preservation of the order on the high seas. Though it is main jurisdiction regarding vessels, different kinds of jurisdictions such as coastal jurisdiction and port State jurisdiction have been stated under the UNCLOS.

Flag State Jurisdiction is laid down in the Geneva Convention on the High Seas Article 5[113] as to be in the UNCLOS Article 92. It was determined as sole authority on the high seas regarding vessels flying its flag. However, the UNCLOS sets out an exception for cases stated in international treaties in Article 92(1).

Article 94(1) of the UNCLOS imposes the general obligations on flag States to execute jurisdiction on their ships effectively on technical, administrative, and social

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[112] Zwinge, 301.
[113] *ibid* 319.

issues. Article 94(2) has signified the obligation of maintaining a registry and assuming of flag State's jurisdiction under its internal law over the ship flying its flag, its master, officers, and crew in respect to administrative, technical, and social matters relating to the vessel. These aspects require to be inspected. They are important for international maritime community. In fraudulently registered vessels, these regimes have been undermined. Rights of seafarers, compatibility within international order, fiscal liabilities have not been satisfied by fraudulently registered vessels. They act for themselves by harming the maritime order.

Flag States have been needed to take appropriate measures in respect to Article 94(3) of the UNCLOS for the vessel flying its flag. This requirement is relevant to the innocent passage where the coastal State may not enact its law if the vessels are appropriately inspected accordingly to the paragraph. Therefore, excluding the exceptions under international law, ships on the high seas are under the flag State's exclusive jurisdiction. Flag State jurisdiction and control are vital for the maritime community and their absence caused severe incidents.

Flag States are required to satisfy the surveys of their vessels regarding these conditions. Article 94(5) of UNCLOS imposes flag States the duty to adopt necessary precautions to observe whether vessels are sufficiently equipped and prepared under the accepted international regulations.

Some of these regulations are the Safety of Life at Sea, the Prevention, Reduction, and Control of Marine Pollution, the Prevention of Collisions, and the Maintenance of Communications by Radio. Such criteria may be acquired by the issuance of the certificates by the flag States[114]. Flag State's administrative authorities should perform periodical surveys and renewal of the certificates to ascertain that the vessel meets the adequate requirements as these certificates are also the key element for the port State control.

Flag State control exercises certain control over vessels. It assists them to cooperate with international regimes. In the case of fraudulently registered vessels, there is no

[114] Sucharitkul, 412.

control over such vessels. Fraudulently registered vessels become exempted from their liabilities. International conventions regarding seafarers, maritime safety and security, and marine pollution are some of the Conventions which these vessels have breached. Flag State control is significant for the comprehension of fraudulent ship registration because it and its protection over maritime industry are the matters fraudulent ship registry has violated.

4- Flag of Convenience

"Flag of convenience" is a significant importance on fraudulent ship registration. Vessels which have registered to flag of convenience States have demonstrated resemblance with fraudulently registered vessels in certain aspects. One of the main purposes to register flag of convenience States is the economic advantages provided by such States[115]. Similarly, fraudulently registered vessels have adopted such a method for its economic advantages.

Flag of convenience States have fixed fewer requirements for registration and vessels in such a way as to endanger maritime safety and security. In fraudulent ship registration, there have been no requirements to use such method except for the knowledge of fraudulency. Therefore, dangerous vessels may also use such method to voyage.

Flag of convenience and fraudulent ship registration also have similar outcomes. Flag of convenience has inspectional deficiency whereas fraudulent ship registration has no inspection. Therefore, both may demonstrate lack of compatibility with international regimes. Such similarities oblige to analyze flag of convenience to comprehend fraudulent ship registration and to prevent it.

Even though the responsibilities of the flag States have been introduced under international law, certain flag States have not been fulfilling their obligations relating to

[115] Churchill / Hedley, 62

inspections, controls, and surveys relating to the international law of the sea. Hence, substandard ship-owners have become prone to register these countries[116].

Changing the ship's flag among States is not a new concept. It has emerged from the Roman Empire that Roman ship-owners registered their vessels under the Greek flag. There are other examples such as British vessel owners flew the Spanish and French flag in the 16th and 17th century to avoid prohibitions regarding commerce with West Indies, or English ship owners changed their flag into French flag to circumvent prohibitions concerning fishing enforced by Great Britain[117].

The current usage of flag of convenience has started in the 1920s to avoid the prohibitions imposed by the US regarding the sale or carriage of alcoholic beverages aboard vessels that are US-owned. The vessel owners transferred their US-flagged ships to the Panamanian registry. Thereby they could hamper the outcome of the restrictions preventing the sale and carriage of the liquor[118].

Ships have changed flags for various reasons. The main reasons can be identified as reducing the operation cost of the vessel, avoiding the sanctions and political instability, and preventing the inspections and controls over the vessels. There are certain spectrums of reasons to change the flag one of which is economic advantage[119].

In maritime companies, the aim to decrease the cost and maximize revenue[120] has affected the choice of flag State by investment and cost/revenue considerations. Under flag of convenience, the vessel owner can avoid taxation, minimize the requirements relating to the international regulations, and reduce manning costs[121]. Fraudulent ship registration may also aid to avoid taxation, minimize the requirements relating to the international regulations, and reduce manning costs.

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116 Ademuni-Odeke: "An Examination of Bareboat Charter Registries and Flag of Convenience Registries in International Law", Ocean Dev & Int'l L, 2005, Vol. 36, p. 339, 349.

117 Özçayır, 23.

118 *ibid* 24.

119 Hamad, B. H.: "Flag of Convenience Practice: "A Threat to Maritime Safety and Security", IJRDO-Journal of Social Science and Humanities Research, 2016, Vol. 1, Iss. 8, p. 207, 210.

120 Goldie, L. F. E.: "Environmental Catastrophes and Flags of Convenience - Does the Present Law Pose Special Liability Issues?", Pace Y.B. Int'l L., 1991, Vol. 3, p. 63, 63.

121 *ibid* 82.

The registration to such flag States does not require going to that State. It can be done via consulates. Shares of a shipping company are generally issued in bearer form, thus whoever possesses the shares owns the company. It has led to the actual ownership of the maritime company that may remain unknown. Similarly, in fraudulent ship registration, the actual ownership of the vessel may remain unknown due to the absence of registration.

The inception of flag of convenience caused a decrease in maritime employment rates in the developed countries. Because the crewing expenses constitute half of the operating expenses, ship-owners prefer to register their vessel to a flag of convenience State for more profit. In fraudulently registered vessels, seafarers' conditions may tend to become worse. Since there may be no actual registration, the conditions of the crew may not be inspected.

The vessels registered to flag of convenience States caused several maritime disasters such as Torrey Canyon[122]. These disasters mainly happened due to the lack of enforcement of regulations, controls, and untrained labor force.

According to the statistics, vessels recording to flag of convenience States have a higher accident rate than other States[123]. As an example, Panamanian flagged vessels can be demonstrated. These ships had had a relatively higher accident rate compared to the vessels in which had registered traditional maritime countries. Due to this rate and international pressure, in 1997 the Panamanian government adopted stricter norms regarding the inspection of ships flying its flag. After this enactment, Panama lost many of its vessels.

The Amoco Cadiz is one of the best-known incidents of an open registry vessel. It caused an oil spill due to the inadequately trained crew[124]. It was flying the Liberian flag such as the Torrey Canyon, the Sea Empress, and the Argo Merchant which all caused maritime incidents. An accident occurred more recently, the Erika, which was flying the

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122 Price II., H. M.: "Interrelationship of the Behavioral Sciences and Law in International Crisis Decision Making: An Analysis of the Torrey Canyon Incident as a Model", Int'l L, 1974, Vol. 8, p. 219, 221.

123 Bye, R. J. / Gilberg, A. / Kleiven, E.: "Marine Navigation Accidents and Influencing Conditions: An Exploratory Statistical Analysis Using AIS Data and Accident Databases", in Bedford, T. / Revie, M. / Walls, L. (Eds.): *Risk, Reliability and Safety: Innovating Theory and Practice*, London 2017, p. 104.

124 Nagel, S.: "Parliamentary Action on the Amoco Cadiz", Envtl Pol'y & L, 1978, Vol. 4, p. 167, 167.

Maltese flag, broke in two at the Bay of Biscay[125]. A drastic oil spill, which has been estimated as 10 thousand heavy fuel oil, occurred.

After this incident, the Prestige, single-hull oil tanker which was flying Bahamas flag broke off and sank at the North West coast of Spain[126]. Vessels that have registered flag of convenience States have caused many incidents, disasters, and casualties. As a consequence of this situation and international pressure after these disasters, several flag of convenience States had enacted stricter regulations. For fraudulently registered vessels, a catastrophic accident has not occurred yet. However, they have tendency to create such an accident.

Flag of convenience States caused an untrained labor force to be hired to the vessels and insufficiency in the supervision of the seafarers' rights. Consequently, the "International Transport Workers' Federation (ITF)" started a campaign against flag of convenience States.

During this campaign, the ITF prepared the Collective Agreement[127], which contains the terms and conditions of the seafarers' employment. Vessel owners using flag of convenience vessels had made employment according to this agreement. A ship-owner who signed this agreement would receive a "blue certificate" and if he fails to fulfill the obligations arises from this agreement; the ITF is going to take industrial actions against the vessel. There is not any specific campaign against fraudulently registered vessels by the ITF, yet there shall be since it endangers seafarers as well.

Another aspect of flag of convenience State relating to the vessel operation is the economic advantages. Vessel owners gain competitive advantages with flag of convenience against regulated States regarding the substandard application of regulations. Additionally when a ship is registered to a flag of convenience registry by a corporation, and the corporation is established only for this purpose, the only asset of the corporation had become the vessel to avoid tax and legal liabilities. Such economic advantages have

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125 Wene, J.: "European and International Regulatory Initiatives Due to the Erika and Prestige Incidents", Austl & NZ Mar L J, 2005, Vol. 19, p. 56, 57.

126 *ibid* 58.

127 Özçayır, 28.

been available for fraudulently registered vessels as well. They may operate substandard and avoid tax and legal liabilities.

Along with such incidents, the ITF had decided to list flag of convenience States.[128]. The decision is based on the degree of registered foreign-owned vessel predominance in the registry.

The ITF has also put an eye on the performance of the registries by the criteria it determined. Firstly, the enforcement of the international minimum social standards of the flag States are enforcing on their vessels has been regarded. Secondly, the enforcement of International Labor Organization Conventions and Recommendations has been considered. At last, the demonstration of the deficiencies regarding the execution of IMO Conventions relating to safety and the environment has been taken into account as well. This method would be inefficient to prevent fraudulent ship registration since fraudulent parties tend to become hidden.

The decisions by States to fight against flag of convenience States were drastically different from the ITF. At first, they tried to enact regulations to stop flagging out. Yet, since it had not been a successful attempt, they also established second registries with fewer obligations. The establishment of second registries was also considered a threat to seafarers' rights, maritime safety, and security as some of the second registries caused a lack of control and supervision. The second method would be assistive to prevent fraudulent ship registration since it decreases economic burden[129].

After the 11 September 2001 attack, the flag of convenience system is appeared to be more threatening as may be used as an assistive place to terrorists, human smugglers, drug traffickers, and other criminals. The main purpose of the ITF is to determine whether the ownership or control of the vessel is linked with the flag State[130]. As regarded, should there be not a solid link there would be no one to obey the liabilities and punish for crimes. This situation arises similarly in fraudulent ship registration. In fraudulently registered vessels, there would be no one to obey the liabilities and punish for crimes as well.

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[128] *ibid* 30.
[129] Hamad, 211.
[130] Coles / Watt, 33.

Therefore, it may be used for illicit activities and to hinder criminal prosecution. Because of the lack of inspection and supervision, both flag of convenience and fraudulent ship registration become tools for illegal activities such as terrorism, drug and weapon trafficking, human smuggling, etc.[131].

The elemental accepted principle of jurisdiction over vessels is flag State jurisdiction. Flag State jurisdiction is an essential tool for the protection and preservation of the contexture on the high seas. In fraudulent vessel registration, lack of flag State jurisdiction demonstrates its effects. Since influential jurisdiction and control over such vessels could not be satisfied, they endanger maritime order.

Ships on the high seas are under the flag State's exclusive jurisdiction. Flag State jurisdiction and control are vital regarding the maritime community and its absence has caused severe incidents. To evade such circumstances in fraudulent ship registration, these vessels have been required with the authority of a flag State.

C) PORT STATE JURISDICTION

Flag State jurisdiction is an old concept of the international law of the sea subject to international maritime conventions. Yet the port State jurisdiction is a relatively novel concept that includes the imposition of the international regimes to protect and preserve maritime safety and security and prevent marine pollution[132].

The port State control is essentially the inspection of foreign vessels in national ports for verification of compliance for the condition of the vessel, her seafarers, and equipment within the requirements of international regulations[133]. At the beginning of the 20th century, the port State jurisdiction had not been developed and regulated as it has been today. The first SOLAS which was adopted in 1914 merely accepted the authorities of the port States were to check the certificates of the vessel which had been registered to a State party and inform the flag States in the cases of deficiencies. After the Torrey

131 Hamad, 214.

132 Rajadurai, A.: "Regulation of Shipping: The Vital Role of Port State Control", Austl & NZ Mar LJ, 2004, Vol. 18, p. 83, 87.

133 McDorman, T. L.: "Regional Port State Control Agreements: Some Issues of International Law", Ocean & Coastal LJ, 2000, Vol. 5, p. 207, 210.

Canyon incident, the extent of the States' right to protect their coastline and take convenient measures for this purpose is highlighted.

Port State control is a significant means for the prevention of fraudulent ship registration. Since it is a control mechanism established in ports, authorities are not required to pursue ships on the high seas. They must inspect and control vessels which are arrived in their ports. With this control mechanism, fraudulently registered vessels which have arrived in ports may be detected. Therefore it would be difficult to operate fraudulently registered vessels and easy to detect them.

In 1969, two new instruments had been adopted for the matter which are the "International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Intervention Convention)"[134] and "International Convention on Civil Liability for Oil Pollution Damage (CLC)"[135]. With the Intervention Convention, for the first time, non-flag States had been authorized to take preventive measures against threats to their coastal environment which derived from outside of territorial waters.

After the adoption of these Conventions, both flag States and port States have appeared as significant supervision and inspection authorities since their duties and rights have been increased. In the 1970s IMO instruments that had been adopted broadened the power of the port States. These instruments are "International Convention for the Prevention of Pollution from Ships (MARPOL)"[136], SOLAS, and STCW[137].

Many of the IMO Conventions includes provisions regarding vessels to be inspected by the port State control officials to assure they meet the IMO requirements. Port State

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[134] International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Intervention Convention), adopted on 29 November 1969, entered into force on 6 May 1975, UNTS 14049, Turkey is not a State party to the Convention, <https://treaties.un.org/doc/Publication/UNTS/Volume%20970/volume-970-I-14049-English.pdf> (accessed on 16/05/2021).

[135] International Convention on Civil Liability for Oil Pollution Damage (CLC), adopted on 29 November 1969, entered into force on 19 June 1975, UNTS 14097, Turkey is State party to the Convention, 24 July 2001 dated 24472 numbered Cabinet Decree, 27 January 2000 dated 4507 numbered Act, 29 January 2000 dated 23948 numbered OG, <https://treaties.un.org/doc/Publication/UNTS/Volume%20973/volume-973-I-14097-English.pdf> (accessed on 16/05/2021).

[136] International Convention for the Prevention of Pollution from Ships (MARPOL), adopted on 2 November 1973, entered into force on 2 October 1983, UNTS 22484, Turkey is State party to the Convention, 3 May 1990 dated 442 numbered Cabinet Decree, 20 June 1990 dated 20558 numbered OG, <https://treaties.un.org/doc/Publication/UNTS/Volume%201340/volume-1340-A-22484-English.pdf> (accessed on 16/05/2021).

[137] Rajadurai, 90.

control mainly originated to support the flag State implementations. It has its basis derived from most of the international conventions such as the UNCLOS, the SOLAS, the MARPOL and the STCW[138].

The UNCLOS introduces the port State jurisdiction in several Articles such as 25, 216 and 218. In these rules, the UNCLOS mainly seems to govern the port State control against marine pollution. However, the scope of port State control exceeds the boundaries of marine pollution for maritime security and maritime safety[139].

The port State control essentially enforced the control of ship certificates to inspect the vessel's compliance to the international requirements. Article 226 of the UNCLOS has established the principles of investigation of foreign vessels. Accordingly, a foreign ship's physical inspection should not delay the vessel and should be limited to examine the certificates and required documents. Additional physical examination can be processed; if there are discrepancies between the vessel's condition and the documents, the documents are not sufficient to confirm the suspected violation, or the ship is not possessing valid certificates and records. It is significant for fraudulent ship registration because of the inspection of documents. Since fraudulently registered vessels use forged documents, their documents should be inspected and verified. The Article provides port State control officials with such an inspection power.

The MARPOL regulates many aspects of pollution from vessels and applies to commercial vessels. Article 5 of the Convention authorizes the port States for the verification of certificates. The inspection should be limited to verification of the certificates unless there is reasonable ground for suspicion regarding vessel's condition or her documents do not correspond to the certificates. This Article also introduces the "No More Favourable Treatment" Clause (NMFT)[140]. This clause allows the State parties for the application of the Convention's conditions to vessels of non-party States to assure that no more favorable treatment is provided to these ships.

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138 Cariou, P. / Mejia Jr., M. Q. / Wolff, F.: "On the Effectiveness of Port State Control Inspections", Transportation Research Part E, 2008, Vol. 44, p. 491, 492.

139 Rajadurai, 88.

140 Chen, Y.: "Reconciling Common but Differentiated Responsibilities Principle and No More Favourable Treatment Principle in Regulating Greenhouse Gas Emissions from International Shipping", Marine Policy, 2021, Vol. 123, p. 1, 2.

According to Article 6 of the MARPOL, port officials of the contracting State parties are authorized to inspect a foreign ship to verify if any harmful substance has been discharged by her in violation of the Convention. Under the Article, if an investigation request is received with sufficient evidence of disposal of harmful substance by the vessel, the port officials have the right of investigation.

The SOLAS is another Convention relating to the safety of vessels. It establishes basic standards for the maritime industry. It also includes instructions, emergency procedures, surveys, and certificates. It is mainly applicable to passenger and cargo vessels of a gross tonnage of 500 and over engaged on international voyages.

Regulation 19 of the SOLAS Chapter I sets forth control by port State authorities. According to the Regulation, the certificates may be accepted unless there are clear grounds for suspicion regarding the correspondence of the vessel and the certificates. The SOLAS also includes the NMFT Clause in Article II of the 1978 Protocol.

The STCW deals with certain training, watchkeeping, and certification requirements for seafarers[141]. The Convention predicts minimum international standards regarding the seafarers which the State parties are obliged to meet[142]. Article X of the Convention empowers the port State control officers for verification of related certificates.

As seen therefrom, the control mainly includes the verification of the certificates. However, if there are reasonable grounds to believe that the certificate was fraudulently acquired or the certificated was originally issued for a different person than the certificate holder. The Convention contains the NMFT Clause as well.

The STCW has explicitly referred to the fraudulently obtained certificates. Even though certain other Conventions are not referring to the fraudulently issued certificates, the Convention includes the port State control mechanism to inspect and detect such certificates and documents.

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[141] Young, C.: “Comprehensive Revision of the STCW Convention: An Overview”, 1995, J Mar L & Com Vol. 26, p. 1, 1.

[142] Palma, M. A. E.: “Facing the Hurdles of Implementing the STCW Convention: A Challenge to the Filipino Seafaring Industry”, Ocean L & Pol'y Series, 2000, Vol. 4, p. 58, 64.

In summary, because of the lack of sufficient flag States inspection, certain regulations have been legislated by port States to increase controls, inspections, and appliance of relevant IMO treaties. Therefore, IMO made A.682(17)[143] Regional co-operation in the control of ships and discharges resolution to invite Governments to consider such agreements to apply port State control precautions in cooperation with the IMO and port States have been initiated to sign in and participate in Memorandum of Understanding (MoU) agreements[144].

Today nine regional agreements have been signed and applied to establish regional port State control standards. These are "Europe and the North Atlantic (Paris) MoU", "the Indian Ocean MoU", "Latin America (Acuerdo de Viña del Mar) MoU", "the Black Sea Region (Black Sea) MoU", "Asia and the Pacific (Tokyo) MoU", "West and Central Africa (Abuja) MoU", "Caribbean MoU", "the Mediterranean MoU", and "the Riyadh MoU"[145].

At the inspections performed by regional MoUs, initially IMO and "International Labour Organization (ILO)" treaties are taken into consideration. In addition to those issues; age, type, class, tonnage, flag, company, and previous inspections of the vessel are paid attention as well. As a result of these inspections, risk parameters regarding the vessel are being determined in the databases of certain regional MoUs. Many treaties prepared by the IMO demonstrate the issues which are needed to be inspecting by port States.

In the Conventions two aspects appear to be significant for the prevention of fraudulent ship registration that are the document verification and the NMFT Clause. The document verification provides the port State control authorities for the inspection of ships' documents that have arrived in their ports. Therefore, the rate of detection of forged documents may increase within such inspections.

143 The IMO: "A 17/Res. 682", 6 November 1991, p. 2.
144 Rajadurai, 93.
145 McDorman, 208.

The NMFT Clause provides the port State control authorities to inspect vessels regardless of their nationality. Such inspections would increase the rate of detection of fraudulently registered vessels[146].

Yet it must not be overlooked that port State control mechanism would become an efficient means against fraudulently registered vessels if the port State control authorities communicated with the flag State authorities. Such communication is essential since for the detection of fraudulently registered vessels, the port State control authorities shall require the registration information of vessels from flag States. The provision of this information would enable the detection of fraudulently registered vessels by the port States.

In conclusion, port State control is a balanced mechanism of control. It appeared to provide sufficient inspections and reduce the negative outcomes of the deficiencies of the flag State control. It also has certain advantages regarding the inspection of fraudulent ship registries. Therefore, it could also be used against fraudulent ship registries to prevent them.

D) MEASURES TO PREVENT FRAUDULENT SHIP REGISTRY

1- Overview

Fraudulent ship registration is malfeasance for the international maritime industry and should be prevented by all means by the international community. The IMO is the international authority that has the means for the prevention of fraudulent ship registration.

The IMO is the specialized agency of the UN concerning maritime issues. The IMO is an international authority and has set certain standards regarding maritime safety, marine environment, maritime security, and international shipping. The shipping industry is of international nature. Consequently, considering the industry, it can be easily realized that relating regulations and standards may only be effective if they have been agreed, adopted, and implemented internationally. The IMO has been the essential place of

[146] Özçayır, 130.

discussion process regarding the maritime industry. One of the main roles of the IMO is the organization of a regulatory framework regarding the shipping industry[147].

Fraudulent ship registry is a phenomenon that requires the attention of the maritime community. The purposes of the IMO have demonstrated that measures for the prevention of fraudulent ship registry may be established, adopted and enforced with the leading of the IMO[148]. According to the “Convention on the International Maritime Organization”[149] Article 1(a) some of the main aims of the IMO are; the provision of machinery for cooperation among Governments in the field of governmental regulation and practices regarding technical matters affecting shipping industry, the encouragement and facilitation to adopt the highest practicable standards regarding the maritime safety, control and prevention of marine pollution from vessels, the efficiency of navigation, and to deal with legal and administrative matters regarding such issues.

The organization of an international regulatory framework must be considered fundamental to prevent this matter since a unified effort is required to prevent this issue. Besides, the presence of an international authority is imperative for the assurance of adoption and implementation of international regulatory framework globally. To achieve the purpose of the foundation of the IMO, it had to assure that there would be no compromise for the ship operators concerning the issues such as environment, safety, and security performance just to be financially more stable.

The main pillar of the global transportation of people and commodities is the maritime shipping industry. It is one of the most efficient means of transportation internationally for commodities and people. The maritime industry is a sector that has been providing low-cost transportation to merchants. It is a dependable means of transport and assists commercial activities internationally. As there are other incentives regarding maritime transportation, it is safe to state that the industry has brought wealth among

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147 Arceredillo, A. T. / Bettridge, S. / Brown, M. W. / Johnson, L. / Sagarminaga, R. / Silber, G. K. / Taggart, C. T. / Vanderlaan, A. S. M.: “The Role of the International Maritime Organization in Reducing Vessel Threat to Whales: Process, Options, Action and Effectiveness”, Marine Policy, 2012, Vol. 36, p. 1221, 1231.

148 *ibid* 1222.

149 Convention on the International Maritime Organization, adopted on 6 March 1948, entered into force on 17 March 1958, UNTS 4214, Turkey is State party to the Convention, 16 July 1956 dated 6812 numbered Act, 25 July 1956 dated 9364 numbered OG, <https://treaties.un.org/doc/Treaties/1958/03/19580317%2005-05%20PM/Ch_XII_1p.pdf> (accessed on 16/05/2021).

nations. Maritime commerce is important for States and needed to be protected by certain international regimes[150]. Fraudulent ship registry has endangered maritime sector and it should be prevented by the efforts of the IMO and States.

2- Maritime Safety and Security Regarding Fraudulent Ship Registry

Many times, the technical defaults and lack of sufficiency of the crew of the vessel jeopardize the safety at sea. The attacks have been targeting ports and ships cause damage to both people and goods. Especially in the last century, with the increase of criminal organizations and their efficiency at technology, precautions relating to safety and security at sea had become less efficient. As a result of these occurrences, the IMO had focused its attention more to satisfy the needs of safety and security at sea. Fraudulent ship registration is one of these illegal activities. Fraudulent parties have used technology in their frauds. They have endangered maritime safety and security. Therefore, the IMO has focused on this matter to prevent it and to improve maritime safety and security.

Throughout history, the IMO has codified certain international conventions on maritime safety and security to improve them. Owing to this situation, the evolution of the maritime safety and security era has also required to be studied under the light of some of the historical cases and international conventions for improved comprehension of the current and potential consequences of fraudulent ship registration.

Maritime security has not been defined meticulously. However, this concept has essentially comprised the international peace and security, regional cooperation, crimes that have been committed at sea. There have been certain factors which can be specified as a threat to maritime security.

At first, maritime terrorism should be remarked as a menace to maritime security. There is not a unified universal definition of maritime terrorism. Though, fundamentally it can be described as terror attacks or activities within the maritime environment against fixed ships or fixed platforms at sea or in port, or against their personnel or passengers, against coastal facilities or settlements.

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[150] Özçayır, 37.

Throughout history, there have been several terror attacks that occurred at sea. Some of them caused both losses of life and damage to goods such as the USS Cole attack which is committed to the US Navy and caused death of 17 US Navy sailors and injury of 39 US Navy sailors[151]. Another example of this situation is the SUPERFERRY 14 incident which ended up with death of 116 people. 63 bodies were recovered while remaining 53 bodies presumed dead[152].

Another threat to maritime security is drug trafficking. Drug trafficking has been a serious and prevalent issue in the maritime sector. This situation has appeared in the maritime industry because of the convenience at shipments of large number of products and lack of control and supervision.

The UNCLOS has specified certain provisions relating to drug trafficking. According to the Article 27 of the UNCLOS[153], coastal States have the right to enforce their jurisdiction over foreign vessels in their territorial waters if these precautions are required to suppress narcotics trafficking. Article 108 of the UNCLOS has regulated combats against illicit narcotic drug trafficking on the high seas. This provision specifies that all States should cooperate in the suppression of illicit narcotic drug trafficking that has been engaged in by vessels on the high seas contrary to international conventions. The States may also request for the cooperation of another State to suppress such traffic if the State has reasonable grounds to believe that the ship flying its flag is involved in illicit narcotics trafficking.

Migrant smuggling has been another issue threatening maritime security for years[154]. Smuggling of migrants had caused the increase of events that have required the intervention of States and marine accidents since the act has been illegal and has not required responsibility. Migrant smuggling has also linked with international criminal actions and organizations as an economic resource of such organizations.

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[151] Marcopouls, A. J.: "Flags of Terror: An Argument for Rethinking Maritime Security Policy Regarding Flags of Convenience", Tul Mar LJ, 2007, Vol. 32, p. 277, 292.

[152] *ibid* 293.

[153] Tryfon, K.: "Exceptions to the Criminal Jurisdiction of the Coastal State on Merchant and on Naval Vessels in the Hellenic Legal Order", European Scientific Journal, 2014, Vol. 1, p. 320.

[154] UNODC Issue Paper: "Smuggling of Migrants by Sea", 15 September 2011, p. 9.

Fraudulently registered vessels may be used in these activities since they have not been inspected. The phenomenon may assist these activities. These activities endanger maritime safety and security and should be prevented. To prevent them, assisting activities such as fraudulent ship registry should be prevented as well.

The UNCLOS had tried to establish a balanced mechanism between freedom of navigation and maritime security. In this regard, innocent passage regime, flag State control, and freedom of the high seas are balanced with interventions to vessels in certain circumstances to maintain maritime security.

Maritime security law was initially regulated to prevent conflicts at sea. Though, the increase of maritime piracy and its effects on the maritime community indicated that maritime security has been needed to incline to this aspect as well. As a result of these events, international regulations had been made and amended by the IMO in cooperation with States, such as SOLAS and "Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA)"[155] 1988 with 2005 Protocol.

There are certain international conventions relating to maritime security as mentioned above. At the international community, SOLAS is an effective and significant Convention regarding maritime safety and security. The first version of the SOLAS had been accepted after the RMS TITANIC incident[156]. However, due to the 1st World War it had not been applied. After that, there are certain versions and updates relating to SOLAS had been performed.

SOLAS is now applied as a safety standard for nearly the entire shipping and maritime sector. In this regard, SOLAS essentially regulated certain provisions relating to fire safety, radio communication, navigational safety, ship construction, management for vessels' safe operation, and special measures to enhance maritime safety. Within this

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155 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted on 10 March 1988 (SUA), entered into force on 1 March 1992, UNTS 29004, Turkey is State party to the Convention, 26 January 1998 dated 23242 numbered Cabinet Decree, 27 September 1990 dated 3662 numbered Act, 09 October 1990 dated 20660 numbered OG, <https://treaties.un.org/doc/db/terrorism/conv8-english.pdf> (accessed on 16/05/2021).

156 Kenney, F. J. Jr. / Tasikas, V.: "The Tampa Incident: IMO Perspectives and Responses on the Treatment of Persons Rescued at Sea", Pac Rim L & Pol'y J, 2003, Vol. 12, p. 143, 149.

scope, flag States should enforce compliance to SOLAS Convention and vessels should have their mandatory certificates in their possession.

"International Ship and Port Facility Security (ISPS) Code" was prepared after the 11 September 2001 terror attack and aimed to increase maritime security is an annex to the SOLAS as chapter XI-II[157]. The ISPS Code has been mainly related to the maritime security. One of the major objectives of the ISPS Code is to obstruct terror acts[158]. However, the ISPS Code also purposed to obstruct any criminal activities which threatened the port and maritime security. ISPS Code includes Part A and Part B. Part A is of mandatory nature whereas Part B is of recommendatory to improve and facilitate the mandatory ones[159].

"International Safety Management (ISM) Code" purposes prevention of maritime pollution and loss of lives and goods arises from marine accidents. At the point of increasing the quality and training of the seafarers, inspection, and documentation; both the ISM Code and the ISPS Code have resemblance. However, the main area of the ISM Code is the regulation of maritime safety and the essential point of the ISPS Code is to govern the threats relating to the vessels and port facilities under maritime security.

The SUA also had a significant impact regarding procuring of maritime security especially within the scope of maritime terrorism and piracy[160]. It purposed to define actions that included in the scope of terrorism and perpetrators to be judged.

Fraudulent ship registry and illegitimate acts associated with fraudulent ship registry are in the scope of both the SOLAS and the SUA since fraudulently registered vessels may be used in illegitimate acts. However, these Conventions have not included sufficient preventive measures regarding fraudulent ship registries. In consideration of these possibilities, these Conventions may also require certain amendments regarding the prevention of fraudulent ship registry.

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157 Şeker, B. Ş.: "Maritime Security: Prevention of Maritime Terrorism by International Ship and Port Security (ISPS) Code", Turkish Studies, 2018, Vol. 13, Iss. 3, p. 673, 673.

158 *ibid* 676.

159 *ibid* 682.

160 Tuerk, H.: "Combating Terrorism at Sea - The Suppression of Unlawful Acts against the Safety of Maritime Navigation", University of Miami International & Comparative Law Review, 2018, Vol. 15, Iss. 3, p. 337, 347.

3- Current Measures to Prevent Fraudulent Ship Registry

Current mandatory and non-mandatory instruments of the UN and the IMO have not been enough for the prevention of fraudulent registration of ships. It is recalled that the UNCROS, which has not in force yet, has not sufficiently addressed all aspects of the problem which have also caused fraudulent ship registration.

The responsibilities and the relevant sources regarding the promotion of a safe, secure, and efficient maritime commerce world have pertained to the IMO[161]. Consequently, only the IMO could be the Organization that may achieve the management of work concerning the fraudulent ship registration[162]. Fraudulently registered vessels have abused the maritime system in certain methods such as the use of fake certificates and this circumstance has caused the complete undermining of the regime which has been created by the international organizations.

There are many measures that have been regulated by the IMO and many of these regulations have also assisted in the prevention of fraudulent ship registration. One of the main examples of such IMO measures is "the IMO ship identification number scheme".

"The IMO ship identification number"[163] is adopted to improve maritime safety and security, preserving the marine environment, and preventing maritime fraud by providing a unique identification number to the vessels over 100 gross tonnage which belonged to natural persons or legal entities. It has become mandatory under SOLAS Regulation XI/3 for certain vessels. With a modification to this Regulation, IMO Numbers are required to be marked permanently on a visible place of vessels, either on hull or superstructure of the vessel[164].

"The IMO ship identification number" is an identification number assigned for vessels permanently, inserted on vessel's certificates, and could not be changed regardless of transfer of its flag; prevention of maritime fraud, pollution prevention, and enhancement of maritime safety would be facilitated. This number may not be reassigned

161 Özçayır, 46.
162 The IMO: "LEG 107/7", 13 December 2019, p, 2.
163 The IMO: "A 28/Res.1078", 15 January 2014, p. 1 ("A 28/Res.1078").
164 The IMO, "A 30/Res.1117", 1.

to other ships under any circumstances and appears on vessel's certificates[165]. Its main purpose is to improve maritime safety, prevent marine pollution and maritime fraud. The Scheme was not intended to affect civil law, liability matters, or commercial considerations regarding the operation of vessels.

The SOLAS obliges the IMO ship identification number to be marked in a visible place indelibly, either on vessel's superstructure or hull[166]. The IMO number includes three letters "IMO" and seven-digit number. It is designated to all vessels by IHS Maritime & Trade[167]. The IMO number may not be reassigned to other ships to empower maritime safety, maritime security and to avoid fraudulent registration of vessels[168].

"The IMO unique company and registered owner identification number" is another measure that has been regulated by the IMO[169]. It is a mandatory measure that has been similar to "the IMO ship identification number scheme" in ways such as methodology and purpose[170]. This measure has also been introduced to enhance maritime safety, security and is assistive in the context of prevention of fraudulent ship registration.

This measure is purposed to identify each company or registered owner managing vessels of 100 gross tonnage and above on international voyage[171]. When this number assigned, it may not be changed[172] such as the IMO ship identification number.

The Continuous Synopsis Record (CSR) is also a measure that has been promoting the prevention of fraudulent ship registration[173]. The CSR has mainly enforced flag States' supervision and inspection over registered vessels. The essential purpose of the CSR is the provision of an auditable history of the vessel by appropriate officials[174]. All the relevant information concerning the ship-owner, classification society, etc., and all

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165 The IMO, "A 28/Res.1078", 1.
166 The IMO: "Circular Letter No.1886/Rev.6", 8 August 2016, p. 1.
167 The IMO, "A 30/Res.1117", 1.
168 Baatz, Y.: *Maritime Law*, 4th ed., London 2018, p. 354.
169 The IMO: "MSC.160(78)", 20 May 2004, p. 2 ("MSC.160(78)").
170 The IMO: "MSC.194(80)", 20 May 2005, p. 5.
171 The IMO, "MSC.160(78)", 2.
172 Baatz, 355.
173 The IMO: "A 23/Res.959", 4 March 2003, p. 4 ("A 23/Res.959").
174 The IMO: "MSC.198(80)", 20 May 2005, p. 1.

relevant and important aspects of the vessel would be reviewed on the CSR. The main intention is a reflection of a compilation of the history of the ship.

Another significant precaution regarding the prevention of fraudulent ship registration is the “measures to prevent the registration of phantom ships”[175]. Phantom ships are considered as the ships which have been registered with false or inaccurate information. There are similarities between this phenomenon and fraudulent ship registration and to prevent fraudulent ship registration, thus phantom ships should be scrutinized as well.

The measures have been adopted by the IMO General Assembly on 29 November 2001 with Res. A.923(22)[176]. Accordingly, the Assembly has mentioned its functions concerning the international regimes relating to maritime safety, the importance of the provision of a legal basis for requirements concerning the registration, the duties of the flag State under the international law of the sea, especially under Article 94 of the UNCLOS, the increase of piracy, armed robbery, and registration of certain vessels with falsified or inaccurate information[177].

At the end of the Resolution, the Assembly has invited Governments for certain measures[178]. Firstly, the ship registration procedures of the States have needed to acquire adequate safeguards to prevent the registration of phantom ships. Secondly, the obtaining evidence on the deletion of a vessel’s previous registration under another flag State or flag State’s consent regarding the transfer of the vessel has been mentioned as essential.

The importance of the submittal of the evidence concerning a vessel’s registration status by the flag State to another State before new registration procedure and the requirement of verification of original documents regarding the registration procedures has been emphasized. Before the ship registration, the identification and verification of the vessel should be satisfied by the States with the inclusion of the IMO number to prevent flying more than one flag. Last but not least, the States have been encouraged to

175 The IMO: “A 23/Res.923”, 22 January 2002, p. 1.
176 *ibid* 1.
177 *ibid* 1.
178 *ibid* 1.

take steps under the procedures such as port operation, ship surveying, chartering, and insurance to detect the improperly registered vessels.

There are certain resemblances between fraudulent ship registration and phantom ships. Firstly, they both have relevant methods of fraud such as the usage of falsified information or document for registration. Secondly, they both have been encountered in illegitimate areas. Lastly, their measures are similar. Hence, the measures which have been adopted for the obstruction of phantom vessels' registration are assistive to prevent fraudulent ship registration as well.

In the international community, there have been several problems under transfer of ships between States[179]. It has been a delicate issue. There have been certain discussions made at the international community and the MEPC has approved a procedure regarding the issue[180].

The procedure aims to satisfy the enhancement of the transparency of the process of ship transfer between flag States. The transparency must be increased for the sake of maritime safety. The purpose of this enhancement is to signify the importance of information sharing and seeking between States to prevent fraud, duplicity, and multiple registration of a vessel[181].

Lastly, the IMO member State audit scheme is another measure that is currently in the aspect of prevention of fraudulent ship registry[182]. Since one of the main objectives of the IMO is provision of an effective and fair regulatory framework regarding the maritime industry which would be implemented universally and procured maritime safety, maritime security, and sustainable maritime industry.

This objective may only be achieved by demonstrating the effectuality of current regulatory framework and improve the implementation of the regulations. For this purpose, the IMO has adopted member State audit scheme.

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179 The IMO: "MSC/Circ. 1140 MEPC/Circ. 424", 20 December 2004, p. 1.
180 *ibid* 1.
181 *ibid* 1.
182 The IMO: "A 28/Res.1067", 5 December 2013, p. 3 ("A 28/Res.1067").

Member State Audit Scheme initiated as a voluntary scheme in 2006[183] and became mandatory on 1 January 2016[184]. Its main purpose is to improve effectiveness and consistency regarding the implementation of the IMO conventions and to aids the member States regarding the matters of these conventions. It is an effective method to improve both flag State control and port State control. If they would be improved, fraudulent ship registry would have ceased eventually.

In consideration of current measures regarding fraudulent ship registry, it could be asserted that these methods are efficient and improve the detection of many fraudulent ship registry cases. However, they are not sufficient to cease fraudulent ship registration and prospective measures must be taken into consideration for prevention fraudulent ship registries.

4- Prospective Measures to Prevent Fraudulent Ship Registry

There have been certain measures that have been adopted by the IMO and assistive for prevention of fraudulent ship registration[185]. Even though there have been such measures to prevent fraudulent ship registration, they have not been adequate to prevent it.

There has been an increase at fraudulent ship registration, it has been realized that more measures have been required to prevent it. As a result, the discussion regarding fraudulent ship registries and measures to obstruct unlawful activities associated with fraudulent ship registries and fraudulent registration has been initiated by the IMO[186].

The discussions regarding fraudulent ship registration and preventive measures relating to fraudulent registry which have occurred at the 106th IMO Legal Committee Meeting demonstrated that a multi-pronged approach concerning the issue has been required for an effective analysis of the issue[187]. One of the essential problems of the international maritime community is the miscommunication and misinformation between administrative authorities concerning the official information regarding the States'

[183] The IMO: "A 24/Res.974", 21 December 2005, p. 1.
[184] The IMO, "A 28/Res.1067", 1.
[185] The IMO, "A 23/Res.959", 1.
[186] The IMO, "LEG 105/11", 1.
[187] The IMO, "LEG 106/7", 1.

registration procedures and authorities. This fundamental problem has become one of the main causes of fraudulent ship registration.

The measures which have been considered by the IMO must include all the actors of the international maritime community[188]. The main purpose of these measures must be the provision of current, reliable, and clear information concerning the procedures and authorities of the States' ship registries.

States' requirements for vessel registration and recognized organizations for the identification and accreditation of the vessels should be signified. As these measures become applicable for the international maritime community, the issue regarding fraudulent ship registration lessens and eventually deters.

Fraudulent registration caused hundreds of fraudulently registered vessels to sail internationally and effective control over these vessels is not available since there is no flag State jurisdiction upon them. As mentioned, in many fraudulently registered vessel cases, the vessels have been used for illegal activities onboard and fraudulent registration would become the cover which such illegal activities required for. There is also certain usage of fraudulently registered vessel at the ship-to-ship transfers between the States under UN Sanctions and the contribution of fraudulent ship registration to maintaining sub-standard operation in shipping and endangering seafarers' lives should not be overlooked[189].

The methods of fraudulent ship registration have been addressed and enucleated. Since there has been an increase in fraudulently registered vessels count, further measures should be discussed and adopted[190].

At first, the miscommunication between authorities of the States has been causing the operation of fraudulent registries to be committed. To prevent such a situation, there should be an information network for member States to share the contact information of

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188 The IMO, "LEG 106/7/1", 1.
189 The IMO: "LEG 106/7/5", 05 February 2019, p. 3.
190 The IMO, "LEG 106/7/1", 2.

the authorities which have authorized by the States to issue registration certificates on their behalf[191].

There should be a database that the actors of the international maritime community can share their information and search for the information of other States. The database has also required to be operated by an internationally recognized authority for frequent use and sake of the database.

The aim could be achieved through the Global Integrated Shipping Information System (GISIS)[192] of the IMO. The database has been operated by the IMO, the provision of reliable information to port States and flag States for verification of a particular ship from the registration could be succeeded[193]. The database can also satisfy the provision of verified information and identities regarding the authorized entities for the issuance of ship registration certificates and other certificates on behalf of flag States which the ship owners, operators, or insurers could trust.

In this context, an explanation of the GISIS and measures involving the system is required for a comprise comprehension of the issue. A significant discussion regarding fraudulent ship registration and the methods of prevention of this issue has taken place at the 105th and 106th IMO Legal Committee Meetings. The issue of satisfaction method of the requirement regarding the database for the provision of current and accurate information concerning the States' ship registration authorities and procedures widely and quickly to the actors of the international maritime community has been brought in front of the IMO Legal Committee[194].

At the IMO Legal Committee Meeting, it has been proposed by the US that the GISIS could be used as a beneficial tool for information provision relating to a list of authorized organizations to issue certificates[195]. Such methods would assist the actors of maritime commerce in the matters of the existence, verification, and approval of the flag by the competent authorities and the IMO. In the 106th IMO Legal Committee Meeting,

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191 The IMO, "LEG 106/7/2", 2.
192 The IMO, "LEG 106/7/1", 2.
193 *ibid* 2.
194 The IMO, "LEG 106/7/2", 4.
195 The IMO, "LEG 106/7/1", 2.

the proposal relating to the GISIS being a platform for sharing information regarding the experience and expertise concerning the issues which have arisen from fraudulent ship registries has been made[196].

Certain fraudulent activities such as; production of convincing false or forged documents by operators to successfully deceive ship owners, companies which have operated fraudulent registries all over the world with authentic-looking websites, claimed that they are the official registration offices of certain flag States and they have authorized for granting the vessels the nationality of these States has drawn attention to themselves. At the 106th IMO Legal Committee Meeting, it has been found out that some of the victim States have not operated international ship registries and other States have operated closed ship registries[197].

Despite these premises, fraudulent ship registration companies have continued to operate and register ships. In other cases of this fraud, certain flag States have terminated the authorization of their previously recognized organizations for performing registration functions. Even though the authorization has been terminated, these companies have continued to register vessels under the flag[198]. There has been a lack of information and communication between the actors of the international maritime world and this lacking could be concluded with the procurement of such information to an internationally recognized organization.

The proposal concerning the usage of GISIS to create a comprehensive database of registries that would be publicly accessible at any time has appeared as feasible. The essential aim of this database is the supplying of current and appropriate information to port State authorities, ship owners, ship operators regarding the registry of a ship, the legality of registration and to assist the owners of ships to register their ships in a legitimate registry[199].

On the other hand, a database could help member States to share their fraudulent registration examples. Information provision to other member States could develop

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196 The IMO: “A 26/Res.1029”, 18 January 2010, p. 2.
197 The IMO, “LEG 106/7”, 5.
198 The IMO: “LEG 106/7/4”, 04 February 2019, p. 2.
199 The IMO, “LEG 106/7/1”, 2.

immunity to fraudulent ship registries. In addition, the IMO can cooperate with the UN Security Council for the establishment of a searchable database concerning the vessels that currently become the subject of the UN Security Council resolutions. The database can work with searching the IMO number and vessel name[200].

Another measure could be the improvement of the procedures relating to the provision of CSR. The CSR has been assistive for the prevention of fraudulent ship registration. Flag States needs to review the CSR before the registration of a vessel. To achieve a reliable control procedure, The US has proposed certain measures which can be implemented. Therefore, a healthier checking procedure would be available for flag States before registration of vessel[201].

The US has firstly suggested that flag State administrations should ensure their up-to-date contact information regarding their CSR system in the GISIS should be available[202]. Concerning the vessels which have to comply with the SOLAS, regulation 5 of the SOLAS chapter XI-1 has outlined the requirements regarding the CSR[203]. These requirements have aimed the provision of an onboard record of the ship's history.

The CSR should be issued by the administration of the flag State. It should include the ship's name, the IMO number of the ship, the registered owner and operators, the registration date, the registration cancellation date, and certain other relevant information. Regulation 5 of the SOLAS Chapter XI-1 has also outlined the contracting administrations' responsibilities concerning the share, review, and update of the CSR.

To improve the procedure, the flag State which has received the application of registration of a vessel that has been formerly registered to a different flag State should review and confirm the CSR with the current flag State before the registration. As, one of the responsibilities of the current flag State is, regarding Regulation 5.8 of the SOLAS Chapter XI-1, the transfer of the copy of the CSR of the vessel which has covered the registered period of the vessel together with the CSR which has previously issued by other States. Therefore, the efficient transfer of CSR between the flag States is essential to

[200] *ibid* 5.
[201] The IMO, "LEG 106/7/2", 4.
[202] *ibid* 4.
[203] The IMO, "A 23/Res.959", 1.

prevent fraudulent ship registration and with the contact information of CSR authorities of the flag States, fraudulent ship registration could be prevented more effectively.

Another prospective measure could be the organization of a workshop concerning fraudulent ship registration by the IMO. The workshop may adopt the guidelines and practices focusing on the enhancement of capabilities to detect and report fraudulently registered vessels as the main topic[204]. As the workshop would be organized by the IMO, this workshop would appear as universal and member States, port State authorities, ship owners, ship operators, and other international maritime actors such as shipbrokers and insurance companies would be invited and informed regarding this issue.

The main aspect of the issue is the adoption of such measures by the international organizations. However, in the fight against fraudulent ship registration, there are also certain requirements which the States should accomplish[205]. These States have required exchanging information with each other to aid law enforcement for investigation, identification, and prosecution of such criminal activities. Appropriate criminal and civil action against such unlawful activities should be adopted by the States.

There are certain basic measures which flag States may apply as well. These States could verify the IMO numbers of vessels for the application of registration[206]. The verification of the IMO number can be made through GISIS. In situations that the IMO number and ship name has not matched clearly, these States could conduct a further investigation before the registration of the vessel, and confirmation of the information from previous flag State could be required if necessary. Flag States must ensure their CSR Contact Information at the GISIS is entered up to date[207].

Both the IMO and States are required to be more cautious relating to the preventive measures. At first, for the IMO, the submitted document's verification must be made more exhaustively. The IMO and each State should establish a systemized and secure communication.

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[204] The IMO, "LEG 106/7/2", 4.
[205] *ibid* 5.
[206] *ibid* 5.
[207] The IMO, "LEG 106/7", 3.

Provision of information and access should be accomplished after consulting national authorities. An establishment of guidelines for the enforcement of preventative measures concerning the registration of ships must be satisfied and announced. The IMO has been required to use GISIS to enlist the ship registration authorities and procedures of States. GISIS also must be used to share information regarding the cases of fraudulent ship registration to inform other States relating to this matter[208].

There are certain precautions that the States may take to prevent fraudulent ship registration. Port State control authorities must be informed concerning fraudulently registered vessels. The identity verification of the vessels should be accomplished more strictly. Furthermore, online verification of vessel's documents from other flag States is another convenient method for prevention of fraudulent ship registration.

CONCLUSION

In this study, certain questions as raised in the Introduction are discussed and addressed as follows:

The definitions of fraudulent ship registration and fraudulent ship registries have been under study at the IMO, definitions concerning these terms have not been constituted yet. There are certain suggested definitions relating to these terms which has stated above. Regarding the suggested definitions, it should be considered that, for prevention of fraudulent ship registration, adopted definitions should be simple, clear, and include all aspects of the term needing for definitions. Many of the suggested definitions of "fraudulent registration" and "fraudulent registry" are rational and acceptable.

Many countries have suffered from fraudulent ship registries. The 105th and 106th IMO Legal Committee Meetings have some of these States such as; the United Republic of Tanzania, the Government of the Republic of Maldives and the DRC. The analysis of the cases in which the registrations of vessels are legitimate have displayed that they have conducted their activities in their internal waters or territorial sea. Conversely, the cases which have stated fraudulent registered vessels demonstrated that these vessels have run their business mainly in international voyages. The FSM case has demonstrated that the

208 The IMO, "LEG 106/7/1", 2.

IMO was not aware of the fraudulent documents either. The Fiji case has indicated that even though the State has a closed registry no recognized organization authorized for issuance of ship registration for an international registry, the vessels which had been fraudulently flying Fiji's flag have been registered to a fraudulent international registry. The Maldives have become subjected to a similar occurrence as well.

Fraudulent ship registration has been committed in certain different methods such as falsified documentation, international companies purporting registration of vessels to cognizant flag States and operation of fraudulent registry websites. Other methods such as terminated registry, fraudulent representation to the IMO, broadcasting falsified AIS data, and physical and constructive alteration of vessels identification have been used for fraudulent registration of ships.

Fraudulent ship registration has certain aspects concerning the right of visit regarding Articles 92 and 110 of the UNCLOS. There are diversified methods of fraudulent ship registration and a classified approach for different conditions of the cases has been required. Fraudulently registered ships could have been registered to another State and may still use a flag other than the State of registry. Fraudulently registered ship could be a stateless ship and may use her previously terminated registration, or there could be no record of her registration as well. Regardless of these circumstances, she may become subject to the right of visit under the UNCLOS, concerning the conditions and status of the stateless vessels. There are also other illegitimate activities in the UNCLOS Article 110 entitling the right of visit to fraudulently registered vessels.

Flag State jurisdiction and fraudulent ship registry are significantly associated with since flag State jurisdiction is main component relating to supervision and inspection regarding the vessels on the high seas. The UNCLOS and other international conventions have established definitive limitations and prohibitions regarding the ships on the high seas. These limitations should be controlled in such a way as to punish the infringements. However, there should be an effective flag State jurisdiction over the vessels to inspect them. Such inspections would be effective to detect and prevent fraudulent ship registration.

The UNCROS has come into prominence as a legal source strengthening the genuine link concept and fixing certain conditions regarding for ship registration. Both the UNCLOS and the Geneva Convention on the High Seas mentioned the genuine link regarding ship registration. However, due to the difficulty of defining comprehensive genuine link and sovereignty issues regarding States, the genuine link was not defined in both Conventions. In this matter, the UNCROS has significance as a result of the attempt to define the genuine Link. The genuine Link concept has certain advantages regarding the satisfaction of establishing effective flag State jurisdiction over vessels. On the other hand, fraudulent ship registries had demonstrated the consequences of the vessels without flag State jurisdiction. Therefore, it is important to strengthen the genuine link concept.

Port State control is a balanced mechanism of control regarding the reduction of the impacts of the lack of flag State control. It has certain advantages regarding the inspection of fraudulently registered vessels. The inspections which have occurred under the port State jurisdiction demonstrated that there are a significant amount of fraudulently registered vessels posing danger to many areas. Many international conventions referred to the port State control mechanism such as the UNCLOS, SOLAS, MARPOL and STCW. The port State control mechanism has become frequently used mechanism for inspection of vessels. Port State control may and should be used to prevent fraudulent ship registries.

In conclusion, under the consideration of the cases concerning fraudulent ship registration, preventive measures have been required to be adopted in cooperation among the IMO, port States and flag States. Only with this method, this phenomenon may be prevented and eventually eradicated.

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ÖZET

Bu tezin amacı, “Gemi Sicilinde Sahteciliğe İlişkin Bir Analiz” sunmak ve gemi sicilinde sahteciğili Türk Hukukuna tanıtmaktır. Bundan sonra, belirli terimlerin önerilentanımları dahilinde gemi sicilinde sahteciliğe genel bakış, bu olguya maruz kalan Devletlerin örnekleri, gemi sicilinde sahtecilik ile bağlantılı hukuka aykırı fiilleri işlemekiçin kullanılan yöntemler ile birlikte incelenmiştir. Daha sonra gemi sicilinde sahtecilik ile bayrak devleti yetkisi, liman devleti kontrolü ve “Birleşmiş Milletler Gemilerin TescilŞartları Anlaşması” arasındaki uyum incelenmiştir. Son olarak gemi sicilinde sahteciliğekarşı alınacak önlemler anlatılmıştır. Mevcut ve ileriye dönük yöntemler sonuçlarıyla birlikte açıklanmıştır.

Bu tezde, gemi sicilinde sahteciliğin uluslararası denizcilik camiası ve IMO'nun deniz emniyeti ve güvenliği için oluşturduğu rejim açısından zararlı sonuçları olduğu tespit edilmiştir. Gemi sicilinde sahteciliklere karşı mücadele için çeşitli önlemler mevcutolsa da, gemi sicilinde sahteciliğin önlenmesine katkıda bulunmak için ileriye dönük önlemlerin de gerekli olduğu düşünülmektedir.

Anahtar Kelimeler: Gemi Sicili, Gemi Sicilinde Sahtecilik, Sahte Gemi Tescili, BayrakDevleti Yetkisi, Liman Devleti Yetkisi, Kolay Bayrak Devleti, Birleşmiş Milletler Gemilerin Tescil Şartları Anlaşması, Ziyaret Hakkı, Gerçek Bağ.

ABSTRACT

The purpose of this thesis is to provide “An Analysis of Fraudulent Ship Registration” and to introduce fraudulent ship registration to Turkish Law. Hereinafter, the overview of fraudulent ship registry within the suggested definitions of certain terms, examples of the States which have been subjected to this phenomenon have gone through alongside with the methods which have been used to commit the fraud and illegitimate acts associated with fraudulent ship registration issues are scrutinized at first. Afterward, the accordance among fraudulent ship registration and flag State jurisdiction, port State control, and “the United Nations Convention Conditions for Registration of Ships” is analyzed. Lastly, measures against fraudulent ship registries are explained. The current and the prospective methods with their outcomes are explained.

In this thesis, it is determined that fraudulent ship registration has fatal outcomes regarding the international maritime community and the regime which the IMO has built for marine safety and security. It has been considered that even though there have been current measures for fighting against fraudulent ship registries, prospective measures have also been required to contribute to the prevention of fraudulent ship registration.

Keywords: Ship Registry, Fraudulent Ship Registry, Fraudulent Ship Registration, Flag State Jurisdiction, Port State Jurisdiction, Flag of Convenience, United Nations Convention on the Conditions for Registration of Ships, Right of Visit, Genuine Link.