

Ship Registration and the Legal Attribution of Nationality Under the Law of the Sea

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Abstract

Ship registration is the legal process through which vessels acquire nationality and become subject to the jurisdiction and regulatory authority of a flag State under the international law of the sea. This study examines the legal framework governing ship registration and the attribution of nationality, focusing on the juridical bond established between vessels and States and the obligations that arise from this relationship. The research is motivated by ongoing concerns regarding the ambiguity of the genuine link requirement and inconsistencies in the enforcement of flag State responsibilities within the global maritime regime. The study adopts a qualitative research approach using the doctrinal legal method, involving the systematic analysis of relevant international legal instruments, legal principles, and scholarly materials regulating ship nationality. Particular attention is given to the provisions governing ship registration and the duties of flag States to exercise effective jurisdiction and control over vessels flying their flag. The findings reveal that ship registration constitutes the legal act through which nationality is conferred, granting vessels the right to fly the flag of a State while simultaneously placing them under its regulatory authority. However, the study finds that the genuine link requirement remains vague and weakly operationalized, contributing to disparities in registration practices and regulatory oversight. The research also highlights the governance challenges posed by stateless vessels, which operate outside effective legal supervision. The study contributes to knowledge by clarifying the legal implications of ship nationality, identifying regulatory gaps within the existing framework, and proposing reforms aimed at strengthening flag State accountability, oversight of ship registries, and technological innovation in maritime administration.

Keywords: ship nationality, ship registration, flag State jurisdiction, UNCLOS, genuine link, law of the sea

1. Introduction

The attribution of nationality to ships constitutes one of the foundational mechanisms of the international law of the sea. In the vast maritime space characterized by absence of any territorial

sovereignty exercised by states on sea, nationality ascribed to vessels functions as the primary mechanism through which jurisdiction is allocated and legal order maintained. Without nationality, vessels navigating beyond territorial waters would operate in a regulatory vacuum,

undermining well established maritime legal frameworks.

Nationality in international law traditionally denotes the legal bond between a State and those persons whom it is entitled to protect. While the concept is most frequently associated with natural persons, it is not confined to them.¹ International law extends the notion of nationality to certain juridical entities, including corporations, ships, and aircraft. In these contexts, nationality operates for legal purposes, though its conceptual foundation differs significantly from that applicable to individuals.² The International Court of Justice in the *Nottebohm Case*³ famously described nationality as a “legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.” The Court emphasised that nationality constitutes the juridical expression of a factual connection between an individual and the State conferring that nationality.

The nationality of a ship does not exist in the abstract; it is expressed and made visible through the act of registration. Registration is the general mechanism through which a State confers its nationality on a vessel and establishes the legal bond that attaches the ship to its authority.⁴ By entering a ship in its national registry, a State publicly affirms that the vessel is one of its subjects under international law and that it assumes responsibility for its regulation, supervision, and protection.⁵ This process gives concrete form to the relationship between the ship and the State, since the flag that the vessel is thereafter entitled and required to fly is the outward symbol of this attachment. Through registration, the State acquires the right to exercise jurisdiction over the vessel and to extend diplomatic protection when necessary, while the

ship gains a recognised national identity that allows it to navigate internationally under the legal authority of a single State.⁶ Without registration, there is no valid nationality and therefore no lawful attachment to any State.

This means that under public international law the ship is treated as being under the authority and protection of its flag State. The attachment through registration places the vessel within the legal sphere of the State, which is responsible for its regulation, supervision, and conduct on the high seas. This approach differs from the practice in private international law, where the protective veil of the flag State can be lifted and the focus shifts to the rights and liabilities of the individuals connected with the ship. In this context, actions may precede in rem⁷, allowing claims to be directed against the ship itself rather than against a State or its public authority.

In the *M/V Saiga (No. 2) case*,⁸ the Tribunal affirmed that the nationality of a ship is determined by the domestic law of the State concerned. This principle is codified in Article 91 of the United Nations Convention on the Law of the Sea 1982, which provides that every State shall fix the conditions for the grant of its nationality to ships, for their registration, and for the right to fly its flag. This formulation reflects language previously contained in Article 5 of the Geneva Convention on the High Seas.⁹ Both instruments affirm two central propositions: first, that nationality is not inherent but legally conferred; and second, that registration operates as the constitutive act through which that nationality becomes opposable in international law.

Registration must therefore be understood as an act of public authority. Through this sovereign act, a privately owned movable object is incorporated into the legal order of the flag State. Jurisprudence has consistently recognised that

¹ David Gallou. (2019). *L'apatride et le navire sans pavillon. Neptunus*, 25(4), pp. 1-9.

² Teakaram Singh. (2017). “Nationality defines a continual legal relationship between the State and the citizen, but only the State is competent to confer nationality on persons and objects”, available online at https://www.academia.edu/44660933/Nationality_define_s_a_continual_legal_relationship_between_the_State_and_the_citizen_but_only_the_State_is_competent_to_confer_nationality_on_persons_and_objects accessed 25/02/2026.

³ *Nottebohm case* (Liechtenstein v. Guatemala), 1955 I.C.J. 4 (Apr. 6).

⁴ Churchill, R. R., and A. V. Lowe. (2022). *The Law of the Sea*, 4th ed., Manchester University Press, p. 258.

⁵ Yoshifumi Tanaka. (2019). *The International Law of the Sea*. Cambridge, United Kingdom: Cambridge University Press, 3rd Edition.

⁶ Malcolm Shaw. (2021). *International Law*, 9th ed. Cambridge University Press.

⁷ Private maritime law allows claimants to proceed in rem; meaning the ship itself can be the defendant. This commonly occurs in: Collisions, salvage, maritime liens, cargo claims, and mortgage enforcement. In these contexts, the ship is not treated as “covered” by the State; jurisdiction is exercised by domestic courts.

⁸ *M/V “SAIGA” (No. 2) Case* (Saint Vincent and the Grenadines v. Guinea). ITLOS Case No. 2, Judgment of July 1, 1999.

⁹ High Seas Convention 1958, Article 5.

determination of conditions for the grant of nationality falls within the competence of States. In the *Muscat Dhows Case*,¹ the tribunal acknowledged the authority of States to regulate the nationality of vessels flying their flag. Similarly, in *Lauritzen v. Larsen*,² the Supreme Court of the United States underscored the centrality of the flag in determining the applicable legal order at sea.

Yet the relationship between registration and nationality is not conceptually self-evident. A vessel may be owned, financed, and managed across multiple jurisdictions, while its nationality remains singular and exclusively attributed, the legal bond created through registration operates independently of ownership and economic control. Nationality functions instead as a juridical technique for allocating regulatory competence in a space that is otherwise non-territorial.

The consequences of attribution are significant. Under Article 94 of UNCLOS, the flag State assumes responsibility to exercise effective jurisdiction and control over administrative, technical, and social matters. Exclusive jurisdiction on the high seas is thus structured around the prior act of registration. Without nationality, a vessel risks being treated as stateless and consequently deprived of the protection ordinarily afforded under international law, as reflected in Article 92 of UNCLOS.

Several scholars have contributed to this discussion on the nationality of ships focusing either on the requirement of the genuine link or on the regulatory challenges created by open registries and flags of convenience. Authors such as Meyers, Tanaka and Richard Barnes have examined the doctrinal foundations of ship nationality and the responsibilities attached to the flag State within the law of the sea regime. However, the juridical mechanism through which nationality itself is constituted often remains treated as a secondary technical matter rather than as the central legal act that structures the relationship between the vessel and the State. By focusing specifically on the role of registration as the legal act that produces this relationship, this article seeks to clarify the legal architecture

through which ship nationality is attributed and exercised within the contemporary law of the sea framework.

Despite its structural importance, the legal construction of ship nationality is often treated merely as a procedural requirement. This article thus argues that registration should instead be understood as the constitutive mechanism through which a ship acquires juridical identity within the international maritime order. By examining the legal character of registration, the right to fly the flag and the jurisdictional consequences flowing from attribution, this study clarifies the architecture through which nationality operates under the law of the sea.

2. Conceptual Clarification

The conceptual framework of this study is derived from three central concepts embedded in the research topic: ship registration, legal attribution of nationality, and the law of the sea. These concepts explain the legal process through which vessels acquire nationality, how jurisdiction is allocated among States, and how maritime governance operates within the international legal order.

2.1 Ship Registration

Ship registration refers to the formal legal and administrative process through which a vessel is recorded in the official register of a State and granted the right to fly the flag of that State. According to *Black's Law Dictionary*, registration generally refers to the official recording of a legal instrument, property, or entity in a public register for the purpose of establishing legal recognition and regulatory control.³ In the maritime context, this process establishes the legal identity of a vessel and enables the State to exercise jurisdiction and oversight over it.

Similarly, the *Oxford English Dictionary* defines registration as the act of officially recording or enrolling something in a register maintained by an authority.⁴ Applied to maritime governance, ship registration ensures that vessels are formally recognized within a national registry for administrative and regulatory purposes.

From the perspective of international law, Article 91 of the *United Nations Convention on the Law of the Sea* provides that every State shall fix the

¹ *Muscat Dhows case, (France V. Great Britain) 1905, Permanent Court of Arbitration.*

² *Lauritzen v Larsen*, 345 US 571, 1953 AMC 1210 (1953).

³ Garner, B. A. (Ed.). (2019). *Black's law dictionary* (11th ed., p. 1476). Thomson Reuters.

⁴ Oxford University Press. (2023). *Oxford English dictionary* (online ed.). Oxford University Press.

conditions for the grant of nationality to ships and for the registration of ships in its territory.¹ This provision establishes ship registration as the legal mechanism through which vessels are formally linked to a State within the international maritime legal system.

2.2 Legal Attribution of Nationality

The legal attribution of nationality refers to the process through which a vessel is legally identified with a particular State and placed under its jurisdiction. *Black's Law Dictionary* defines nationality as the legal relationship between an individual or entity and a State, entitling the entity to the protection of that State while subjecting it to its jurisdiction.² When applied to ships, nationality establishes the legal bond between a vessel and the State whose flag it flies.

In a general sense, the *Oxford English Dictionary* defines nationality as the status of belonging to a particular nation or State, typically associated with legal rights and obligations.³ Within maritime law, nationality therefore signifies the legal identity of a vessel as belonging to a particular State.

International law provides a specific legal basis for this concept. Article 91 of the *United Nations Convention on the Law of the Sea* states that ships have the nationality of the State whose flag they are entitled to fly.⁴ Through registration, a vessel acquires nationality and becomes subject to the jurisdiction and regulatory authority of the flag State, particularly on the high seas where flag State jurisdiction predominates.

2.3 Law of the Sea

The law of the sea refers to the body of international legal rules governing the use, regulation, and management of the oceans and maritime activities. *Black's Law Dictionary* describes the law of the sea as the branch of international law that regulates maritime navigation, the rights and duties of States over ocean spaces, and jurisdiction over maritime activities.⁵

From a general definitional perspective, the *Oxford English Dictionary* describes the law of the sea as the system of legal principles governing the rights and obligations of States in relation to the oceans and maritime zones.⁶

The modern legal framework of the law of the sea is largely codified in the *United Nations Convention on the Law of the Sea*, which establishes comprehensive rules governing maritime zones, navigation, marine resources, and jurisdiction over ships.⁷ Within this framework, the convention also provides the legal basis for ship registration, nationality of vessels, and the responsibilities of flag States to exercise effective jurisdiction and control.

These three concepts form the analytical foundation of the study. Ship registration operates as the legal and administrative mechanism through which vessels are entered into a State registry. Through this process, the legal attribution of nationality occurs, creating a juridical bond between the vessel and the flag State. The law of the sea, particularly as codified in the *United Nations Convention on the Law of the Sea*, provides the overarching legal framework regulating this relationship by defining the rights and responsibilities of States in relation to ships flying their flags. Together, these concepts explain how nationality is conferred on vessels, how jurisdiction is exercised by flag States, and how maritime governance is structured within the international legal order.

3. Methodology

This study adopts a qualitative research methodology, which is particularly appropriate for examining legal principles, institutional frameworks, and normative rules within international law. Qualitative research emphasizes the interpretative analysis of texts, concepts, and legal doctrines rather than numerical measurement, making it highly suitable for studies that seek to understand the meaning, development, and application of legal rules.⁸ The choice of a qualitative approach in this study is justified by the nature of the research

¹ United Nations. (1982). *United Nations Convention on the Law of the Sea*. United Nations.

² Garner, B. A. (Ed.). (2019). *Black's law dictionary* (11th ed., p. 1235). Thomson Reuters.

³ *Ibid.*

⁴ *Ibid.*

⁵ Garner, B. A. (Ed.). (2019). *Black's law dictionary* (11th ed., p. 1041). Thomson Reuters.

⁶ *Ibid.*

⁷ United Nations. (1982). *United Nations Convention on the Law of the Sea*. United Nations.

⁸ Creswell, J. W., & Creswell, J. D. (2018). *Research design: Qualitative, quantitative, and mixed methods approaches* (5th ed.). SAGE Publications.

problem, which focuses on the legal attribution of nationality to ships and the regulatory implications of ship registration under the international law of the sea. Since the study seeks to analyze legal principles, treaty provisions, and doctrinal interpretations rather than empirical data, a qualitative methodology provides the most appropriate framework for achieving the research objectives.

Within this qualitative paradigm, the study employs the doctrinal legal research method, commonly referred to as the black-letter law approach. Doctrinal research involves the systematic examination and interpretation of legal rules derived from authoritative sources such as statutes, treaties, judicial decisions, and scholarly writings in order to clarify the content, scope, and application of legal principles.¹ This method is particularly relevant to the present study because the issue of ship nationality is fundamentally a legal and doctrinal question rooted in international maritime law. The doctrinal approach therefore enables a rigorous analysis of the legal framework governing ship registration and the responsibilities of flag States.

The study relies primarily on authoritative legal sources, including international treaties, conventions, and legal instruments that constitute the foundation of the global maritime legal regime. Particular attention is devoted to the United Nations Convention on the Law of the Sea (UNCLOS), which establishes the legal framework governing ship registration, nationality, and flag State jurisdiction. Key provisions of the Convention are analyzed to understand how international law constructs the legal bond between ships and States and how it allocates regulatory authority and responsibility to flag States.

In addition to primary legal sources, the research draws on secondary materials such as academic books, peer-reviewed journal articles, and legal commentaries that provide scholarly interpretations of maritime legal doctrines. These materials are used to critically examine debates surrounding the concept of the “genuine link”, the scope of flag State obligations, and the broader implications of ship registration for

maritime governance and accountability.

The use of the doctrinal method in this study is therefore justified because it enables a systematic and critical analysis of the legal rules that govern ship nationality within the international maritime legal order. By examining treaty provisions, legal doctrines, and scholarly interpretations, the methodology provides a solid analytical foundation for understanding how international law structures the attribution of nationality to ships and assigns regulatory responsibility to States.

4. Theoretical Framework

Understanding the legal attribution of nationality to ships and the regulatory obligations that flow from ship registration requires a robust theoretical foundation within international legal scholarship. Ship registration is not merely an administrative procedure but a juridical mechanism through which international law allocates authority, responsibility, and regulatory control over vessels navigating the global maritime domain. Within the framework of the United Nations Convention on the Law of the Sea (UNCLOS), the attribution of nationality establishes a legal bond between a vessel and a flag State, thereby determining the State responsible for exercising jurisdiction and ensuring compliance with international maritime standards. To explain the legal logic and regulatory implications of this relationship, this study draws on three complementary theoretical perspectives: the theory of international responsibility, the compliance-based theory, and the risk theory. These theories collectively illuminate the normative and institutional foundations upon which the contemporary regime of ship registration and flag State control is constructed.

The theory of international responsibility, commonly associated with the doctrinal work of Anzilotti (1905)² and later codified in the International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts (2001),³ posits that States are legally accountable for acts or omissions that breach their international obligations. The central postulate of this theory is that whenever a State

¹ Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin Law Review*, 17(1), 83–119.

² Anzilotti, D. (1905). *Teoria generale della responsabilità dello Stato nel diritto internazionale*. Firenze Press.

³ International Law Commission. (2001). *Articles on responsibility of states for internationally wrongful acts*. United Nations.

undertakes an international legal commitment, failure to comply with that obligation gives rise to responsibility and may entail legal consequences. Within the maritime domain, this principle explains the legal significance of ship nationality. Once a vessel is registered and authorized to fly the flag of a State, that State assumes responsibility for exercising effective jurisdiction and control over the vessel and its activities. The significance of this theory to the present study lies in its explanation of why ship registration is legally consequential: by conferring nationality upon a vessel, a State simultaneously assumes international responsibility for regulating its conduct and ensuring compliance with international maritime obligations.

Complementing this perspective is the compliance-based theory, developed through the influential work of Chayes and Chayes (1993, 1995).¹ This theory challenges enforcement-centered approaches to international law by arguing that States generally comply with international obligations because of normative commitment, reputational incentives, and participation in cooperative institutional frameworks. Non-compliance, according to this perspective, often results from capacity limitations or institutional constraints rather than deliberate defiance. Within the maritime governance system, international conventions rely significantly on the regulatory capacity of States to implement agreed standards through domestic institutions such as ship registries and maritime administrations. The relevance of this theory to the present study lies in the fact that ship registration constitutes a central institutional mechanism through which States internalize and implement international maritime rules, thereby facilitating compliance with global regulatory standards.

The risk theory, associated with the works of Saleilles (1897)² and Jossierand (1897),³ provides a further explanatory lens for understanding the regulatory structure of maritime governance. The theory is premised on the idea that responsibility should be assigned to actors who create or control activities capable of generating harm. Rather than focusing exclusively on fault, the theory emphasizes preventive regulation by

allocating responsibility to those best positioned to manage potential risks. Maritime navigation inherently involves considerable dangers, including ship collisions, marine pollution, environmental degradation, and threats to human life at sea. Through the attribution of nationality via ship registration, international law identifies the flag State as the authority responsible for supervising and regulating these risks. The significance of this theory to the study lies in its explanation of why international law assigns regulatory oversight to the State granting nationality, thereby ensuring that vessels operate under a system of identifiable accountability and risk management.

Taken together, these theoretical perspectives provide a coherent analytical foundation for the study. The theory of international responsibility explains the legal accountability of States for vessels flying their flags, the compliance-based theory clarifies the institutional mechanisms through which maritime obligations are implemented, and the risk theory illustrates the rationale for allocating regulatory oversight to flag States. Collectively, they reinforce the central premise of this study that ship registration is the juridical mechanism through which responsibility, compliance obligations, and regulatory risk are structured within the international maritime legal order.

5. Registration as a Constitutive Legal Act for the Attribution of Ship Nationality

The acquisition of ship nationality is not automatic. It involves the product of a well-structured legal procedure whereby a vessel is incorporated into the public registry of a State. The procedures for the acquisition of ship nationality lie at the centre of the regulatory framework governing activities on the high seas. Nationality enables the consistent application of legal standards to vessels and determines which State bears responsibility for their supervision concerning navigation, safety, administrative, technical, and social matters.

Under international law, this framework is anchored in Article 91 of the UNCLOS, which recognises the capacity of every State to fix the conditions for the grant of its nationality to ships and for their registration. A ship has the nationality of the State whose flag it is entitled to

¹ Chayes, A., & Chayes, A. H. (1993). On compliance. *International Organization*, 47(2), 175–205.

² Saleilles, R. (1897). *Les accidents de travail et la responsabilité civile*. Paris.

³ Jossierand, L. (1897). *De la responsabilité civile*. Paris.

fly. Article 91 highlights the fact that nationality is not inherent. It is granted. The mechanism through which it is granted is registration which serves as a condition *sine qua non* for the acquisition of nationality.

5.1 Sovereign Discretion in the Grant of Ship Nationality

Article 91 affirms a classic principle of international law: each State whether coastal or landlocked, retains discretion to determine the conditions under which it will confer nationality upon vessels. This position was articulated as early as the *Muscat Dhows Case*,¹ where the tribunal recognised that France was entitled to authorise vessels belonging to subjects of the Sultan of Muscat to fly the French flag, bound only by its own legislation and administrative rules prior to treaty restrictions.² The same logic was later echoed in the *M/V Saiga (No. 2)*,³ where it was affirmed that the nationality of a ship is determined by the domestic law of the State concerned. International law therefore does not prescribe uniform substantive criteria for the registration of ships. It leaves to States the authority to establish their own regulatory frameworks.

This discretion is not merely theoretical. States impose varying conditions relating to ownership structures, documentation, fees, technical compliance, crewing standards, or corporate presence. Whether operating closed registers or open registries often associated with flags of convenience, States retain control over the admission of vessels into their national registries.⁴ This freedom should however exist within limits. Article 91 introduces the requirement of a “genuine link” between the State and the ship. Although the content of this requirement remains debated, it reflects the broader principle that nationality must not be reduced to a purely formal gesture devoid of regulatory substance.

5.2 Registration as an Act of Public Authority

Registration is not simply administrative

documentation. It is an act of public authority. Through registration, a State transforms a privately owned movable asset into a vessel vested with a national character. Once entered into the national register, the ship becomes a subject of flag State jurisdiction and protection.⁵

This process is comparable, though not identical, to the conferral of nationality upon natural persons. Just as an individual must comply with legal requirements before being recognised as a national of a State, a vessel must satisfy statutory conditions before being granted the right to fly its flag. Upon fulfilment of those requirements, nationality is conferred together with the right and obligation to display the State’s flag.⁶

The public character of registration is further demonstrated by its consequences. Entry into the register places the vessel under the regulatory, administrative, technical, and social control of the flag State. Article 94 of UNCLOS imposes upon States the duty to exercise effective jurisdiction and control over ships flying its flag. Registration therefore generates responsibility as well as authority.

The importance of registration as the determinant of nationality was clearly illustrated in *R v. Bolden and Dean (The Battlestar)*,⁷ where the court held that nationality depended upon entry in the public register. In the absence of valid registration, the vessel was considered stateless despite its ownership and the documentation it purported to carry. This case underscores a central point that nationality flows from registration, not from ownership, certification, or the mere visual act of flying a flag.

5.3 The Administrative Process Linking Vessel and State

The administrative process that connects a vessel to a State typically involves the submission of documentation, verification of compliance with national requirements, payment of fees, and formal entry into the public register. Upon completion of these steps, the ship acquires national character and may lawfully navigate

¹ *Muscat Dhow’s case, (France V. Great Britain)* 1905, Permanent Court of Arbitration. Also see Rodney Carlisle. (2014). The Muscat Dhows Case in Historical Perspective. *The Northern Mariner/Le marin du nord*, XXIV(1), pp. 23-40.

² Richard Coles and Edward Watt. (2018). *Ship Registration: Law and Practice*, p. 70. Also see, Louis B. Sohn *et al.* (2014). *Cases and Materials on the Law of the Sea*, 2nd edition, Brill Nijhoff, p. 116.

³ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999.

⁴ Michael Galley. (2013). Flagging Interest: Ship Registration, Owner Anonymity, and Sub-standard Shipping. *Mountbatten Journal of Legal Studies*, 14(1&2), pp. 87-109. See, Theodore Okonkwo. (2018). International maritime legal regime and the escalation of flags of convenience practices. *International Journal of Law*, 4(1), pp. 1-9.

⁵ Article 94 UNCLOS.

⁶ See *Nottebohm case op.cit.*

⁷ *R v. Bolden and Dean (The Battlestar)* (1997) 2 Int. M.L.

under the flag of that State.¹ The act of registration thus implements a dual function. First, it documents the national identity of the vessel. Second, it establishes the legal bond through which jurisdiction is exercised. The ship gains the right to diplomatic protection and lawful navigation; the State acquires regulatory authority and international responsibility.

International practice also recognises the obligation of States to respect foreign registration. The principle of mutual recognition underpins cases such as *McCulloch v. Sociedad Nacional*,² where the United States Supreme Court declined to extend domestic labour jurisdiction over vessels flying foreign flags.³ Similarly, during the 1873 *Virginus* incident,⁴ the United States asserted that only the flag State possessed authority to determine the validity of a ship's registration.⁵ These examples highlight the international significance of the act of registration. Once nationality is conferred in accordance with domestic law, it becomes opposable to other States.

6. The Criteria for Ship Nationality and the Genuine Link Requirement

As earlier mentioned, the determination of a ship's nationality is formally tied upon registration of a vessel in the State's registry, subsequently acquiring nationality from the State in whose registry it is entered and whose flag it is entitled to fly. Once authorisation is granted to fly that flag, the vessel benefits from the diplomatic protection of the flag State and falls under its primary jurisdiction on the high seas.

The principle that the flag State exercises jurisdiction over vessels flying its flag is one of the most firmly established rules of customary international law and is expressly reflected in the UNCLOS. As established in Article 91 that grants the possibility of every State retain its authority to determine the conditions under which nationality of ships can be issued, subject to the existence of a genuine link between the State and the vessel.⁶ These obligations, elaborated in

Article 94, requires the flag State to exercise effective jurisdiction and control in administrative, technical, and social matters, including construction standards, equipment, seaworthiness, manning, labour conditions, and crew training.

The concept of the genuine link was first formally introduced in Article 5 of the 1958 Convention on the High Seas (HSC). Article 5 paragraph 1 of that Convention provides that each State shall establish the conditions for the grant of its nationality to ships, for their registration, and for the right to fly its flag. It further stipulates that ships possess the nationality of the State whose flag they are entitled to fly and that a genuine link must exist between the State and the ship, requiring the effective exercise of jurisdiction and control in administrative, technical, and social matters.⁷

Article 91 of UNCLOS subsequently reaffirmed the wordings of the former Convention reiterating the genuine link requirement, though without repeating verbatim the reference to effective jurisdiction. The *travaux préparatoires* suggest that the deletion was not intended to alter the substance of the requirement, but rather to avoid duplication with Article 94, which comprehensively sets out flag State duties.⁸ This can thus be deduced that the genuine link in the 1982 Convention retains the same functional orientation as under the 1958 Convention.

The readings of these provisions raise two enduring questions. First, what is meant by a genuine link in the maritime context? Second, what legal consequences follow where such a link is absent or merely nominal?

The concept did not originate in maritime law. It echoes reasoning developed by the International Court of Justice in the *Nottebohm Case*, where nationality was described as requiring a real and effective bond rather than a purely formal attachment.⁹ Although that case concerned individuals rather than ships, its language influenced subsequent debates on ship

¹ Michael Galley, *op.cit.*

² *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963).

³ David Sloss, Michael Ramsay and William Dodge. (2011). *International Law in the US Supreme Court*. Cambridge University Press, p. 329.

⁴ Jonathan Ault. The *Virginus* Affair, Latin American Studies, available online at <https://www.spanamwar.com/virginus.htm> accessed 14/05/2025.

⁵ Louis B. Sohn *et al.* (2014). *Cases and Materials on the Law of the Sea*, 2nd edition, Brill Nijhoff, p. 112.

⁶ Article 91 (1) UNCLOS.

⁷ Article 5 (1) of the High Seas Convention 1958.

⁸ Third United Nations Conference on the Law of the Sea, Official Records, Vol. III, p. 107 at 130.

⁹ *Nottebohm Case op.cit.*

nationality. Yet, despite decades of incessant discussion, no precise or universally accepted definition of the genuine link has emerged in the maritime sphere.

To comprehensively understand this dilemma, the interpretation of the term under the 1958 Convention must be guided by Articles 31 and 32 of the Vienna Convention on the Law of Treaties. In applying the ordinary meaning rule, a genuine link supposes a real and substantive connection between the ship and the State purporting to grant nationality,¹ as opposed to a merely artificial or tenuous association.² Contextually, the HSC restricts changes of flag during a voyage save in cases of genuine transfer of ownership or registry, ultimately reinforces the idea that nationality presupposes a meaningful relationship.³

However, neither textual interpretation nor recourse to *travaux préparatoires* yields a definitive standard as suggested by the Vienna Convention on Treaties. Early drafts of the International Law Commission attempted to impose ownership requirements as minimum criteria for recognition of nationality by other States.⁴ These proposals were ultimately abandoned in favour of the more flexible genuine link formula, reflecting a compromise between traditional maritime powers and States operating open registries.⁵

The ambiguity surrounding the concept was later addressed by the ITLOS in the *M/V Saiga (No. 2)* judgment wherein the Tribunal reaffirmed that the genuine link was to be viewed in the context of the effective exercise of jurisdiction and control and not for determining whether a State is apt to allow ships to fly its flag.⁶ In other words, the genuine link functions as a principle directed inward, toward the responsibilities of the flag State, rather than outward, as a mechanism for invalidating nationality.

Subsequent efforts to give the concept greater precision culminated in the 1986 United Nations Convention on Conditions for Registration of Ships. Whilst the earlier Conventions envisaged the “genuine link”, as seen, in terms of

jurisdiction and control, the 1986 Convention introduces the concept of the economic link, providing for the participation by nationals of the flag State in the ownership, manning and management of ships. The relevant provisions for this purpose are contained in Articles 7, 8, 9 and 10.⁷ Yet even these provisions leave considerable discretion to States and have not fundamentally altered the landscape of maritime registration. The Convention although considerable of the short comings of the earlier Conventions, it has not achieved widespread ratification, and its practical impact remains limited.

Thus, the genuine link does not undermine the constitutive function of registration. Rather, it reinforces it. Registration remains the sovereign act through which nationality is conferred. The genuine link requirement ensures that the connection between the issuing state and the ship in question carries functional substance, anchoring nationality to responsibility that comes with it within the international maritime order.

7. The Legal Consequences of Flag State Nationality

The attribution of nationality confers rights upon the flag State, but it simultaneously imposes corresponding obligations within the international maritime order. This link, however, carries with it a structured allocation of jurisdiction, authority and responsibility. Once a vessel acquires nationality, it becomes integrated into the public law framework of the flag State and consequently subject to its regulatory control.

Under Article 92 of the UNCLOS, ships sailing under the flag of one State are subject to the exclusive jurisdiction of that State on the high seas. This principle reflects the long-standing rule of international law that jurisdiction over a vessel on the high seas resides solely with the State to which the vessel belongs. Nationality therefore operates as the legal basis upon which

¹ Churchill R.R. (2000). “The Meaning of the “Genuine Link” Requirement in Relation to the Nationality of Ships”, a study prepared for the International Transport Workers’ Federation, University of Wales, Cardiff, p. 11, available online at <https://orca.cardiff.ac.uk/id/eprint/45062/1/itf-oc2000.pdf> accessed 16/05/2025.

² Articles 31 and 32 of the Vienna Convention on the Law of Treaties 1969.

³ Article 6(1) of the 1958 HSC.

⁴ *Yearbook of the International Law Commission*, 1951, Vol. II, pp. 75-76.

⁵ Alex, G.O. (1999). *The Genuine Link Concept: Time for a Post Mortem?* Utrecht University, p. 3.

⁶ *M/V Saiga (No. 2) op. cit.*, Judgment para.83.

⁷ Richard Coles and Edward Watt. (2018). *Ship Registration: Law and Practice*, p. 70. Also see, Louis B. Sohn *et al.* (2014). *Cases and Materials on the Law of the Sea*, 2nd edition, Brill Nijhoff, p. 74.

jurisdiction is asserted and exercised.¹

7.1 *The Exercise of Exclusive Flag State Jurisdiction*

The exercise of exclusive jurisdiction encapsulated in Article 92 is complemented by the obligations imposed under Article 94 of UNCLOS. Article 94 provides that every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. This provision transforms nationality from a formal status into a regime of active supervision.

In our previous analysis, the flag State holds jurisdiction over its vessels on the high seas and is obligated to enforce regulations concerning navigation, safety, and administrative, technical and social matters.² These duties include maintaining a ship register, assuming jurisdiction under domestic law over the vessel and its crew, and ensuring compliance with applicable international standards. The obligation to effectively exercise jurisdiction underlines that nationality entails performance, not mere attribution. This consequently buttresses the need for a genuine link in order to ensure this regulatory control over vessels being granted nationality.

7.2 *Duties of the Flag State Under Article 94 of UNCLOS*

The reading of Article 94 expressly revolves around three dimensions of control herein; administrative, technical and social. This tripartite formulation mirrors the regulatory responsibilities bound by every flag state conferring ship nationality as well as regulate the activities of the vessel and every one serving on board it.

One of the most fundamental obligations imposed on the flag State is the duty to maintain an official register of ships. Article 94(2) (a) requires States to keep an official register containing the names and identifying particulars of vessels entitled to fly their flag. Through this register, nationality is attributed to ships and the legal bond between the vessel and the State is established. While the Convention leaves the regulatory structure and registration procedures

of such registers largely to the discretion of domestic legislation, the 1986 Convention elaborates in far greater detail the information that ought to be recorded in a ship register.³ In practice ship registries often reflect the broader maritime policy pursued by the State concerned. Some traditional maritime powers maintain closed registries designed to preserve national control over ownership and management of ships, whereas other States operate open registries intended to attract foreign shipowners and capital.⁴

Equally related to the maintenance of the register of ships is the obligation of the flag State to assume jurisdiction over ships flying its flag and over the persons serving on board them. Article 94(2)(b) further obliges the flag State to exercise jurisdiction not only over ships registered under its flag, but also over the master, officers and crew serving on board such vessels. This jurisdiction constitutes the legal basis for the well-established principle that vessels on the high seas are primarily subjected to the control of their flag State. Likewise, the responsibility of the flag State extends not only to the physical condition of the vessel but also to the conduct, competence, and welfare of the persons on board.

Article 94 further imposes a series of obligations aimed at ensuring the safety of ships and the protection of life at sea. Paragraph 3 requires the flag State to take all necessary measures to guarantee safety with respect to the construction, equipment, and seaworthiness of vessels, as well as the manning of ships, the training of crews, and the use of signals and communication systems designed to prevent collisions.⁵ The notion of seaworthiness refers to the overall fitness of a vessel to withstand the conditions reasonably expected at sea. This notion extends beyond the physical integrity of the hull and equipment to encompass crew competence, adequate stores, and sufficient fuel supplies. Seaworthiness therefore covers vessel design, construction, manning, equipment, and

¹ Richard A Barnes. (2015). "Flag States", in DR Rothwell, AG Oude Elferink, KN Scott and T Stephens (eds) *The Oxford Handbook on the Law of the Sea*. Oxford University Press, pp. 304-324.

² Article 94 (1) UNCLOS.

³ See Article 11 of the 1986 Convention.

⁴ Nivedita Hosanee, A Critical Analysis of Flag State Duties as Laid Down Under Article 94 of the 1982 United Nations Convention on the Law of the Sea (UN Division for Ocean Affairs, 2009), available online at http://www.un.org/depts/los/nippon/unnnff_programme_home/fellows_pages/fellows_papers/hosanee_0910_mauritius.pdf accessed 13/05/2025.

⁵ Article 94 (3) UNCLOS.

maintenance standards.¹ Within the framework of Article 94(3), seaworthiness is further reinforced by Article 219 of UNCLOS, which links vessel condition directly to the prevention of marine pollution.

In practice, the fulfilment of these safety standard obligations is derived from international conventions and through international cooperation, particularly under the auspices of the International Maritime Organization (IMO).² Instruments such as the International Convention for the Safety of Life at Sea (SOLAS) establish detailed requirements relating to ship construction, fire protection, lifesaving equipment, and navigational safety.³ Although these technical standards are elaborated at the international level, their implementation and enforcement ultimately remain the responsibility of the flag State.

Again, international maritime safety regulation places particular emphasis on the importance of proper training and working conditions for seafarers. International standards governing training and certification are established under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, while labour conditions aboard ships are addressed through instruments adopted by the International Labour Organization. In particular, the Maritime Labour Convention 2006 consolidates a wide range of earlier maritime labour standards and establishes minimum requirements concerning employment conditions, accommodation, health protection, and social welfare for seafarers.⁴

Furthermore, the duty of the flag State is outlined in issues concerning the inspection and survey of ships. Article 94(4) requires vessels to be surveyed by qualified surveyors prior to registration and periodically thereafter to ensure continued compliance with safety standards. These inspections may be carried out by national maritime authorities or delegated to recognised classification societies acting on behalf of the flag

State. Through such surveys, the flag State verifies that vessels possess the necessary charts, navigational equipment, and qualified personnel required for safe navigation.

UNCLOS further introduces mechanisms designed to reinforce accountability in the exercise of flag State jurisdiction. Article 94(6) reinforces the overarching principle articulated in Article 94(1), namely that the flag State bears primary responsibility for exercising effective jurisdiction and control over vessels flying its flag. It permits any State that has reasonable grounds to believe that a flag State has failed to discharge this responsibility to report the relevant facts to that flag State. Upon receipt of such a report, the flag State is required to investigate the matter and, where appropriate, to take remedial action.

In addition, Article 94(7) imposes a duty on the flag State to conduct an inquiry, before suitably qualified persons, into every marine casualty or incident of navigation on the high seas involving a ship flying its flag, where such incidents result in loss of life or serious injury to nationals of another State, or cause serious damage to ships, installations, or the marine environment of another State. The provision further requires cooperation between the flag State and other States concerned in the conduct of such inquiries. This means that the flag State and the other State have a mandatory duty to cooperate to establish the relevant facts.⁵ Contemporary maritime practice increasingly emphasises cooperation between States in the conduct of such investigations, as reflected in the standards developed by the International Maritime Organization concerning the investigation of marine casualties.

Beyond these safety and administrative responsibilities, the Convention also assigns the flag State a central role in the protection of the marine environment. Article 217 outlines the enforcement mechanisms necessary to uphold these standards; emphasizing that compliance

¹ Adriana Vincenca Padovan, "The Elements of Seaworthiness in the Context of Marine Insurance Revisited," pp. 101-122, *Modern Challenges of Marine Navigation - Book of Proceedings of the 4th International Scientific Conference on Maritime Law ISCML Split 2023*.

² Convention on the International Maritime Organization, Adoption: 6 March 1948; Entry in force: 17 March 1958 available online at <https://www.imo.org/en/about/conventions/pages/convention-on-the-international-maritime-organization.aspx> accessed 29/12/2025.

³ International Convention for the Safety of Life at Sea (SOLAS), 1974.

⁴ International Labour Organization, Maritime Labour Convention, 2006.

⁵ Etienne Kentsa and Arnold Moyo Dongue. (2025). The Obligations of States to Cooperate under the United Nations Convention on the Law of the Sea. *Quebec Journal of International Law*, 36(2), pp. 47-72.

must be monitored irrespective of where violations occur. Ships should not be allowed to operate unless they meet pollution control requirements and possess the appropriate certification. In cases of non-compliance, flag States are responsible for conducting investigations and where sufficient evidence exists, the flag State must institute proceedings under its domestic law and impose penalties adequate to discourage further violations.¹

In view of these provisions underscored above, the attribution of nationality to ships is made of a complex framework of responsibilities borne by the flag State. The flag State is expected not only to confer nationality but also to exercise continuous oversight over the vessels flying its flag, ensuring compliance with international standards relating to safety, labour conditions, environmental protection, and maritime governance. Nevertheless, as practically demonstrated, the effectiveness of this regime ultimately depends on the willingness and capacity of flag States to implement and enforce these obligations in good faith.

8. Summary of Findings

This study examined the legal architecture governing ship registration and the attribution of nationality under the international law of the sea, emphasizing the juridical bond between vessels and flag States and the regulatory obligations that flow from it. The findings underscore that ship registration is the constitutive act through which nationality is conferred, providing vessels with a recognized legal identity and establishing the flag State's authority and responsibility. Consistent with Article 91 of the United Nations Convention on the Law of the Sea, nationality is not an inherent attribute of a vessel, but a legal status formalized through registration, which entitles the ship to fly the flag of the registering State. This process is the linchpin of maritime governance, linking jurisdiction, regulatory oversight, and international accountability.

A key finding is that States retain broad discretion in granting ship nationality, including determining eligibility criteria, ownership structures, and operational standards. However, this discretion is constrained by the principle of a

“genuine link”, a requirement intended to ensure that the flag State is capable of exercising effective jurisdiction and control over vessels. The study confirms, in line with contemporary scholarship, that while the genuine link remains legally ambiguous, its functional purpose is to anchor nationality to regulatory capacity and accountability, rather than to serve as a rigid test for validating registration.

The study further finds that the legal consequences of nationality are substantive and enforceable. Under Article 94 UNCLOS States are obligated to maintain comprehensive ship registries, supervise vessel safety, enforce labor standards, ensure crew competence, and uphold environmental protection obligations. Nationality, therefore, is inseparable from active regulatory responsibility, transforming the legal status of a vessel into a mechanism for effective governance, risk mitigation, and compliance enforcement. This reinforces the view, supported by scholars such as Churchill and Lowe (2022) and Barnes (2015), that nationality is not merely symbolic but operational, shaping state accountability and maritime order.

Another significant finding is that stateless vessels represent a governance and regulatory gap. Without registration, ships are deprived of the legal protection and oversight normally provided by a flag State, leaving them vulnerable to regulatory evasion, unsafe practices, environmental harm, and maritime crime. This finding emphasizes the critical role of registration as a preventive and regulatory instrument, ensuring that every vessel operates under identifiable jurisdiction and supervision.

Finally, the study confirms that ship registration serves as the gateway through which vessels enter the international maritime legal order, integrating legal identity, flag State responsibility, and international regulatory obligations into a coherent framework. By linking ships to States, registration allocates jurisdiction, enforces compliance with international standards, and establishes accountability for governance on the high seas. These findings align with both classical maritime doctrine and contemporary scholarship, underscoring that the

¹ Article 217(8), modeled on the relevant provisions of MARPOL 73/78 requires penalties provided by the flag State to be “adequate in severity to discourage violations wherever they occur.” Thus, the flag State must have in place an effective enforcement regime for vessels registered under its flag.

effectiveness of the law of the sea ultimately depends on the capacity and willingness of flag States to exercise meaningful control over registered vessels.

9. Conclusion

The regulation of maritime navigation ultimately depends on the ability of international law to attach vessels to States either coastal or landlocked legal authorities. This performance is usually done through linking the vessel and a particular State, accrediting them into a framework of jurisdiction and responsibility. This therefore means that the attachment in question is not the result of a natural connection but the product of a deliberate legal act undertaken through registration.

In the light of this study, registration should not be perceived simply as administrative procedure. It is the regulatory point at which a vessel enters the international maritime legal order and becomes subject to the authority and protection of a flag State. From that moment, the ship operates not as an isolated object on the seas but as an extension of the legal system whose flag it flies often referred to as the *floating piece*¹ of that State.

A clear understanding of the constitutive role of registration is how the authority is showcased and exercised under maritime governance. It thus highlights the extent to which the effectiveness of the law of the sea ultimately rests on the willingness and capacity of States to exercise meaningful control over the vessels that carry their nationality and duly registered under their State registries.

10. Recommendations

In light of the findings of this study, several recommendations are proposed to strengthen the legal and institutional framework governing ship registration and the attribution of nationality under the international law of the sea. While the United Nations Convention on the Law of the Sea establishes the foundational rules regulating the relationship between ships and flag States, developments within the global shipping industry have exposed structural weaknesses in the existing regime. These challenges include the ambiguity surrounding the genuine link requirement, weak enforcement of flag State obligations, disparities in national ship

registration systems, and the increasing complexity of maritime governance. Addressing these issues requires both normative clarification and institutional strengthening within the international maritime legal order.

Accordingly, the following recommendations are advanced to enhance the effectiveness, accountability, and transparency of ship registration systems while reinforcing the role of nationality as a mechanism for allocating jurisdiction and regulatory responsibility among States.

10.1 Redefining the Genuine Link Requirement

One of the most persistent weaknesses within the international legal regime governing ship nationality is the vagueness of the “genuine link” requirement articulated in Article 91 of the United Nations Convention on the Law of the Sea (UNCLOS). Although the provision requires that a genuine link exists between a vessel and the flag State, international law does not clearly define the parameters of such a relationship. As a result, the concept has frequently remained abstract and politically interpreted rather than legally operationalized. This ambiguity has enabled the proliferation of open registries and flags of convenience, which often weaken effective flag State control and undermine international regulatory standards.

The genuine link requirement should therefore be redefined in operational and measurable terms, incorporating indicators such as effective administrative control, ownership transparency, regulatory oversight, and demonstrable enforcement capacity. Clarifying and operationalizing this requirement would significantly strengthen the credibility and accountability of ship registration regimes within the international maritime legal order.

10.2 Establishing an International Oversight Mechanism for Flag State Registries

Another important recommendation is the establishment of an international oversight mechanism to periodically audit national ship registries for compliance with international maritime standards and the genuine link requirement. Although UNCLOS assigns primary responsibility for vessel regulation to flag States, the absence of systematic monitoring mechanisms has contributed to variations in

¹ *S.S. Lotus (France. v. Turkey)*, Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 25 (Sept. 7).

regulatory practices across national registries. Some States maintain robust administrative systems, while others operate minimal oversight regimes, thereby allowing vessels to operate under weak regulatory conditions.

An international auditing framework potentially administered through the International Maritime Organization (IMO) could conduct periodic evaluations of registry practices, administrative capacity, and enforcement mechanisms. Such oversight would enhance transparency, promote regulatory consistency, and reinforce the effectiveness of the international maritime governance system.

10.3 Establishing Accountability Mechanisms for Flag State Non-Compliance

The effectiveness of the international maritime legal regime ultimately depends on the ability of flag States to exercise effective jurisdiction and control over vessels flying their flags, as required under Article 94 of UNCLOS. However, evidence shows that some flag States fail to adequately fulfil these obligations, leading to maritime safety deficiencies, environmental harm, and labor rights violations within the shipping industry. To address this challenge, stronger accountability mechanisms should be developed to ensure that States comply with their international responsibilities. These mechanisms could include enhanced reporting obligations, peer review processes within international maritime institutions, and strengthened cooperation between flag States, port States, and coastal States to address persistent regulatory failures.

10.4 Strengthening International Institutional Frameworks

Effective governance of ship registration requires stronger institutional coordination within the global maritime regulatory system. International organizations particularly the International Maritime Organization (IMO) play a critical role in establishing safety standards, environmental regulations, and mechanisms for international cooperation.

However, the complexity of modern maritime operations necessitates enhanced institutional capacity, improved coordination among regulatory bodies, and stronger enforcement mechanisms within existing frameworks. Strengthening these institutional arrangements would enhance the ability of the international community to monitor compliance, respond to emerging regulatory challenges, and maintain

effective governance within the maritime domain.

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