



## The Panama Ship Registry: 1917–2017

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### ABSTRACT

The Panama Ship Registry has its origins in the year 1917. Nowadays, Panama has the largest vessel registry in the world. The second placed registry in the world ranking is Liberia, which does not have even half the number of Panamanian ships. In this Centennial, the aim of this paper is to analyse the evolution of the Panamanian Registry, the structure of the Panamanian-flagged fleet and the level of compliance with international standards in relation to maritime safety and working conditions. To undertake the analysis, two different qualitative and quantitative approaches are compared and integrated for the evaluation of the Panama Ship Registry: the degree of ratification and enforcement of the Conventions and Recommendations of the International Maritime Organization and International Labour Organization, and the results of Panamanian flagged vessels in inspections carried out within the major Port State Control Memoranda of Understanding. This paper fills a research gap by discussing an approach to the concept of flag of convenience and flag State, Panama is more an international registry, whose role is becoming less important from the points of view of safety or working conditions. The fleet performance evolution has been very positive as evidenced by the data presented in this article regarding Port State Control.

### 1. Introduction

Historically, States have attributed their nationality to their "own vessels", those that fly the flag of that State. The so-called flagging of a vessel was an act of endorsement of the authority of that country, and signified that the vessel was under the jurisdiction of the laws of that State. Basically, ship registration is the process through which a ship is granted nationality by a flag state.

However, since the Second World War, the phenomenon known pejoratively as "Flags of Convenience" (FOC) developed [1,2]. This development demonstrated the absence of what the Nottebohm Case of the International Court of Justice (ICJ) [3] referred to in a 1955 judgment as a "genuine link" between a State and its national, person or entity [5–7]. According to this principle, a country cannot extend its laws and protection to its nationals without any kind of limitation. In addition to the formal nationality, a genuine connection must also exist between the State and its national.<sup>1</sup> What constitutes the link between a State and a vessel registered in and flying the flag of that State was set out in the 1958 United Nations Convention on the High Seas [8].

This term as used in Article 91.1 of the United Nations Convention on the Law of the Sea, UNCLOS [9] clearly states that "[T]here must be

a genuine link between the State and the ship". There is no mention of a link between the ship owner's nationality and the ship which is the position taken by some traditional maritime states but is not supported by international law. In that provision, the terms for fixing conditions regarding the right of a ship to fly the national flag is presumably left to individual states. The meaning in law of "genuine link" has been explained to a sufficient extent by UNCLOS Article 94.1 which states - "[E]very State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag". In the same sense, the United Nations Convention on Conditions for the Registration of Ships, UNCCROS [10], which remains becalmed in the list of international agreements awaiting ratification, with only fourteen signatories to date [11].

Many years have passed since the "battle" began to stop this process by which ship owners have increasingly abandoned the traditional maritime flags, known as "flagging out". In recent years, maritime transport has undergone consolidation of so-called open registries. In 2015, open registries accounted for 71.3% of the global fleet, up from 21.6% in 1970. The global fleet continues to maintain a strong separation between the nationality of the ship owner and the flag state of the ship. As of 1 January 2015, Panama had the largest vessel

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<sup>1</sup> We can not fail to mention the Advisory Opinion sought by the IMO in 1960 (then known as IMCO) in the *Constitution of the Maritime Safety Committee of IMCO Case* [4] in which the ICJ basically stated that according to the IMCO Convention the size of the national tonnage was the sole criterion for membership of that Committee and the nationalities of beneficial owners of ships was not contextually relevant.

**Table 1**  
FOC countries.

Antigua and Barbuda	Liberia
Bahamas	Malta
Barbados	Madeira
Belize	Marshall Islands (USA)
Bermuda (UK)	Mauritius
Bolivia	Moldova
Cambodia	Mongolia
Cayman Islands	Myanmar
Comoros	Netherlands Antilles
Cyprus	North Korea
Equatorial Guinea	Panama
Faroe Islands (FAS)	Sao Tome and Principe
French International Ship Register (FIS)	St Vincent
German International Ship Register (GIS)	Sri Lanka
Georgia	Tonga
Gibraltar (UK)	Vanuatu
Honduras	
Jamaica	
Lebanon	

Source: International Transport Workers' Federation (ITF).

These countries have been declared FOCs by the ITF's fair practices committee (a joint committee of ITF seafarers' and dockers' unions), which runs the ITF campaign against FOCs.

registry in the world with a 9.33% share of world total vessels, 8351 merchant vessels of 100 Gross Tonnage (GT) and above, according to the UNCTAD Annual Report 2015, but a total of 9409 according to Lloyd's List Intelligence (LLI), although this percentage is higher, 20.13%, if the deadweight tonnage is considered. At present, the Liberia registry is the second largest fleet in the world with 3144 vessels, it does not even have half the number of Panamanian ships [12,13].

The Panamanian Ship Registry has its origins in the year 1917. One hundred years later, the most important interlocutor of seafarers, the International Transport Workers' Federation (ITF), maintains this registry of ships in its list of 35 FOC registries (Table 1). The aim of this paper is to analyse the evolution of the Panamanian Registry, the structure of the fleet and its relation to compliance with international standards of maritime safety and working conditions in its centennial anniversary. To perform this analysis, consideration is given to the degree of ratification and enforcement of the Conventions and Recommendations of the International Maritime Organization (IMO) and the International Labour Organization (ILO), and the results of Panamanian flagged vessels in inspections carried out within the major Port State Control (PSC) Memoranda of Understanding (MoU) agreements.

## 2. Origin and evolution of the Panama Ship Registry

The existence of Panama as an independent nation is historically linked to the Panama Canal and the United States. After its independence from Spain in 1821, modern-day Panama became a part of the Republic of Gran Colombia, which consisted of today's Colombia, Venezuela, Panama, and Ecuador. Despite the feelings of independence of Panamanians there were discrepancies between the Americans and Colombians, which favoured the creation of the Central American state of Panama. President Roosevelt believed that a US-controlled canal across Central America was a vital strategic interest of the country, and Panamanian rebels, helped by the US Navy, declared its independence on 3 November 1903. The Panamanians gave the US control of the Panama Canal Zone on 23 February 1904, in accordance with the previous year's Treaty of Hay–Bunau-Varilla [14].

Therefore, Panamanian ship registration cannot be understood without framing it within the country's political and economic relationship with the USA, which linked both countries from a different position, an imperialist power and a small, strategic and fragile nation

in search of survival and sovereignty. The first Panamanian Constitution of 1904 was taken advantage of by the US ship owners, who found exceptional advantages that were not available elsewhere. Panama used and uses the American Dollar as legal tender. Other ship registries leading the world rankings such as Liberia, or more recently, the Marshall Islands, also have or have had a relationship of political dependence in terms of national sovereignty with the hegemonic umbrella of the United States. The majority of the open registers are administered from the United States.

From a chronological point of view, the Panamanian registry has its origin in the Law/63 dated 15 December 1917, and even in its predecessor, the new Code of Commerce dated 22 August 1916. As stated by Montero [15] and Carlisle [16], until 1917, Panamanian maritime legislation was consistent with a national fleet, managed by national interests and targeting the protection of trade with neighbouring countries. The fleet was made up of some small fishing vessels and coasters. For all that, another important step was taken with the Law/8 of 1925, which established procedures favouring the existence of an international register of ships: a foreign-owned Panamanian Corporation was allowed to register ships under the Panamanian flag. The Panamanian Merchant Marine was thus created, and restrictions regarding nationality and residence of ship owners were eliminated, thus adopting an open registry system. Also, the Panamanian law recognised English language contracts. As a result, the Panamanian register would become a useful tool for American ship owners, a flexible flag, in order to avoid the restrictions imposed by national legislation during the First World War.

The barriers that would fall were those established under US law and the difficulties involved in transferring an American ship's flag to the Panama Ship Registry. At first, there were no transfers of American ships to the new international registration of Panama. In fact, the first reflagged ship was the Canadian “Belen Quezada”, in Vancouver in 1919. The U.S. Shipping Board feared that this type of international registry might attempt to evade U.S. maritime labour legislation by registering their ships with another country, and that it would not contribute to the development of the American merchant marine [17]. The domestic shipping companies pressured the Government to change the policy against the Panamanian flag. Other cases of transferring ships to the Panamanian flag came about to avoid prohibition regulations on the sale of liquor on board American vessels. All this, combined with the desire to compensate use of the Panama Canal, led to the USA gradually facilitating transfers of vessels to the Panamanian registry. In those years, the United States' consular service represented the interests of Panamanian nationals in ports where there was no Panamanian consul.

Although the Panamanian registry allowed foreign ownership, it needed a law that would provide legal certainty to owners and creditors. With their Corporation Law 32 of 1927, the Panamanians mimicked the laws of the States of New York and Delaware, in order to facilitate the business of residents of different States of the Union, but, in extending that concept to everyone, they anticipated the current concept of globalization. The complement of a tax system was added, to limit income tax to the territorial source. Therefore, users of the Panamanian flag and its companies only had to deal with their personal taxes but not pay tax in Panama on income from external source.

In the interwar period, with Panama being a small, neutral nation, its flag was useful for North American ship owners and vessels to avoid political troubles and the sea blockade (Jewish refugees, weapons to Republican Spain, or Norwegian whalers [18]). A ship could be easily registered at a Panamanian Consul's office abroad. Even in the first years of World War II, Congress wanted to avoid US flagged ships being sunk in belligerent waters and much US shipping was reflagged to Panamanian registry [19]. The American War Shipping Administration took control of Panamanian registered ships.

Two important American companies transferred their ships to the Panama Ship Registry, the United Fruit Company and the Standard Oil

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