



Concepts of Flag State and Port State, and Their Roles on the Implementation of SOLAS Convention

Dr Belma BULUT ŞAHİN,
Asst. Prof of Maritime Law, Kocaeli University

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Safety Net:

- International Conventions of the IMO
- International Conventions the ILO
- **Flag state control**
- Classification societies
- Marine insurance industry
- **Port state control**

Concept of Flag State

Flag State means:

UNCLOS Art 91: The state in whose territory a ship is registered

Conv. On Codifications for Reg. of the Ships: A state whose flag a ships flies and is entitled to fly.

Flag is a symbol of nationality = nationality is granted via registration

Concept of Flag State

1958 High Seas Convention > 1982 UNCLOS

UNCLOS Art 91 "Nationality of Ships": 1. Every State *shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly.* There must exist a *genuine link* between the State and the ship.

2. Every State *shall issue to ships to which it has granted the right to fly its flag documents to that effect.*

Concept of Flag State

The term "genuine link": No definition under HSC/UNCLOS

ITLOS M/V Saiga (1999, Case no.2): More effective implementation of the duties of the flag state under Art. 94 of UNCLOS

UN Doc. A/54/429: "Genuine Link" is the link that enables the flag state to exercise effective control over the ship and meets its obligations and UNCLOS and other instruments.

Concept of Flag State

Flag of Convenience/Open Registry: Is one that flies the flag of a country other than the country of ownership

Factors for Flagging-out: The need to reduce overall cost; type, age, size of the ships; avoidance of bureaucratic control and costs; avoidance of complying with higher standards under the national flag.

Concept of Flag State

UNCLOS Art 92 “Dual Nationality”:

1. Ships *shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.*
2. A ship which *sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.*

Concept of Flag State

Importance of Flag State:

- Rights
- Obligations
- Determination of application of international agreements

Concept of Flag State

Duties of Flag State:

UNLOS Art 94 and SOLAS: Exercise its jurisdiction and control in administrative, technical and social matter; use of signals; prevention of collision; maintenance of communication; manning of ships; construction, equipment, and seaworthiness; survey at regular intervals; appropriate number of qualified crew; accident investigation etc.

IMO INSTRUMENTS IMPLEMENTATION CODE (III Code): Legal basis for the enforcement of its national laws and regulations; effective jurisdiction and control in administrative, technical and social matters

Concept of Port State

Roles of port state control: Effective implementation and enforcement of international instruments by playing an integral role (IMO INSTRUMENTS IMPLEMENTATION CODE (III Code))

Rights of Port States: Inspect document; Make detailed inspection; Detain ships

General Rules: Authority to inspect over documents but if there are clear grounds a detailed inspection can be carried out

Res. A.1138(31) Procedures for port state control: “clear grounds” sample cases & samples for detention

Concept of Port State

Duties of Port State ((IMO INSTRUMENTS IMPLEMENTATION CODE (III Code))):

- Implementing policies
- Consistency with international instruments
- Treat non-parties no favourable
- Authorised and qualified port state officer
- Evaluation and review