

The merits and demerits of foc economics essay



At the end of the Transatlantic Slave Trade, The Society for the Colonization of Free People of Color of America, in short, The American Colonization Society (or ACS), established by the American Government, founded the dependent territory of Liberia (land of liberty) in 1821 as a home for ex-slaves. In subsequent years thousands of black men, women and children were ' shipped' to the dependent land, which declared its independence on July 26, 1847, becoming the second Black Independent nation, after Haiti, and the concerned government, flag and motto bore striking resemblance to those of the United States.(1) The capital city, Monrovia, was named in honor of the fifth president of the United States, and the currency was the American dollar. England, France and Belgium recognized the new country's independence in 1848, 1852 and 1858 respectively. Liberia attained recognition from many European states later, but the United States withheld recognition until 1862, during the presidency of Abraham Lincoln, because the U. S. leaders believed that the southern states would not accept a black ambassador in Washington D. C. (2)

The United States supported the young, fledgling West African country by setting up infrastructural, military, economic and social programs. And one of such programs was The Liberian Registry. It was created in 1948 by the former U. S Secretary of States Edward Stettinius;(3) although many students of history question this notion and argue that it was actually set up to help American shipping companies compete internationally. The Liberian Registry is run from Park Avenue, New York City, and Reston, Virginia, USA. Over the years the Liberian Registry has generated millions of dollars for the Liberian Government and people, and was for many years, the world's

largest so called flag of convenience nation until due to the civil war, it was overtaken in the 1990s by Panama. During the war, Liberia generated most of its revenue from the Registry. Even today, a huge portion of the country's revenue is realized from shipping companies that ply under the Liberian flag. The 1989-2003 civil war decimated the Liberian economy. Key businesses were destroyed or profoundly damaged, and investors, both local and foreign, left the country in droves. Iron ore production was halted, and the United Nations banned the export of timber and diamond in 2006. Currently, the shattered economy depends almost entirely on revenues from rubber and iron ore exports and revenues from the maritime registry program, a Liberian flagged program that earned some \$ 18 million in the FY 2008/2009.

(5)

However, in the past, there were very serious shortcomings and drawbacks to this arrangement, because many of the ship owners tended to be reckless and unscrupulous – flaunting international shipping regulations, under paying their crews, and periling human lives and the environment. Recent history indicates that the country is raising the standards of its registry in a bid to attract more profitable and reputable shipping companies at the very time when some traditional maritime states like Denmark, Germany, Portugal and Spain are relaxing some standards previously upheld by major maritime states. In essence, these countries have created quasi-open registries, often referred to as international or second registries. Then, the question is what are the advantages and the disadvantages of an open registry, often termed a flag of convenience (FOC)? This paper will address this aged-old question by probing the role of the Liberian open registry in the nation's economic

development and what tends to drive some ship owners to ply under the so-called flags of convenience, and the practical implications of their decision for maritime safety, administrative and financial arrangements, environment and labor – and what can be done to improve the lot of the industry. In this study, we rely on interviews, surveys and budget reports to employ empirical analysis to compare and contrast the merits and demerits of the arguments as advanced by opposing proponents of the debate.

Key Words: Liberian Registry, flag of convenience, advantages, disadvantages, interviews, surveys, budget reports

Introduction

In 1948, Panama, an open registry, had only 3 percent of the world's fleet. By 1980, Liberia and Panama had 25 percent of the world's ships within their registries. (6) In 2009, ??? of all the world's ships were registered in these two flag states. By then, FOC had ??? percent of all registered ships. ()

2. The sovereignty issue

Every state has conditions and right to grant its nationality to ships and allow them to fly its flag, and concerned ships acquire the nationality of the state whose flag they are entitled to fly. When a ship registers under a flag, it becomes a 'national' of the flag state, and it is entitled to its protection and consular help. She enjoys rights and privileges, but has responsibilities, and is subject to the jurisdiction and authority of the flag nation. Therefore, it could be argued that when a country gives sovereignty to a vessel whose owner or operator is not its national, and there is no genuine link, it amounts to that state voluntarily selling its sovereignty, abdicating its responsibilities

and failing to effectively implement its duty as a flag state. However, given that the concept of genuine is open to interpretation (it is not well defined), the reversal of this argument could be true, as it is arguable that a registration creates a true link between the shipper and the state. Moreover, as suggested by Article 91 of the Convention on the Law of the Sea, it is the exclusive prerogative of a state to decide the principles and guidelines of bestowing on or withdrawing its nationality from a vessel, and that the matter of genuine link is not a pre-condition to registration. This assertion could be enforced further if the said country had an internationally recognizable classification society to certify the vessel, as a way of exercising its control and meeting its duties and responsibilities as flag state. (Preamble to the UN Convention on the Law of the Sea: Nationality of Ships, Article 91. Change this biography # 7, and make changes accordingly. Expand this paragraph.)

2. 1 Conferring and assuming nationality

A ship can acquire nationality in two ways. First, a ship owner can decide to flag his vessel in a closed registry regime. This sort of registry does not accept foreign ships. Here, for example, Russia cannot register its ships under the German Flag. Open registry is the second type of registry. In contrast, it does not exclude other countries. The flag of convenience phenomena relates to the later category of registry.

The notion of a flag being used as tool to hide the true identity of a ship can be traced to centuries ago as used by The Americans in the 1812 War (8), (one reason the British resulted to impressments during the war). The most recent example of this deceit is when prior to entering World War II, the United States circumvented its own neutrality law by passing the Lend-Least Act on March 11, 1941. The law gave the President power to sell, lend, or lease weapons, ships, and munitions to Allied Nations.(9) This piece of legislation granted the government the right to reflag American vessels as other countries', and ushered in the end of America's deception of neutrality. Germany was not deceived. On May 21, 1941, the SS Robin Moor, a US merchant ship, was destroyed by a German U-boat. (10). However, the current usage of delusive flags by shipping companies as a tool to boost commercial performance and avert taxes, regulations and liability suits is quite a resent phenomena. The history of the so-called Flags of Convenience goes back only as far as the United States' Seamen's Act of March, 1915, an act of Congress often termed the 'Magna Charta of the Seas'.(11) This law which, like the International SOLAS Convention (12), was occasioned by sinking of the Titanic in 1914, provided for the general welfare (for example, better wage scale, an end to the old-aged practice of caging mariners for desertion) and safety of seamen. Some American ship owners concluded that the Act was too controlling and expensive for United States flagged merchant vessels, and disadvantageous to them, as other shipping nations did not have such stringent safeguards and additional operational overheads. Hence, American ship owners began plying their vessels under the flags of countries in a bid to reduce their costs, avoid regular inspections, avoid the enforcement of

high safety standards, and interference in the administration of their crews. The very first non-Panamanian-owned ship to be registered was the Belen Quezada. (13)

There is not a commonplace characterization for flag of convenience. Boczek suggests that “ the flag of any country allowing the registration of foreign owned and foreign controlled vessels under conditions which, for whatever reasons, are convenient and opportune for the persons who are registering the vessels” is a flag of convenience. (14). As well, Lovett says that open registries are generally characterized as ship registries that do not require citizenship of ship owners or operators, levy no or minimal taxes, allow ships to be worked by non-nationals, and have neither the will nor the capability to impose domestic or international regulations on registered ships. (15) There are many other descriptions of the flag of convenience, but each has one or two elements of the Rochdale Inquiry (17), which concluded that:

The country permits foreigners to own and control vessels;

Access to and transfer from the registry is easy. It can be processed at a consul abroad;

Taxes levied on the company’s income are based on the flag country’s income tax system, and are very low or non-existent.

The registry country lacks the power or the will to administer international regulations on the ship owner;

A registry fee and an annual fee based on tonnage are the only charges;

Crewing by non-nationals is allowed.

The determining characteristic of both registries is the principle of a true relationship between the flagged vessel and the registry country.

To this end, the 1958 United Nations Convention on the Law of the Sea, UNCLOS I, required that a state exercises jurisdiction and control in technical, administrative and social matters over ships flying its flag. (18) Another principle that is common to both registries is the port state control, the inspection of foreign vessels in national ports to ensure that they meet IMO requirements. (19)

The post traditional shipping nations and the rise of the rest

It is worth noting how the so-called traditional shipping nations seem to be losing the trade, as they have done for a very long while, and what they are doing currently to catch up with the newly merged or emerging shipping powers. The global nature of the shipping trade makes it a fierce but ever-growing market. The complex interplay of stern national shipping policies, shipping regulations, unionized seamen and severe oil crises have pushed many ship owners who want to reduce their operating costs towards flags that offer the possibilities of cheaper non-unionized crews, no corporate taxes and lax regulatory regimes.

(Make a table to show how the original flag states have lost out to open registry countries in term of fleet and/or deadweight – from the 1940s to 2010. This is Table 1.)

4. The open Registry Market

As of 2004, an estimated 64 percent of the world's merchant-ship tonnage was registered in the so-called flag of convenience countries, including 68.7 percent of bulk carrier and 64.3 percent of container-ships deadweight tonnage. Liberia, Panama and the Marshall Islands accounted for nearly 40 percent. (20) (Latest data to be provided and shown in graphic form – and source credited.) Open registry countries, including land locked ones (i. e. Mongolia) compete and scramble for ship registrations by deliberately keeping taxes (if relevant) and fees to minimum and by being carefree about labor, environmental, and safety standards. Shipping companies assent by choosing to ply under their flags because they wish to operate at the lowest possible cost. This registry does attract low-quality ships that wish to avoid internationally accepted regulation, but, as well, it draws many large and important commercial ships. (List and show in graphic form important commercial ships that currently flagged under FOC.) It is therefore safe to assume that given ship owners of renounced companies would not like to be routinely chosen for inspection just because they fly a particular flag. It is also safe to assume that because registry countries are anxious to get their business, they would do all it takes to assure the concerned shippers that their business would not be impacted negatively. Consequently, key open FOC countries tend to ratify relevant IMO accords that relate to safety, labor and the environment. They also tend to engage excellent maritime classification societies to certify the vessels that ply under their flags. They also tend to placate potential clients by meeting some of demands of pressure groups like the Transport Worker Federation (ITF), an international labor union that insists that flag of convenience vessels are not

worth the services of seamen. (List IMO labor, environmental and safety agreements ratified by FOC in ranked order or percentage terms. And, show classification societies engaged by FOC. Also, Give examples of boycotts staged by ITF.)

The anomaly of the second and international registries

The fervent effort being made by some traditional states to dampen flagging out is commanding considerable criticism and debate. (21) This new phenomenon seems to be working, as shown in (Table 2)