

## Parallel flags: a new alternative of conciliation between competition and regulation?<sup>1</sup>

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As a nation is able to allow foreign vessels to fly its flag, the flag constitutes a fundamental element of the international maritime order. The concept of vessel nationality is considered as the main tool to enforce international law and place vessels under a system of law<sup>2</sup>. Nevertheless, the exceptional development of maritime activities has increased competition among states and affected the traditional balance of maritime commerce<sup>3</sup>. Indeed, since the 1970's, the fleets of the main traditional maritime countries have decreased in favour of the flag of convenience. Hence, it has become necessary to organise a new balance.

For states, owning a significant fleet involves some financial constraints in order to maintain supplying capacities, protect ships and keep maritime abilities. Basically, the challenge is to provide an economically competitive flag which ensures the respect of international standards and attests a high quality of navigation<sup>4</sup>.

However, maritime economic competition has a direct impact on international and national regulations. The need for more economic freedom and lower transport costs has induced the creation of a second legal registry, resulting in the development of parallel flags and international registries<sup>5</sup>. This practice consists of creating a second legal registry reserved to international shipping which permits to reduce national financial constraints. The main objective is to avoid the "fleet's flight".

Hence, in practice, a state can have both a national flag and a international registry which is based on international conventions. As a result, states are confronted to flag management instead of ship management, which is now reserved to ship-owners. In the context of modern economy, politics are less important than financial benefits, meaning that

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<sup>2</sup> MATLIN (D.), Re evaluating the status of Flag of convenience under international law, 23 VAND J Transnat

<sup>3</sup> In consideration to the major evolutions of maritime transport since the XIX century specialists use to associate the Flag's mutation to maritime regulation. The development of Flag of convenience figures the evolution of maritime commerce by 20th century. Flag of convenience countries can generate national revenue by having an accessible ship registry, and ship-owners are attracted to the countries by the prospect of saving money in any or all of the following ways: lower registration fees, maintenance and licensing fees, lower crewing costs, lower taxes, and less rigorous environmental and safety inspection regimes.

<sup>4</sup> Parallel Flags's development is considered like a relevant tool to face shipping progression. In 1993, the vice president of Mediterranean transport institute stress on this practice: " *ces seconds registres, intermédiaires entre les régimes nationaux et ceux qui se réclament de l'immatriculation libre, jouent un rôle complexe qui tient à quelques objectifs où la stratégie commerciale internationale, le maintien d'un dispositif social allégé et quelques aménagements fiscaux, devraient permettre de donner à l'industrie du transport maritime la flexibilité d'adaptation aux impératifs des échanges à l'échelle mondiale* ».

<sup>5</sup> CHAUMETTE (P.), *Le droit social des gens de mer : diversité des sources du droit du travail maritime*, in *Droits maritimes*, dir. J-P BEURIER, Dalloz action, 2007, p. 430.

ships will only fly a flag if both states and ship-owners get financial benefit from it<sup>6</sup>. Then, the objective is to achieve the highest level of shipping efficiency, i.e. the combination between free competition and quality shipping as defined by the regulation. The stake for European and international regulators is to permit states to develop their flags while preserving the implementation of international standards.

In this perspective, the impact of parallel flag's development leads to two main issues: First, can international registries be a new alternative to prevent open flag competition? And can international registries be a new option to ensure the enforcement of international regulations?

On the 3<sup>rd</sup> of May 2005, France has adopted an act creating the French international registries (IFR)<sup>7</sup>. The main objective of the French government, supported by the shipping industry and more specifically by ship-owners, was to stop the decrease of its fleet<sup>8</sup>. In France, the parallel flag aims to be more competitive in front of international shipping (I) in maintaining a good shipping quality (II).

## **I - Competitive advantages of the French international registry**

The French parallel flag aims to reduce the cost of shipping quality (A) and to increase the influence of French flag on international shipping (B).

### **A- Reducing the cost of shipping quality**

The challenge consists of reducing the cost of ship management, in order to be competitive among the open registries. The main advantage of parallel flag focuses on the amount of navigation social cost. Indeed, it constitutes the principal expending of ship-owners and the choice of the flag is handing by the national conditions linked to seafarers<sup>9</sup>. However, the problem lies within the staff management cost, in relation to the payment and charges generated by European crews, as well as the recruitment of foreign seafarers to crew ship under international registries.

The IFR offers to the ship owners a great celerity<sup>10</sup>. The port of registration of the IRF ships is Marseilles, where a single counter makes it possible to proceed to their registration, and if necessary with their gauging<sup>11</sup>. The only restrictions imposed by the IRF house relate to manpower on board. At least thirty five percents of the members must be amenable to a member state of the European Union, the master and the first mate shall be French<sup>12</sup>. It is difficult to know if these measurements, is not rather protectionist than an element in favour of safety on board. This provision which created the polemic within the European Union was important for the creators of IFR because they needed supports to make succeed their project in the name of the development of maritime employment in France.

In addition, the registration in IFR must allow to the owners ships to profit from tax advantages. Certain provisions are taken to decrease the running costs of the ship-owner. Thus

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<sup>6</sup> BEURIER (J.P), "Le transport maritime, le droit et le désordre économique international », in La mer et son droit, mélanges offerts à L LUCCHINI et J.P. QUENEUDEC, A. Pédone, 2003, p. 95.

<sup>7</sup> Act of the 3<sup>rd</sup> of May 2005, relative to the creation of the International French registry.

<sup>8</sup> Title 1 of the law relating to the creation of the International French registry (IFR law), [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr)

<sup>9</sup> MARLOW P., PETTIT S., BERGANTINIA A., « The decision to flag out and its impact on the national economy." Marine transport and economic reconstruction, édité par MISZTAL K. et KUCK J., 1998, pp. 37-55. LEFRANCOIS (A.), La composition et la nationalité des équipages en question : entre enjeu escuritaire et protection de l'emploi national, Annuaire de Droit Maritime et Océanique, Maritime and Oceanic Law Center, Nantes University, pp. 67-81.

<sup>10</sup> Article 5 of the IFR law, [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr)

<sup>11</sup> 2006-142 of February 2006 relating to the single counter/ article 2 of the IFR law, [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr).

<sup>12</sup> Article 5 of the IFR law, [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr).

the States try to develop the financial advantages to attract new units. First of all last tax relief by the reduction of the tonnage tax which aims at compensating for the handicaps of the national registry. These measurements are regarded as State aids<sup>13</sup>. However the main character in favour of competitiveness is the choice between different treatments of seafarers. Indeed, the IFR law provides that the social conditions are different between the French and foreign seafarers. Indeed the Title II provides specific treatment for the seafarers who are not French residents. These provisions call into question the legal safety which however characterizes the French social law. Then, the IFR is comparative with the flags of convenience because the idea of an uneven value work, function of the nationality of the flying personnel, is introduced in French law<sup>14</sup>. With equal work, the remuneration of the seafarers can vary and be locally defined. This provision is worth in IFR. Consequently the trade union called International Transport Worker's Federation (ITF) classified the IFR as a flag of convenience<sup>15</sup>. It contests the effectiveness of this device<sup>16</sup>.

## **B- Dumping the French flag.**

To estimate the impact of international registries, the comparison between national and international flag cost provides a valuable overview of the benefits associated with parallel flags. With the creation of an international registration, the traditional flag states try to recover their influence on international shipping. The objective is to attract ship-owners who were attempted by benefits of international registries. In the same day, the necessity of flag development in front of coastal state influence appears as a priority<sup>17</sup>.

However the house IFR and other parallel flags such as the German registry are listed among the flags of convenience. Whereas the ship-owners do not have an interest limited to weigh down their load, they do not benefit of a better reputation on the international scene. With regard to the IFR, there are 248 ships which post Marseilles as their home port. The increase in the registrations for one year has been rather important since in 2006, IFR counted 174 units. However this assessment is moderate compared to the 100 ships which appeared in register TAAF<sup>18</sup> and which necessarily did not rock automatically towards IFR. The preference went for certain ship-owners towards international registers even more permissive. On the 250 ships which IFR counts today, a great part represents only small units. Despite the registration of the French gas tanker or some pals containers of CMA CGM, the new register is neither a qualitative success nor quantitative<sup>19</sup>. To be attractive, it must dissociate its

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<sup>13</sup> In the field of the IFR, the tonnage tax is implied by a circular 4 H- 1-04 n° 28 of the 12<sup>th</sup> February of 2004 relative to the Tonnage tax, [http://www.rif.mer.equipement.gouv.fr/rubrique.php3?id\\_rubrique=15](http://www.rif.mer.equipement.gouv.fr/rubrique.php3?id_rubrique=15).

<sup>14</sup> DRAPIER (S.), « Les pavillons de complaisance concurrencés: la promotion du pavillon bis français! », Droit maritime français, janvier 2008, p. 11.

<sup>15</sup> The French seafarer federation awaited collective bargaining envisaged by the law on the loading of the officer cadets in formation. The objective was to widen the topics of discussion on two essential points: the number of French or Community on board and negotiation framework of company. the French shi-owners association did not want to open these negotiations and the federation seized ITF of a retaliatory measure. Pursuant to its statutes, when it is seized by all the maritime trade unions of a country, the registry must be classified as a FOC. An opening of the negotiations would push certainly the French trade unions to require to leave this classification.

<sup>16</sup> International transport worker's federation, Campaign against flag of convenience and substandard shipping, Annual report 2004, [www.itfglobal.org](http://www.itfglobal.org).

<sup>17</sup> CHAUMETTE (P.), « Le contrôle des navires par les Etats riverains », Les cahiers scientifiques du Transport, n° 35/ 1999, p. 55-72.

<sup>18</sup> Austral and Antarctic French Possessions. Terres Australes et Antarctiques Françaises. BEURIER (J.P), Les pavillons d'outre mer : havres ou écueils, in La communauté européenne et la mer, Dir. J. LEBUMMINGER et D. LE MORVAN, Economica, 1990, p. 683et svt.

<sup>19</sup> The governmental analyst are more optimist: "The first (point) relates to the attractivity of our flag; two years after the vote of the law creating the French register international (RIF), it appears that 242 ships were registered there, which represents a growth of 8% per annum during two years. There are in addition 60 ships

negative image. This step supposes that efforts are carried out to mitigate the insufficiencies raised by IFR. In addition the diversity of the international registers of the European member states requires a Community harmonization in the future<sup>20</sup>. However, the combination of the reduction of the cost of transport and the implementation of international standards appears impossible to circumvent.

## **II- International standards implementation toward parallel flag**

In the 90's, the implementation of international standards has become a priority for the states that were victim of major maritime accidents<sup>21</sup>. European coasts, and mostly French coasts, suffered from the Erika, the Prestige and others. Consequently, the priority is to recover their influence. The French maritime "savoir faire" is confronted to commercial struggle. Then, the competitive policy must not break the French interest for efficient shipping in terms of safety or environmental protection. However, French industry and government considered that the IFR could participate of the international standards implementation (A) but its development depends of the international initiatives for a shipping quality (B).

### **A- Discret attempt of the French international registry**

The main characteristic of the IFR is to be a national registry, consequently submitting all ships to the French maritime safety measures. The fourth article of the French law states:

*"The ships registered with the French international register are subjected to the whole of the maritime safety and security requirements, of training of the flying personnel, health and safety at work and under the terms and environmental protection applicable under the French law, Community regulation and international engagement of France."*<sup>22</sup> »

Hence, the French parallel flag implies to respect the international standards principally provided by the International Maritime Organization (IMO) and the International Labour Organization (ILO) The European framework ensures the control of flag registration and provides respect of international standards in consideration of the risk assessment. The IFR founders confronted to the impossibility of enhancing a competitive flag try to find a new balance between the financial advantages and international standards implementation. The main idea was to provide a registry capable to offer a label of good quality in assuring a control

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*which are currently in construction, and whose inscription in RIF was announced by the ship-owners. At the end of the year 2008, more than 300 ships will thus have joined this new register, against 212 ships flying French flag in 2005, which represents a clear increase of more than 100 ships in three years."* Report of the French economic affairs, environment and territory commission, presided by Patrick OLLIER, French national assembly, 30<sup>th</sup> October 2007, [www.assembleenationale.fr](http://www.assembleenationale.fr)

<sup>20</sup>This harmonization must first of all relates to the coordination of the social conditions aboard ships. Then to unify the conditions of navigation open or not to the ships of these international registries. The example of the conflict relating to the transchannel is particularly significant. If the transchannel is interdict with a FIR ship of a French ship-owner, can it be exploited by a ship of Italian international register? Example of the business of the Louis Dreyfus Line between Portsmouth and Le Havre. CHAUMETTE (P.), "Marine marchande, navigation et espaces juridiques", in GUILLAUME J., *Les transports maritimes dans la mondialisation*, L'harmattan, 2008, pp. 233-244.

<sup>21</sup>BEURIER (J.P), "La transport maritime, le droit et le désordre économique international, in La mer et son droit, mélanges offerts à L. LUCCHINI et J.P QUENEUDEC, A. Pédone, 2003, p. 95.

<sup>22</sup> Ships registered on the French International Registry are subject to rules concerning maritime security and safety, crew training, health and safety in the work place and environmental protection, as applicable in the French law, EC regulations and the international commitments of France.

of the costs. The IFR originality is unfortunately not a guarantee of its commercial success; and the measures, provided by the IFR concerning seafarers, don't contribute of a secure shipping. The human element can not be dissociated of the navigation safety conditions. Consequently, the priority for France is in the same time to promote the implementation of safety standards towards international initiatives.

## **B- The necessity of international and regional support**

French and other traditional maritime states initiate and contribute to develop the control of the flag state implementation. The international organizations objectives are to recover the role of flag states<sup>23</sup>. Compared with the flag of convenience development, the impact of the port state control and the intervention of coastal states are more frequent<sup>24</sup>. The freedom of the sea, which represents the root of the maritime transport system, is contested because of the practice of convenience flag. Hence, the new perspective is to reinforce the genuine link between the flag and its ship<sup>25</sup>. In that sense, the French initiative could be appreciate as an attempt to restore the flag state credibility without taking into account of the human element. While attracting the French shipowners, the IFR tries to find again the French shipping tradition.

The IFR can't be efficient by itself. That is why the influence of France is used to promote the international action for the international standards implementation. The French action is lead beside the international organization as IMO and the European Union. The French delegation participated to the development of the voluntary member state audit scheme which provides an evaluation of the performance of flag state. In the other hand, the European Community follows closely the conditions and the way in which the member states discharge their obligations. The changes of register are facilitated but regulated and supervised. In order to complete the legislation as regards maritime safety, the Commission endeavours to define the obligations falling on the Member States as Flag states.

Consequently, if the creation of an international registration seems to provide a response for the western countries to develop kindness, the system set up in France shows important inconsistencies. The attempt of the French government to reconcile the economic assets and the respect of safety does not meet a great success. The states cannot individually act against the practice of the obliging states, the rehabilitation of the Flag state necessarily passes by an international step.

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<sup>23</sup> CHAUMETTE (P.), Le droit social des gens de mer : diversité des sources du droit du travail maritime, in Droits maritimes, dir. J-P BEURIER, Dalloz action, 2007, p. 504.

<sup>24</sup> BEHNAM (A.), « Ending Flag state Control ? », in Kirchner (A.), International Maritime Environment, Kluwer Law international, p. 123-135. CHROSTODOULOU VAROTSI( I.), Port state control of labour and social conditions: measures which can be taken by port states in keeping with international: a study for the international labour Office, Annuaire de Droit Maritime et Océanique, Maritime and Oceanic Law Center, 2003, pp. 251-285.