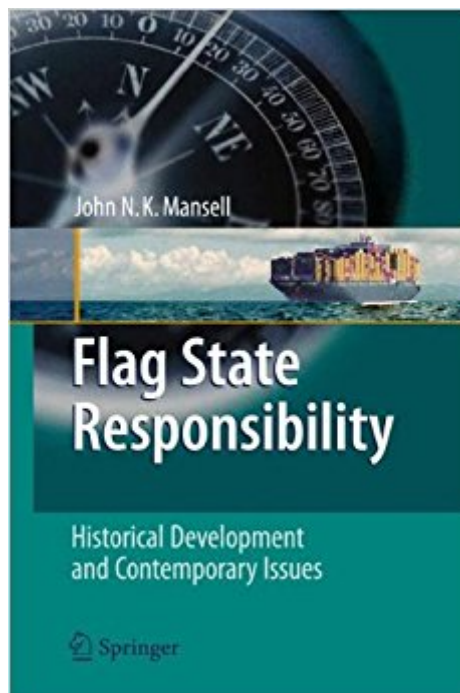




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Flag State Responsibility: Historical Development And Contemporary Issues



Synopsis

All of these flag States have the right to sail ships flying their flag on the high seas (LOSC Article 90) ; and those ships enjoy the freedom of navigation upon the high seas (LOSC Article 87) . With this freedom comes a concomitant duty upon the flag State to effectively exercise its jurisdiction and control in administrative , technical , social (LOSC Article 94 (1)) and environmental protection (LOSC Article 217) matters over ships flying its flag.

1.2 Flag State Responsibility

The absence of any authority over ships sailing the high seas would lead to chaos. One of the essential adjuncts to the principle of freedom of the seas is that a ship must fly the flag of a single State and that it is subject to the jurisdiction of that State. (Brown 1994 , p. 287) This opinion of the International Law Commission in 1956 on a draft article of the High Seas Convention (HSC) was a product of its time; a time of traditional maritime States and responsible long-established shipping companies operating for the most part under the effective maritime administrations of their national flag .

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The historical development of tonnage, ship registration, classification societies and national and international law for flag State responsibility is recounted, along with the large increase in numbers of non-traditional flag States and classification societies over the past fifty years. The Law of the Sea Convention provides for a State to grant its nationality to ships, for those ships to be surveyed before registration, and for a flag State to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. A State has the sovereign right to determine conditions for grant of its nationality and this can lead to derogation of flag State

responsibility with implications for safety of ships. These issues are analysed and remedies proposed for effective flag State implementation of mandatory instruments.

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