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and intergovernmental organizations**

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The Registration of Ships by International
and Intergovernmental Organizations

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PREFACE

The Sea Grant Colleges Program was created by Congress in 1966 to stimulate research, instruction and extension of knowledge of marine resources of the United States. In 1969 the Sea Grant Program was established at the University of Miami.

The outstanding success of the Land Grant Colleges Program, which in 100 years has brought the United States to its current superior position in agricultural production, was the basis for the Sea Grant concept. This concept has three objectives: to promote excellence in education and training, research, and information service in the University's disciplines that relate to the sea. The successful accomplishment of these objectives will result in material contributions to marine oriented industries and will, in addition, protect and preserve the environment for the enjoyment of all people.

With these objectives, this series of Sea Grant Technical Bulletins is intended to convey useful research information to the marine communities interested in resource development.

While the responsibility for administration of the Sea Grant Program rests with the National Oceanic and Atmospheric Administration in the Department of Commerce, the responsibility for financing the program is shared by federal, industrial and University of Miami contributions. This study, The Registration of Ships by International and Intergovernmental Organizations, was made possible by Sea Grant support for the Ocean Law Program.

One of the most notable trends in international law since the Second World War has been the development of the law of cooperation. This development, in turn, resulted in a proliferation of international and inter-governmental organizations.¹ These new legal entities exhibit widely diversified functions and powers. As the scope of their operation expands, the probability increases that some will have to use ships to fulfill their functions. Under certain circumstances these organizations will find it advisable not only to sail ships, but also to register them. For example, in the past, the United Nations found it desirable to register and to sail ships under the United Nations flag on at least three occasions.² The possibility of ship registration by international organizations raises several interesting questions concerning the law of the sea and

¹ W. Friedmann, The Changing Structure of International Law 288 (1964).

² Note by Secretariat: Use of the United Nations Flag on Vessels, UN Doc. A/Conf. 13/ C.2/ L. 87 appearing in (1958) Summary Records and Annexes, Second Committee, U.N. Conference on the Law of the Sea, UN Doc. A/Conf. 13/40.

poses a number of challenges to the continuing development of the law of international organizations.

The questions raised are not purely academic; the flag a ship flies carries with it important legal consequences.³ One British court considered the ship's flag so important that it held a change in a chartered ship's flag a material breach of the charter party.⁴ Several writers have stated that the entire legal system evolved for the use of the high seas depends upon each ship possessing the flag of a recognized international personality.⁵ The flag's importance follows as a necessary corollary to the principle of freedom of the high seas. Since the high seas, as res communis, cannot be subjected to the legal regime of any one State, each State has competence to prescribe rules for the use of the high seas. The allocation

³Such was not always the case. During the Middle Ages, maritime law was largely customary and did not differ greatly from one country to another. See generally, F. Sanborn, Origins of the Early English Maritime and Commercial Law (1930).

⁴M. Issacs & Sons, Ltd. v. William McAllum & Co. Ltd., (1921) 3 K.B. 377, 386.

⁵R. Rienow, The Test of the Nationality of a Merchant Vessel 12-15 (1937); M. McDougal & W. Burke, The Public Order of the Oceans 1066 (1962); N. Singh, "International Law Problems of Merchant Shipping", 107 Recueil de Cours de l'Academie de Droit International 19 (1962).

of this competence among the various States is achieved by the principle of the "law of the flag." The "law of the flag" is a concise way of saying the law of the State to which the ship belongs and whose flag she flies, whether it accords with general maritime law or not.⁶ This principle excludes States from claiming and exercising prescriptive and enforcement jurisdiction over foreign flag ships except in certain limited and well defined situations.⁷ The law of the flag has pervasive effects on the regulation of the public order of the oceans and may be of crucial importance in resolving many claims concerning the use and authority over ocean areas.⁸

The law of the flag regulates all conduct on board the ship while it is on the high seas. The flag State can prescribe criminal conduct.⁹ The law of the flag also extends to other conduct and events, such as marriage,

⁶ R. Rienow, supra note 5 at 5.

⁷ H. Meyers, The Nationality of Ships, 33, 78, 81 (1967); Article 6, Convention on the High Seas, done at Geneva April 29, 1958, 13 UST 2312, TIAS 5200, 450 UNTS 82.

⁸ McDougal & Burke, supra note 5 at 774.

⁹ e.g. Offences at Sea Act, 1536, 28 Hen. 80 c.15 (England); § 4(2), Indian Penal Code (Raju Ed. 1965).

death and birth.¹⁰ The law extends even beyond the limits of the ship; it might determine the priorities among mortgages,¹¹ or determine the right to claim treaty privileges for commercial trading.¹² Conversely, the flag State may restrict the activities or movements of its ships. The flag State may suspend the commercial activities of its vessels with any other State or even with all other States.¹³ The effect of a ship's flag, however, does not stop merely with controlling the legal status of the ship and the persons and goods aboard it.

The granting of its flag to a ship imposes certain obligations on, as well as giving certain rights to, the flag State. The 1958 Geneva Convention on the High Seas, for example, places several obligations on the flag State.¹⁴ Furthermore, there are a number of other multilateral conventions dealing with safety standards

¹⁰ N. Singh, supra note 5 at 26-27; Ervin v. Quintella, 99 F.2d 935 (5th Cir. 1938) cert. denied, 306 U.S. 635 (1939).

¹¹ Supra note 5.

¹² R. Rienow, supra, note 5 at 12-15.

¹³ Id. at 4.

¹⁴ Articles 10, 13 and 27, Convention on the High Seas, done at Geneva April 29, 1958, 13 UST 2312; TIAS 5200 450 UNTS 82.

on ships. Perhaps the three most important are the Load Line Convention of 1930,¹⁵ the 1960 Convention on Safety of Life on the Seas,¹⁶ and the International Load Line Convention of 1966.¹⁷ All of these conventions leave the enforcement of the provisions to the flag State. These obligations and the customary rules of navigation and safety insure the rational use of the seas by ships. The flag State's failure to comply with the requirements of the conventions and customary laws might make them liable internationally to injured States.¹⁸

A State's registration of a ship gives that State the right to protect the ship. While the ship, like a private individual, cannot claim the flag State's protection as a matter of right,^{18a} it is generally conceded that the flag State has the right to protect its

¹⁵ International Load Line Convention, signed at London July 5, 1930, 47 Stat 2228; TS 858; 135 UNTS 301.

¹⁶ International Convention for the Safety of Life at Sea, done at London June 17, 1960, 16 UST 185; TIAS 5780, 536 UNTS 27.

¹⁷ International Convention on Load Lines, 1966, done at London April 5, 1966, 18 UST 1857, TIAS 6331.

¹⁸ M. McDougal & W. Burke, supra note 5 at 1081-82.

^{18a} e.g. II.G. Hackworth, Digest of International Law 759 761 (1941) (Correspondence relating to ships of the Archipelago-American Steamship Co.).

vessels from deprivations by other States.¹⁹ Some States have even asserted the claim to protect alien seamen on their ships.²⁰ On the other hand, if a ship is not granted a flag by any State, or flies the flags of two or more States at its convenience, it cannot claim the protection of any State.²¹ Therefore, any State can seize and confiscate such a stateless ship.²² There is some question whether the right to confiscate stateless ships is a matter of jure gentium or simply a practical consequence of the inability of any State to protect the ship.²³

¹⁹ A.D. Watts, "The Protection of Merchant Ships," 33 Brit. Y.B. Int'l L. 52, 56 (1957).

²⁰ Id. at 68.

²¹ Article 6, Convention on the High Seas, done at Geneva April 29, 1958, 13 UST 2312; TIAS 5200, 450 UNTS 82.

²² Naim Molvan v. Attorney-General for Palestine [1948] A.C. 351.

²³ Contrast; "having no usual ship's papers which would serve to identify her, flying the Turkish flag, to which there was no evidence she had a right, hauling it down on the arrival of a boarding party and later hoisting a flag which is not the flag of any State in being, the Asya could not claim the protection of any State nor could any State claim that any principle of international law was broken by her seizure." Naim Molvan v. Attorney-General for Palestine, supra note 22 at 370 with "Registration is further of international significance in so far as every ship must, to avoid chaos on the high seas, be registered in some State, such is the importance of this rule that any ship which is not registered may jure gentium be confiscated by any State meeting with it." Watts, supra note 19 at 67.

Probably it is a combination of both factors. Undoubtedly the practical element is very strong; nonetheless, the requirement of registration for the rational use of the oceans is so strong that it might place a duty upon all States to seize stateless ships, similar to the duty to seize pirates and slave traders.

Because of the important consequences of registration, several questions arise as to the feasibility of inter-governmental organizations to sail ships under their flags. Can the international organization provide an internal legal order for the ship? Can the organization ensure compliance with the safety, navigational and labor standards established by conventional and customary international law? Finally, can the organization effectively protect the ship and the people on board the ship? Before these problems can be considered, two threshold questions should be answered.

The first question is whether international law prohibits intergovernmental and international organizations from registering ships. The most recent authoritative decision dealing with this problem was taken at the 1958 Geneva Conference on the Law of the Seas. At the Conference, Article 7 of the Convention on the High Seas was

approved. This article provides:

The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of the organization.²⁴

Mexico, Norway, the United Arab Republic and Yugoslavia introduced this article which was adopted by the Second Committee with little or no discussion.²⁵ The delegates wished to avoid creating the impression, from the emphasis in the preceding articles on the "national character of the ships," that the Convention prohibited intergovernmental organizations from registering ships.²⁶ They drafted the provision in such vague terms to permit each case to be judged on its individual merits. The Conference, however, did nothing else to answer the question. Under Article 7, therefore, if it were possible before the Convention for an intergovernmental organization to register ships, then it was still permissible

²⁴Article 7, Convention on the High Seas, done at Geneva April 29, 1958, 13 UST 2312; TIAS 5200; 450 UNTS 82.

²⁵Summary Records and Annexes, Second Committee, U.N. Conference on the Law of the Sea [1958] U.N. Doc. A/Conf. 13/27.

²⁶2 Official Records, U.N. Conference on the Law of the Sea, 136-137 U.N. Doc. A/Conf. 13/38.

after the Convention. Similarly, if international law prohibited such registration, then the Convention did not change the rule.

The International Law Commission's discussions do not answer the question either. The Commission realized the flag of an intergovernmental organization could not precisely be assimilated to the flag of a sovereign State.²⁷ Nevertheless, some members thought Article 104 of the United Nations Charter gave the United Nations the legal capacity to register ships if it were necessary for the exercise of its functions and the fulfillment of its purposes.²⁸ Other members of the Commission, however, stressed the need for an internal legal order on the ships, and felt this deficiency on international ships precluded international organizations from registering ships.²⁹

Mr. François, special rapporteur on this question, adopted the latter position in his 1956 report to the

²⁷Comment to Art. 4, Regime of the High Seas, Report of International Law Commission to General Assembly in [1956] 2 Y.B. Int'l L. Comm'n 22, U.N. Doc. A/CN. 4/19 (1956).

²⁸Comments by Mr. Scelle, [1955] 1 Y.B. Int'l L. Comm'n 225, U.N. Doc A/CN 4/ 1 (1955); Comments by Mr. Amador, [1955] 1 Y.B. Int'l L. Comm'n 226; U.N. Doc. A/CN 4/1 (1956).

²⁹e.g. Comments by Mr. Zourek, [1955] 1 Y.B. Int'l L. Comm'n 225, U.N. Doc. A/CN 4/1 (1956).

Commission. In his opinion, since the United Nations could not offer the same guarantees as States for the orderly use of the seas, it was not entitled under general international law to register its own ships. This, however, is not exactly the same as saying that international law prohibits the organizations to register ships. In place of international registration, he proposed a system whereby the United Nations, as the need arose, would enter into special agreements with member States to permit ships to fly the United Nations flag in combination with the flag of the contracting State. The contracting States would also take steps to extend their legislation to the ships under the United Nations flag.³⁰ None of the members of the Commission, however, adduced any evidence showing that the flags of international organizations would be denied recognition by other States, or were prohibited by international law.

In fact, the historical evidence, although inconclusive, tends to lead one to the opposite conclusion. Records show that as early as the German Hansa ships

³⁰ Supplementary report by J.P.A. François, Special Rapporteur on the Right of International Organizations to Sail Vessels Under Their Flags, [1956] 2 Y.B. Int'l L. Comm'n 102, et seq. U.N. Doc. A/CN.4/1 (1956).

have sailed under the flags of international organizations.³¹ It is also possible that the Republic of the United Netherlands, the American Confederation and the German Federation were international organizations in the modern sense, although a final determination would require a close analysis of their respective constitutions. All of these international entities registered ships and this registration was accepted by other States.³² The international Roman Catholic Church (as contrasted with the Vatican City) also registered ships until the beginning of the twentieth century. These ships sailed under the Vexillum Terrae Sanctae granted by the Patriarch of Jerusalem. Once the ship received this flag it was no longer subject to the authority of the State which had previously registered it. During the voyage canon law applied on board and, until the Berlin Congress (1878), exclusive control was vested in the ecclesiastical authorities in port.³³ The latest international organization to register ships is the United Nations.

³¹H. Meyers, supra note 7 at 323.

³²Id. at 323.

³³Id. at 326.

On at least three occasions, the United Nations has found it necessary to sail ships under its flag and to issue to the ships United Nations' "sea letter". The first instance occurred in 1955. The United Nations Korean Reconstruction Agency built ten trawlers in Hong Kong, and had to sail them to Korea before they were transferred to the new Korean owners. Since the ships could not be registered under the British flag, and since the United Nations thought it advisable not to register them in another country, they were sailed to Pusan under the United Nations flag. The voyage went without incident.³⁴ The second occasion arose during the 1956 Suez crisis, when troop transports for the United Nations Emergency Force carried the United Nations flag. Sometimes the ships' masters flew the U.N. flag alone, and sometimes they flew it in combination with the flag of the countries from which the ships were chartered. Also during the crisis, the United Nations purchased a Landing Craft Mechanized. The organization issued this vessel a United Nations sea-letter,

³⁴Letter from Mr. Stavropoulos, Legal Counsel to the United Nations to Mr. Liang, Secretary to the International Law Commission, dated May 31, 1955, printed in [1955] 1 Y.B. Int'l L. Comm'n 225, U.N. Doc A/CN.4/1 (1955).

since it was the property of the United Nations and there were no appropriate countries in which to register it.³⁵ Approximately a year later, ships again flew an international flag when ships of the United Nations Suez Canal Clearance Operation worked in Egyptian waters and flew the United Nations flag.³⁶ No one questioned the legality of these steps taken by the United Nations. It should be noted, however, that during each of these occasions emergency conditions prevailed, and the registration might be excused on these grounds.³⁷

The legality of international registration was indirectly raised during the 1961 Diplomatic Conference on Maritime Law held in Brussels. A four power proposal for inclusion in the Draft Convention on the Liability of Operators of Nuclear Ships would have permitted inter-governmental organizations to act as licensing agencies under the Convention and to accede to the terms of the Convention. In answering objections by the delegate from Czechoslovakia to this proposal, the Danish and

³⁵Note by Secretariat, supra note 2, at 138.

³⁶Id. at 138.

³⁷See e.g. Supplementary report by J.P.A. François, supra, note 30 at 103.

Indian delegates implied that international registration was an open question under present international law.³⁸ The Indian delegate continued by saying that the requirements for a progressive development of the law compelled an affirmative answer to the question.³⁹ While the Conference rejected the proposal, the participants did resolve to establish a standing committee to study the possibility.⁴⁰

A final argument for permitting intergovernmental organizations to register ships might be based upon the S.S. Lotus decision of the Permanent Court of International Justice. As part of their ratio decidendi, the Court said that whatever is not expressly forbidden by international law is permitted.⁴¹ Since international law apparently does not expressly prohibit intergovernmental organizations from registering ships, arguably it permits such registration. On the other hand, the Lotus decision dealt solely with relations among States. The

³⁸Singh, supra, note 5 at 148 & n. 16, 145-146, n. 12.

³⁹Id. at 148, n. 16.

⁴⁰Id. at 155-156.

⁴¹Case of the S. S. "Lotus," [1927] P.C.I.J., ser A. No. 9.

sovereignty and equality of the States results in the aforementioned principle. International organizations, while international legal personalities, are not the same as States, and do not possess the same power as States; their powers result from specific grants from the member States.⁴² Since the organizations cannot be assimilated to States, arguably the Lotus decision is inapplicable. Nevertheless, since the modern trend of international society is towards a growth of international organizations, the better alternative to this strict interpretation of the Lotus Case is to follow the spirit of the case and grant all international personalities broad powers and scope.⁴³

Should the first question be answered affirmatively, before an international organization can undertake the registration of ships, it must determine whether it,

⁴²"Accordingly, the Court has come to the conclusion that the Organization is an international person. That is not the same thing as saying it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State.....What it does mean is that it is a subject of international law and capable of possessing international rights and duties....." Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations [1949] I.C.J. 174, 179.

⁴³Cf., Singh, supra, note 5 at 134-135.

in fact, has the power. This question must be answered on a case to case basis. The answer will depend upon the particular powers and functions granted to the organization by its Charter; the charter, however, need not grant expressly the power to register ships. As the International Court of Justice found in the Reparations Case,⁴⁴ certain powers can be implied from the functions of the organization. If it should be found that in order to fulfill its functions the intergovernmental organization should require registering ships, this power will be found by implication should the question arise.

A correlative question is whether non-member States must recognize this international registration. During its opinion in the Reparations Case, the court discussed the recognition non-members must grant to the United Nations. It said,

Fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone, together with the capacity to bring international claims.⁴⁵

⁴⁴ Supra, note 42 at 182-183.

⁴⁵ Id. at 185.

Extending the reasoning of this decision, undoubtedly all States are required to recognize the flag of large international organizations.

Smaller intergovernmental organizations pose a greater problem. At least one writer has suggested that a narrow reading of this opinion would prohibit a few States from forming an intergovernmental group to pool their shipping activities which would have an objective international personality.⁴⁶ While such an interpretation of the case is logical, it would ignore the current trends in international society. State practice has departed from abstract principles of personality and now uses a functional definition of international personality.⁴⁷ Therefore if the registration of the ship were a properly implied power of the intergovernmental organization, then the organization has an international personality in this respect, and the flag should be granted recognition.

Three general situations can be foreseen in which ships might be registered by and sailed under the flag of an international organization. The organization might

⁴⁶ H. Meyers, supra, note 7 at 344-345.

⁴⁷ D.W. Bowett, The Law of International Institutions, 275 (1963).

use ships in peacekeeping forces, such as the United Nations Emergency Force during the Suez Crisis of 1956. Regional defense organizations might also require ships. For example, during the Cuban Missile Crisis of 1962, the United States' claim that the quarantine was a valid defensive measure would have been strengthened if the participating ships flew the OAS flag and were registered by the OAS. Similarly, the proposal for a NATO Multilateral Force might require international registration of the ships.

International regulatory agencies might also find it useful to register their own ships. Senator Pell of Rhode Island, in his 1968 draft treaty on Ocean Space, proposed the formation of an International SeaGuard. The SeaGuard would be an international body detailed to enforce the Treaty's provisions, and would require an international registration.⁴⁸ Proposals have also been forwarded to give international fisheries commissions more power.⁴⁹ Given greater powers, these commissions might find it desirable to register ships and enforce the

⁴⁸ 114 Cong. Rec. 5184 (1968) (remarks of Senator Pell).

⁴⁹ F. Christy & A. Scott, The Common Wealth in Ocean Fisheries, 239 et seq. (1965).

convention through an international enforcement branch.

With international organizations assuming more functions traditionally left to private entities, some organizations might operate ships in a semi-private fashion. Once again, perhaps the most practical way to operate these ships would be with an international registration. One of the reasons the 1961 Diplomatic and Consular Conference on Maritime Law considered the possibility of an international organization acting as a licensing state was the belief that many countries individually could not finance the research and development of a nuclear powered ship. Intergovernmental organizations would have the financial resources for such development. The participating States, however, might be reluctant to register the ship under the laws of any one country. Therefore, an international registry would result.⁵⁰ Also, with the ever increasing research into the oceans, scientists might find it easier to do research if they worked under the auspices of an international organization. To allay the fears of the coastal States, the research ships would fly an international flag.⁵¹

⁵⁰ N. Singh, supra, note 5 at 141.

⁵¹ Id. at 140.

In each of the foregoing situations, although the organization will have a dual character, as a shipowner and as a registering party, it is only the latter function which would cause substantial legal problems. The problems of ownership are mainly administrative in nature and do not affect the legal status of the ship.⁵² As the registering party, however, the organization will have to provide a criminal and civil regime for the ship while it is on the high seas. Several alternative methods for achieving these goals are possible; the choice of the method will depend upon the charter of the organization and the requirements of the given case.

Establishing a criminal code for the ships will be an essential task facing the organization initially. The simplest way of achieving this goal is to adopt the criminal laws of a named country, analogous to the method used by the United States in the Outer Continental Shelf Act.⁵³ The Conference drafting the Convention on Offenses

⁵² For a general discussion of the administrative problems which would face an international organization, qua shipowner, see N. Singh, supra, note 5 at 156 et seq.

⁵³ "To the extent that they are applicable and not

and Certain Other Acts Committed on Board Aircraft employed this method.⁵⁴ Such a course would result in a desirable uniformity in the laws. Enforcement of the criminal code could be left to the State which law was chosen or it could be left to all of the States participating in the organization.

For short term operations, such as a peacekeeping force, the criminal laws of each participating State might be used to govern the conduct of their respective nationals. The United Nations chose this method during the 1956 Suez Crisis. Under Article 34 of the UNEF

inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf." 43 U.S.C.A. § 1333 (a)(2).

⁵⁴ Convention on offenses and certain other acts committed on board aircraft, done at Tokyo September 14, 1963, TIAS 6768.

Regulations,

Members of the Force shall be subject to the criminal jurisdiction of their respective national states in accordance with the laws and regulations of those States. They shall not be subject to the criminal jurisdiction of the Courts of the Host State. Responsibility for the exercise of criminal jurisdiction shall rest with the authorities of the State concerned, including as appropriate the commanders of the national contingent.⁵⁵

The chief advantage of this approach is that it does not require the various commanders to apply unfamiliar law to the detriment of discipline; nor would it require the enlisted personnel to comply with unfamiliar laws. For long term operations or in situations of a non-military character, this approach, however, would be inappropriate. It lacks the uniformity of laws required for the smooth operation of a ship. Enforcement of the varying national laws by a centralized body or a single person, would create many difficult practical problems.

The organization itself could promulgate the criminal code as a final possibility. Whether the organization actually had this power would depend upon its constitutional instrument. A more difficult question is whether

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Note by Secretariat, supra, note 2 at 139.

general international law permits an international organization to promulgate criminal codes. The only instance where this occurred in the recent past was during the trial of the major German war criminals by the International Military Tribunal. The circumstances surrounding these trials, however, were so extraordinary that they might not provide a valid precedent for ordinary criminal codes. As well as being laws and trials imposed by conquering nations, the crimes were "crimes against humanity." It is interesting to note, however, that the United Nations did unanimously affirm the principles of international law in the Nuremberg Charter and Judgment.⁵⁶ Furthermore, arguably, if an international organization has the power to register ships, an implied power to promulgate criminal codes might also be implied, although this is stretching the implied power principle to an extreme degree. If such a power is found, the enforcement should be left to the member States; it would be impractical for the organization to maintain the necessary penal institutions.

⁵⁶G.A. Res. 95, I GAOR, U.N. Doc. A/65/Add. 1 at 188 (1946).

In the realm of civil jurisdiction, the problems are not as severe as in the criminal area. International organizations unquestionably possess the competence to enact some of the necessary laws. These laws could take the form of the regulations similar to those which control the conduct of the staff members of the United Nations Secretariat. Also, they might take the form of traditional legislative enactments. For example, Article 189 of the Treaty of Rome,⁵⁷ empowers the Council and the Commission of the European Economic Community to issue directives and regulations for limited purposes. Article 189 further provides that these ". . . Regulations shall have general application. They shall be binding in every respect and directly applicable in each member State." In two 1962 decisions, the Community's Court of Justice held that certain provisions of the Treaty could confer enforceable rights upon individuals.⁵⁸ These cases dealt solely with

⁵⁷ Treaty Establishing the European Economic Community, entered into force, January 1, 1958, 298 UNTS 11.

⁵⁸ N.U. Algemene Transport en Expeditie Ondeneming van Gend & Loos v. The Netherlands Fiscal Administration 9 Recueil 1 (1963); 1963 C.M.L. Rep. 105; Da Costa en Schaake N.V. v. Nederlandse Belasting administratie, 9 Recueil 59 (1963); C.M.L. Rep. 224.

Article 12 of the Treaty; therefore it could be argued that their holdings should not be extended to include the regulations of the Council and Commission. Such an argument, however, goes against the clear intent of Article 189. Furthermore, Article 192 gives Decisions of the Council the enforceability of a court judgment; this includes forced execution on property. From these two precedents, clearly international organizations have the competence to affect directly the rights of individuals in at least limited areas.

In the few areas where it would be impractical or impossible for the organization to provide the requisite legal framework, solutions are still available. For example, in the case of a birth on board an international ship, the registering organization obviously could not grant its citizenship to the child as could a State. The child's nationality would then be decided under the laws of his parents' country; most nationality laws provide that a child shall have the nationality of his parents.⁵⁹ In the cases of the limitation of liability or contracts for the carriage of goods, the contracts can specify that

⁵⁹W. Bishop, International Law, Cases and Materials, 415-416 (2d Ed., 1962).

the laws of a given State shall apply.⁶⁰ At most, the international organization would have to pass a general regulation specifying that this type of contract was permissible and would be honored in the appropriate courts. Other problems could also be resolved by reliance upon individual national laws; most States provide that their laws shall be applied to their nationals abroad.⁶¹

The organization would have two methods of enforcement should it decide to promulgate its own civil legislation. It could rely either upon the courts and administrative agencies of the member States, the practice the EEC follows,⁶² or form its own judicial or administrative system, the practice of the United Nations.⁶³ The judgments of this latter court would be binding upon the organization.⁶⁴ In the event the organization does

⁶⁰The possibility of using this method for contracts to which an international body corporate is a party is discussed in C.W. Jenks, The Proper Law of International Organizations 148 (1962).

⁶¹Cf. Skiriotes v. Florida, 313 U.S. 69 (1941).

⁶²Article 192, Treaty establishing the European Economic Community, entered into force January 1, 1958, 298 UNTS at

⁶³D.W. Bowett, supra, note 47 at 258 et seq.

⁶⁴Advisory Opinion on the Effect of Awards Made by the U. N. Administrative Tribunal, /1954/ I.C.J. 47.

not formulate a civil code, ships could still be governed by the laws of a designated State. Enforcement of these laws could be left to the individual member States once again.

The two remaining problems can be discussed briefly. Two methods exist for an international organization to comply with the safety and labor standards established by conventional international law. Most international organizations have the power to enter into treaties consistent with their granted functions and powers.⁶⁵ Therefore they could adhere to the treaties and multi-lateral conventions controlling maritime affairs. Should these conventions not permit adherence by international organizations, the international organization can unilaterally declare it will follow the provisions of the convention, and obligate itself in this manner.⁶⁶ To assume adherence to the conventions' terms, the organization could either establish its own facilities or use the facilities of the member States.⁶⁷

⁶⁵ D. W. Bowett, supra, note 47 at 277.

⁶⁶ N. Singh, supra, note 5 at 159.

⁶⁷ Id. at 160.

Protection of the internationally registered ships also poses little difficulty. Since the organization would have an objective international personality it could press claims for any injuries to its ships. Should this fail, the member States would probably be able to show enough interest in the ship to permit them to protect it to a limited extent. The combination would be sufficient for all foreseeable possibilities.

Most of the arguments against the registration of ships by international organizations have been based upon the organization's inability to insure the rational use of the oceans. This paper has attempted to show some methods of surmounting these problems. There are grave difficulties, both practical and legal; however, they are amenable to solution. Although international organizations are not a panacea for all of the world's problems, they are extremely useful in certain spheres of activities. To permit them to register ships would further increase their usefulness. To deny them access to the oceans, the one area open to the use of everyone, would be as senseless as denying landlocked States access to the seas.

