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OF REGISTRATION OR THE FLAG STATE IN
RESPECT OF SEA-GOING VESSELS, AIRCRAFT
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REGISTRATION AUTHORITIES**

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I. AN INDUCTIVE APPROACH

The topic selected for this report forms part of a broader picture: "the Liability of Registration authorities," which embraces a wider scope of enquiry, principally covering an infinite variety of international regulations within comparable national legal orders. Civil liability may require consideration of legal questions for which practical solution may only be found beyond the confines of internal law, in the choice of applicable law as part of private international law, or ultimately in the direct or indirect application of a rule of public international law, as recognized by States and incorporated in negotiated provisions of a Treaty.

As the main branch of the area of the law under study is III. D. Air and Maritime Law/Droit Aerien et Maritime, there appears to be ample justification for undertaking an examination of the question of liability, not only by comparing the rules in one legal system with several others, but also by comparing analogous rules adopted for maritime transport with those applicable to civil and commercial aviation, and even to space travel.

In the ultimate analysis, the question of civil liability of an agency of a State or an organ of an international organization performing registration functions cannot escape the control or regulation by a competent authority of the prevailing international legal order. Nor for that matter could liability avoid the application of the relevant rules of international law. States and international organizations exercising the functions of registering all modes of international transport are clearly and equally responsible before the law in the eyes of international law. In this connection, international law is undergoing a constant process of evolution to crystallize a minimum

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universal standard of responsibility and liability on the part of States and international agencies in the field of maritime transport as well as in civil and commercial aviation, as indeed equally also in space flight and space voyage.

The present study will follow a logical pattern of systemic sequence. First, it will in due course examine the practice of the United States with regard to the liability of its registration authorities with its limitations and qualifications, inevitably engaging the State responsibility of the United States in respect of any harm or injury, physical or financial, incurred by non-nationals within or outside the United States as the result of a wrongful act, or negligent handling, or willful conduct committed by an agency of the United States Government, or an independent contractor acting on behalf of the State, in connection with the registration of a sea-going vessel of the size and category and with the permit to fly United States flag.

In the second place, the study will address the varying requirements and diverse qualifications for registration of an aircraft of different designs and purposes to enable such vehicles of transport to take to the air and to be air-borne or to take off on a flight within or across and beyond the national boundaries of the United States for the carriage of goods and passengers or other peaceful purposes. These are matters within the exclusive jurisdiction of the Federal Aviation Administration (FAA) of the United States. The liability of the registration authorities is governed by federal legislation superimposed on various State legislative requirements. The civil liabilities and their limitations, exemptions and privileges as well as immunities of the United States competent authorities for the process of examination, attestation and registration are regulated by State law as well as by Federal Regulations.

The basic needs and requirements of proof of ownership and air-worthiness for purposes of eligibility for registration in the United States are essentially not far different from those for registration of sea-going vessels with permits to fly United States flags.

Finally, liabilities for registration authorities in respect of space vehicles, space objects and satellites closely resemble those of aircraft, as space travel and space shuttle services are analogous to air traffic, flight navigation or civil and commercial aviation. The treatment of the three means of transport, sea voyage, flight or passage through space, is sometimes merged or combined under the heading of multi-modal transport, comprehending the carriage of goods and passengers by land, by sea including waterways, and by air including eventually space transport.

The current survey of State practice in the three modes or means of international transport may lend itself to some tentative conclusions, based on an empirical comparison of State practice particularly

the United States model as well as international standards. It is conceivable that there may be an intermediary regime between maritime and air law as between aviation and space shuttle. This study will follow an inductive method.

II. MARITIME LAW

A. General Considerations

Maritime law constitutes a branch of the law within a national legal system, designed to regulate the carriage of goods and passengers by sea, or the carrying trade by water, traversing the sea or the ocean through national or international waterways. It does not necessarily preclude consideration of safety and security at sea, in the ocean or hazards to navigation whether in the nature of piracy *jure gentium* or terrorism at sea, domestic as well as international.

The current survey is confined to certain legal aspects of civil liability of registration authorities for any harm, damage, or injury to person or property resulting from the operation of a sea-going vessel especially after it has been duly inspected and registered with certificates of documentation and sea-worthiness as well as permit to operate under the flag of a particular State, in this case, the United States of America as a point of departure.

Under the Law of the Sea Convention 1982,¹ every ship must have a nationality and fly a national flag of a State. A sea-going vessel may not fly more than one flag.² However, it can fly a flag of an international organization, such as the United Nations or ASEAN. Every sea-going vessel is additionally required to carry a paper, or certificate of documentation, indicating its size, tonnage replacement, construction ship-yard and a name for purpose of its identification. It has to be equipped with safety devices and radio telecommunication set to ensure its location or geographical coordinates at sea, its known point of departure and declared destination of a voyage. It has to have a call-sign to be able to announce its whereabouts and its intention to enter and visit a port of call. These are also needed to report an emergency to call for assistance, salvage service or rescue at sea.

International law does not impose on every maritime State nor land-locked State any detailed regulation or specific requirement for

1. See in particular, Articles 90-91 of the UN Convention on the Law of the Sea, signed at the Montigo Bay, Jamaica, December 10, 1982, and entered into force on November 16, 1994 among various States. However, Thailand and USA have not ratified the Convention, although, except for Part XI, most other substantive parts reflect the current status of customary international law on the subject.

2. See *id.*, Part VII, the High Seas, Articles 92-100 of the Convention Official Text with Annexes and Index, UN. NY, 1983.

registration of a ship with a permit to fly a national flag.³ Rather every State has the fullest authority to adopt, modify, amend and vary at will the necessary requirements for registration of a vessel as part of its flag, either as a merchant marine, a fishing vessel, a ferry, a tanker, a transport ship, a cruise vessel, a man of war or battle ship, a cruiser, a torpedo-boat, an auxiliary vessel, a hospital boat, a sub-marine, a destroyer, a nuclear sub-marine, a coast guard, a frigate, a tug boat, an explorer or training vessel for various educational, scientific and experimental purposes, and ultimately an aircraft carrier and an aquapolis.⁴ It is clearly beyond the scope of this brief survey to examine national qualifications and requirements of every maritime nation for each of the categories of the above-mentioned vessels.

The present study starts with maritime law and incidentally touches upon some of the requirements and qualifications for a vessel to be registered under a United States flag, namely, ownership and place of construction in order to ascertain the nature and extent of the liabilities and responsibilities of the registration authorities. In the United States practice, the task of testing, attesting or verifying the qualifications and requirements for registration is not infrequently delegated or assigned to what is known as a 'Société de classification' or "Classification Society." Performance of these delegated tasks by expert societies does not exonerate the flag State of its primary or principal responsibility. Whatever faults and imperfections or 'fautes de service' committed in the performance of these functions are attributed, as they are imputable, to the State.

B. Status of Ships and Liability to Arrest in Foreign Jurisdictions

1. Jurisdictional and Procedural Issues

One of the first questions to be examined relates to jurisdictional issues whether an act of State or an act of the State, exercising its sovereign authority in the discharge of its inspection duties and functions is subject to the jurisdiction of any authority, administrative or judicial, within or outside the United States. This study will address a few topical questions relating to the liability of the flag State or its registration agencies or authorities in any civil proceedings, involving such questions as the certificate of sea-worthiness of a vessel, its registered name, title-holder and changes. This may affect its prompt release or loss of standing of claimant or absence of jurisdiction of an international instance.

3. *Id.*, Article 91(2): obligation to issue document.

4. Japan launched an aquapolis, a submersible marine city to farm under-water plants and to cultivate fish cultures.

It is useful to appreciate certain procedural distinctions or peculiarities of a suit in admiralty before a judicial instance of a common law system such as the United States and the United Kingdom. In the traditional theories of the common law, a ship is a unique species of chattel in the sense that an action can be brought against a ship as such *in rem*, where the writ or libel *in rem* against the ship can be served by posting the writ on the main mast, but it is at the same time addressed to the owner and master or captain of the vessel also *in personam*. A proceeding *in rem* against a ship can be initiated with its arrest or seizure *ad fundandam jurisdictionum*, which, strange but true, can be served and effected not only against the ship that has itself been at fault, but also in its absence, against any sister ship of the same fleet.⁵ A ship is at times considered fictitiously as a floating territory,⁶ but that fiction is exploded as a legal basis for territorial jurisdiction. The jurisdiction of the flag State is based on nationality of the vessel as evidenced by the national flag it flies and not on any fiction of territoriality similar to the exploded theory of extraterritoriality of embassies entailing inviolability of diplomatic and consular premises.⁷

2. Liability *in rem*

The liability of a ship *in rem* is comparable to *noxal liability* or liability of the owner under Roman Law at various periods to surrender the vicious animal, such as a mad dog. The owner of a vicious dog that inflicted injury upon a person would be liable vicariously for the injury caused by the dog. The owner could choose to keep the dog and pay the compensation or penalties for damage caused or surrender the dog to the victim. Thus, *noxal surrender* resembles the arrest of a vessel to ensure that the harm caused by the vessel is redressed either by the owner or master of the ship agreeing to compensate for the loss suffered or from the proceeds of sale of the vessel arrested. By the same token, a complainant in the ancient Roman legal system could detain the vicious dog as security for payment of compensation by its owner for the injury inflicted by the dog⁸ in the event the owner wished to have his dog back. Proof of ownership is invariably contained in the registration paper, hence the liability and responsibility of the Registration authorities to register any transfer of title to the ship.

5. See *I Congreso del Partido*, [1983] AC 244. House of Lords Decision relating to the *Playa Larga* and the *Marble Island*, Cuban ships. See also Lord Atkin in the *Cristina* [1938] A.C. at p. 490.

6. See the reasoning of the Permanent Court of International Justice in the *SS Lotus*, (*France v. Turkey*) 1927, PCIJ Report Series A. No. 10; 2 Hudson World Ct. Rep. 20.

7. See EDWARD R. ADAIR, *THE EXTERRITORIALITY OF EMBASSIES IN THE XVITH AND XVIITH CENTURIES* (1929).

8. See *Lex Aquilia*, A.D. 287, DIGEST 49.

3. International Regulation of Arrest of Ships

The institution of *noxal liability* or *noxal surrender* was normal in more primitive societies. Today, traces of such practice could only be found as a security or *cautio* for payment of compensation in discharge of liability for a tort or civil wrong. Nevertheless, the arrest of vessels has become more frequent in modern maritime law, both comparative and international. The frequent uses of arrest of ships have led to an international endeavor to put the current practice on a more rational and generally accepted basis. Ninety-five sea-faring nations including the United States and Thailand as well as Hong Kong and Macao, attended the UN/IMO Diplomatic Conference on Arrest of Ships from 1 to 12 March 1999 in Geneva. The Conference was also attended by International Organizations, as observers, such as the Arab Labor Organization, OAU, OAS, OIC and the Intergovernmental Organization for International Carriage by Rail. Several NGOs also attended the Conference as observers.⁹ The draft articles were prepared by the joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liners and Mortgages and Related subjects.¹⁰

The UN/IMO Convention on Arrest of Ships 1999 serves to standardize and regulate rules and procedures for arrest and release of ships. As indicated in its Preamble,¹¹ the States Parties to the Convention recognize the desirability of facilitating the harmonious and orderly development of world sea-borne trade and are convinced of the necessity for a legal instrument establishing international uniformity in the field of arrest of ships, taking into account recent developments in related fields. Many basic terms have been defined for the purposes. The power of arrest is vested in the Court of the State party in which the arrest is effected in respect only of a maritime claim as defined. The purpose of the arrest is to obtain security for a maritime claim for which the owner or demise charterer is liable. Sister-ship jurisdiction is permissible for the arrest of a ship or ships owned by a person liable for the maritime claim, or is otherwise chartered to that person.¹² A ship so arrested is to be released when sufficient security has been provided in a satisfactory form.¹³

9. See documents A/CONF. 188/6, 19 March 1999; also A/CONF. 188/2, and 188/5.

10. See document TD/B/IGB.1/5; A/CONF.188/3 Add. 103; and A/CONF.188/2. The United States attended and signed the final Act. Indonesia, the Philippines, Singapore, Thailand and Vietnam also signed the Final Act. Most sea-faring nations signed the Final Act, including Switzerland.

11. See document A/CONF.188/6, Preambles.

12. See *id.*, Article 3 (1) and (2).

13. *Id.*, Article 4 (1) and (2).

C. *Responsibility of a Flag State in Respect of Sea-Going Vessels Flying Its Flag*

That the flag State has primary, if not indeed exclusive, jurisdiction over all ships flying its flag on the high seas, no one today can dispute, nor can anyone deny the predominant authority of the flag State. Opinion and practice of States lack uniformity with regard to the nature and extent of the responsibility of the flag State in respect of the activities of sea-going vessels flying its flag. The exercise of the authority to register a ship by whatever body or agency as a United States vessel entitled to fly United States flag is attributable to the United States.

The prevailing opinion and practice of the United States appear to be the most outstanding if not indeed the most extensive, not only in regard to the basic jurisdiction over the vessels, but also with respect to the obligations and responsibilities that the United States Government is prepared to undertake to protect and defend the safety and security of all ships flying United States flag on the high-seas or anywhere else. The United States practice has been relatively consistent in its assumption of the function and responsibility to preserve and protect the integrity of the United States from any armed attack by whomsoever and wherever launched. Different categories of ships merit different consideration.

1. Man-of-War

The most obvious example of United States position and policy is its treatment of any armed attack against or upon its warship or government ship being invariably regarded as an attack against the United States. This may prompt a series of response to the armed attack, as in various instances such as the Gulf of Tonkin incident,¹⁴ the Gulf of Sidra incidents,¹⁵ the attack against the USS *Pueblo* off the coast of North Korea,¹⁶ and the USS *Cole* off the shore of Yemen.¹⁷ United States warships have been targets of attack even

14. This has led US Congress to adopt a resolution authorizing the President to commit US armed forces, including ground troops, to fight in Vietnam in the sixties and early seventies.

15. In 1981, the US took occasion to respond to the two attacking Libyan Fitters, and after downing both Libyan Fitters, the US fighter aircraft removed the shore batteries and radar stations of Libya during a missile exercise of the USS *Nimitz* (CVN-68) in the high-seas in the Gulf of Sidra, which Libya had claimed to be within its territorial waters. This was generally viewed as an exercise of US self defense against Libya. Another incident recurred in 1989 resulting in two US F14 Tomcats shooting down the Libyan Mig-23 Flogger-Es.

16. The USS *Pueblo* was attacked by North Korean forces in the Sea of Japan in 1968 and its crew members were detained for 11 months before they were released.

17. The USS *Cole* was attacked by a suicide squad of the Al-Qaeda in October 2000.

from friendly fires.¹⁸ This accounts for a stern position taken by the United States in response to armed attacks against its warships, as if it were an armed attack or aggression against the territorial integrity of the United States itself.

There was not much adverse or critical reaction from world public opinion as to the duties or responsibilities of the United States Government to defend and protect its own land from armed attackers, and to extend these functions to cover warships as if they constituted 'floating territories' of the United States, hence the revival of a kind of a long exploded fiction of territoriality attached to a man-of-war. Nevertheless, the extent to which the United States could exercise the right of self-defense in such cases has not escaped severe and in several instances justifiable criticisms. The case on point was the self-protection or alleged self-defense of the USS *Vincennes*¹⁹ against possible attacks by vessels or aircraft which turned out to be an innocent Iranian civilian Airbus carrying Muslim passengers from Teheran to Saudi Arabia to do their annual pilgrimage.

2. Private-Owned or Private-Operated Vessels

The fiction of territoriality may be said to have been overstretched when applied to ordinary sea-going vessels not forming part of the United States navy. United States armed intervention in numerous instances for the purpose of providing protection for United States commercial flags have not been supported by world public opinion, nor clearly established rule of customary international law. The *Mayaguez* Incident (1975)²⁰ in the Gulf of Thailand, was the case on point, when the *Mayaguez*, flying a United States flag, was attacked and seized by piratical rebel forces of the Khmers Rouges, the United States Navy decided to respond by attacking Kampuchea under cover of self-defense to liberate and recover the *Mayaguez*.²¹

18. On 17 May 1987, the USS *Stark* was attacked by two air-to-surface missiles from an Iraqi Air Force F1 Mirage, being mistaken for an Iranian frigate.

19. On 3 July 1988, the Iranian Airbus 300, IR655, was downed by the USS *Vincennes* surface to air missiles. The error of fact or mistake of identity could only afford an excuse to establish absence of criminal intent or *mens rea*, but it could in no way exonerate the US Government from the secondary obligation to wipe out the consequences of its internationally wrongful act, though not necessarily criminal.

20. Piracy *ex jure gentium* was not unknown in international law. Pirates are treated as *hostes generis humani* (enemies of mankind), and as such can be attacked anywhere on the high-seas or on dry land to deny them shelter to provide safety for international maritime trade.

21. It should be noted that the Thai Government specifically notified the US forces in Thailand not to use any Thai base to launch an attack on Kampuchea or on the *Mayaguez*. But the US armed forces did not heed that warning.

3. Reflagging of Private-Owned Tankers

The question of reflagging of Kuwaiti tankers as United States vessels flying United States flag deserves serious consideration. It is not without significance that a United States registration authority could register or change the registration of a Kuwaiti tanker and allowed it to fly a United States flag. The apparent purpose is to permit the United States armed forces to provide effective protection to the reflagged US - Kuwaiti tankers, carrying Iraqi crude oil from the Persian Gulf.

Many incidents occurred in the height of Iran-Iraq war of the 1980s. The United States was not a party to the bilateral armed conflict. Its interest was to protect the safety of navigation in the Persian Gulf which was the theatre for naval warfare between the two warring Gulf Nations. Under the law of international armed conflicts, the United States should observe strict neutrality and refrain from taking side.

In the case of an attack on the USS *Stark* in 1987, the United States Government did not take any measure of self-defense by responding to the mistaken Iraqi attack. On the other hand, the United States Navy went to the length of destroying Iranian Oil Platforms in a series of forcible measures taken against Iran. The International Court of Justice in the case between Iran and the United States on the destruction of the Oil Platforms expressed no sympathy with United States theory of self-defense.²²

Nicaragua v. U.S.A. (1986) (Military and para-military activities in and against Nicaragua) amply demonstrated a fundamental lack of understanding on the part of the United States of the basic principle of international law of collective self-defense, which requires a request of assistance by the victim of an armed attack. In the *Nicaragua Case*, the United States could provide no evidence of any such request. The United States view of international law has been proven to be inaccurate, but the injury was already inflicted upon innocent victims. The problem remains not only for reparation under the law of State responsibility, but also civil liability to be discharged in respect of harms done to individuals in the eyes of international law as well as under the rules of conflict of laws or private international law.

Questions of liability for tankers on the part of the flag State are borne out by State practice. The Brussels Conference in the 1970s²³

22. ICJ Report (2004) 6 November 2003, 42 I.L.M. 1334 (2003).

23. An International Fund was set up, contributed by States Members to abate the consequences of oil pollution at sea caused by tankers. Oil pollution of the seas is regulated by the International Convention for the Prevention of Pollution of the Sea by Oil, London, 12 May 1954, 12 US T. 2989, TIAG No. 4900, 327 U.N.T.S. 3, US is a Party.

on the prevention of Oil Pollution from Tankers showed a high degree of awareness on the part of Maritime States and Sea-faring nations of the responsibility incumbent upon the flag States to see to it that tankers flying their flag are in sea-worthy conditions according to international standards of safety. Thus, in 1975, a Japanese tanker of the Sanko Line, named the *Showa Maru*, struck some under-water rocks in the Malacca and Singapore Straits and suffered leakages which resulted in oil pollution of the Strait States of Malacca and Singapore Straits (Singapore, Malaysia, and Indonesia). The Japanese Government took no time to make necessary reparations and took immediate steps to adopt precautionary measures to prevent further repetitions of such incidents. An international Committee was set up to explore ways and means to enhance the safety and security of navigation through the Malacca and Singapore Straits.²⁴ Civil liabilities attaching to the tankers as well as to their flag States abound in the annals of maritime transport. The *Torrey Canyon*²⁵ and the *Prestige*²⁶ have been as notorious as the *Exxon Valdez*.²⁷

4. Protection of the Fishing Fleets and Liabilities of the Flag State for Violations of Conservation Measures

Not only the United States but also the United Kingdom Governments, had taken upon themselves to protect their fishing fleet at one time or another. For instance in the fifties, certain Latin American countries extended their exclusive fishing zones to 200 miles as '*Mar patrimonial*' to conserve and protect the exploitation of living resources, the United States Navy had to escort its tuna fishing fleet to fish in the proclaimed '*Mar patrimonial*' to preempt naval incidents. The United Kingdom also protected British fishing fleet in the cod wars off the coast of Norway when Norway enforced its four-miles territorial sea, and later also with Iceland when the latter proclaimed an extended exclusive fishing zone of fifty miles. However, after the Third United Nations Conference on the Law of the Sea adopted the 1982 Convention with provisions on Exclusive Economic Zones (EEZ),²⁸ the Reagan Administration issued a Proclamation in 1983²⁹ proclaiming United States EEZ, but at the same time denouncing

24. See, for instance, Sompong Sucharitkul, *Le Statut Juridique des Détroits de Malacca et de Singapour*, 1994, No. 8, *Revue Espaces et Ressources Maritimes*, Université de Nice, France.

25. The United Kingdom destroyed a tanker without the consent of the flag State. The Torrey Canyon disaster prompted the adoption of the International Convention Relating to Intervention on the Highseas in cases of Oil Pollution Casualties 1969, 26 U.S.T. 765, T.I.A.S. No. 8068. The United States is a party to this Convention.

26. The Spanish Government took steps to preempt oil pollution from The Prestige to reach the Spanish coast. This diversion could endanger the French coast.

27. See Gold, *Marine Pollution Liability after 'Exxon Valdez': The United States 'All-or-Nothing Lottery'* 22 J. MAR. L. & COM. 423 (1991).

28. Part V, Article 55.15 of the 1982 UN Convention on the Law of the Sea. UN Doc. A/CONF.62/122, UN Sales No. E83 V.3.

United States exclusive possession or control over the highly migratory species, i.e., free-swimming tunas within the United States EEZs. By so limiting, the United States hoped that it could maintain a more consistent position when it came to the fishing of highly migratory species by United States tuna fishing fleets inside the EEZ of the fifteen South Pacific Forum States. This consistent United States attitude appeared to be in direct conflict with the notion of EEZs which allowed coastal States to regulate and manage the stocks including migratory species within their EEZ. Kiribati arrested at least one such United States fishing vessel and refused to release the recalcitrant vessel without posting of appropriate bond.

The United States Government continued to maintain its untenable position, although seeing that Japan had agreed to give financial and technical assistances to the South Pacific Forum States in return for licenses for Japanese fishing fleet to fish in their EEZ. The United States was not persuaded until the Russian started to fish in the EEZ of these South Pacific nations with legitimate license, having also given necessary financial assistance together with highly sophisticated fishing technologies to these South Pacific States.³⁰

Apart from the duty of protection of the fishing fleets, States have also assumed several obligations under the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks. Part V of the Convention enumerates the duties of the flag State. In effect, Article 18 stipulates that 'A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with sub-regional and regional conservation and management measures and that such vessels do not engage in any activities which undermine the effectiveness of such measures.'³¹

The measures taken by a State in respect of vessels flying its flag include control on the high seas by means of fishing licenses, authorizations or permits, in accordance with any applicable procedures agreed at the sub-regional, regional or global level.³² A State is under an obligation not to authorize the use of vessels flying its flag for fishing on the high sea if it is not able to exercise effectively its

29. President Reagan Proclamation of the US EEZs on 10 March 1983, Proclamation No. 5030, 33 VA. J. INT'L L. 600 (1983).

30. See William O. McLean and Sompong Sucharitkul, *Fisheries Management and Development in the EEZ: The North, South and Southwest Pacific Experience*, in 63 NOTRE DAME LAW REVIEW 492 (1988).

31. Article 18 (1) of the Agreement for the Implementation of the provisions of the 1982 UN Convention on the Law of the Sea relating to conservation and management of straddling stocks and highly migratory fish stocks, adopted 4 August, 1995, opened for signature, 4 December 1995; 34 ILM1542 (1995).

32. *Id.*, Article 18 (2).

responsibilities in respect of such vessels under the Convention and this Agreement.³³ In addition, the flag States are required to establish regulations, to apply terms and conditions to the license, authorization or permit sufficient to fulfill any sub-regional, regional or global obligations of the flag State, to prohibit fishing on the high seas for unlicensed or unauthorized vessels, and to require such vessels to carry the license, authorization and permit on board at all times.³⁴

These are but a few examples of the duties of the flag State to take measures to ensure compliance with international regulations at various levels, sub-regional, regional and global, including detailed requirements regarding marking of the vessels, fishing gears, timely reporting of the position of the vessels and the catch of target and non-target species through such means as observers program, inspection schemes, unloading and monitoring of landed catches and market statistics.³⁵ The Agreement also provides for international cooperation in enforcement³⁶ and obligation to prevent and settle disputes by peaceful means.³⁷ States Parties are required to encourage non-parties to become parties as well as to take measures to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.³⁸ State Parties are responsible and liable for damage or loss attributable to them in regard to this Agreement.³⁹ While non-parties are not bound by the provisions of this Agreement, they are liable to have the fishing vessels flying their flag subjected to the rigorous regulation and implementation of fisheries management, and limitations and restrictions. National and international sanctions are also available.⁴⁰

33. *Id.*, Article 18 (3)(a).

34. *Id.*, Article 18 (3)(b), and also to ensure compliance or non-violation of fishing regulations in areas under national jurisdiction of other States. In a different context, the case of the *Virginus* (1873) seems to point to the lack of relevancy whether the *Virginus* truly had the right to fly United States flag when it was carrying arms and ammunition and potential rebels destined for Cuba. The *Virginus* was captured by a Spanish man-of-war on the high seas. Among the 53 out of 155 crew members and passengers summarily condemned for piracy and executed, some were nationals of the US and the UK. Spain paid compensation for the families of the executed American and British nationals without the case being referred to arbitration. J. B. Moore's DIGEST OF INTERNATIONAL LAW, 1906, Vol. 2, p. 895.

35. *Id.*, Article 18 (2)(d)(e)(f) and (g).

36. For basic procedures for boarding and inspection, see *id.* Articles 21 and 22.

37. *Id.*, Part VIII Pacific Settlement of Disputes, Articles 27-32.

38. *Id.*, Part IX, Article 33.

39. *Id.*, Part XI, Article 35.

40. Provisional measures may be and have been prescribed by the Law of the Sea Tribunal even prior to the preliminary determination of the jurisdictional issues by the Arbitration Tribunal under Annex VII seized of the matter. See, for instance, the Blue-fin Tuna Disputes between Australia and Japan; and New Zealand and Japan, ITLOS REPORT (2003).

D. Absence of Uniformity in the Requirements for Registration of Sea-Going Vessels

In the absence of generally accepted criteria for registration of sea-going vessels so as to qualify them to fly the national flag of a State, let alone the existence of uniformity in the flagging of ships, States or flag States could hardly be found responsible or liable for non-compliance with their own national legislation. Besides, a State may at any time alter or waive certain conditions or requirements to enable it to reflag non-national ships and treat them as forming part of its own national fleet with every right to fly its flag

A brief survey of national requirements of some selected maritime nations may suffice to demonstrate the variations and diversities of national requirements and regulations concerning registration of ships with license to fly their flag and with necessary legal implications.

For convenience sake, it is practical in this survey⁴¹ to examine classification of ships by States under separate headings, according to the degree of strict requirements of a genuine link with the flag State or State of registration, starting from the most stringent requirements of the United States to the least prerequisite of essential connection, such as Mexico and the States that permit flags of convenience such as Liberia.

1. The United States of America

To qualify for registration in the United States, different requirements exist for different purposes of registration.

- a. Vessels registered in the United States for foreign trade may be any type, size and age and may have been constructed anywhere. However, they must be owned by a United States entity, but that entity may be owned up to one hundred percent in turn by non-citizen interest.
- b. Vessels registered in the United States for domestic trade must be built in the United States and owned by a U.S. entity that is owned no less than 75 % by U.S. citizens.
- c. Vessels registered in the United States must be inspected and certified by the U.S. Coast Guard.
- d. Vessels registered in the United States must be crewed by U.S. citizens.

41. This survey is based on an APEC report of 14 February 2000. APEC is an association of Asian Pacific Economic Cooperation, consisting of East and Southeast Asian nations, Australia, Canada, Hong Kong, Mexico, New Zealand as well as Taiwan and USA. The Association is loosely organized, with annual meetings at summit level, currently with headquarters in Singapore.

A number of significant amendments, modifications and exceptions have been introduced in the recent past to accommodate new situations, either for economic, political or strategic reasons. To give but a few illustrations:

a. The United States reflagging of Kuwaiti tankers during the Iraq-Iran Gulf War of the 1980s is an example of the relaxation of U.S. registration requirements. The tanker need not be constructed in the United States but must satisfy international standards of safety, not the United States requirements. The reflagging was based on political and strategic motives as opposed to economic reasons.⁴²

b. The recent United States change of attitude towards coastal cruises has led to the relaxation of the requirements of United States construction for cruise vessels in response to the demand of the United States market for tourism as a coastal trade.⁴³ It was possible for United States entities to operate foreign-built cruise ships of at least 20,000 gross tons with capacity of 800 passengers and less than ten year of age to fulfill the need to enlarge the domestic market which included visits to U.S. ports along U.S. coasts. This was subject to the proviso that the foreign-built cruise vessels reflagged as United States vessels were to be gradually replaced by U.S. built cruise ships. In any event, they are to be inspected each year according to United States standards. They are also to be repaired in the United States and maintained by U.S. crew.⁴⁴ This stop-gap legislation was based on economic grounds. Foreign-flagged vessels could operate in the coast-wise or domestic trade, two voyages per year, as long as the voyage did not last longer than two weeks, and either started at one coast of the United States and ended on the other, or started along one coast of the United States during a voyage between two countries. Also the Secretary could approve up to 30 foreign-flagged vessels to be chartered for 30 days to a non-cruise ship-owning company, to be used in domestic commerce.

42. See *supra* section 3 (c) Reflagging of Private-owned Tankers, cited also in *The Iranian Oil Platforms Case*, ICJ REPORTS (2003). For a political comments on this judgment, see Pieter, H.F. Bekker, in 98 A.J.I.L. pp. 550-558. See also *Mitra Koochi v. U.S.A.: Iran Air Flight 655* (3 July 1988, 290 victims) 976 F. 2 d. 1328.

43. See US Cruise Vessel Act 2001, Report of the Committee on Commerce, Science and Transportation, 107th Congress, 1st Session, 27 July 2001. Calendar No. 106, 107th Congress Report Senate, 1st Session 107-47.

44. Labor standards are regulated by International Labour Organization (ILO), while safety standards are implemented by delegation to Coast Guard approved classification societies to provide inspections to meet the safety standards set by the International Maritime Organization (IMO).

c. The latest United States requirements under the U.S. Maritime Transportation Security Act (MTSA) were signed into law by President George W. Bush in November 2002.⁴⁵ The new law was motivated by reasons of national security having regard to the 361 public ports that are operational through which pass each year approximately 95 per cent of United States overseas trade, including bulk and containerized cargo.⁴⁶ The new legislation was designed to improve security conditions *inter alia*, to help identify and track vessels, assess security preparedness and limit access to sensitive areas. The Maritime Transportation Security Act established a new United States Antiterrorism Maritime Transportation System to develop an automatic identification device that would enable port officials to determine the identity and position of vessels 'operating on the navigable waters of the United States.'⁴⁷

All vessels within certain categories (based on the type and size) that enter United States ports must install such tracking equipment by no later than December 2004, although in several United States ports, the infrastructure for operating the system is not yet in place.⁴⁸ In addition, owners and operators of vessels operating in United States waters, including foreign vessels, are required to submit for approval to the Secretary of the Department of Homeland Security a 'Vessel Security Plan' for determining a 'transportation security incident' to the maximum extent practicable.⁴⁹ Unless the plan is approved, the vessel may not operate in United States waters. The Secretary is also required to assess the effectiveness of anti-terrorism measures maintained at foreign ports (such as screening of containerized cargo and restrictions on access to cargo) and to notify the foreign government if such measures were found ineffective as well as to recommend steps for improvements.⁵⁰

Pending such improvement, the Secretary

a. may prescribe conditions of entry into the United States for any vessel arriving from that foreign port, or any vessel carrying cargo or passengers originating from or trans-shipped through that port;

45. See establishment of U.S. Antiterrorism Maritime Transportation System, Cir. 98 A.J.I.L. 588 (2004).

46. 46 U.S.C.A. ss. 70101 (West 2004).

47. *Id.*, ss 70114.

48. US General Accounting Office, Maritime Security Progress Made in Implementing Maritime Transportation Security Act, GAO Doc. GAO-3-11551, at 7 (9 Sept. 2003) available at <http://www.gao.gov>.

49. 46 USCA SS 70103 (c) (1), (2), (3).

50. *Id.* SS 70103 (c) (4), (5).

- b. may deny entry to the United States to any vessel that does not meet such condition; and
- c. shall provide public notice for passengers of the ineffective antiterrorism measure.

The Maritime Transportation Security Act also requires the Department of Homeland Security to report to Congress on foreign-flag vessels calling at United States ports, particularly those with questionable ownership histories.⁵¹ The United States Coast Guard published final regulations on maritime security implementation of the Maritime Transportation Security Act.⁵² Although foreign vessels from the International Convention for the Safety of Life at Sea (SOLAS) member States need not submit security plans to United States Government for approval, non-SOLAS foreign vessels are required to have Coast Guard-approved security plans.⁵³

2. Thailand

Thai Vessels Act B.E. 2481 (A.D. 1938)⁵⁴ regulates registration of sea-going vessels in Thailand on the following criteria:

- a. Section 8 requires registration in accordance with type and size of ships
 - (1) mechanically-propelled vessels of ten gross tons or more;
 - (2) sea-going vessels, not mechanically propelled, of twenty gross tons or more;
 - (3) river boats, not mechanically propelled, of fifty gross tons or more.
- b. For fishing in the sea
 - (1) mechanically propelled vessels of any size;
 - (2) vessels, not mechanically propelled, of six gross tons or more.
- c. Ownership and
- d. Nationality of owner

Section 7 specifies the need for ownership by Thai nationals. Section 7 *bis* reduces the required percentage from 70 to 50 in case of a limited company and a public company limited

51. MTSA 46 USCA s. 112. The International Maritime Organization (IMO) was also pursuing a similar initiative. The IMO decided to adopt new regulations to enhance ship and port security, especially from international terrorism. A new 'International Ship and Port Facility Security Code' (ISPS Code) was adopted, IMO Doc. SOLAS/CÓNF.5/32, Annex (12 Dec. 2002). Part A is mandatory, while Part B is recommended as guidance for implementation of the ISPS Code.

52. 22 Oct. 2003, 68 Fed. Reg. 60, 448, at 60, 459.

53. The Coast Guard estimates the cost of implementation to be at US\$ 1.5 billion for the first year at US\$ 7.3 billion for the decade to come.

54. Thai Vessels Act B.E. 2481 (A.D. 1938), promulgated in Government Gazette B.E. 2481. cited from APEC Report 2000.

with capital and paid up capital 50 per cent owned by Thai nationals for a registered Thai vessel trading with foreign countries and not in Thai waters.

e. Control

Section 31 provides for the transfer of a registered Thai vessel to a person qualified to own a Thai vessel under section 7 within 90 days from the date of acquisition by unqualified person or from the date of disqualification of the original owner.

f. Place of construction

There is no restriction for a ship to be built in Thailand or anywhere else.

g. Nationality of crew

Ministerial Regulation No. 8 (1997) issued under the Thai Vessels Act B.E. 2481 requires at least half of the crew to be Thai nationals for a Thai-flagged vessel in international trade. This requirement may be reduced to 10 per cent of the crew with Thai nationality in case of inability of the ship-owner to hire Thai nationals.

f. Certification

Several types of certificate may be issued according to Ship Survey Regulation No. 23 (1986) for Coastal Trade and International Trade.

3. Hong Kong

A set of regulations has been introduced to improve registration procedures for Hong Kong shipping Register.⁵⁵ The new Merchant Shipping Registration Amendment 2001 is part of Hong Kong's ongoing efforts to streamline ship registration procedures in Hong Kong. To proceed from one port to another, a ship must carry on board a certificate of registry issued by the flag administration. When a ship is reflagged, Hong Kong requires the original title document to process a provisional ship registration. This period is reduced from three to one month. The tonnage charge has also been reduced correspondingly. This is part of the continuing efforts to enhance the attractiveness of the Hong Kong registry which now numbers some 581 vessels totaling 10.71 million gross tons. Otherwise, a Hong Kong ship must comply with safety requirements of the IMO, SOLAS, MARPOL, Load Line, STCW, etc. Ownership or representation by qualified persons is necessary, otherwise there are no limitations on the type, size, age, control, nationality of crew, etc.

55. Report from the Xinhua News Agency, (also www.marinelog.xorg/DOC/NEWS/SMMI/MMID_Feb_09.htm).

4. Taiwan

Taiwan's Evergreen Maritime Co. announced on 4 February 2002⁵⁶ that it would reflag more than half of its container vessels as British and Italian to facilitate its business with China. The purpose of Evergreen reflagging its ships is also to reduce optional costs, such as insurance cost, especially war-insurance risk. The war-insurance premiums for global sea and air transportation have increased sharply since the 9:11 Terrorist Attacks. As the United Kingdom is a traditional sea super power in marine insurance with Lloyds of London, Evergreen could reach an agreement on the insurance premium with the United Kingdom before changing the registration of its fleet. But the real purpose for this move is for Evergreen to expand its market. The recent purchase of an Italian shipping firm was a first step in entering the European market. Taiwan also had an eye on new cruise vessels to be constructed in Toronto City to develop cruise ships industry in the Mediterranean.

Crew certificate requirements follow international practice such as STCW Convention. There is also maximum age allowable for importation of existing ships into Taiwan. Taiwanese flags suffer the disadvantage of lacking a general or universal recognition, but the effective business management of its maritime fleet flagged or reflagged clearly made up for its political handicaps.⁵⁷

5. China

To be registered in China, vessels must be owned by Chinese nationals or companies. A ship forming part of a Sino-foreign joint venture must have at least fifty per cent of capital investment on the Chinese side. Chinese flagged vessels must be managed by Chinese nationals. Whenever it is necessary to recruit foreign sea-farers, their employment has to be approved by the competent authority of the transport and communication under the State Council. But there is no restriction on the type, size and construction of the ship.⁵⁸

6. Singapore

To give effect to the Hague-Visby Rules, Singapore amended its 1995 Carriage of Goods by Sea Act (COGSA) in 1997.⁵⁹ The legisla-

56. Report by Yang Chang-Cheng, Associate Professor at the Dept of Shipping and Transportation Management at the China College of Marine Technology and Commerce.

57. There has been no need for Taiwan to change the registration of its EVA air fleet, nor China Airline for that matter.

58. See the APEC report 2000, cited in note 54 above. See also Order of the President of the People's Republic of China No. 28, promulgated on 25 Dec. 1999, entered into force on 1 July 2000: Maritime Procedure Law of the Peoples' Republic of China.

59. *Id.*, see in particular, the decision of Singapore Court of Appeal in *Sunlight Mercantile Pte, Ltd. v. Ever Lucky Shipping Co., Ltd.* [2004] 1 SLR 171, holding that a

tive technique was modeled after the United Kingdom 1924 Carriage of Goods by Sea Act which gave effect to the Hague Rules. The amendment was meant to fill one lacuna in cases where the contract of carriage albeit governed by Singapore law would not attract the mandatory application of the Hague-Visby Rules, such as the port of shipment being non-Singapore.

Only Singapore citizens or permanent residents or companies incorporated in Singapore can be registered owner of Singapore ships. A company registered in Singapore with one hundred percent foreign shareholders can register a Singapore ship. The size required is at least 1,600 gross tons and self-propelled.

The vessel may be surveyed by the survey or by any of the classification societies authorized by the Maritime Port Authority. Owners of ships above seventeen years are required to submit a special report on the condition of the ship issued by one of the authorized classification societies.

7. Japan

Japanese vessels are defined as ships which have been granted the right to fly the Japanese flag,⁶⁰ including

- a. Ships owned by the Government of Japan or a Japanese Public Office;
- b. Ships owned by Japanese nationals; and
- c. Ships owned by a legal entity with principal office located in Japan, and all of their representatives are Japanese nationals. This may be subject to additional qualification that more than two thirds of their representatives must be Japanese nationals. There are no other requirements or restrictions.

8. Korea

Any vessels over 20 gross tons can be registered as a Korean vessel under Korean Vessel Registration Act.⁶¹ Foreign-owned company registered in Korea under relevant laws of the Republic of Korea may operate a Korean flagged vessel. The majority of the investors must be Korean and three fifths of the voting rights of the directors must belong to Korean. The directors representing the company must be a Korean national. The ownership requirement is being revised, so as

clause in Bills of Lading excluding liability of ship-owner for any loss or damage "howsoever" caused or arising was not sufficient to exonerate it, where the general average incident was caused by unseaworthiness. York-Antwerp Rules 1974.

60. *Id.*, see also Article 3 of the Ministry of Land, Infrastructure and Transport (MLIT) Establishment Law, 2001, setting out MLIT Bureau Activities.

61. *Id.*

to allow a Korean registered commercial company to own a Korean vessel without limitation as to nationality of shareholders or co-owners.

9. Mexico

There are no restrictions on vessels registration. Only vessels with Mexican flag must have Mexican crew.⁶² All vessels are required to comply with international conventions.

10. Indonesia

A vessel of 7 gross tons or more may be registered in Indonesia and allowed to fly Indonesian flag. It has to be owned by Indonesian citizens or companies incorporated in Indonesia.⁶³

11. Philippines

The Philippines requires all entities wishing to engage in overseas shipping, specially ship owning and ship chartering must be registered and accredited with the MARINA.⁶⁴ Only Philippines national entity may be so accredited (60 - 40 per cent Philippine - foreign equity.) Chartered ships may be registered under Philippines flag (a) with at least 60 - 40 Philippine equity participation; (b) with 100 per cent Philippine crew; and (d) with complete compliance with IMO Safety and Marine Pollution Prevention Conventions.⁶⁵

12. Liberia (Flag of convenience)

For vessels owned by a Liberian company, existing owners who wish to reflag will have to redomicile the owning company to another company or transfer ownership to a non-Liberian company's place of incorporation. Not all countries allows redomiciliation, Hong Kong and Singapore do not allow it. A Liberian company could redomicile to Panama, (another flag of convenience), Marshall Islands, British Virgin Islands or Bermuda.⁶⁶

Another issue relates to the mortgage or remortgage of a ship to the owner's bank. A Liberian mortgage cannot automatically be registered elsewhere without amendment.

Moreover, the owner may have to obtain charterer's consent to changing flag and sufficient time should be allowed to obtain this consent and agreement on the new registry for the vessel. In addition, the owner may need new trading certificates from a classifica-

62. *Id.*

63. *Id.*

64. See Memorandum Circular Nos. 330-A and 42-A.

65. See Presidential Decree 866, Amending PD 760. Other international instruments include the 1978 STCW Convention, as amended and the I.S.A. Code.

66. See APEC Report 2000, cited in note 54 above.

tion society approved by the new flag State. The insurance will have to be notified of the transfer. Officers and crew may also require licenses from the new flag State. These items will doubtless incur costs.

E. APEC Concerns for Ships Engaged in International Voyages

Having regard to the casualties suffered by United States vessels of various types, it is not surprising that the United States authorities have been most vigilant to safeguard freedom of navigation and to secure safe passage for international maritime transport. This concern is shared by most sea-faring nations on a world-wide or global basis⁶⁷ as well as at inter-regional, multi-regional, regional and sub-regional levels.

The current study is singling out one multi-regional model, APEC, as a tri-regional association of East and Southeast Asian nations together with Australia and New Zealand and the Pacific nations, including the United States of America, North and South American States bordering the Eastern Pacific Ocean, including Canada, Mexico, Chile and Peru.

APEC plans to protect ships engaged in international voyages by promoting ship and port security plans and installation of automatic identification systems by the end of 2004. Enhancing cooperation on fighting piracy in the region within APEC fora and organizations such as the International Maritime Bureau Piracy Reporting Centre and International Maritime Organization will be next on the agenda of measures to protect ships on international voyages.

APEC members have been cooperating to strengthen border security through enhanced supply chain of security guidelines. These non-binding guidelines are business friendly and are being used by the private sector to reinforce their supply chain security practices. The APEC Transportation Working Group is also developing standards for detection equipment and other security technology. The Accreditation of Seafarer Manning Agencies in the APEC tri-regional project plans to devise a system for accrediting manning agents to provide secure employees to maritime companies in the Asia-Pacific Region. The APEC Transportation Work Group is also supporting the development and use of Intelligent Transportation Systems (ITS), involving the use of electronic cargo seals and sensors, increased efficiency in inspecting seals, the use of electronic cargo manifests and Global Navigational Satellite Systems.

67. On the global scale, a new 'International Ship and Port Facility Security Code' (ISPS Code), IMO. Doc. SOLAS/CONF.5/34, Annex 1 (12 Dec. 2002). IMO will publish a 'White List' of vessels issued an 'International Ship Security Certificate' (ISSC) by authorized shipping societies.

To implement Secure Trade in the APEC Region (STAR) initiative, APEC leaders agreed to secure and enhance the flow of goods and people through measures to protect cargo, ships, international aviation⁶⁸ and people in transit.

STAR I

The first Secure Trade for APEC Region (STAR) Conference was held in Bangkok on 23-25 February 2003, co-hosted by Thailand and the United States with 21 APEC Members in attendance and participating as well as officials from international organizations such as the IMO, IATA,⁶⁹ World Custom Organization (WCO) and the world Bank, not to mention senior executives from major private sector companies affected to discuss how to advance trade efficiency and trade security in the Asia-Pacific Region. Participants agreed that investment in security can deliver significant economic returns, by reducing the economic costs of terrorism prevention and by facilitating freer movement of goods and people.

As a follow-up to STAR I initiative, Thailand and the United States developed a demonstration project, the STAR-Bangkok/Laem Chabang Efficient and Secure Trade (BEST) Port, using e-seal technology to track shipments of secured containers via satellite from the Port of Laem Chabang to the Port of Seattle.

This constituted a show of solidarity in collective responsibility to enhance the confidence of exporters and consumers in the security of the region's supply chain.

STAR II

Chile hosted the second STAR Conference from 4-6 March 2004. The agenda covered topics of maritime security, air transportation security,⁷⁰ the mobility of people and measures to prevent terrorist financing. APEC members agreed to implement new security measures to ensure more stable economic environment through effective collective collaboration between public and private sectors and sharing of information and responsibility between APEC Governments. There were some concerns nonetheless regarding the impact that security measures could have on trade facilitation. A global approach is vital and that the tri-regional initiative should be globalized.

It was agreed that APEC economies need to have an operational financial intelligence unit to prevent terrorist financing and to counter money laundering for terrorist financing.

68. For international aviation, see the section on Air Law below.

69. International Air Transport Association. This is vital for international civil aviation.

70. See further detailed discussion in the ensuing section below.

F. Conclusion

This study may serve to demonstrate the lack of uniformity in the various national legal systems regarding the requirements for a State to register a vessel under its flag. The test of the closest link or connection need not depend on the place of construction or qualified percentage of ownership by nationals, or of the equity in an owning entity. What appears to be decisive is the willingness of the State to consider a sea-worthy vessel qualified to fly its flag, and hence worthy of its protection. The flag State or State of registration carries with it the authority to apply and enforce its law. On the other hand, it equally entails the liability and responsibility of protection, which today has become a matter of common concern not only for individual responsibility of each flag State but for the collective and shared responsibility of the maritime trading nations and the entire global community ideally to police if not patrol the oceans.

Any serious study of comparative legal systems on the issues under review will have to bear in mind the ultimate common interest of mankind in the safety of life at sea and in the free and secure movement of goods and people across the oceans, not unmindful of the ever constant state of evolution in which the applicable rule of international law on any controversial issue is finding itself.

III. AIR LAW

A. General Observations

For Present purposes, AIR LAW means international civil and commercial aviation law, otherwise known as Air Transport Law, and not the quality of the air as in international environmental law. The present study of Air Law provides a more or less exact counterpart parallel to Maritime Law in the preceding section. While no attempt will be made to relate or restate the evolution of civil aviation law based on legal developments of Maritime Law, the current inquiry is confined to a very few points of special interest from comparative law perspective. To an appreciable extent, efforts will be made to underline a potential and likely reproduction of a parallel evolution of maritime rules in international air transport law, as reflected in the adoption of corresponding rules in aviation law or domestic air transport law of national legal systems.

In historical perspective, legal development in domestic and international air transport has not always followed the exact path of legal development in maritime law. The high seas or open seas were relatively free, and indeed most international sea ports have always been open to ships of all flags for international trade. The highways of the skies were known to be comparatively unfree, due in no small measure to the exclusive domain of territorial airspace. Each of the

traffic rights, from the third to the sixth freedoms, had to be negotiated and bilateral agreements successfully reached to initiate the operation of international air services. Multilateral Conventions, such as the Chicago Convention 1944⁷¹ was inadequate to ensure free movement of passengers and goods by air. Except for the right of over-flight and the right to land and refuel (first and second freedoms), no traffic rights were automatically accorded. The United States policy of 'open skies' for international aviation was only an American dream in the 1940s.

In recent years, renewed efforts have been launched to initiate bilateral air-services arrangements on a revised model of 'open skies' or 'mixed open skies package'. Recent attempts have met with some measure of success, notably the agreements between the United States and Canada, and with the United Kingdom and a number of European NATO partners of the United States. This has not escaped the watchful eye of the European Community. The European Commission raised the question with the European Court of Justice in the series of cases in 1998,⁷² involving *inter alia*, the question of the need for the Community to renegotiate a new 'mixed open skies package' Air Service Agreements with the United States to replace the existing eight bilateral agreements concluded by the United Kingdom and several other Community members. For the Community, the intra-Community routes had been reserved almost as 'Cabotage' for Community national carriers. Special provisions will have to be made on the analogy of the provisional stop-gap adopted by the United States Administration in connection with the reflagging of foreign-built cruise vessels to operate in coastwise and domestic trade off the United States coasts.⁷³

B. Similarities and Dissimilarities in Legal Development

To proceed from a study of the law of maritime transport to that of civil air transport, some similarities deserve the closest attention, having regard to the dissimilarities in the conditions and capacities of maritime and air transport.

71. Chicago Convention on International Civil Aviation, 7 Dec. 1944, T.I.A.S. 1951; 15 U.N.T.S. 295.

72. See *Commission v. U.K., Denmark, Sweden, Finland, Belgium, Luxemburg, Austria and Germany*, E.C.J. 5 Nov. 2002, cases C-466/98-469/98; C-471/98-474/98; C-475/98-476/98; 2002 E.C.J. I-9427. The Council has authorized the Commission to renegotiate a series of mixed open-skies Agreements with the United States, New Zealand and Singapore to correct the respective bilateral Air Services Agreements on the basis of the horizontal mandate. See EC Regulation 847/2004 of European Parliament and the Council of 29 April 2004.

73. See the US Cruise Vessel Act, 2001, cited in note 43 above.

1. Piracy *Jure Gentium* and Unlawful Seizure of Aircraft in Flight

For one thing, the perils of the seas and the bottomless oceans are not dissimilar from the hazards of the skies. Piracy became the first known offense against the law of nations, recognized as such in most penal codes as well as in customary international law. The classic definition of piracy *jure gentium* embracing the existence of a pirate ship to capture a victim ship may seem outmoded. Nonetheless, the treatment of *pirates* as *hostes generis humani* (enemies of mankind) appears to have retained its *raison d'être* today as much as ever before when it was originally introduced. The transplantation of the concept of 'piracy' into international air law would seem unreal, if not incomplete. There is no need for a 'pirate aircraft' to capture and board a 'victim aircraft' in mid-air in mid-flight. Development in international aviation law has been in the limitation of liabilities of air carriers as foreshadowed in the original Warsaw Convention 1929.⁷⁴ Offenses on board an aircraft had not attracted much attention until the Tokyo Convention of 1963.⁷⁵ The problem of hijacking of aircraft came to a head in the Hague Convention on the Unlawful Seizure of Aircraft in Flight 1970.⁷⁶

2. Terror on the High Seas and in the Skies

The maritime incident of the *Achille Lauro*⁷⁷ in the Mediterranean in the mid-eighties involving unlawful seizure of an Italian cruise vessel by terrorists who boarded the ship as passengers in a North African Mediterranean port could scarcely be characterized as 'piracy' for want of another ship known as a pirate ship or even an aircraft. The horror that befell the *Achille Lauro* resulted in one American ex-serviceman killed by being thrown overboard. Subsequently, the United States took occasion to intercept an Egypt Air flight carrying some of the alleged terrorists involved in the incident and caused them to be landed in a military airfield in Sicily.⁷⁸ While the United States request for extradition was not favorably received by the Italian authorities who resorted to the option *aut dedere aut*

74. Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 Dec. 1929, copy available at www.lexmercatoria.org, Hague Protocol, 28 Sept. 1955, ICAO Doc. 7632, and protocol No. 4 Montreal, 1975, ICAO Doc. 9148. Compare the UN Convention on the Carriage of Goods by Sea, 1978, Hamburg.

75. 14 Sept 1963; 20 U.S.T. 2941; 704 U.N.T.S. 219 (Tokyo Convention).

76. 16 Dec. 1970; 20 U.S.T. 1641; 10 I.L.M. 113 (Hague Convention).

77. The *Achille Lauro* was an Italian cruise vessel, flying Italian flag, with an Italian crew, but with passengers from the Mediterranean ports. Compare also the destruction of the *Rainbow Warrior*.

78. US fighters, based on Israeli intelligence, intercepted an Egypt Air flight over the Mediterranean and escorted it to land at the military facilities near Palermo in Sicily.

judicare, by prosecuting some and releasing others.⁷⁹ This incident seems pertinent to the current comparative study as it also relates to maritime as well as air transport law, as it relates to sea-jacking after lawful boarding and also to air interception. The lesson from the Achille Lauro Incident could lead to a review of the traditional concept of piracy to include unlawful seizure of ship in voyage in addition to the seizure of aircraft in flight. Legal developments have taken a long stride from the mid-eighties to prepare a proper procedure to prevent 'terror in the skies' as 'on the high seas.'

Clearly, there have been innumerable instances of 'terror in the skies' involving United States commercial airlines. The international communities responded with the adoption of a series of International Conventions.⁸⁰

3. Quarantine or Maritime Interdiction and Aerial Interception to Prevent Impending Armed Attacks by Weapons of Destruction

It is noteworthy that in a very limited area of maritime and air law, in the context of an extended notion of self-defense, individual and collective, the United States position may have been far ahead of other nations.

The incidents of September 11, 2001 certainly opened up new frontiers for legal development in international air and maritime law. It should be recalled that President John F. Kennedy in 1962⁸¹ initiated fresh developments in the law of 'Quarantine' or 'interdiction Line' aiming to put a stop to the shipment of *matériel de guerre* to that 'imprisoned island.' That initiative produced the salutary result of modifying the existing rules of ocean law.

A new rule of international law was born overnight, not without a sacrifice.⁸² The same could be said of President George W. Bush's innovation in announcing the United States intention to shoot down any aircraft (with or without US registration) which has been unlawfully seized and converted into a weapon of destruction against targets in the United States. This declaration of intent was a bold step taken not lightly but with mature deliberation by the Bush Ad-

79. The US extradition request predated the Anti-Terrorism Act 1986. It was not explicitly based on the passive nationality principle.

80. In addition to the Tokyo Convention (1963) and the Hague Convention (1970) cited in Notes 75 and 76 above, the Montreal Convention (1971) should be listed: Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 23 Sept. 1971, 24 U.S.T. 564, 10 I.L.M. 1151 (The Montreal Sabotage Convention).

81. This interdiction was proclaimed as 'Quarantine' and explained to the UN Security Council as and when events were taking place in 1962. See Abram Chayes, *Law and the Quarantine of Cuba*, FOREIGN AFFAIRS, April 1963, at 550-554.

82. The opening of the first hot line communication between President Kennedy and Chairman Khrushchev succeeded in establishing a cooling off period and mutual agreement to dismantle missile sites in Cuba and in Turkey.

ministration, having regard to the prevailing contrary rule of international air law,⁸³ and against the background of Article 3 *bis* (a) of the Protocol of 10 May 1984.

4. Shared Responsibility for Policing the High Seas and Air Space

The preceding contribution of the United States has left an indelible mark in the making of rules of international law in the field of maritime and air transport.

Indeed, new pertinent rules are being made by operation of Proliferation Security Initiative (PSI) which in May 2003⁸⁴ comprises fifteen nations : Australia, Canada, France, Germany, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Russia, Singapore, Spain the United Kingdom and the United States. These countries have agreed not to traffic in missiles and WMD themselves and also to adopt measures to cooperate in the search and seizure of suspect vessels flying the flags of participating States and searching of foreign vessels entering their ports, denying transit rights to suspect aircraft, and requiring such plane that enter to land for inspection. Besides Denmark and Turkey, sixty other nations have intimated their agreement to cooperate on an *ad hoc* basis, if such a suspect vessel or aircraft enters their territorial waters or airspace.⁸⁵

Thus far, 'operational experts' have held several meetings, most recently in Washington and Ottawa. They have agreed to exchange information concerning suspected proliferation of WMD, to review and strengthen their national laws, and to undertake a number of interdiction measures.⁸⁶

83. President Bush made this declaration as Commander-in-Chief of the United States. See Richard Gardner, *Neither Bush nor the Jurisprudence*, 97 A.J.I.L. 585, 587 (2003). See also ICAO Declaration on Misuse of Civil Aircraft as Weapons of Destruction and other Terrorist Acts involving Civil Aviation, 5 Oct. 2001, 41 I.L.M. 501 (2002).

84. See Michael Byes, *Policing the High Seas: the Proliferation Security Initiative*, in 98 A.J.I.L. 526, 528 (2004). US and Liberia agreed to accord each other the right, on the high seas, to board, search, detain, and seize cargo of any vessel reasonably suspected of trafficking in missiles or WMD, 11 Feb. 2004, available at <http://www.state.gov/t/np/trty/32403.htm>.

85. In December 2002, Spanish Marines boarded the *So San*, a North Korean freighter crossing the Arabian Sea with hidden fifteen Scud missiles, purchased by Yemen. In September 2003, a German-owned freighter, the *BBC China* was heading for Libya laden with thousands of centrifuges that could be used to enrich Uranium. The cargo was seized and somehow Libya was persuaded to abandon its WMD programs.

86. See *Proliferation Security Initiative: Statement of Interdiction Principles*, 4 Sept. 2003, State Dept. See also Israeli practice concerning high seas interdiction of weapon-laden vessels, most notably the January 2002 seizure of the *Karin A*, an Iraqi-flagged ship in the Red Sea with some fifty tons of Iranian weaponry, including Katyusha rockets, anti-tank and anti-aircraft missiles.

5. APEC Continuing Concerns for Air Transport Security

APEC has shown deep concerns for the safety of ships in international voyages,⁸⁷ in the same way APEC STAR initiative in enhancing the safety and security of airline passengers and crew. APEC members have agreed to introduce highly effective screening procedures and equipment at all APEC international airports within this year 2005.⁸⁸ Programs are designed to assist members to meet international safety standards and to ensure that aviation personnel receive proper training with the necessary resources to carry out their responsibilities.

APEC group on air transportation welcomed the measures implemented by airlines to protect passengers, personnel and passengers' belongings, air transport being a major component of trade and development in the Asian Pacific region. Further measures are needed to deliver an effective approach to air transport security in the APEC region. These should include the training of the personnel to monitor suspicious activities and report incidents, cargo security programs to ensure the legitimacy of shippers, in cargo data validation systems, and identification of high risk cargo by means of effective canine detection services, enhanced risk assessment methodologies and the use of air marshals to prevent international terrorism.

Man Portable Air Defense Systems (MANPADS) continue to be a genuine asset to international commercial aviation. Strict controls on the export and transfer of missiles and timely exchange of information among APEC members on MANPADS threats could provide the most effective measures to prevent possible missiles attacks.

C. Liability and Responsibility of the State of Registration

From the United States vantage point, an armed attack against an American aircraft, civil or military, is no different from an armed attack against an American-flagged vessel, merchantman or men-of-war alike. It is considered to be an attack against the United States itself, which may induce or provoke responsive measures of self-defense. The present study is designed to illustrate the precise extent of liability and responsibility of the State of registration of aircraft of any type.

The relevance of a warranty of airworthiness is more apparent than real. A certificate of sea-worthiness of a sea-going vessel may serve a meaningful purpose. But an aircraft has a shorter life span depending on the length and frequency of its service. The at-

87. See the preceding Section above in ss. 5 APEC Concerns for the Safety of Ships Engaged in International Voyages.

88. For instance, the new Thai Airport Suvarnabhumi, is currently being fitted with 26 units of the latest model of the screening detector equipment.

tributability to the State of registration for any inspection or survey of an aircraft or a ship for the purpose of issuance of a certificate of 'seaworthiness' or 'airworthiness' is of limited relevancy in cases where it would engage the liability of the 'classification societies' or 'aeronautics board or committee', which liability is in turn imputed or attributed to the State of registration or the flag State, as the case may be.

What is by far of greater practical interest and pertinence appears to be the liability and responsibility of the State of registration for the activities or conduct of the aircraft.

Failure on the part of the State to enact effective law to control aircraft registered in the State may engage State responsibility. No vicarious liability is directly attached to the State of registration, the owner and/or operator of the aircraft is liable for the loss incurred.

In most cases, for civil and commercial air transport, a carrier is answerable for taking an insurance against the risk of aerial accident. Passengers and cargo-owners could also take additional insurance, while the insurance companies in turn may take further reinsurances. Thus, the State of registration is rarely found primarily liable or responsible for any loss resulting from misconduct or willful conduct of the cockpit crew. Product liability may be attributable to the manufacturer of the defective parts accountable for the mishap. The main concern of the State of registration is confined to the duty of protection and safety of aircraft under its national registration. This includes precautionary measures to prevent acts of terrorism against the aircraft, the responsibility primarily resting on the State of registration but is also shared by all members of the global community to ensure to safety and security of air transport in no way dissimilar from the efforts displayed by flag States for safety of life at sea (SOLAS).

In contrast to the liabilities of carriers which are limited by the Warsaw system now undergoing some review, the United States is not seeking to limit its responsibility to take all measures necessary to prevent an armed attack by flying object.⁸⁹

D. Conclusion

Air transport requires as much vigilance if not indeed more sophisticated mechanisms than what is expected in maritime transport, not only against acts of terror and attacks or explosion and total destruction of the aircraft, but also as recent events reveal the need to take preventive measures against possible conversion of unlaw-

89. Compare the limitation of liabilities of carriers in Maritime Transport under various rules, such as Hague, Hague-Visby and Hamburg (1978). The United States is prepared to extend the responsibility of the flag State in the context of its duty to cooperate with other flag States to suppress acts of terrorism on the high seas.

fully seized aircraft into a weapon of destruction, complete with the fuel on its way to hit designated targets on the ground or tall buildings in mid air. The risk of terrorist attack not only against an aircraft in flight itself, but also by the use of unlawfully seized aircraft as means of delivery of a weapon of destruction against pre-selected targets on the surface. All States are expected to contribute their individual and collective efforts to preempt the recurrence of the events of 9:11. This is a truly collective responsibility to be shared by all. Each State is in turn a State of registration without being itself a maker or builder of any aircraft.

IV. OUTER SPACE LAW

A. *General Notions*

Space law or international law governing the peaceful use of outer space can in some way be regarded as an outstretch of international aviation law or an extension of air law. Aeronautically, however, flight in outer space is not winged flight for lack of air support. Thus, the law of outer space owes its origin to the start of the flight into space, which has to begin from surface through territorial air space very often of more than one jurisdiction around the globe before a satellite or a space object reaches its orbital level of altitude. Another confusing yardstick in the assessment of the speed or velocity of a space vehicle and the distance or altitude to attain may further compound the confusion by the use or double use of mileage, namely, surface mile and nautical mile, and the use of the metric system as the more regular method of measuring the distance in outer space. This inevitable confusion may result in miscalculations of the exact distance to a given destination in outer space, and may actually cause some tragic accidents, over-shooting of the target or other shortcomings. One last notion to be mentioned is the absence of a clear-cut dividing line between air space and outer space, which may be only be roughly calculated from the lowest orbit or *perigee* of about 110 kilometers above ground surface. This imprecise border line necessarily serves to blend the application of air law with outer space law, using common overlapping principles as a space vehicle travels through the upper limits of territorial air space or traversing the space barriers.⁹⁰

90. See SOMPONG SUCHARITKUL, *THE BENEFITS OF SPACE ACTIVITIES FOR ASIAN COUNTRIES* (1992), Golden Gate University; Reprint from the proceedings: *"The Highways of Air Space and Outer Space over Asia,"* International Institute of Air and Space Law, Leiden University, (Pablo Mendes de Leon ed., 1992). See also Kosmo, *The Commercialization of Space: A Regulatory Scheme that Promotes Commercial Space Ventures and International Responsibilities*, 61 *SOUTHERN CALIFORNIA LAW REVIEW*, 1059 (1988); C. Christol, *The 1986 Remote Sensing Principles: Emerging or Existing Law?* *PROCEEDINGS OF THE 13TH COLLOQUIUM ON THE LAW OF OUTER SPACE* 289 (1987).

In this context, the 'open skies' policy as applied to outer space law has become a living reality, thanks to the penetrating vision of countless viewing satellites orbiting the earth.

B. Collective Efforts to Regulate the Exploration and Peaceful Use of Outer Space

The time has come for effective international control mechanisms to be put in place to regulate the exploration and peaceful use of outer space.⁹¹ These are included in a series of declarations of principles adopted by United Nations General Assembly Resolutions beginning from 1962 with The Principles Governing the Activities of States in the Exploration and Use of Outer Space,⁹² the Principles Governing the Use by States of Artificial Satellites for International Direct Broadcasting (1982),⁹³ the Principles Relating to Remote Sensing of the Earth from Outer Space (1986),⁹⁴ the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (1992),⁹⁵ and the Declaration on International Cooperation on the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries (1996).⁹⁶

The *corpus juris* governing outer space is embodied in another series of United Nations Treaties, beginning with the Outer Space Treaty (1967),⁹⁷ the Agreement on the Rescue and Return of Astronauts and Space Objects (1968),⁹⁸ and ending up with the Moon Treaty (1979).⁹⁹ The crux of the substantive law pertaining to the liability and responsibility of the State of registration under review can be found in two successive Conventions, namely, the Convention on Liability for Damage Caused by Space Objects (1971)¹⁰⁰ and the

91. See U.N. Treaties and Principles on Outer Space, a commemorative edition published on the occasion of the Third U.N. Conference on the Exploration and Peaceful Use of Outer Space (UNISPACE III) A/AC.105/722, A/CONF. 184.

92. G.A. Res. 1962 (1963).

93. G.A. Res. 37/92 (1982).

94. G.A. Res. 41/165 (1986).

95. G.A. Res. 47/68 (1992).

96. G.A. Res. 51/122 (1996).

97. The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies. G.A. Res. 2222 (XXI) Annex, adopted on 19 Dec, 1966, opened for signature on 27 Jan. 1967 and entered into force on 10 Oct. 1967.

98. The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, G.A. Res. 2345 (XXII) Annex, adopted on 19 Dec, 1967, opened for signature on 22 April 1968 and entered into force on 3 Dec. 1968.

99. The Agreement Governing the Activities of the States on the Moon and Other Celestial Bodies, G.A. Res. 34/68 Annex, adopted on 5 Dec. 1979, opened for signature on 18 Dec. 1979 and entered into force on 11 July 1984.

100. The Liability Convention, G.A. Res. 2777 (XXVI) Annex, adopted on 29 Dec, 1971, opened for signature on 29 Mar. 1972 and entered into force on 1 Sept. 1972.

Convention on Registration of Objects Launched into Outer Space (1974).¹⁰¹ Although chronologically the Registration Convention should have preceded the Liability Convention, but once the Liability Convention was adopted, the impelling need for registration became apparent.

C. Liability and Responsibility of the State of Registration

For space objects, more than for vessels and aircraft, the liability of national registry agencies is indubitably imputable if not readily attributed to the State of registration. The State stands liable for whatever harm, injury or loss caused by any registered objects launched into space. The law of outer space has developed a more sophisticated set of criteria to determine multiple liabilities which are based on joint and several responsibilities of every State connected with the launching process of a space object, most certain of all the State of Registration. The 'space object' includes artificial satellites, space stations, as well as space and launch vehicles.

1. The 'State of Registration' and the 'Launching State'

Simple enough, a 'State of Registration' may be defined as the State that registers the space object in question. However, further inquiry has to be made as to the duty to register, or rather which of the States among the launching States should bear the responsibility of registering an object launched into outer space. Article II (2) of the Registration Convention provides a clue to the solution to this enigma.

"(2) Where there are two or more States in respect of any such space object, they shall jointly determine which one of them shall register the object in accordance with paragraph 1 of this Article, bearing in mind the provisions of Article VIII of the Outer Space Treaty) and without prejudice to appropriate agreements concluded among the launching States on jurisdiction and control over the space object and over any personnel thereof."¹⁰²

In this context, it should be noted that the term 'space object' includes component parts of a space object as well as the launch vehicle in accordance with Article II.¹⁰³ The multiple choice to be made

101. The Registration Convention, G.A. Res. 3235 (XXIX) Annex, adopted on 12 Nov. 1974, opened for signature on 14 Jan. 1975 and entered into force on 15 Sept. 1976.

102. See Article II (1) and (2) of the Convention on Registration of Objects Launched into Outer Space, cited in note 126 above.

103. *Id.*, Article I (b) definition of a space object.

for the State of registration is dictated by the plurality of the meanings of the term 'launching State', which includes under Article I (a)

a. A State which launches or procures the launching of a space object; and

b. A State from whose territory or facility a space object is launched.¹⁰⁴

This does not preclude the launching of a space object by an international organization, such as the United Nations or a regional organization such as the European Space Agency (ESA). The complexity of this multiplicity of launchers and international legal personalities responsible for registration may thereby be further compounded. Supplementary agreements between launching States and/or launching institutions may help clarify the respective rights and obligations as well as joint and several liabilities of the various partners in the common or joint venture. In the ultimate analysis, it is the collective will of the launching States that determines the precise nature and contents as well as the extent of the rights and obligations of each individual partner in the launching of the space object.

2. Multiple Standards of Liability of the Launching States

Apart from the multiplicity and joint or several liabilities of the launching States, although only one of which serves as the State of registration, the outer space regime has to work out a practical solution for the apportionment of liabilities in terms of proportionality of faults or risks or in terms of priority of claims by the injured parties, and the respective primary or residual responsibility of the launching partners. Thus far, the provisions of the Liability Convention appear to suggest a solution of joint and several liabilities with possible apportionment of the compensation to be paid with possible eventual recovery from other partners.

The outer space regime provides two types of liability for the launching States, individual and collective, joint and several. In the first place, the launching States are liable absolutely, i.e., without proof of fault for the damage caused by their space object to the surface of the Earth or to aircraft in flight.¹⁰⁵ Article II of the Liability Convention provides for 'absolute liability' for damage caused (1) to the surface of the Earth; and (2) to the aircraft in flight within the Earth air space.

Article III of the Liability Convention provides for 'liability based on fault' in the event of damage caused elsewhere than on the surface of the Earth to a space object of one launching State or to persons or

104. *Id.*, Article I (a) definition of a launching State. Compare Article I (c) of the Liability Convention (1972) cited in note 100 above.

105. See Liability Convention cited in note 100 above.

property on board such a space object by a space object of another launching State, the latter shall be liable only if the damage is due to the fault of persons for whom it is responsible.¹⁰⁶

Article IV provides for joint and several liabilities of the first two States for damage caused to a third State or to its natural or juridical persons, absolute liability for damage on the surface of the Earth or to aircraft in flight and liability based on fault for damage to a space object elsewhere than on Earth.¹⁰⁷

V. A CLOSING NOTE

The preceding survey of the comparative study of the practice of States on the Liability and Responsibility of the State of Registration or Flag State in cases respectively of vessels, aircraft and spacecraft does not appear to be final and conclusive. Each regime seems to be in a state of flux or more exactly in a state of evolutionary transformation in search for a more comprehensive set of rules regarding liability of the State of registry for various purposes, absolute liability as well as fault-based liability for sea-going vessels, for airlines and for space objects. Flagged States or States of registration are willing to accept the responsibility not so much for the loss or injury caused by their ships, airplanes or spacecraft under national flag or registration but more so for the obligation to protect the flag and registry of the fleet, especially the enhancement of freedom from terrorist attack and the new-found shared or collective responsibility of users of international highways to preserve and defend the security interest of international waterways, international air routes and space odysseys in geostationary or rotational orbits.

The concept of collective or shared responsibility has grown out of the duty of cooperation among States and has its counterpart in the notion of shared resources and the common responsibility for the preservation of the integrity and conservation of inter-generational equity of all items forming part of the common heritage of mankind.

Thus this study ends with one closing note. Collective responsibility is an effective method to ensure universal respect for the Rule of Law for the benefit of mankind as a whole anywhere, on the high seas, in the oceans or in the skies or way up in the outer space with the moon and other celestial bodies, yet within the reach of the law as conceived, interpreted and applied by man.

106. *Id.*, Article III.

107. *Id.*, Article IV (1) (a) and (b) and (2).