Flag State

- Flag State: nationality of the ship
- “Genuine link” between the FS and the ship (Article 91 UNCLOS)

- Flag State has obligations in respect of safety
- What is the scope of safety measures required from FS?
- UN Convention on the Law of the Sea/UNCLOS Art 94
  - Construction, equipment and seaworthiness of ships
  - Manning, labour conditions, training
  - Use of signals, maintenance of communications, prevention of collisions
- Conformity with "generally accepted international rules" must be ensured
IMO

- Specialized UN agency responsible for measures to improve safety of shipping at the international level
- Conventions
  - SOLAS
  - MARPOL
  - Load Lines
  - STCW (ILO convention)
  - etc
- Codes, Resolutions, recommendations (non-binding)
- Tacit acceptance procedure
- Implementation of IMO conventions is the Flag State responsibility

Enforcement by flag State

- Art. 217 UNCLOS
- Must ensure compliance by adopting appropriate laws and taking measures to ensure implementation
- Prevent ships from sailing in case of non-compliance
- Periodic inspections
- On board certificates
- Investigate accidents and violations
• Exclusive jurisdiction: High seas Articles 92 and 97 UNCLOS

• Concurrent jurisdiction: EEZ and TS

• No FS jurisdiction (?): internal waters of other States

---

Problems of flag State jurisdiction

• Out–flagging process from "traditional registries"
  ◦ To Flags of convenience & Open registries (FoCs)
    • FoCs expressly permit secret ownership

• Strategic decisions by shipowners:
  ◦ Off shore companies
  ◦ Anonymity of "beneficial" ship owners

• Is there a genuine link between the State and the ship?
Why are FoCs a safety problem?

- Reduced safety standards (‘sub-standard shipping’)
  - Not party to some conventions
  - Ineffective enforcement mechanism
  - Lack of real control over the vessel
- Less protection to the crew

How to respond to sub-standard shipping and failures in safety compliance by FS?

- Port State jurisdiction?
- Control and enforcement in transit (coastal State jurisdiction)