

***The particularism of certain conflicting rules relating to the exploitation of the Ship in Moroccan and comparative private international law***

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***Abstract:***

*During the operation of the ship, it is likely to face several situations and legal relationships. In this sense, it is very common to identify one or more elements of foreignness, and therefore to distinguish the birth of a legal relationship that links maritime law with private international law. In this regard, we wonder about the particularism and the role of certain conflicting rules which appear either before the designation of the applicable law or after its designation, in particular the qualification (the *lex rei sitae*) and the fraud to the law and conflict mobile.*

*A descriptive, comparative, and analytical methodology was carried out to determine the scope of the above mechanisms with the ship.*

***Keywords:*** *Ship, lex rei sitae, fraud to the Law, Conflict Mobile.*

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### ***Introduction***

*The maritime universe represents 71% of the surface of the globe, it has never ceased to be always a natural source of wealth for mankind and a privileged place where the expansionism of States manifests itself.*

*These growing appropriations of the marine<sup>1</sup> space led on December 10, 1982 to the signing of the United Nations Convention on the Law of the Sea (UNCLOS) in Montego Bay in (Jamaica).*

*This Agreement delimited the various oceanic zones and obliged the States to respect the regime and the conditions of exploitation of the oceans<sup>2</sup>. The Agreement also establishes an international tribunal for the law of the sea with its seat in Hamburg.*

*This maritime universe cannot be disassociated from the notion of maritime law, since the Dean Rodière affirms that maritime law informs everything relating to the sea<sup>3</sup>. This broad determination requires the distinction between the law of the sea and maritime law.*

*The first defines the respective competences of States and the international community on maritime areas whose rules are rooted in public international law<sup>4</sup>, the latter does not fall within our field of research, since it is the private part of maritime law, which applies to companies and individuals and which includes the specific legal rules directly applicable to maritime activities<sup>5</sup> which interests our subject that will combine the provisions of private international law and that of private maritime law.*

*Furthermore, maritime law is based on three essential notions: its traditionality, its originality and its internationality. But, it is this last notion which concerns our subject, and which manifests itself by the various links and commercial relations that are exercised by various actors by sea beyond their borders and that commonly carry out legal operations of which one relates a foreign element.*

*however, the notion of internationality cannot be dissociated from the institution of the Ship, since it is unanimously accepted that the ship is considered to be the fundamental element around which a good part of maritime law is concerned, since this sea Ship is intended by its nature to move outside the border, and therefore the revelation of a foreign element*

during its operation where internal rules cease to apply and where international rules begin to apply is a very common consequence.

This is how the importance of private international maritime law<sup>6</sup> manifests itself in this regard, as the special law applicable to the various legal transactions within the framework of private international relations relating to the ship.

Moreover, it is in this approach where the interest of our subject stands out, in particular the qualification as well as the scope of the connecting factor represented in this category of law by the *lex rei sitae* and its scope with the other essential rules of conflict of laws and more precisely the fraud to the law and the mobile conflict which are likely to play very fundamental roles in the various legal actions which can be brought against the Ship.

In this regard, it is wise to ask about the particularism which distinguishes certain conflicting rules which play a determining role on the designation of the applicable law on the ship?

This is how the development of this subject will highlight a reasoning which includes, in addition to the historical and descriptive method, a comparative approach within the framework of the method of analysis.

For this, our study will be divided into two parts that will respectively address the conflicting rules prior to the designation of the applicable law on the ship, part (I), before leading, the conflicting rules subsequent to the designation of the applicable law on the ship, part (II).

### **Part I- Conflicting rules prior to the designation of applicable law on the Ship**

Within the framework of the analysis of the legal provisions of private international law (PIL), several conflicting rules may arise to govern the same legal situation, but only a few of them have a very determining particularism on the legal relationship, as well as on the determination of the applicable law.

Thus, during the operation of the ship in matters of private international relations, the qualification of the ship is distinguished (Chapter I), as well as its connecting to the place of its registration which gives it a permanent connecting even during its displacement outside borders (Chapter II).

### **Chapter I- The qualification of the Ship**

*The ship has certain peculiarities of a maritime nature which are specific to Ships only, it is likely to face different legal relationships, and therefore the determination of the applicable law is required, hence it is important to study the importance of the qualification in private international law (1), as well as the legal classification of the ship itself (2).*

#### **1- The importance of qualification in private international law**

*The assignment of the legal regime applicable to a conflict of law in matters of private international relations first requires knowledge, since it requires a delimitation of a legal nature, or what is called in matters of conflict of laws the qualification<sup>7-8</sup>.*

*The qualification<sup>9</sup> has fundamental importance in private international law<sup>10</sup>, since the determination of the legal regime applicable to a private legal situation of an international case presumes its knowledge, that is to say the determination of its legal nature, therefore its qualification.*

*The qualification constitutes a preliminary phase<sup>11</sup> preceding the determination of the applicable legal regime<sup>12</sup>.*

*In other words, the operation of the qualification in PIL is based on the choice among all the conflicting rules, the competent one and which will therefore allow the designation of the applicable law.*

*In principle, the qualification operation in private international law is generally considered to be a simple operation which poses almost no complications for the court seised.*

*But it should be noted that the qualification operation is divided into several elements.*

*First of all, it is imperative to define very precisely the object that should be qualified, and then this determination must be made in one of the four categories of conflicting rules<sup>13</sup> of the for<sup>14</sup>, in particular (personal status, property, international contracts and Delict).*

#### **2- The legal classification of the Ship**

*In French private international law, Article 3 of the Civil Code extends its scope to include several conflicts of law provisions in PIL.*

*Paragraph 2 of this article states that "buildings even those owned by foreigners are governed by French law". The legal reading of the*

*aforementioned article specifies that its provisions therefore apply to the entire territory.*

*However, this same paragraph 2 of Article 3 has a double extension, insofar as it considers that immovable property located abroad is subject to foreign law.*

*In addition, assets considered *ut singuli*, that is to say when it is not part of universality, is also governed by the law of the place of its situation. This is the case with all corporal assets.*

*It is in this sense that case law has bilateralized this text on the one hand, it was extended to furniture by a decision of the Chamber of Requests of March 19, 1872. And on the other hand, properties located abroad are therefore generally governed by the law of the place of their situation<sup>15</sup>.*

*In Morocco, the DCC<sup>16</sup> states in its art 17 “that property, whether movable or immovable, located in Morocco, is governed by local legislation”.*

*Nevertheless, article 17 of the DCC is clearer, since considered that all the movable assets that are located on the national territory, it is the Moroccan law which determines their nature, their classification, their characters, their modes of acquisition or loss, real rights, as to their existence and content, to which they may be the object, in particular the various warrants and pledges to which they may be affected, that is to say all that should normally be classified under the expression “property regime”.*

*Moreover, since the condition of movable property is thus linked to the law of their situation, the problem which must first be resolved is obviously that of the location of the property in question.*

*As a general rule, it is fairly easy to locate corporal movable property, except for certain movable property such as movable property in transit, as well as those whose location is subject to special rules, such as Ships<sup>17</sup>.*

*In this sense, and according to the provisions of Articles 1 and 2 of the Maritime Commercial Code<sup>18</sup>, the ship is considered to be the vessel which usually practices maritime navigation when it is carried out on the sea, in ports, on lakes, ponds and parts of rivers where the waters are salty and communicate with the sea.*

*Likewise, article 67 of the aforementioned code specifies that “ships are movable property ..... ”.*

However, if the ship is qualified as being movable property by the majority of compared legislation, the interpretation of this rule leads to a principle universally accepted within the framework of the designation of the applicable law on the property and this, by its connection to the law of situation (*lex Rei Sitae*).

### **Chapter II- The connecting factor of the Ship**

Between the ship and the *lex rei sitae* does not exist a simple legal relationship, but rather a correlation, since the international status of the Ship is based exclusively on this rule of law (1), but this provision which confers to the Ship a connection to its place of registration even when it is outside the border is not recent, since its doctrinal justifications are classic (2).

#### **1- The correlation of the Ship with the *lex rei sitae***

In accordance with a universal principle, the Moroccan PIL and like the comparative PIL attaches the status of movable property to the *lex rei sitae*, that means the location of its situation, but the Ship has the particularity of being movable property intended by its nature for navigation and for moving constantly outside the border, especially in areas that do not come under any state sovereignty. This characteristic therefore calls for more details on the domain of *lex rei sitae*.

In terms of PIL<sup>19</sup>, the Ship is qualified as movable property with a very particular nature, thus the *lex rei sitae*<sup>20</sup>, that is to say the law of the place where the object of the legal relationship is located is present in this branch of law as the appropriate connecting factor.

In this sense, it should be noted that the admission of the *lex rei sitae* as a connecting factor<sup>21</sup> relating to property by the various legal regimes at the international level is not a recent action, since this theory has been widely adopted and accepted by the Old Italian doctrinal schools relating to the personnel statute, like the theory of Bartole.

This same principle was then enshrined by several jurisconsults: D'Argentré in the 16th century who was known for his territorial tendency, as well as by the Dutch school in the 17th century.

Mancini meanwhile and despite his tendency to personalize laws, he excluded properties from it by admitting to subject them to the law of their

situation, and the same goes for Savigny in the 19th century which enshrined the same principle .

But if the competence of the territorial law in immovable properties matters is a principle at the same time traditional and universal having been enshrined by all the foreign systems, some could see it a true international custom, in particular with the coincidence of the judicial and legislative competences.

Therefore, the sovereignty of the State over its territory, of which the immovable properties constitutes a portion, requires that a single law governs each immovable property and that interested individuals be able to easily know what this law is<sup>22</sup>.

As for the Ship, this one has a nationality, this attribute, element of individualization of the Ship is also more than that, it in principle reflects a real political allegiance, the submission of the Ship to the State where it is registered<sup>23</sup>.

Carrying the flag which is its hallmark engenders rights and duties: The international status of Ships resembles that of a person.

However, the recent trivialization of free-registration flags has however deprived the flag of most of this significance.

The flag does not make the Ship part of the national territory. Thus, tradition had accepted this fiction in the nineteenth century, but the powers exercised by the State on the Ship are, not of a territorial nature, but of a personal nature.

It is normally for the *lex rei sitae* to define the very notion of movable property and in particular to classify it in the category of goods or in that of immovable properties<sup>24</sup>.

The following fall within the scope of the law:

1. The determination of the property regime, private or collective, and the legal nature of the property, movable or immovable by nature or by destination, corporal or incorporeal.

2. The real rights, principal or accessory rights which may be acquired in the property.

3. *The prerogatives which confer real rights (use, enjoyment, and disposal). As well as the charges and restrictions to which the exercise of these rights is subject.*

4. *The modes of acquisition and extinction of real rights*<sup>25</sup>.

*It is therefore up to lex Rei Sitae to define the very notion of corporal property and in particular to determine the content of this category with regard to the classification of property as movable and immovable.*

*This distinction falls under the law declared competent on the merits and not under the lex fori, as it constitutes a qualification in sub-order*<sup>26</sup>.

## **2- Doctrinal justifications of the principle**

*Savigny justified the competence of the lex rei sitae by noting that "the place where the object is located is the seat of the legal relationship for which it provides the material".*

*This is, in fact, the only element visible to all that is capable of designating the applicable law. Moreover, the lex rei sitae frequently coincides with the lex fori.*

*Another reason for giving jurisdiction to the lex rei sitae lies in the fact that, if it were denied this principle, it would then come as overriding law and therefore disrupt the application of the law recognized as competent in its place.*

*It concerns, in fact, the economic organization of the State in two ways. In the first place, it plays a role in the development of natural resources. Second, third parties (creditors or successors in a particular capacity) pretend, and must be able to rely on the lex rei sitae, to assess the credit of their co-contracting parties, the idea is the same as that which led in law internal to remove hidden securities: We can only oppose to third parties rights whose existence or risk of existence is revealed by a simple verification.*

*This last justification of the competence of the real law is to be retained because it subsists when the real right is subject (which is sometimes regarded as essential) to the law of the contract, or to the law of the previous situation of the good, the law of the current situation, thus excluded in principle, it is likely to intervene as "Lois de police"*<sup>27</sup>.

*Also, identifying the exact location of a movable corporal property like Ship is not always easy.*

### **A- The situation of movable corporal assets**

*It is not in itself more difficult to determine than that of immovable properties, but the question of proof may arise if there is uncertainty about the actual situation. This uncertainty arises above all when it comes to determining where the movable assets was when a given operation was carried out ... But this question of proof becomes a problem of law when one considers property whose mobility does not exist is not a simple property such ships, boats and aircrafts<sup>28</sup>.*

### **B- The difficulty of locating Ships is twofold**

*On the one hand, their role keeps them moving as much as possible so that determining their situation at any given time will often be difficult. On the other hand, they are most of the time on the high seas, therefore exempt from any territorial law.*

*However, domestic law, also having to reckon with these difficulties, has established under the name of "nationality of ships", a legal link between each Ship and a given country, and more precisely a so-called "home port" where the real rights existing on the Ship. The commercial value of seagoing Ships, the dangers they can cause to third parties in the event of collision, grounding or shipwreck, in fact call for administrative control of their movements and publication of the rights of which they are responsible.*

*Therefore, is it not natural to substitute the "home port" for the actual situation as a connecting element? The very terms seem to call for it, the vast majority of authors are in favor of it. The location of the property is understood here in a legal sense<sup>29</sup>.*

*Nevertheless, if the qualification and the connecting of the Ship by the *lex rei sitae* seem to manifest themselves as conflicting rules prior to the designation of the applicable law during the operation of the Ship in matters of private international relations, other conflicting rules may arise in a manner subsequent to the applicable law.*

### **Part II- Conflicting rules subsequent to the designation of applicable law on the Ship**

*The classification of Ships in the category of movable property has been the subject of legal and doctrinal unanimity following its qualification, but the interpretation of the conflict rule relating to this maritime vehicle requires*

special attention with regard to the mechanisms which are attached to it, in particular in the existence of the elements constituting the fraud to the law (Chapter I), as well as the conflict mobile (Chapter II), since its nature requires it to travel outside the place of its registration.

### **Chapter I - Concept of fraud to the law**

The notion of fraud of the law is based on a very classic theory and widely accepted in PIL where fraudulent intent plays a very fundamental role in determining whether it is really a fraud to the law or just a conflict mobile, a determination of this notion is therefore necessary (1) before leading the analysis likely to be disclosed (2).

#### **1- Determination of fraud to the law**

If in matters of PIL fraud to the law does not pose any problem for its disclosure when there is a modification of connection for the purpose of escaping the law normally applicable (1), its use during the exploitation of the Ship is manifested by flags of convenience (2), and in this regard conventional provisions against fictitiousness have been taken, but the desired results are far from being achieved.

Within the meaning of the conflict of laws, fraud to the law is defined as a voluntary displacement of the connecting factor in order to substitute one applicable law for another. Apart from unmovable connections that are beyond control (location of immovable property, place of damage), this maneuver can theoretically affect all connections: nationality, domicile, residence, location of a piece of movable assets, place of fulfillment of a legal act.

Thus, fraud to the law supposes an objective element "the displacement of the connecting factor" and a subjective element "the intention to defraud the applicable law". Thus, the normal sanction for fraud to the law is the unenforceability of the fraudulent act<sup>30</sup>.

In private international law, fraud to the law consists in conferring an artificial location on the private situation in order to exempt it from the normal application of the conflict of laws rules of *the for*. Indeed, the term fraud naturally comes to mind to designate any eviction by a foreign law of a law deemed more competent.

*The theory of fraud to the law strives to protect the imperative character of its provisions, the conflict mobile thus, in Spanish law according to art 12 -4 of the Civil Code confers such character to fraud to the law, which consists, according to this provision, of “the use of a conflict rule in order to avoid the application of a mandatory Spanish law”.*

*In many categories of connection, the play of the conflict rule or the circumstance of connection depends on the will of the parties. They can then fraudulently use this will to escape the legal provisions applicable to the substance. The fraud to the law exception is the weapon used to punish maneuvers to enforce a law that is only apparently competent.*

*The function of legal fraud lies in the sole defense of the law of **the for** against the application of a foreign law whose jurisdiction was only artificial<sup>31</sup>.*

*However, even that a connection was made with public policy (order public), but the two concepts remain different: since in the case of public policy, it is foreign law that is regularly applicable but it is its content that leads to its eviction. In the case of fraud to the law, foreign law is only apparently applicable and it is the attitude of the person concerned that is taken into account.*

## **2- The disclosure of the fraud to the law**

*Like juridical persons, Ships are legally attached to a State through nationality. This link is concretely materialized by the fact that the Ship flies the flag of the State to which it belongs. However, a state can attract the registration of Ships as it attracts the registration of companies under light taxation and to take advantage of less stringent social laws. These granted facilities give rise to the practice of flags of convenience<sup>32</sup>.*

*Article 5 of the Agreement on the High Seas of April 29, 1958 specifies "that there must be a substantial link between the State and the ship; the State must in particular effectively exercise its jurisdiction and control in the administrative, technical and social fields over flag Ships ".*

*In fact, these provisions set out in the aforementioned art require that a State should exercise its international jurisdiction only if there is a sufficiently close link between its sovereignty and the situation it claims to govern, failing which this exercise of jurisdiction will be unenforceable against other States.*

*But the exercise of a state by abusing its jurisdiction through flags of convenience creates false conflicts and therefore leads to fraud to the law on the part of individuals. Thus, by exercising its competence in relation to a situation which is not attached to it by the closest ties, a State affects the sovereignty of other States<sup>33</sup>.*

#### **A- The flag of convenience**

*Any Ship has a nationality expressed by the port of the national flag. The nationality of the ship is of fundamental interest both from the point of view of international and domestic law.*

*In private international law, it determines the law applicable on the high seas, in internal law, it identifies the Ships to which the protection reserved for nationals is guaranteed. The nationality of vessels expresses a very strong idea, that of a reciprocal link between the flag State and the Ship, the flag State protecting the Ship and this Ship having to respect the regulations of the flag. It thus presents a reality much more marked than the “nationality” of juridical persons. But with the practice of “flags of convenience” the meaning or even the legal significance of the nationality of Ships has diminished significantly<sup>34</sup>.*

#### **B- Historical background**

*Since 1945 initially, the phenomenon of the flag of convenience has developed (or for ship-owners, flag of necessity). The phenomenon was known as early as 1942 at the initiative of the American administration, anxious to protect American Ships against the actions of the Axis powers, many ships flying the flag of the United States abandoned their flag to come under the flag of Panama or the flag of Honduras.*

*In the 1950s, the phenomenon intensified, with the benefit of a new pavilion, the Liberian pavilion. Since then there has been an increase in the number of states freely granting their flags to Ships unrelated to their economy, whether they are states like Cyprus, or more recently Vanuatu.*

*But if originally there were strategic reasons for the concealment of the American flag, today it has economic reasons<sup>35</sup>.*

*Ships under flags of convenience do not have to comply in particular with regulations concerning the composition of crews, working conditions, payment of crews which impose such protective legislation, such as American*

or French legislation. Sometimes, Ships under the flag of free registration escape the very strict security controls that are exercised in traditional maritime nations. This explains the success of the practice and that nearly 50% of the world fleet is under the flag of free registration<sup>36</sup>.

**a- Conventional provisions against fictitiousness**

In addition, the provisions on the law of the sea under article 91 of the 1958 Agreement specify that “each State fixes the conditions to which it subjects the attribution of its nationality to Ships... there must be a substantial link between the 'State and ship'.

Article 64 of the same text defines more precisely the obligations of the flag State: Obligation to keep a maritime register, to exercise jurisdiction over any Ship flying its flag and its crew, to take the necessary measures to ensure safety at sea, in particular with regard to the construction and equipment of the Ship, the composition and working conditions of the crew, the use of signals...<sup>37</sup>.

**b- Critique of free registration**

Widely criticized by the developing countries, this practice of granting free registration flags caused considerable economic damage to these countries.

At their request, UNCTAD prepared a text which was adopted on January 20, 1986 entitled United Nations Convention on the Conditions for Registration of Ships.

This new Agreement, which has not yet entered into force to date, recalls the uniqueness of the flag. It then defines the obligations of the flag State timidly, since it does not require that the State which registers a Ship requires the owner of this Ship to reside in its territory, but only that the said owner is represented on its territory by a natural or juridical person. The same Agreement does not even require a minimum quota of the nationality of the crew<sup>38</sup>.

In theory, it is easy to limit the freedom of States to allocate their flag, but in practice, too strict international regulations would lead to dead-end situations, since the evolution of international law from a system of the substantial link-condition towards a system of substantial link-obligations therefore appears fully justified<sup>39</sup>.

*Fraud to the law is generally conditioned by the displacement of the connecting factor with fraudulent intention, failing which the transaction will be determined to be a conflict mobile.*

### **Chapter II- The conflict mobile (conflit mobile)**

*Unlike the fraud to the law where the change of the connecting factor is based on a fraudulent intention intended to escape the applicable law, the conflict mobile also sees its connecting element moved or modified but without prior fraudulent intention (1), however, the economic value of the ship requires an international solution which must give it a certain legal stability (2).*

*There is a "conflict mobile", to use the expression due to Bartin, when the connecting element retained by the conflict rule is moved or modified.*

*This type of conflict can therefore only arise in certain matters.*

*This is mainly encountered in matters of personal status, when the person concerned changes nationality, domicile or residence and in matters of movable property status when the movable asset is moved<sup>40</sup>.*

#### **1- Distinction between fraud to the law and conflict mobile**

*The modification of the connecting element can in certain cases be accused of fraud to the law.*

*The question is whether we should continue to apply the old law or it should give way to the new law.*

*One can try to answer it according to principles external to the rule of conflict itself although two theories have been supported in this direction<sup>41</sup>.*

#### **2- The solution for the case of the Ship**

*However, in the case of the Ship, the flag offers it a fictitious and stable connecting factor which consequently prevents the operation of the conflict mobile mechanism even in the event of its displacement beyond national borders.*

*On the other hand, the considerable economic interest of the Ship has led the international community to draw up rules for the unification of conventional sources in order to determine the applicable law in a conventional and prior manner.*

### **Conclusion**

*In matters of private international relations, and more specifically in the field of international trade, the Ship plays an unequivocal role in this area.*

*Being frequently in motion, the Ship is likely to encounter several legal situations, in particular where the provisions of domestic law cease to apply and where the application of the provisions of private international law begins, and by logical consequence the co-operation of several legal rules to govern the same conflict.*

*It is in this sense that certain conflicting rules mechanisms arise to determine its particular legal qualification and which is situated on a hybrid status between the characteristics of a movable property and both of an immovable property,*

*But, since it is difficult to determine its position at a precise moment, we therefore appeal to the law of the country of registration of the flag, and this with regard to both the things transported and the means of transport, and whatever or the place where the Ship is located at a specific time. So its connecting to the place of its registration which gives it a permanent connecting and legal certainty granted to the various parties having legal relations with the ship, since the latter is almost in motion outside national borders.*

*Also manifested in terms of conflicting rules relating to the operation of the Ship, fraud to the law because of the very large numbers of flags of convenience granted to Ships to fraudulently change the connecting factor in order to avoid the law normally applicable, in this regard, provisions against fictitiousness have been taken by the competent international community, but the desired results are never achieved.*

*It is thus highly recommended that a binding legal consolidation against the violations indicated be imposed in order to put order in particular by the establishment of provisions of private international law which must be based exclusively on legally substantial links in terms of the connecting of the Ship before conferring a given flag.*

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  - <sup>18</sup> In Morocco, the ship is defined in article 2 and its qualification is in article 67 of the Dahir relating to maritime trade which dates from March 31, 1919 (B.O. of May 26, 1919, p. 478). Book 1: Regime of maritime navigation; Book two: Ships; Book three: Maritime transport, sea risks and maritime insurance. This maritime trade code which is the main basis of Moroccan maritime legislation is still in force despite these obsolete and old provisions compared to the maritime law of other States with which Morocco has international trade relations. Likewise, the 2007 draft maritime code, which has been so widely criticized, has undergone several corrections since 1982 and has not been adopted to date.
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  - <sup>22</sup> Dominique Holleaux, Jaques Foyer et Géraud De La Pradelle, *Op cit.* N°336.
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<sup>23</sup> Movable property considered *ut singuli* is governed by the *lex rei sitae*. Ships: As regards ships and boats, they are governed by a fictitious situation law, the law of the flag, which corresponds to the law of the country of registry. The real rights imposed on ships and boats depend on the legislation of their home port, the place of their registration (Brussels Agreement of April 10, 1926).

<sup>24</sup> Marie-Christine Meyzeaud-Garaud, *Op cit*, P 132 & fol.

<sup>25</sup> Mohand Issad, *Droit international privé*, Ed Publisud, Paris, 1986, P 278.

<sup>26</sup> Yvon Loussouarn, Pierre Bourel et Pascal De Vareilles-Sommières, *Droit international privé*, Dalloz, 10<sup>ème</sup> Ed, Paris, 2013, N° 417.

<sup>27</sup> Pierre Mayer et Vincent Heuzé, *Droit international privé*, Montchrestien, 10<sup>ème</sup> Ed, Paris, 2010, N° 644.

<sup>28</sup> Paul Lagarde et Henri Batiffol, *Droit international privé*, T 2, L.G.D.J, 7<sup>ème</sup> Ed, Paris, 1983, N° 507.

<sup>29</sup> Paul Lagarde et Henri Batiffol, *Op cit*, N° 508.

<sup>30</sup> Dominique Holleaux, Jaques Foyer et Géraud De La Pradelle, *Op cit*, N° 450 & fol.

<sup>31</sup> Mohand Issad, *Op cit*, P 216.

<sup>32</sup> Roger Pinto, *Les pavillons de complaisance*, Clunet, LexisNexis, Paris, 1960, P 345.

<sup>33</sup> Bernard Audit, *La fraude à la loi*, Ed Dalloz, Paris, 1974, 477 P & esp N° 54 & fol. The practice of flags of convenience is not only an evasion of tax laws; it also defeats social laws. While American unions have secured protective legislation for seafarers working on American ships, crews on ships flying a flag of convenience face significantly tougher conditions, and competition is at the expense of American sailors. Struggles between unions resulted in the adoption of art 5 of the Geneva Agreement on the High Seas. But it does not seem that the practice of flags of convenience has been altered, since only buildings that are attached by the closest ties to the United States sailing under the foreign flag.

<sup>34</sup> Georges Assonitis, *Règlementation internationale des transports maritimes dans le cadre de la CNUCED*, Ed PUF, Genève, 1991, P171 & fol.

<sup>35</sup> Bernard Dujardin, *Le pavillon français au commerce, un pavillon en devenir in la Revue Maritime*, N° 492, 2011, pp 62-64.

<sup>36</sup> <http://www.futura-sciences.com/planete/definitions/oceanographie-pavillon-complaisance-6847/> consulted on 03/01/2021, 21:00.

<sup>37</sup> Pierre Bonassies et Christian Scapel, *Droit maritime*, L.G.D.J, 3<sup>ème</sup> Ed, Paris, 2016, N°170.

<sup>38</sup> *Ibid.*

<sup>39</sup> Pierre Bonassies, et Christian Scapel, *Op cit*, N°177.

<sup>40</sup> Pierre Mayer, *Op. cit*, N° 263.

<sup>41</sup> Another analysis highlights the analogy of the problem with that raised in domestic law by the succession of two law Pierre Arminjon « la notion des droits acquis en droit international privé » *RCADI* 1933, pp 77-82,