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## Flags Of Convenience. By Boleslaw Adam Boczek.

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## BOOK REVIEWS

FLAGS OF CONVENIENCE. By Boleslaw Adam Boczek. Cambridge: Harvard University Press, 1962. Pp. 279. \$4.95.

On December 5, 1922, a most significant event occurred in the history of merchant shipping, heralding the inception of a new concept in the nationality of vessels. On that date the Panamanian flag was hoisted on two American-owned ocean liners to enable them to avoid the abstemious United States liquor legislation then in effect, thereby giving birth to a practice in vessel registration which, a generation later, would be the center of international controversy and shake the very foundations of the venerable international law of the sea. Since that time, a multitude of ship owners of many nationalities, prompted by considerations of laxer tax or labor laws than those prevailing in their own countries, have seen fit to register their vessels under the liberal ship-registration laws of Panama, Liberia, Honduras and Costa Rica, until as of June 30, 1961, there were more than 14,680,000 gross tons of shipping in the combined fleets of these so-called "flag-of-convenience" states.

Today, mighty battles are being waged in the courts of the United States and in diplomatic circles around the world, between primarily American and Greek shipping interests on the one hand who claim that freedom to register their vessels under flags of convenience is essential in order to enable them to survive the competition of other traditional maritime fleets, and American labor unions and the maritime nations who attack what they describe as unfair means of evading the labor and tax laws of the owners' home countries. The Maritime Administration of the United States has also expressed its interest in this area, pointing out the national defense interest of the United States in the preservation of American-owned flag-of-convenience fleets because these are supposedly under "effective United States control" for purposes of requisition in case of national emergency.

This controversy over flags of convenience has raised difficult questions of international law as to the right of port states to apply their municipal laws (particularly their labor laws) to vessels under foreign flags and the right of the state of ultimate ownership to requisition vessels owned by its nationals but registered under flags of convenience. In connection with the right of a port state to apply its labor laws to foreign-flag ships within its territorial waters, the NLRB has already declared its competence to apply American labor legislation to vessels flying flags of convenience, a matter now being litigated before the courts. The controversy has also placed in doubt the hitherto well-established law of the sea that each state is competent to determine for itself under what circumstances ships are entitled to fly its flag, owing to the provision in Article 5 of the 1958 Geneva Convention on the High Seas that "there must exist a 'genuine link' between the State and the ship."

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Clearly Mr. Boczek could hardly have chosen a more timely and important topic to write on, and he has done a praiseworthy job of collecting a great mass of source material bearing on this subject, for which he deserves the thanks of all the legal practitioners, judges, and government officials concerned with the issues involved. Not only has the author provided the reader with a thorough insight into the underlying reasons for the controversy and the applicable law, but in numerous instances he has also boiled down this material into easy-to-digest charts and graphs. He has done this with the case material as well as with shipping statistics.

The primary significance of the book, however, lies in the author's commendable presentation of the applicable international law, particularly with respect to the right of states freely to accord their national character to ships without regard to any prerequisite "genuine link" between ship and flag state. In this connection, Mr. Boczek has divorced himself from the pros and cons of the controversy inspired by national and economic interests, and with an eye instead to preserving stability in international law he has, after a carefully presented analysis of the history of the law of the flag, correctly concluded that the law is as declared by the Supreme Court of the United States in *Lauritzen v. Larsen*, viz., that "each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship." At the same time, he has not neglected to present whatever exponents of the opposing view exist, dating from the first international attempt to formulate some kind of "genuine link"-type requirement in 1896.

Considering the importance and value of this work, it is the more regrettable that it suffers from numerous defects in form. First, it should be pointed out that this monograph should never have been drawn out to its printed length of 292 pages: what properly deserves to be a much shorter book or pamphlet has been given an unpardonable bulk by the author, perhaps to justify its inclusion within its own hard cover. Mr. Boczek has deluged the reader with a mass of insignificant minutiae, ranging from the different ways of saying "flag of convenience" in seven languages to a blow-by-blow description of how the International Court of Justice reached a decision. In general, the book contains far too much of such trivia, and the reader is constantly in danger of missing the occasional phrase or sentence which is of significance in two or three pages of reading. In dealing with a subject at once vague and complicated, the author would have done better to use lacedaemonian reserve in the use of words.

In a few instances the book suffers from disconnected information, such as its extensive discussion of the *Nottebohm* case and its bearing on the national character of ships without telling what that case held until two pages later. For no apparent reason, an entire chapter (on the IMCO dispute) relating to the "genuine link" concept is separated by two chapters from a continued discussion of this subject.

Frequently the author has thrown in the names of various legal personages without any description of their states and offices, so that the reader is at a loss as to the significance of whatever statements are attributed to them. Nor is the reader helped by numerous omissions of the grammatical articles "a," "an," and "the" from the text, which certainly does not make the task of studying the book easier. The reader is also warned to beware of at least one dangerously misleading error in quotation: on page 159, the excerpt from the Supreme Court's opinion in *Wildenhuis'* case should read: ". . . all things done on board, which affected only the vessel, *and do not affect* the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged." The italicized words do not appear in the quotation as it appears in the book.

With respect to content as distinguished from form, although the value and general validity of the book are clear beyond doubt, once or twice Mr. Boczek apparently has given in to the excusable and natural temptation to any good legal mind to create law and make order out of chaos. Nowhere is the opportunity for such creativity greater than in the realm of international law, where rules are few, contradictory authorities abound, and rules often depend on commentators' analyses. Offering his contribution to the international law-making process, the author has unfortunately foundered in his attempts. Thus, on one occasion he has reasoned that states of ultimate ownership ought to be able to requisition foreign-flag vessels owned by their nationals in time of war because enemy states would be entitled to attack such vessels under international law. Without citing any authority for his view, the author then simply concluded that states of ultimate ownership do have such a right, in order to afford protection to such ships. Not only has Mr. Boczek stated this rule solely on his own authority, but he also has done so in complete contradiction of his amply sustained thesis that vessels are properly said to "belong" to their flag state, which is obliged to maintain control over them.

Equally indefensible is Mr. Boczek's attempt to define and limit the "genuine link" concept in Article 5 of the 1958 Geneva Convention on the High Seas in terms of the provision immediately following it which states that "in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag." In support of this thesis he cited the French text of the Convention, which renders "in particular" as "notamment," which the author said corresponds more to the English expression "that is." However, Larousse defines "notamment" as "particulierement" (in particular) or "entre eux" (among others), corresponding exactly with the English text. Although it would be highly gratifying to find such an easy solution to the enigma of what a "genuine link" is, the unfortunate fact is, as the author's history of the Convention itself points up, that the delegates to the United Nations Conference which adopted Article 5

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were themselves uncertain of its meaning, and they purposely left it vague because of their inability to define it in generally acceptable terms.

Despite these flaws, *Flags of Convenience* remains a highly informative and significant work, and is undoubtedly the most comprehensive analysis of vessel nationality since Reinow's excellent monograph on that subject a quarter century ago. The practitioner adrift among the problems raised by flags of convenience would do well to chart his course by Mr. Boczek's book.

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GREEN BELTS AND URBAN GROWTH: ENGLISH TOWN AND COUNTRY PLANNING IN ACTION. By Daniel R. Mandelker. Madison: The University of Wisconsin Press, 1962. Pp. 156. \$5.00.

Are you disturbed by the waste of open space caused by the swift expansion of urban areas into the countryside, an expansion typically occurring while there still are numerous vacant lots within the city? Does the thought nag you that perhaps it is not necessary for a community to destroy much of its charm as a place to live in order to attract new wealth and jobs for its citizens? Do you sometimes suspect that our techniques of land use control are reasonably good mechanically but are hamstrung in achieving their purpose of bettering man's environment because no coherent land use policy has been articulated by the community? As a lawyer, has your advice been sought by persons bent on preserving open space? or by persons bent on fending off efforts to preserve open space? If the answer to any of these questions is "yes," you will be well advised to read and ponder Professor Mandelker's book. Of course, the professional political scientist interested in the structure of local government and ideas for improving it, the professional planner of land uses interested in techniques of public control of land uses, or the lawyer in his role of student of the law as it actually operates in the lives of people, rather than as it appears in books, will find this book rewarding, too. Further, *Green Belts and Urban Growth* speaks provocatively to the lawyer in his role of planning layman living in the United States.

Anyone living in an urbanized area of this country, and possessing ordinary sensory perceptions, must be at least vaguely aware of the constant conversion of open country to built up areas, of the increased smog and congestion of people and vehicular traffic in cities and villages, and of various other ills of contemporary urban civilization; all this in spite of the efforts of the planning professionals. Every lawyer belongs to the professional group to which the rest of society turns to get things done when social reform is afoot. Thus, both as a person experiencing the ills of urban life and presumably wishing they could be reduced, and as a member of the profession traditionally charged with invention and operation of new machinery of social control and who, therefore,