

## Provisional registry - is the concept real?

*Many registries have the concept of "Provisional Registry" enshrined in their national law. Many have a practice of registering ships as "provisional" initially and issuing them with a "Provisional Certificate of Registry", which is replaced later by a full certificate. Given that the concept pre-dates the United Nations Convention on the Law of the Sea, it is worth investigating if it still has any real value to a modern register.*

Provisional Registry is a very old idea and its first obvious appearance was probably in the UK's 1894 Merchant Shipping Act, where, in the wonderful language of that Act, it says:

*"if at a port not within Her Majesty's dominions and not being a port of registry established... a ship becomes the property of persons qualified to own a British ship, the British Consular officer there may grant to her master, on his application, a provisional certificate..."*

Clearly the idea was firstly that a ship owned by a qualified owner would naturally be registered, given that 1894 was long before the advent of open registries, and secondly that that a ship that came into the ownership of a qualified owner outside the reach of Empire could be registered by the local consul and the rest of the paperwork sorted out later. The 1894 Act was a remarkable piece of legislation that set the standard for marine legislation over a great deal of the world. It still has influence today. Its text can be found on line and it repays a good read. Anyone reading through it will immediately be struck by the many phrases and concepts that reappear in current practice and in major international conventions, for example, the Maritime Labour Convention 2006. UK law today, like many others, retains the concept and says:

*"Where a ship which the owner intends should be registered on Part 1 or Part II of the register is outside the British Islands the owner may apply to the Registrar for provisional registration, or, if the ship is at a port outside the British islands, the owner may alternatively apply to the appropriate person for provisional registration of the ship"*



The Bahamas Merchant Shipping Act says something very similar and in fact mandates that a newly registered ship must be provisionally registered pending receipt of various documents. Liberian law similarly has the concept and allows provisional registry for up to 2 years.

Clearly the concept is widespread and very little changed from that which appeared in the UK's 1894 Act. But the 1894 Act was written at a time long before wireless, email, fax, internet, document couriers, video telephone conferencing and all the facilities of modern communications. And long before UNCLOS.

Many countries still have maritime legislation based on the old UK Acts and as a result the concept of provisional registry remains commonplace. The question is - is it a valid idea and is it actually useful?

The overarching international law on the registry of ships today is probably the United Nations Convention on the Law of the Sea, UNCLOS. Article 91 of that Convention says that every state shall fix the conditions for the grant of its nationality to ships, the registration of ships, and the right to fly the state's flag. Article 92 says that a ship shall sail only under the flag of one state and may not claim the benefits of either if it attempts to sail under two or more flags according to convenience.

From this it follows that a ship may only have one flag, and logically a certificate only from that flag. It cannot, therefore fly the flag of its previous registry. From this it seems clear that registry is a binary concept - a ship is either registered or it is not registered. There is no provision in UNCLOS for a half-way house. Hence provisional registry may actually have no meaning in this sense. A ship that is provisionally registered is in fact fully registered and entitled to fly the state's flag. Such a ship comes under the legal jurisdiction of the state whose flag it flies.

It does obviously have value as an administrative tool, it is often used, as the 1894 Act suggests, in cases where there is a need to wait until the ship reaches the administration or where some documents remain outstanding. Often today it is used when the losing state hasn't issued a certificate of deletion yet and the receiving state is reluctant to complete registry until it is received or actually prevented from doing so by its national legislation.



The Bahamas law mentioned earlier actually says that a certificate of deletion and confirmation that no encumbrances remain attached to the ship are pre-requisites for changing from provisional to full registry.

But, as argued earlier, international law in UNCLOS only allows two physical states; registered under a flag or not registered under that flag. The sort of indeterminate status implied by provisional registry isn't catered for. Given that the use of the concept is widespread it is possibly arguable that it forms custom and practice in this area. But it remains the case that many registries issue "Certificates of Provisional Registry" to ships in this status.

It should be asked what this actually means. The ship in question is marked with a valid port of registry, has a flag state MMSI number, a flag state callsign, is subject to the flag state laws, flies the flag state's flag and in every respect is a flag state ship. It cannot be anyone else's. Therefore provisionally registered as a type of registry is completely indistinguishable from registered to the outside world.

Nowadays electronic systems allow for any registry to set any expiry date for the registry of any ship which and that date can be any date the registry selects. There is no need for a separate class of registry as might have been the case once. That date need not actually be shown on a certificate of registry, that is a matter for the registrar, but it is an attribute attached to the ship record. As such it is always available. Electronic systems allow for easy access to filtered lists of ships against any selected status or criteria.

Effectively a certificate of registry can be for any length of time that a registry chooses. While some registries still issue a certificate of registry without an expiry date so that it remains valid as long as the owner pays the annual fees or it is withdrawn, it doesn't stop an electronic system from recording the fact that the first one is time limited. A good electronic registry system will show any registry entries that are due to expire and flag them up to the registrar on demand and on any selected date range. So a vessel, "short term registered" cannot be missed and allowed to continue, its status will always be flagged up until any necessary procedures are completed or it is removed.



So the administrative utility of provisional registry may no longer be required. While the legal concept of something less than full registry is uncertain, this may actually be a far better approach.

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