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ENVIRONMENTAL LESSONS LEARNED FROM THE MARITIME DOMAIN: THE DANGERS OF  
FLAGS OF CONVENIENCE

**Abstract**

In the oceans as in space, public and private sector actors have struggled to achieve a sustainable legal framework regulating pollution and waste. This paper explores a cautionary tale from the maritime domain that has important implications for the space domain. Flags of convenience (FOCs) are open registry states that permit commercial operators from any country register their sailing vessel under their flag in order to increase profit via registration fees. Commercial operators flock to these states as they are known for minimal registration requirements and weak oversight mechanisms. Ships flying under these flags are therefore linked with higher rates of accidents and environmental harm. Like maritime law, space law provides that all commercial actors must obtain the authorization and ongoing supervision of a state. This paper therefore explores the possible dangers of an orbital flags of convenience arrangement, detailing the ways that registry states can help or hinder environmental protection via their national licensing processes. It includes a dash of optimism, highlighting how the international regulatory bodies of the two domains—the International Maritime Domain (IMO) and the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS)—have different institutional structures that may lead to different environmental impacts. Namely, the executive organ of the IMO has a tiered structure that gives FOC states weighted influence in the institution. Research has indicated that these states use their privileged status to act as proxies for industry leaders who historically block environmental regulation, which has stalled the IMO’s deliberation on environmental issues. Unlike the IMO, COPUOS is a consensus-based organization, meaning that all member states’ votes have equal weight. There is therefore a chance that COPUOS may be better-suited to address environmental protection in the space domain. The paper concludes by exploring a possible first step towards avoiding an orbital FOC arrangement: a non-binding set of best practices on national licensing processes. These practices should ideally be the result of interviews with stakeholders—global policymakers and industry leaders—with an eye towards achieving the minimum set of regulatory requirements. These requirements would be geared towards protecting the environment while ensuring that space operations continue to constitute a prosperous economic opportunity for all spacefaring nations, especially emerging spacefaring nations. As such, these guidelines would embody the environmental legal principle of common but differentiated responsibility.