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Flags must hoist a different standard

January 2002, Israeli forces captured a Tonga-registered general cargo ship in the Red Sea laden with 50 tons of arms. The Israeli authorities claimed that the vessel, Karine A, was on route to Yasser Arafat’s Palestinian Authority.

June 2002, French authorities, suspecting cocaine smuggling, seized the Cambodian-registered vessel, Winner. The vessel’s operators suspected the vessel were subsequently charged with drug trafficking, setting up a criminal organisation and money laundering.

The SIRC column, of the Seafarers’ International Research Centre, looks at the relationship between open registers and criminal acts.

The question is then, why is there a relationship between criminal activities and vessel registration? The answer relates to the nature of the regulatory environment which these kinds of illegal activities are given their conditions of existence, i.e. the potential for any relationship between them and the vessel, and have no influence from the state concerning the operations of the vessel. Human intention and action being what it is, for those pursuing illegal activity such registers are entirely suited to their ends. Now, it would be incorrect to claim that these vessel registers are attempting to provide outlets for criminal activities. However, it does seem that they produce regulations that are insufficient to prevent such activity. However, we have to be careful in making claims about causality here. The flag of convenience system does not cause criminal activity, nor is it restricted to it. Instead, the open register system enables those wishing to engage in criminal activities with a ready-made system that they can use to take advantage. In essence these opaque structures of vessel ownership, low requirements for the incorporation of offshore business entities, limited registration requirements and the absence of effective monitoring procedures produce an environment which could be attractive to those engaged in illegal activities. However, it could also be seen as a deregulated environment in which the rules are flexible enough for on-line costs yet still maintain their own standards.

The question here is whether these structures enable both kinds of action, by providing, in some instances, the ultimate place for self-regulation. Illegal activities have been carried out on a number of occasions to which these registers and the experience of self-regulation in other sectors of the economy have taught us that free markets are wholly inadequate to undertake effective and standards and guarantee the legality of operations. The development of the open register system has led to a situation in which ship operators may choose the regulatory regime they wish. Essentially, within flag state law, shipowners are provided with the opportunity to opt for a low taxation regime; reduce legal liability through the creation of a single-ship company; employ seafarers of any nationality and conditions; and, in some cases, own their own system of vessel maintenance; and, choose which organisation classifies their vessels. However, in general, the shipowner is also provided with the opportunity to hide their identity under multiple dummy corporations; register their vessel with little or no checks from the flag state; not maintain their vessel; break fishing laws with minimal consequence from the flag state and engage in a range of illegal activities with the absence of directed state control. This system creates the conditions for a range of criminal activity as it does for running a lean effective business within the boundaries of the law. To this end, an approach to prevent the occurrence of illegal activities conducted by and through the use of any flag state is prone to significant difficulties.

A number of states have made vestigial attempts to tackle the inherent deficiencies of the system. Intergovernmental organisations such as the Helsinki Commission have been set up to tackle the problem of pollution utilising a combination of aerial surveillance and developing techniques that enable a link to be made between oil pollution and individual ships. The various port state control regimes around the world are designed to tackle the problem of substandard vessels by developing a comprehensive system of vessel control and classification, below which at-risk vessels may be targeted. A recent directive by the European Parliament, enables a vessel flying the flags appearing on the Paris port state control “black list” to be banned from European Union waters.

A common theme to these activities is that they tacitly accept the falling out of the flag state from the regulatory regimes. These activities are not an addition to flag state control but a means of avoiding flagging a vessel to a state should have real consequence over and above an exchange of monies. This can only be addressed by changing the function of the flag state from a competitive market for foreign income, to a method of enforcing and maintaining best practice. Flag standards must be raised to meet minimum requirements that enable them to act as a responsible partner in the effective regulation of the maritime industry. It is only by reforming and rebuilding the concept of the flag state that the issue of open registration and crime can be tackled at its source. Although such an approach will not free the seas of crime, it will get rid of a system that enables it.