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Flags must hoist a different standard

Nik Winchester, of the Seafarers' International Research Centre, looks at the relationship between open registries and criminal acts

January 2002, Israeli forces captured a Tongan-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. In June 2002, French authorities, suspecting cocaine smuggling, seized the Cambodian-registered vessel, Winner. The Israeli and French authorities charged that vessels were subsequently charged with drug trafficking, setting up a criminal organisation and money laundering.

These and other high profile cases have focused world attention on the relationship between open registries and criminal acts. Indeed, a recent OECD study into the ownership and control of ships notes the criminal acts. Indeed, a recent OECD study into the ownership and control of ships notes the criminal organisation and money laundering.

The International Training Centre notes that drug traffickers use vessels registered with states that offer a “black list” to be banned from port states. The problem is that these vessels are entirely suited to illegal activity, as they can choose which environment they feel is most amenable to vessel operation. Taking the perspective of someone wishing to undertake criminal activity, it is possible to see these registers as an enabling device to produce extensive layers of corporate secrecy spanning multiple jurisdictions, render anyone independent of the flag state.”

The question is then, why is a vessel registered under a flag state; not maintain their liability through the creation of a single-ship company; employ shipowners of any nationality and strength of regulation put in place and enforced by flag states. The differing forms and strengths of regulation put in place and enforced by flag states give the shipowner differing levels to which they may put themselves at a distance from the flag state control and self-regulate their operations. It is these differing levels of regulation in which illegal activity is given their conditions of existence, i.e. the potential for a shipowner to operate as they wish in 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 a number of factors play a role as well as a consequence of the absence of effective monitoring and control.

The OECD study into the ownership and control of ships notes that “illicit drug traffickers use vessels registered under a flag state to engage in a range of criminal activity. A common theme to these cases is 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 their 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

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