Flags must hoist a different standard

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Centre, looks at the relationship between open registers and criminal acts

January 2002, Israeli forces captured a Tongan-registered 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 2000, French authorities, suspecting cocaine smuggling, seized the Cambodian-registered vessel, Winner. The French authorities claimed that the vessel was subsequently charged with drug trafficking, setting up a criminal organisation and money laundering.

These and other high profile events have focused world attention on the relationship between open registers and criminal acts. Indeed, a recent OECD study into the ownership and use of vessels notes that 'the existence of “many compliant ship registers” which provide means for “illicit drug traffickers to effectively hide their identity while engaged in such activities”. In terms of drug trafficking, another report notes that “illicit drug traffickers use vessels registered in those registers that offer a convenient register”. A Wall Street Journal article from September 2002 assesses the Bolivian flag as follows: “As the fleet of vessels flying Bolivia’s flag has expanded to more than 300 from just a handful a few years ago, authorities have caught the high seas tax collectors smuggling narcotics, hiding toxic waste, fishing illegally and operating unsafely.”

The question is then, why is there a relationship between criminal activities and open registration? The answer relates to the nature of the regulatory environment present in different flag states. The differing forms and strengths of registration 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 the kinds of illegal activity are given their conditions of existence, i.e. the potential for these registers as an enabling device to produce extensive layers of corporate secrecy, spawning multiple jurisdictions, render any relationship between them and the vessel, and have no intercourse 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 needs. Now, it would be incorrect to claim that these vessel registers are attempting to provide outlets for criminal activity. 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 support 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 deregulated environment in which law enforcement costs yet still maintain their own standards.

The OECD notes that these structures enable both kinds of action, by providing, in some instances, the atmosphere for self-regulation. Illegal activities have been carried out on a number of vessels attached to these registers and the experience of self-regulation in other sectors of the economy tells us that free markets are wholly inadequate to undermine effective 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 convenience, or simply own their own system of vessel maintenance; and, choose which organs to classify 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 from a lack of interference from the flag 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 date, there has been no attempt to prevent the occurrence of illegal activities conducted by those engaged in a flag state policy that is prone to significant difficulties.

A number of states have made vested national interests in ensuring that 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 ship. 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 inspection. It is this by which at-risk vessels may be targeted. A recent directive by the European Parliament enables national authorities to detain vessels flying the flags appearing on the ports. The port state control “black list’ to be banned from European Union waters.

A common theme to these events 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 rather a rerouting to a flag state, leaving the flag state to deal with the consequences. This is only by redefining and rebranding 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. The OECD study into the open register systems and crime has produced a number of recommendations which control the development of the open register system.

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Nik Winchester, of the Seafarers’ International Research Centre, assesses the September 2002 article from a Wall Street Journal article from a Wall Street Journal. The OECD study into the ownership and use of vessels notes that ‘the existence of “many compliant ship registers” which provide means for “illicit drug traffickers to effectively hide their identity while engaged in such activities”. In terms of drug trafficking, another report notes that “illicit drug traffickers use vessels registered in those registers that offer a convenient register”. A Wall Street Journal article from September 2002 assesses the Bolivian flag as follows: “As the fleet of vessels flying Bolivia’s flag has expanded to more than 300 from just a handful a few years ago, authorities have caught the high seas tax collectors smuggling narcotics, hiding toxic waste, fishing illegally and operating unsafely.” The question is then, why is there a relationship between criminal activities and open registration? The answer relates to the nature of the regulatory environment present in different flag states. The differing forms and strengths of registration 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 the kinds of illegal activity are given their conditions of existence, i.e. the potential for these registers as an enabling device to produce extensive layers of corporate secrecy, spawning multiple jurisdictions, render any relationship between them and the vessel, and have no intercourse 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 needs. Now, it would be incorrect to claim that these vessel registers are attempting to provide outlets for criminal activity. 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 support 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 deregulated environment in which law enforcement costs yet still maintain their own standards.

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