

SHIP OWNERS ANONYMITY AS SECURITY RISK

Abstract

Flag States are responsible for ensuring that their vessels act in conformity with applicable rules of international law wherever their vessels are located and consequently Flag States play a particularly important role in ensuring maritime safety, security and the protection of marine environment. Hence, they are required to exercise effective jurisdiction and control in administrative, technical and social matters over ships flying their flag. Unfortunately, there are clear indications that a number of flag States regularly fail to comply with the United Nations Convention on the Law of the Seas (UNCLOS), and other relevant international instruments and agreements, while some other flag States fail to exercise effective jurisdiction and control over vessels flying their flag. The reasons for that are the various flag states which are known as the open registry states, who market their registry systems to attract ship owners and shipping companies to fly their flags by offering lax registration requirements, procedures and poor control. In addition, they provide various options to attract ship owners, one of them which of this paper concern, the ownership anonymity that expose the marine community to various security and safety threats.

The paper is discussing the security threats that might be initiated from the anonymity of owners which is given as a positive option by the open registry system. Also, discusses how such an option raises the potential use of vessels in criminal and terrorist acts under the legitimate umbrella of the open registry system and why hiding the owner identity is considered as security breach.

1- Introduction

International shipping is a unique sector that has special features due to the various international actors involved, as a result the sector faces number of challenges. One of these challenges concerned with ships nationality, where all vessels must possess a national character in-order to be managed and controlled under the jurisdictions and laws of the national identity and it provides the legal bases for giving a specific name to the vessel for trade, legal and navigation purposes. Every state therefore under the international law has the rights to establish the national laws and standards for granting nationality to vessels that require flying its flag. So, there is an agreement between the flag state and the ship owner on the required conditions to grant the flag to the ship, consequently both the flag state and the ship owner enjoys the

privileges of the agreement. Some flag states known as open registry states provide lax registration systems and lesser control over their flag ships beside generally characterized by the country of registry that permits ownerships of its ships by non-nationals condition in order to grant the flag to the ship. Therefore, the open registry system attract most of the ship owners as it fulfills their different objectives and motivations, the choice of options is wide and each register may offer its own legal and commercial benefits. The permission to fly the State's flag may be an evidence that a vessel possesses the nationality of that State, but the flag does not proof nationality, the registration is the conclusive evidence of the nationality and ownership. There are features that tend to be common amongst many of the open registers, including low taxation regimes, minimal ownership requirements, and minimum manning requirements, inadequate or absent maritime administration, and a general absence of regulatory observance (Galley, 2014).The problem with the open registry system lies on the limited link between the flag state and their fleets, the link only through mutual financial benefits rather than a genuine link which is stated specifically and directly by the UNCLOS Article 91 *“Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship”* and that *“Ships shall sail under the flag of one State only and... shall be subject to its exclusive jurisdiction on the high seas”*. Therefore, speaking about open register flag state continuous observance over their fleets or enforcing national and international standards is irrelevant with their policies and registry systems. As a result a huge number of open register ships are characterized by being sub-standard ships and lack the safe operation standards that threaten the maritime safety and the marine environment as well as the maritime security. The port state control reports shows that, most of the detained ships are under open register flag and the marine incidents that influenced the international maritime community and where responsible for the adaptation of new international instruments and regulations were also under open registry flag, the Torrey Canyon accident in 1967, Amoco Cadiz in 1978, Exxon Valdez in 1989, Erika in 1999 and Prestige in 2002 are simple examples.

From security point of view which is of this discussion concern, is about the options given by the open registry states concerning ship owner anonymity, the privilege which encourages and allows them to evade rules and regulations. Some open register states advertise anonymity as one

of their registration services and owners who look for hiding their identity could be undertaken for distinctly illegal or even terrorist intent. Flag state generally plays an important role in ensuring maritime security and safety(Gianni, 2008), and the failure to meet their responsibilities and to ensure their ships compliance to the applicable international rules, pose the maritime community to various security and safety threats. From security point of view which is the concern of this discussion, some flag states might facilitate security breaches; specifically the open registry states, where the system provide lax registering requirements and procedures, poor control and anonymity. The service provided by these open register states attracts the ship owners especially for the anonymity offer, including the owners who are involved in illegal activities. Therefore concerns were raised over the potential use of open register ships by terrorist groups and criminal organizations. Another aspect of interest related and serves owners' anonymity is that the open registry states allow financial mechanisms designed specifically to hide owner identity, and hence the liabilities. Allowing registering ownership through offshore corporations, nominees, bearer bonds, shell companies, and the like, have doubtless encouraged many owners, including owners who are involved in illegal acts. Such option and privilege by open registry state has contributed in the prevalence of maritime security and sub-standard shipping where the threats gets high, beside it becomes difficult to prosecute ship-owners involved in these acts because of the anonymity option.

The aim of this discussion is to focus on the anonymity option provided by the open registry system pertaining to security issues; showing how far reached the ownership disclosure requirements mandated by the international maritime community to encounter the anonymity aspect.

2-Security and Anonymity

After September 11th, 2001 maritime security concerns kept growing by national and international maritime regulatory bodies and the ship owner anonymity issue started to be dealt with in more persistent manner, where more demands for greater transparency of ships ownership been pushed strongly. More worries starts to rise about the probability of using ships in terroristic attacks and also from being used by some terrorist and criminal organizations in funding their criminal acts, the lack of ship ownership transparency increased the threat and risks to maritime security. Several approved reports such as OECD report in July 2003 assured that some terrorist

organizations were being funded by legitimate corporations owned by terrorist individuals enjoying the hidden identity option provided by the open registry states systems. The mask that is used to cover ship ownership identity and the security threats from such veil revealed the fact that it is difficult now a day to know who owns and control number of open registry flag ships, this fact was clearly stated by the Organization for Economic Co-operation and Development OECD report in July 2003.

Hiding the identity of ownership may be undertaken for valid commercial reasons, it protects owners who have a bad history in ship detentions or bad reputation with crew poorly supported, even provide cover for those who might have illegal or terrorist intent. The lax registration procedures by the open registry states might provide the legal cover to ship owners which might use their ships for committing unlawful act; or use their ships in lawful trade for funding unlawful acts; even use the ship as weapon in a terrorist act, beside it give no possibility for authorities to prosecute ship owners when their ship gets involved in any unlawful acts. As a result the maritime community dealt with the alert seriously and started to regulate certain laws and regulations to encounter such threat and faces the challenges raised by such condition granted by the open registry states.

2-1 Law and regulations statues concerned with ownership disclosure

The September 11th attacks led the international maritime regime to take an immediate action concerning the maritime security. Most of the new legislations and regulations where aiming greater maritime safety and security and focusing on the lack of adequate tracking of crew, cargo and vessels in addition to extra port security. The IMO through the maritime safety committee and its maritime security working group in December 2002 in the conference of the International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974) adopted the International ship and port facility security code (ISPS code) which became mandatory in July 2004.

The ISPS code main objective is to enhance the security measures to detect and deter terrorist acts that threaten the security of passengers and crews and the safety of ships. SOLAS 1974 amendments added chapter XI-2 for special measures to enhance maritime security, which include only the mandatory part of the ISPS code. While further more amendments to SOLAS

chapter V for safe navigation; addressing in Regulation 5 the Continuous Synopsis Record requirements and specifying in 5.3.6 that it shall contain the name of the registered owner(s) and their registered address(s). In addition, regulation 5.3.8 ensured that the name of the company and its registered address shall be contained in the record, as well as from where it carries out the safety management activities. Moreover regulation 5.4 ensured that any changes to entries shall be recorded in the Continuous Synopsis Record and the administration shall revise and approve the changes. According to regulation 5 the IMO tried to address the ownership anonymity in some way but practical speaking owners who are involved in any illegal activities or has terrorist intents will never place their names in any vessel or administration records.

The September 11th attack investigations led to the fact that terrorists where funded from several maritime corporations worldwide and no terrorists names where listed in the ownership records of these corporations (fox, Bennett.).There are plenty of ways to hide ownership identities which is actually offered by the administrations of the open registry states, and allows them to conceal ownership identities. The international maritime community continued tracking the problem and kept trying to contain such threat via additional laws and regulations to contain the flag states failure to carry their responsibilities as in the United Nations Convention on the Law of the Sea (UNCLOS)whom specifies flag state responsibilities in various articles. The UNCLOS Article 91,article 94,1 and 94.2 concerning rights and duties of flag states, besides Article 217.8 that requires compliance to international standards and rules by flag ships and prohibit sailing unless flag state approval. Moreover the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) which covers the unlawful acts by ships and the expected threats. Even though, the International Labor Organization (ILO) convention governs the working conditions, rest hours and crew affairs which is extremely violated by the open registry system and pose various threats to maritime security directly and indirectly.

3-Anonymity Threats

Owners can easily establish complex webs of corporate entities which are freely available in many jurisdictions. The open registry states facilitate registration of corporation as vessels owners as well as several other mechanisms that provide further effective anonymity. Bearer shares is the popular and the most effective cloaking method, where no owner name, can be

easily transferred from person to person without many changing hands. Thus, facilitate a high level of anonymity. At the same time, many of the traditional jurisdictions will allow local subsidiaries of foreign corporations to register their vessels under their flags, thereby allowing ownership to be concealed (Galley, 2014). Therefore, Terrorist groups can easily operate single vessels or entire fleets in order to generate funds and support their logistics operations, in fact, one terrorist group's. The Liberation Tigers of Tamil Eelam (LTTE), have developed and operated an extensive and profitable network of freight forwarders and ship operators (OECD, 2003) and that is a perfect example of ownership anonymity that might lead to a catastrophic consequences over the maritime security. The group was operating a shipping fleet bearing Panamanian, Honduran or Liberian flags, and the vessels crew were Tamils while the vessels were owned by front companies in Asia (OECD, 2003). The vessels were operated openly in the world shipping market carrying legitimate cargos and definitely, the vessel operations and profits were used in order to generate funds and support their logistics operations. It is doubtless that other criminal or terrorist groups are using the same approach and might already control a fleet of cargo vessels in order to generate revenue. Finally, the maritime transport sector, largely because of the availability of opaque ownership disclosure requirements can provide an attractive option for groups seeking to combine legitimate revenue-generating businesses with a more sinister global logistics.

From a different angle, in some open registry ships, crew might be problematic, since they have little connection to either the shipping company or vessel owner other than that they were hired to work on the ship. Consequently, they could have control of the ship and may be involved in various illegal activities. The prevalence of cases of unpaid wages, poor salaries and late payments, in addition to the crew rights violation because of the opaque shipping company and vessel owners, led some crew members, including officers, to be involved in illegal activities and taking illicit cargo. Illegal activities such as Human smuggling, human trafficking, drugs and weapons smuggling is very popular especially upon the open register ships and by their crews. Such activities by crews are mainly due to the loss of the genuine link and the opaque identity of the owners, therefore the lack of loyalty and connection. Containers for example are being popularly used to hide stowaways and it is a well-established trick in human smuggling (Tina & Ellen, n.d.) and it could easily be loaded with explosives. The minimum possibility to verify container contents beside the lack of proper inspection over them raised the possibility of the use

of them in human smuggling, transport of weapons or loaded with explosives for terror acts and even transfers terrorists to circumvent immigration control. Such opportunities cannot be done unless ship crews are being involved either by agreement or unintentionally. Crew incompetency is one of the reasons for risks being augmented and security being diminished as most of them lack the adequate security standards and the main reason for that is lax registration conditions and the low wages scales in open register ships due to lack of the owner control and company connection. the lax crewing requirements and the ability to employ cheaper foreign crew and lower minimum manning levels, resulting in lower operational costs, higher work-load, more pressure, inadequate resources for on-going ship maintenance and questionable attention to security matter (Gianni, 2008). The sub-standard working conditions in the open registry flag ships which doesn't comply with international standards encourages crews to find other ways to support their income and therefore to get involved in such illegal activities. This problem mainly found to be as a response to the lack of the genuine link and the owner ship anonymity, which requires serious attention and active actions, where the probability for using this weak point is relatively high and threatens the maritime community directly now a day.

4- Ownership Anonymity

Ship owners are given so many attracting offers by the open registry system; the economic attraction is a major motivating factor; minimum operating costs due to lower crew wages and maximization of revenue and turnovers. In other hand non-economic advantages include transparency of ownership, which means the ability to hide ship-owners identity. From economical angle, all the open registry states that provide anonymity services benefit financially from the system, they earn registry fees, maintenance and tax fees and expending little to ensure that their ships that fly their flags meet international standards and laws. The lax registration procedures and requirements in addition to the provided offers led most of the world fleets to prefer registering in these states, therefore earn large profits and bear very little costs.

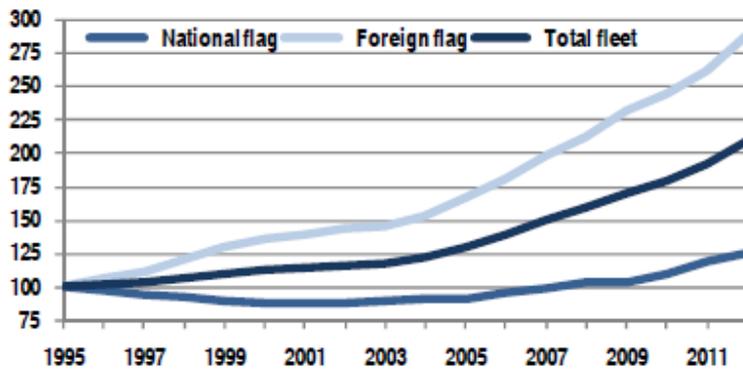


Figure (1) world merchant fleet by national and foreign from 1995- 2012

Source: (ISL, 2012)

Now the owner of the ship change opinion about the registries flag, thus they are choosing the open register flag. Figure (1) illustrates the world merchant fleet by national and open register flag. The number of merchant fleet and foreign flag equal 100 million dwt in 1995, But the foreign flag increased dramatically at (300 million dwt) in 2012. In addition, the national flag increased slowly at (125 million dwt).

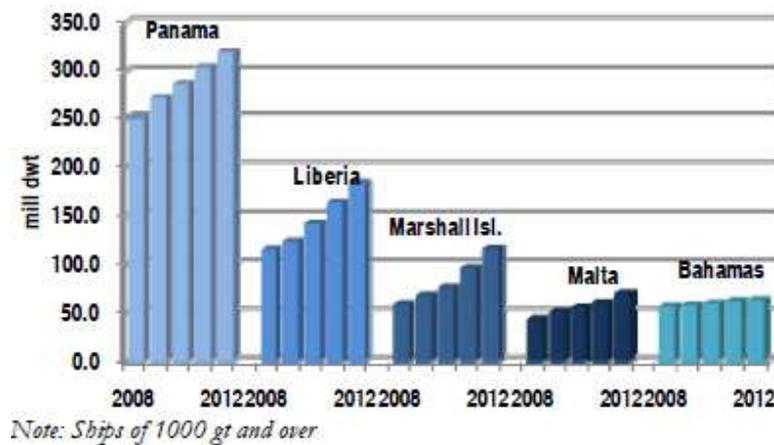


Figure (2) The tonnage development of major open registry flag.

Source: (ISL, 2012)

Figure (2) illustrates the tonnage development of major open registry flags. Panama flag was the highest value (320 million dwt), was double Liberia flag (120 million dwt). The Malta flag and Bahamas flag were the almost equal (60 million dwt).

Rank	Flag	Number of merchant vessels \geq 1000 GT	Rank	Flag	Number of merchant vessels \geq 1000 GT
1	Panama	5,764	32	Belize	261
2	Liberia	1,948	33	Gibraltar	216
3	China	1,775	34	Georgia	209
4	Malta	1,281	35	Sweden	194
5	Bahamas	1,213	36	Ukraine	193
6	Singapore	1,131	37	Canada	171
7	Russia	1,130	38	Korea, North	171
8	Antigua & Barbuda	1,059	39	Spain	167
9	Hong Kong	1,009	40	Comoros	144
10	Indonesia	965	41	France	141
11	Marshall Islands	902	42	Netherlands Antilles	138
13	Greece	824	43	Brazil	135
14	Korea, South	738	44	Bermuda	133
15	Norway	715	45	Iran	131
16	Japan	676	46	Honduras	126
17	Italy	604	47	Cayman Islands	124
19	Saint Vincent & Grenadines	582	48	Portugal	117
20	Netherlands	566	49	Sierra Leone	113
21	Turkey	565	50	Saint Kitts and Nevis	104
22	India	477	51	Taiwan	102
23	United Kingdom	474	52	Syria	96
24	United States	446	53	Finland	92
25	Thailand	405	54	Azerbaijan	86
26	Philippines	383	55	Egypt	77
27	Germany	382	56	Croatia	75
28	Vietnam	314	57	Tuvalu	74
29	Malaysia	304	58	Mongolia	73
30	Denmark	299	59	Barbados	71
31	Isle of Man	297	60	Bulgaria	71

Table (1) Top 60 flags based on numbers of merchant vessels on registry > 1000GT

Source: CIA World Factbook. November 2007

The lax procedures no doubt attracted terrorist and criminal groups to benefit the cover given to their identity under legitimate umbrella and enjoy anonymity as long as they keep paying the required registration fees and tonnage tax. In the other hand, through anonymous ownership,

passive investors limit their liabilities to the amount of their investments and for this purpose investors were encouraged to invest in the maritime industry. Anonymity provides investors with limited liabilities, and any increase in their liability will be opposed by a rise in the costs within the maritime industry through increasing the insurance costs, operational costs and the legal expenses. The rise in costs will be reflected on the consumer and they will bear the brunt of the rise of liability and that would have a negative impact on the shipping industry and the global economy as a whole, where 90% of the world trade is being carried by ships. Therefore, the idea behind not taking a severe action against the open registry anonymity option has an economical background that makes the hand of the international maritime community tied up despite the security threats. Besides, that it is not yet proven that requiring disclosure could prevent terrorist and criminal organizations from funding their acts. The terrorists in such open registry system have plenty of choice to fund their activities and use the ship for terrorist purposes. Moreover it becomes even difficult to detect potential security risks and terrorist groups under this system, they can easily own fleets and benefit the cover given to their identity as long as they keep paying the required registration fees and tonnage tax (Tina & Ellen, n.d.). So, it is not wise to have rules and regulations that might lead investments to be minimized or the costs to be raised for one single option given to investors to encourage investments in the maritime sector.

After September 11th new security regulations were put in place which added financial burden on ship owners which was not actually opposed because of the understanding to secure shipping and to protect investments. Ship owners agreed on the new security measures as it will improve maritime security and assist in preventing vessels from being used in maritime attacks or in unlawful acts. Unlike the new security measures, the requiring disclosure of ship owners would not prevent funding the terrorist and criminal organizations or even identify them because they will not place their names in any records. Moreover the costs to investigate the destination of funds of all these ship-owners records will be extremely costly to any security agency with little to be gained. Requiring transparency will negatively affect investors and yet terrorist will still not be detected, investigations should be conducted through the use of international cooperation between governments' intelligence to share information to track and seize funds transfer worldwide. The situation is a serious security breach and threatens the maritime security in a way that could lead to unbearable consequences and could not be confined by political boundaries (Tina & Ellen, n.d.).

The continuous failure of open registry states to meet their responsibilities and to discharge their duties under international laws raises questions about international maritime standards goals as well as actions required for the integrity of the current system for registering ships. (Gianni, 2008).

5-Conclusion & Recommendation

As seaborne trade increased internationally, the number of ships started to increase as well, and the use of open registry flag by ship owners found to be preferable. The continuous failure of open registry states to meet their responsibilities and to discharge their duties under international laws raises questions about international maritime standards goals as well as actions required for the integrity of the current system for registering ships. The lack of the genuine link plays role in posing the maritime community to various threats and requires strict compliance to activate UNCLOS requirements and further control over this aspect. Also the fact that the maritime legal regime created by UNCLOS does not apply to non-state actors, such as cargo owners and ship owners must be revised as their contribution to the security breach is undeniable.

The Open registry system advantages regarding the lax registration policies, not requiring the disclosure of beneficial ownership and the anonymity is a crucial security aspect and need to be dealt with by the international community in legal framework and rules. Allowing of corporations to be registered as beneficial owner in open registry system must be revised as it facilitates identity cover to ship owner in a way that threatens the maritime security directly. The corporate mechanisms allow terrorist groups and other crime organizations easily fund their illegal or terrorist activities beside they can legally possess their own fleets. Moreover the anonymity option given by the open registry flag to ship owners makes it more difficult to prosecute them if the ship is being stopped for illegal activities. In other hand, because of the opaque shipping company and vessel owners, with the lack of the genuine link could pushshipping crews to get involved in illegal acts and pose the maritime security to high risks.

The international maritime sector should consider the economic benefit behind the anonymity option in parallel with the security needs, and to target the ship operators rather than beneficial owners who might have no involvement to the operation of the ships they own.

References & Bibliography

- 1- Cohen, S. S. (2006) Boom Boxes: Containers and Terrorism, Protecting the Nation's Seaports: Balancing Security and Cost, edited by Jon D. Haveman and Howard J. Shatz.
- 2- Ermal, X., & Krisafi, K. (2013). International implications concerning the legal regime and policy of ship registration, *Analele Universitatii Maritime Constanta*, 14(19), 323-330 Retrieved September 30, 2015, from Academic Search Complete
- 3- Fox B., Jr. (n.d.). [Vessel Ownership and Terrorism: Requiring Disclosure of Beneficial Ownership Is Not the Answer]. Retrieved September 30, 2015, from <http://heinonline.org/>
- 4- Galley, Michael. (2013). flagging interest: Ship Registration, Owner Anonymity and Sub-standard Shipping. *Mountbatten Journal of Legal Studies*, 2013, 4(1/2), pp.87-109
- 5- Galley, Michael. (2014). flagging interest: Ship Registration, Owner Anonymity and Sub-standard Shipping. *Shipbreaking: Hazards & Liabilities*, 99. Retrieved September 30, 2015, from Edb.
- 6- Gianni, M. (2008). REAL AND PRESENT DANGER. Flag state failure and maritime security and safety. Retrieved September 25, 2015, from <http://assets.wwf.no/>
- 7- Institute of Shipping Economics and Logistics (ISL), (2012). Shipping statistics and market review. Volume 56 no.7, published by universitaetsallee 11-13, 28359 Bremen, Germany
- 8- OECD, (2003). Security in Maritime Transport: Risk Factors and Economic Impact. Retrieved September 30, 2015, from <http://www.oecd.org/newsroom/4375896.pdf>.
- 9- Sharife, K. (2010). Flying a Questionable Flag, *World Policy Journal*, 27(4), 111. Retrieved September 30, 2015, from Edb.
- 10- Tina S. & ELLEN T. (n.d.). FLAGS OF INCONVENIENCE: FREEDOM AND INSECURITY ON THE HIGH SEAS. Retrieved September 26, 2015, from <https://www.law.upenn.edu/>
- 11- United Nations Convention of The Law Of Seas (UNCLOS), 1982 (1982, December 10). Retrieved September 25, 2015, from <http://assets.wwf.no/>