

**IMLI/WMU SYMPOSIUM
ON FLAG STATE RESPONSIBILITIES AND THE FUTURE OF ARTICLE 91 OF THE
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA
CO-HOSTED BY IMO AND ITLOS**

IMO Headquarters, Thursday, 5 March 2020

Flag State Responsibilities in Enforcing UN Sanctions

Malta would like to take this opportunity to thank the IMO and ITLOS for co-hosting this initiative which we consider to be dealing with issues of paramount importance.

The main purpose of my intervention is to propose an idea which I feel will contribute to efforts already in place. It is aimed at strengthening international maritime law regulating the combatting of illicit activities in the maritime industry, including, but not limited to, breaches of UN sanctions.

Criminal networks around the world, including terrorist groups, engage in illicit activities by exploiting every weakness in the exercise of jurisdiction. This also applies to illicit activities which occurs on the high seas. In fact, here the opportunities could be even more plentiful in view of the limits of possible oversight and enforcement mechanisms which can be effectively exercised. Indeed, as the Executive Director of the United Nations Office on Drugs and Crime (UNODC) has significantly pointed out, high seas crimes are becoming increasingly sophisticated, more difficult to detect, and pose a serious threat to international peace and security.¹

One important area of such illicit activity is UN sanctions circumvention. This is difficult to combat effectively due to gaps and weaknesses in existing international rules and national legislation. The problem is particularly serious on the high seas due to the inadequate enforcement jurisdiction by certain flag states. As an example, we witness the exploitation of weak ship registries which remain an attractive means to facilitate sanctions evasion.

We take positive note of published research highlighting existing gaps in international maritime law which facilitate sanctions circumvention. To mention but a few of these circumvention methods, we can note: the lack of standardisation on flag registration; the lack of audits to ensure that States are not flagging problematic vessels or complying with other aspects of UN sanctions; or the lack of requirements in current regulations about the identity of the ultimate beneficial owners of assets, including vessels. Another area that requires further consideration are the lack of proper vessel tracking practices which could

¹ <https://www.un.org/press/en/2019/sc13691.doc.htm>

fundamentally aid sanctions implementation. One measure that could be implemented is the requirement on ship masters to transmit signals more frequently when their vessels are in areas known for ship-to-ship transfers, or when approaching sanctioned countries' ports or vessels.

Whilst under the UN Charter, Security Council sanctions may require that flag States refuse to provide flag services to vessels subject to sanctions, such vessels are nonetheless successful in obtaining flag services. In this respect, mechanisms for the full implementation of UN sanctions requirements are either too weak or inexistent.

As has been reported, there are instances where flag registries do not have adequate processes and systems to carry out due diligence for potential sanctions issues. Accordingly, and in this context, compliance with the requirements of UN Security Council Resolutions leaves much to be desired.

Allow me to briefly explain Malta's special interest in maritime sanctions compliance. The geographical position of my country is at the cross-roads of the main Mediterranean shipping routes. It is also close to a relatively shallow and extensive area adjacent to our territorial sea, called Hurds Bank, where ships may anchor and carry out activities such as ship to ship transfer of illicit goods, commodities etc whilst on the high seas.

The proximity of these illicit activities on the high seas may give the false impression that the responsibility is on Malta to monitor very closely what is going on. Let me be clear. I am not saying that every activity that takes place on the Hurds Bank is illegal. Far from it, but due to its proximity to our territory, and being the only place in the Mediterranean having such particular characteristics, we have a national interest to keep a close watch on what is occurring. In this respect, we seek to cooperate in this effort with states and international organisations. This reflects our determination in ensuring, in accordance with national and international law, more effective maritime sanctions compliance.

We are satisfied with our effort and our cooperation with states and international partners which has often resulted in the de-flagging of problematic vessels from our Ship Register. Allow me to mention the fact that the Malta Ship Registrar General is himself a full member of our national Sanctions Monitoring Board. This allows an effective and rapid sharing of information which has secured a number of achievements.

Indeed, our efforts to ensure strict sanctions adherence has led the Sanctions Monitoring Board to take steps to de-flag a number of vessels which were suspected of involvement in smuggling activities relating to the misappropriation of natural resources. A significantly high number of vessels were also de-flagged to ensure the strict adherence to a sanctions' regime. We have also de-flagged vessels due to suspected breaches of UN sanctions and our cooperation resulted in enforcement action being taken against persons based on their criminal intent. To this effect, it is important to highlight that the Maltese Merchant Shipping Act provides a robust mechanism that facilitates this process.

It is in this context that we feel that, as ship registries, we have an opportunity to come together and engage with one another with the aim of even more information sharing. Although there is currently no legal requirement for member states to share information with one another when action is taken against a vessel or company as a result of sanctions enforcement in general, vessels that have been de-flagged for the violation, or even suspected violation of sanctions might be easily re-flagged in another jurisdiction if the reason for the de-flagging is not known, and this to the detriment of the Flag State and their relevant ship registry.

Malta believes that information sharing remains crucial to addressing illicit behaviour by vessels operating in the Central Mediterranean. It is also for this reason that, thanks to our initiative with foreign partners, we have been at the forefront of efforts to boost information sharing and networking with Mediterranean partners. Malta wants to further develop this outreach on a global basis as this will contribute to the maintenance of international peace and security.

We believe that the creation of a platform within the auspices of the International Maritime Organisation for the sharing of information and the establishment of common standard practises for registry compliance would assist us in our quest to achieve shared standards for compliance and due diligence. The principal aim is that of preventing ship registries from re-flagging problematic ships involved in sanctions breaches. We need to share information with one another of actions we have taken and why. In that way we can all make informed decisions when it comes to the flagging or re-flagging of a vessel, in particular where the ultimate beneficial owner or operator may not be known. We look forward to the prospect of the creation of a single common database of vessels involved in illicit activity to which all interested States would have access and contribute to.

Addressing this gap would make the evasion of sanctions more difficult by reducing information asymmetry between States. The timely sharing of information between shipping registries will halt registry shopping and re-flagging by owners and managers of ships involved in illicit activities. Registries, through this forum, will improve the effectiveness of tracking sanctioned vessels and prevent them from joining respective registries by concealing their histories.

Malta deems this to be a key initiative in order to render more effective maritime sanctions compliance and to strengthen maritime security whilst simultaneously addressing the gaps which exist in the field thus strengthening maritime sanctions compliance.

Going forward, I am pleased to announce that Malta intends as a follow up to this symposium to host an open ended international workshop in partnership with other flag states and international organisations to discuss tangible ways of enhancing the exchange of information between flag States, including the deregistering or denial of registration of a vessel for engaging in sanctionable activity.

We look forward to working together with all of you to realize this goal which we fundamentally believe is of mutual interest.

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