Addressing ship reflagging to avoid sanctions

Reflagging to a flag of convenience is a practice whereby a ship-owner registers their ships in a country with relatively light controls or low standards, for instance in the area of environmental or employment law. While this is legal in principle, it is often combined with illegal practices, including the circumvention of sanctions. The International Maritime Organization (IMO) and the EU are trying to tackle abusive reflagging.

Background

The registration of ships (flagging) is key when it comes to safety and respect for international rules. Ships are therefore registered in a particular state – the flag state. The United Nations Convention on the Law of the Sea (UNCLOS) includes two important articles on ship registration: Articles 91 and 94. Under Article 91, while each flag state fixes the conditions for registering ships, there must be a genuine link between the ship and the flag state. According to Article 94, the flag state must exercise its jurisdiction and control over ships flying its flag. The European Commission is currently reviewing its Directive on Flag State Control to bring it into line with the rules of the UN International Maritime Organization (IMO).

Responsibility for monitoring ships’ compliance with international standards on safety, pollution prevention and on-board living and working conditions lies primarily with the flag state, which must guarantee the completeness and efficiency of inspections and surveys undertaken to issue the relevant certificates. However, as there is currently no binding international framework to regulate the registration process, each country sets its own laws and regulations. Weak oversight by certain flag states, intentional or not, often incentivises companies to register their ships in such countries. As there is no agreed understanding on what constitutes a ‘genuine link’, some countries use ‘open registers’ (see box).

Open registers are national registry systems that allow foreign vessel-owners to register their ships without having a genuine link with the country. When national flags are used for the purpose of avoiding taxes, reducing labour costs, or circumventing conservation measures, they are referred to as flags of convenience.

The UN Conference on Trade and Development (UNCTAD) provides information on flag states and vessel ownership. The leading flag states are the small countries of Panama, Liberia and the Marshall Islands, accounting together for more than 40% of registered cargo carriage capacity (see graphic). Malta is the number one EU flag state, with a world market share of 5%. Major ship-owners make use of these flag state registers. Greece is the largest ship-owning economy in the world and two thirds of its cargo capacity is registered in Liberia, the Marshall Islands and Malta. About half of all ships owned by Japanese entities are registered in Panama.

EU Member States are expected to review a white, grey or black list of flag states, in line with the EU Port State Control Directive and the Paris Memorandum of Understanding on Port State Control (Paris MoU). This list is updated on a yearly basis. Of the current 40 white flags, 19 are European. The seven leading flag states (shown on the graphic) are all white. Any ship found not to be in compliance can be banned from a port. A transfer of flag does not revoke or shorten a ban. The IMO has taken a number of measures to address (fraudulent) registration. These include ship identification numbers (unchanged at reflagging), a resolution to prevent the registration of phantom ships (ships registered on the...
basis of incorrect information), and a recommended procedure for the transfer of ships between flag states. The IMO also worked together with the International Labour Organization (ILO) to set up a database of abandoned vessels. Another tool is the IMO Member State audit scheme, under which the IMO evaluates the implementation of IMO rules, including on flag state responsibilities. The subject of fraudulent registries is dealt with within the IMO’s Sub-Committee on Implementation of IMO Instruments.

Circumvention of measures and sanctions
Since Russia began its war on Ukraine, the EU has adopted 10 packages of sanctions against Russia. EU sanctions are adopted by the Council, after which implementation is the primary responsibility of Member States. With regard to maritime transport, the key sanctions on Russia are the entry ban on Russian-flagged vessels to EU ports (with effect from 16 April 2022), and the ban on imports from Russia to the EU of crude oil (from December 2022) and refined petroleum products (from February 2023).

While flags of convenience and reflagging have been around for decades, more recently, ship-owners have been using these practices to evade sanctions. Russian shipping companies are for instance using obscure ownership structures and (illegal) reflagging tactics, often in conjunction with other practices, such as ship-to-ship transfers and even ‘going dark’ – disabling automatic identification systems (AIS). Although there is little formal data on these practices, such cases have been reported in the media.

Early in the war, there were reports of an abnormally high number of ships dropping their Russian flags and re-registering with countries such as the Marshall Islands. More recently, in relation to the oil ban, tankers in Iran’s ‘ghost fleet’ have switched to carrying Russian oil, while there have also been increased ship-to-ship transfers and cases of AIS being disabled by Russian-affiliated oil tankers. Russia’s state-owned Sovcomflot (Russia’s largest shipping company) is believed to have transferred its fleet to a Dubai-based shipping company. This company is purportedly owned by ‘United Arab Emirates and Russian nationals’ and operates a fleet of ‘Liberian and Cypriot-flagged’ ships. It is becoming a major carrier of Russian oil exports. Lloyd’s Register, a global services company, specialising in maritime industry engineering and technology, monitors regulatory, operational and flag state changes, now also in relation to the war on Ukraine.

EU action
The EU is a strong defender of a global rules-based framework in ocean governance. In its updated international ocean governance agenda, the European Commission announced its intention to step up its efforts to tackle the problems associated with open registers. This will involve discussing flag states’ responsibilities in bilateral dialogues, in the areas of fisheries, maritime safety, environment and labour rights in particular. The Commission has also announced a study to explore the underlying business models and is intending to make development aid conditional on the implementation of international conventions (e.g. UNCLOS and IMO regulations). In fisheries, the EU has a set of dedicated regulations in place. Regulation 2017/2403 on the sustainable management of external fishing fleets addressed the problem of abusive reflagging. The primary objective of the IUU Regulation (on illegal, unreported and unregulated fishing) is to prevent the import of IUU fisheries products. One of its tools is a carding system for non-cooperating countries. For example, the Commission recently issued a red card to Cameroon, in part for registering vessels operating outside its waters without controlling them.

In its resolution on ocean governance and its first-reading position on the proposal for a regulation on sustainable maritime fuels, both adopted in October 2022, the European Parliament highlights the issue of reflagging in IUU fishing and maritime transport respectively. Parliament is calling on the Commission to promote transparency on the beneficial ownership of corporate structures and on the EU, more broadly, to strengthen anti-corruption capacity-building. A Commission proposal on the revision of the Directives for Flag State Control and Port State Control – part of the maritime security package – is expected this spring. On the specific issue of circumventing EU sanctions on Russian oil imports, the Commission replied to a Parliamentary question that primary responsibility for enforcing sanctions lies with Member States. However, the Commission, with the Member State concerned, monitors all credible allegations of infringement closely. To this end, an EU whistle-blower tool helps identify potential breaches. The Commission can also launch infringement procedures against any Member State that fails to comply with its obligations.