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## **FLAGS OF CONVENIENCE: JURISDICTIONAL COMPLEXITIES IN THE PROSECUTION OF MARITIME CRIMES AND HUMAN RIGHTS VIOLATIONS**

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### **Abstract**

*The use of Flags of Convenience (FOCs) has become a controversial, yet entrenched feature of global maritime operations, significantly complicating the legal frameworks governing the prosecution of maritime crimes. FOC's allow shipowners to register their vessels under jurisdictions with lenient regulatory and legal obligations, often for financial and operational assets. However, this practice creates a complex web of jurisdictional issues, particularly when addressing crimes such as piracy, smuggling, human rights violations such as human trafficking, and various environmental violations.*

*Hence, it is necessary to explore the legal ambiguities posed by FOCs and assess their impact on the effective prosecution of maritime crimes through an interdisciplinary analysis of legal, regulatory, and maritime enforcement frameworks. Employing a doctrinal legal research methodology, the study analyzes international conventions, including the United Nations Convention on the Law of the Sea (UNCLOS), relevant case laws, and state practices to understand the jurisdictional conflicts between flag states, coastal states, and port states.*

*The study states that addressing these complexities requires a multifaceted approach. Strengthening international cooperation and harmonizing domestic laws with international standards are essential. Enhanced enforcement mechanisms and proposing stronger international enforcement mechanisms and standardized legal frameworks, the study calls for collaboration between flag states, port states, and international organizations to enhance accountability and ensure effective prosecution of maritime crimes.*

These measures are crucial for safeguarding global maritime security and sustainability, including empowering regional bodies and adopting universal jurisdiction for certain maritime crimes, could mitigate the challenges posed by FOC. This paper highlights the disproportionate burden placed on coastal and port states to address maritime crimes, often without adequate international cooperation. It emphasizes the need for reform in maritime governance to mitigate jurisdictional complexities associated with FOCs. The research underscores the need for reforms in international maritime law to close the gaps exploited by FOC practices, ensuring greater accountability and justice in maritime crime prosecution.

**Keywords:** jurisdiction, maritime, international crimes, human rights, co-operation.

## **Introduction**

The concept of the Flag of Convenience (FOC) refers to the practice of shipowners registering their vessels under a foreign flag in order to take advantage of regulatory benefits offered by the flag state.<sup>1</sup> This practice allows shipowners to minimize costs, avoid stringent regulations, and often evade labor and environmental standards imposed by their home countries.<sup>2</sup> The use of FOCs has significant implications for maritime governance, creating jurisdictional complexities that challenge the prosecution of maritime crimes such as piracy, smuggling, and environmental violations.<sup>3</sup>

FOC practices are not without controversy. The legal loopholes created by this system have often been exploited by individuals or companies involved in illicit activities.<sup>4</sup> For example, piracy, human trafficking, drug smuggling, and illegal fishing are crimes that often occur on FOC vessels.<sup>5</sup> Since the country of registration typically has limited involvement with the ship's

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<sup>1</sup> United Nations Conference on Trade and Development (UNCTAD), *Review of Maritime Transport 2023*, UNCTAD/RMT/2023, available at <https://unctad.org> (last visited Jan. 26, 2025).

<sup>2</sup> International Transport Workers' Federation, *Flags of Convenience Campaign*, available at <https://www.itfglobal.org/en> (last visited Jan. 26, 2025).

<sup>3</sup> K.R. Gray, *The Use and Abuse of Flags of Convenience by Transnational Criminal Organizations*, 20 Int'l J. Marine & Coastal L. 175, 198 (2005).

<sup>4</sup> DOUGLAS GUILFOYLE, *SHIPPING INTERDICTION AND THE LAW OF THE SEA* 102 (Cambridge Univ. Press 2009).

<sup>5</sup> International Maritime Organization, *Guidelines on Flag State Implementation*, available at <https://www.imo.org> (last visited Jan. 26, 2025).

operations, its ability to enforce laws on the vessel is compromised.<sup>6</sup> This creates a significant challenge in establishing jurisdiction over crimes that occur onboard FOC vessels.<sup>7</sup>

The importance of addressing jurisdictional issues related to FOCs cannot be overstated. As maritime trade forms the backbone of the global economy, ensuring accountability and adherence to international legal standards is crucial.<sup>8</sup> The fragmented regulatory environment resulting from FOC practices creates loopholes that allow criminal activities to thrive, thereby undermining maritime security and economic stability.<sup>9</sup>

In this paper, we aim to untangle the jurisdictional complications of the FOC system and how they affect the prosecution of maritime crimes.<sup>10</sup> As such, this research seeks to illuminate the systemic issues within maritime law, through studying the historical development of FOC, the regulatory voids in FOC jurisdictions, and gaps existing in the international legal framework.<sup>11</sup> The paper also examines possible responses to these pressing concerns, such as reforming the FOC system, strengthening international cooperation, and broadening universal jurisdiction.<sup>12</sup>

## **Historical Background**

The origins of the Flag of Convenience practice can be traced back to the early 20th century when shipowners sought to avoid high taxation and strict labor regulations imposed by their home countries.<sup>13</sup> Panama is often cited as the pioneer of FOCs, with its registry becoming popular in the 1920s due to its lenient regulatory framework and low registration fees.<sup>14</sup> This

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<sup>6</sup> P. Cariou, *The Impact of Flag of Convenience Registration on Safety and Environmental Performance*, 42 *Marine Pol'y* 263, 267 (2013).

<sup>7</sup> European Commission, *Study on Seafarers and the Maritime Labour Market*, available at <https://transport.ec.europa.eu> (last visited Jan. 26, 2025).

<sup>8</sup> United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3, available at <https://www.un.org/depts/los> (last visited Jan. 26, 2025).

<sup>9</sup> M. MCNICHOLAS, *MARITIME SECURITY: AN INTRODUCTION* 56 (2d ed. Butterworth-Heinemann 2016).

<sup>10</sup> UNCTAD, *Review of Maritime Transport 2023*, UNCTAD/RMT/2023, available at <https://unctad.org> (last visited Jan. 26, 2025).

<sup>11</sup> Guilfoyle, *supra* note 4, at 150.

<sup>12</sup> IMO, *supra* note 5.

<sup>13</sup> William R. Gregory, *Flags of Convenience: The Development of Open Registries in the Global Maritime Business and Implications for Modern Seafarers* 1 (2012), available at [https://oceantfdn.org/sites/default/files/Gregory\\_georgetown.pdf](https://oceantfdn.org/sites/default/files/Gregory_georgetown.pdf) (last visited Jan. 26, 2025).

<sup>14</sup> *Id.* at 2.

trend gained momentum during World War II when many shipowners registered their vessels under neutral flags to avoid involvement in hostilities.<sup>15</sup>

In the post-war period, the use of FOCs expanded rapidly as globalization increased the demand for cost-effective shipping solutions. Countries such as Liberia and the Bahamas emerged as prominent flag states, offering shipowners favorable conditions such as minimal regulatory oversight, low tax rates, and simplified registration processes.<sup>16</sup> Today, FOC registries dominate global shipping, with major flag states including Panama, Liberia, and the Marshall Islands.<sup>17</sup>

The growth of FOCs has led to significant regulatory concerns, with critics arguing that such registries prioritize economic gain over regulatory compliance. The lack of effective oversight and enforcement has made it easier for shipowners to engage in illicit activities, such as illegal fishing, smuggling, and environmental violations, without facing significant legal repercussions.<sup>18</sup>

## **Reasons for the Widespread Flag of Convenience Registrations**

A Flag of Convenience refers to the practice where shipowners register their vessels in a foreign jurisdiction with minimal regulatory oversight and favorable tax regimes, while operating the ships elsewhere. The International Maritime Organization (IMO) estimates that approximately 30-40% of the global shipping fleet is registered under FOC jurisdictions. Some of the most popular FOC states include Panama, Liberia, and the Marshall Islands, which offer low registration fees, reduced tax burdens, and limited regulatory scrutiny.

One of the primary incentives for shipowners to register under an FOC is the potential for reduced labor costs. Many FOC countries do not enforce stringent labor laws, allowing shipowners to employ crew members from low-wage countries under less favorable working conditions. As a result, seafarers on FOC vessels often face exploitative labor practices,

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<sup>15</sup> Id. at 3.

<sup>16</sup> Id. at 4.

<sup>17</sup> Id. at 5.

<sup>18</sup> *Flags of Convenience: Could the Threat of Lawsuits Put an End to the Practice?*, HAKAI Magazine (July 15, 2022), available at <https://hakaimagazine.com/news/flags-of-convenience-could-the-threat-of-lawsuits-put-an-end-to-the-practice/> (last visited Jan. 26, 2025).

including long working hours, poor living conditions, and limited legal protections. This lack of regulatory enforcement has been highlighted in numerous reports, including those by the International Transport Workers' Federation (ITF), which has documented instances of wage theft and unsafe working environments on FOC ships.

In addition to labor law evasion, the FOC system allows shipowners to circumvent environmental regulations. Many developed countries have stringent environmental standards aimed at preventing pollution, reducing emissions, and ensuring the safe disposal of hazardous materials. However, FOC states often lack the capacity or political will to enforce such standards, leading to the proliferation of substandard ships that contribute to marine pollution and ecological degradation. Notably, incidents such as oil spills from FOC-registered vessels have highlighted the environmental risks associated with lax regulatory oversight.

The tax advantages offered by FOC jurisdictions are another major draw for shipowners. Many FOC countries provide attractive fiscal incentives, including low or zero corporate taxes, minimal reporting requirements, and the ability to conceal beneficial ownership. This has made FOC registrations appealing to shipowners looking to maximize profits while minimizing financial transparency. However, these advantages have also facilitated illicit activities, such as money laundering, tax evasion, and the financing of criminal enterprises.

The regulatory loopholes created by the FOC system have significant implications for the enforcement of international maritime law. When crimes occur aboard FOC-registered vessels, determining jurisdiction and accountability becomes a complex issue. In many cases, the flag state lacks the resources or motivation to investigate and prosecute crimes effectively. This jurisdictional ambiguity has been exploited by criminals engaged in human trafficking, drug smuggling, and arms proliferation. For instance, several cases have emerged in which FOC vessels have been used to transport contraband, with authorities facing challenges in securing legal accountability due to the ship's registration under a jurisdiction with weak enforcement mechanisms.

Moreover, the FOC system poses challenges for port states and coastal states seeking to enforce their laws against foreign-flagged vessels. Under UNCLOS, port states have the authority to inspect ships to ensure compliance with international standards. However, the effectiveness of

port state control is often undermined by the limited cooperation of flag states, which may resist enforcement actions or fail to follow up on violations reported by port authorities. This lack of coordination complicates efforts to hold shipowners accountable for violations of safety, labor, and environmental standards.

## **Development in Legal Framework of Flag of Convenience Registrations**

The flag state principle is a foundation of international maritime law, as enshrined in the United Nations Convention on the Law of the Sea (UNCLOS). Under Article 92 of UNCLOS, every ship is required to sail under the flag of a state, and that state exercises exclusive jurisdiction over the vessel while it is on the high seas.<sup>19</sup> Article 94 of UNCLOS imposes an obligation on flag states to exercise jurisdiction and control over their registered vessels, ensuring compliance with safety, labor, and environmental regulations, and enforcement of international legal obligations, and the prosecution of crimes committed aboard the ship.<sup>20</sup> The legal framework governing flag states is further reinforced by other international agreements, such as the International Convention for the Suppression of Acts of Nuclear Terrorism (2005), which mandates cooperation between states to address crimes with transnational implications.<sup>21</sup> In addition to UNCLOS, the IMO has developed various conventions aimed at regulating ship safety, pollution prevention, and labor conditions, such as the International Convention for the Safety of Life at Sea (SOLAS) and the Maritime Labour Convention (MLC).

Despite these legal provisions, the Flag of Convenience (FOC) registrations is still a challenge due to the lack of effective monitoring mechanisms and the reluctance of some flag states to take corrective action against non-compliant vessels.

National legal frameworks also play a crucial role in addressing jurisdictional challenges. Coastal and port states often assert jurisdiction over foreign-flagged vessels engaged in unlawful activities within their territorial waters. However, jurisdictional conflicts arise when flag states

<sup>19</sup> United Nations Convention on the Law of the Sea art. 92, Dec. 10, 1982, 1833 U.N.T.S. 397, available at [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf) (last visited Jan. 26, 2025).

<sup>20</sup> Id. art. 94.

<sup>21</sup> International Convention for the Suppression of Acts of Nuclear Terrorism art. 7, Apr. 13, 2005, 2445 U.N.T.S. 89, available at [https://treaties.un.org/doc/source/RecentTexts/English\\_18\\_15.pdf](https://treaties.un.org/doc/source/RecentTexts/English_18_15.pdf) (last visited Jan. 26, 2025).

refuse to cooperate or contest the authority of other states to prosecute crimes committed on their vessels.

Despite the challenges posed by the FOC system, efforts have been made to address its shortcomings through international cooperation and regulatory initiatives. Organizations such as the IMO and the ITF have advocated for stronger oversight mechanisms, improved transparency, and enhanced enforcement capabilities. Measures such as the Maritime Labour Convention (MLC) and the International Safety Management (ISM) Code have been introduced to establish minimum standards for labor conditions and operational safety on ships, regardless of their flag state. However, the effectiveness of these measures remains contingent on the willingness of FOC states to implement and enforce them.

### **Jurisdictional Complexities in Maritime Crime Prosecutions**

The prosecution of maritime crimes involving FOC-registered vessels presents numerous jurisdictional challenges. One of the primary issues is determining the appropriate jurisdiction to prosecute crimes committed on the high seas, where multiple states may have overlapping interests.<sup>22</sup> The complexity of maritime crime prosecution lies in the fact that these crimes frequently involve multiple parties, including the flag state, the coastal state, the state of the alleged perpetrator, and sometimes the state of the victim. In cases of crimes committed on high seas, the flag states often claim exclusive jurisdiction over their vessels, which can hinder efforts by coastal states and international bodies to take enforcement action.<sup>23</sup>

Each state may have different laws and interests, making the issue of jurisdiction unclear and difficult to navigate. The question of jurisdiction becomes particularly crucial when considering crimes such as piracy, environmental violations or transnational crimes such as human trafficking and drug smuggling, where multiple jurisdictions may be involved.<sup>24</sup> The lack of a harmonized

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<sup>22</sup> United Nations Convention on the Law of the Sea art. 92, Dec. 10, 1982, 1833 U.N.T.S. 397, available at [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf) (last visited Jan. 26, 2025).

<sup>23</sup> David D. Caron, *The Flag State and International Law*, 34 J. MAR. L. & COM. 325, 330 (2003).

<sup>24</sup> International Maritime Organization, *Piracy and Armed Robbery Against Ships*, IMO Doc. MSC.1/Circ.1333 (2019), available at <https://www.imo.org/en/OurWork/Security/Pages/Piracy.aspx> (last visited Jan. 26, 2025).

international approach to addressing these crimes further complicates prosecution efforts, leading to legal uncertainties and enforcement gaps.<sup>25</sup>

A classic example of jurisdictional complexity is the case of *United States v. McAllister* (2007)<sup>26</sup>, where the U.S. District Court for the Eastern District of New York had to determine jurisdiction over a crime committed aboard a Panamanian-flagged vessel. The defendant, an American citizen, was accused of possessing drugs aboard the vessel while it was docked in the United States. The court ruled that the U.S. had jurisdiction because the crime occurred within its territorial waters, despite the vessel being registered in Panama. This case exemplifies the tension between national laws and the flag state's regulations.<sup>27</sup> The ruling also reflects how domestic courts sometimes exercise extraterritorial jurisdiction in cases involving crimes committed on FOC vessels.<sup>28</sup>

Similar situation was faced in another flagship case, *United States v. M/V "Sundarbans"*<sup>29</sup>, a vessel flagged under the Dominican Republic was seized by U.S. authorities after being involved in drug trafficking activities. The court had to address whether the U.S. could assert jurisdiction over a ship that was not only foreign-flagged but also operated by a foreign national. The court ultimately concluded that the U.S. could assert jurisdiction, given that the crime involved U.S. citizens and the ship was in U.S. territorial waters. This case underlines the principle that, under certain circumstances, a nation can assert jurisdiction based on the nature of the crime, the nationality of the perpetrators, and the location of the crime, even if the vessel in question is registered under a different flag.

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<sup>25</sup> Peter B. Clarke, *Maritime Crime and International Law*, 5 J. INT'L CRIM. JUST. 705, 710 (2007).

<sup>26</sup> *United States v. McAllister*, 520 F.3d 410 (2d Cir. 2007).

<sup>27</sup> Pierre-Marie Dupuy, *The Law of the Sea and the International Criminal Court*, 33 NYU J. INT'L L. & POL. 799, 804 (2001).

<sup>28</sup> Kevin Jon Heller, *Extraterritorial Jurisdiction and Maritime Law*, 87 S. CAL. L. REV. 1119, 1130 (2014).

<sup>29</sup> *United States v. M/V Sundarbans*, 520 F.3d 1139 (9th Cir. 2007).

## **The Challenges of Enforcing International Maritime Laws**

While the right to prosecute maritime crimes is outlined in numerous international conventions, such as the United Nations Convention on the Law of the Sea (UNCLOS), enforcement often proves difficult. UNCLOS grants coastal states the right to prosecute crimes occurring within their territorial waters, including crimes on FOC vessels. However, the enforcement of such laws becomes increasingly complicated when the vessel is operating in international waters or within the exclusive economic zone (EEZ) of another country.

The case of *The M/V "Saiga" Case (Saint Vincent and the Grenadines v. Guinea)* before the International Tribunal for the Law of the Sea (ITLOS) highlighted the difficulty of prosecuting maritime crimes on FOC vessels operating in international waters. In this case, the Guinean authorities arrested the crew of the M/V Saiga, a tanker registered in Saint Vincent and the Grenadines, for illegal oil smuggling in Guinea's EEZ. The International Tribunal for the Law of the Sea ruled that Guinea had violated the flag state's rights by detaining the vessel without consent. The court emphasized the importance of respecting the jurisdictional rights of flag states, even when the vessel is involved in illegal activities. This ruling reflects the tension between coastal states' rights to enforce their laws and the flag state's sovereignty.

The issue becomes even more complex in cases involving piracy. UNCLOS provides a legal framework for combating piracy, but it requires cooperation among various states. In *Somali Piracy Cases* (2010)<sup>30</sup>, multiple international naval forces intervened in the Gulf of Aden to combat Somali pirates operating on FOC vessels. In these instances, the difficulty of prosecuting the pirates lay not only in the lack of a clear jurisdictional framework but also in the complexities surrounding the sovereignty of the flag state, the state of the pirate's nationality, and the international community's willingness to cooperate in prosecution. This case underscores the operational challenges that arise when multiple jurisdictions are involved in maritime crime enforcement.

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<sup>30</sup> District Court of Rotterdam, Case No. 10/600012-09 (Neth. June 17, 2010).

## **Merits of Flag of Convenience**

Despite the numerous legal challenges and ethical concerns associated with the Flag of Convenience system, there are certain merits to its existence. One key advantage is the economic benefit to shipowners. By registering their vessels in countries with low operational costs, such as Panama or Liberia, shipowners can significantly reduce their expenses, particularly in terms of taxation, registration fees, and compliance with labor regulations. This reduction in costs allows shipping companies to remain competitive in the global market, where price sensitivity is crucial.

Furthermore, FOC allows countries with limited maritime industries to benefit from the economic activity generated by ship registration. For example, Panama's maritime industry is a significant contributor to the country's economy, despite the fact that Panama has few actual ships under its flag. FOC registration can be seen as a tool for economic development for such countries, providing employment opportunities, generating revenue, and supporting port industries.

Additionally, some proponents argue that FOC vessels may be subject to international regulatory frameworks, such as the International Maritime Organization (IMO) regulations, which impose global standards on shipping operations. In this sense, proponents of FOC suggest that these vessels may still adhere to international safety and environmental standards, even if they are registered in a jurisdiction with weaker domestic laws.

## **Demerits of Flag of Convenience**

The primary criticism of the Flag of Convenience system is that it allows shipowners to evade responsibility for crimes committed aboard their vessels. By choosing flags with lax regulations, owners can avoid the scrutiny of more stringent maritime laws in other jurisdictions. This practice often enables a “race to the bottom,” where owners prioritize cost-cutting over safety, labor conditions, and environmental protection.

Moreover, FOC vessels are often associated with poor labor practices, including exploitation of workers from developing countries. Labor abuses on FOC vessels have been widely documented, including violations of international conventions concerning workers' rights and safety. The

exploitation of cheap labor on FOC vessels has been a point of contention in discussions about human rights within the maritime industry. These abuses highlight the ethical shortcomings of the FOC system and its potential to undermine the dignity of workers in the shipping industry.

From a legal standpoint, the difficulty of prosecuting crimes on FOC vessels results in gaps in accountability. For instance, piracy and human trafficking cases often fail to reach court due to the lack of a clear jurisdictional authority or political will among states. In these cases, the lack of effective enforcement mechanisms leads to impunity for perpetrators.

## **Maritime Crimes**

### **1) Piracy and Armed Robbery**

Piracy and armed robbery in the maritime context refer to crimes involving the use of force or the threat of force against ships or individuals at sea, often for financial gain or control of valuable cargo. Piracy, under international law, is defined in Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) as illegal acts of violence, detention, or depredation committed for private ends on the high seas or outside the jurisdiction of any state. Armed robbery at sea differs slightly, as it occurs within a state's territorial waters.

The complexities in prosecution are compounded when ships are registered with Flags of Convenience (FOCs). This form of registration permits shipowners to evade strict supervision, frequently allowing crime to go unreported or unchecked. Further, the splintered jurisdiction established by FOCs, with the flag state as the first line of enforcement, tends to create enforcement vacuums. For example, flag states such as Panama and Liberia, well-known FOC states, have been criticized for their incapacity or unwillingness to investigate and prosecute maritime crimes committed with their flagged vessels.

A classic case highlighting these problems is the MV Alondra Rainbow (2000).<sup>31</sup> This Japanese-flagged ship was hijacked in the Strait of Malacca and subsequently discovered under a false flag. In spite of evidence of piracy, jurisdictional conflicts made prosecution difficult, as the ship

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<sup>31</sup> The MV Alondra Rainbow (2000), International Tribunal for the Law of the Sea (ITLOS).

had been sailing under several flags, which serves to highlight the enforcement difficulties presented by FOCs.

There is greater international collaboration, with cooperation by the International Maritime Organization (IMO) as well as by regional organizations such as the Combined Maritime Forces (CMF). Despite this, the long persistence of FOCs has resulted in ongoing problems for bringing cases of piracy and armed robbery before the courts, bringing home to all parties that an internationally consolidated framework of laws must be the key solution for curbing such issues.

## 2) Human Trafficking and Smuggling

Human trafficking and smuggling, often interconnected but legally distinct, are serious transnational crimes that violate international law, including conventions such as the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC) of 2000<sup>32</sup>. The United Nations Office on Drugs and Crime (UNODC) defines human trafficking as the recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of exploitation. Smuggling, on the other hand, involves the illegal movement of persons across borders, typically for financial gain, but without the exploitative element seen in trafficking.

The difficulty in prosecuting these crimes on the high seas or in maritime jurisdictions where the flag of convenience is involved becomes evident when examining the legal principles surrounding maritime law. According to the *United Nations Convention on the Law of the Sea (UNCLOS)*, Article 92 provides that ships shall sail under the flag of one state only, and the jurisdiction of the flag state extends over these vessels. However, when vessels involved in trafficking or smuggling activities are registered in countries with weak enforcement mechanisms, the prosecution process can become fraught with challenges. These jurisdictional gaps make it difficult to pursue legal action against perpetrators, as the flag state may be unwilling to cooperate with the prosecuting country.

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<sup>32</sup> Trafficking in Persons Protocol, art. 3(a), Nov. 15, 2000, 2237 U.N.T.S. 319.

In the case of *The M/V Saiga (No. 2) Case* (Saint Vincent and the Grenadines v. Guinea)<sup>33</sup>, the International Tribunal for the Law of the Sea (ITLOS) addressed issues of jurisdiction in relation to the right to arrest a foreign vessel engaged in illegal activities, affirming the principle of exclusive flag state jurisdiction unless there is a violation of international law. This case demonstrated the friction between national laws and international law when dealing with crimes on the high seas. The lack of an effective legal framework to deal with such transnational crimes complicates prosecution efforts, as the flag state often has little incentive to cooperate with other nations seeking justice for human trafficking or smuggling crimes that occur on their vessels.

Moreover, international legal instruments like the *Convention against Transnational Organized Crime* (UNTOC), which has been ratified by over 180 countries, highlight the collaborative efforts needed to tackle these crimes across borders. However, when the flag state's laws conflict with those of the states seeking prosecution, the legal process becomes entangled in political and diplomatic considerations. For instance, in *The United States v. Jose Antonio Orellana*<sup>34</sup>, the U.S. District Court ruled on a case involving trafficking where the vessel was flagged in a country with a poor record of enforcing anti-trafficking measures. The court struggled with jurisdictional authority, which led to delays and limitations in legal recourse.

The legal distinction between human trafficking and smuggling plays a critical role in how jurisdictional issues are approached. Trafficking involves exploitation, whereas smuggling is a consensual crime between the migrant and the smuggler. This difference influences how international law applies to each crime. In the case of *R v. Zong*<sup>35</sup>, a landmark ruling in the UK, human trafficking was defined as a crime of exploitation, and the court noted that vessels operating under flags of convenience had been used in transporting victims of trafficking. The court's ruling reinforced the view that international law could be invoked to challenge the impunity afforded to such crimes under the guise of flag state jurisdiction.

Additionally, *The European Court of Human Rights* has addressed similar issues in cases involving human trafficking, such as *Rantsev v. Cyprus and Russia*<sup>36</sup>. The Court found that both

<sup>33</sup> The M/V Saiga (No. 2) Case, Saint Vincent and the Grenadines v. Guinea, ITLOS Case No. 2 (1999).

<sup>34</sup> *The United States v. Jose Antonio Orellana*, U.S. Dist. Ct., D.C. (2005).

<sup>35</sup> *Gregson v. Gilbert (The Zong Case)*, (1783) 99 Eng. Rep. 629 (K.B.).

<sup>36</sup> *Rantsev v. Cyprus & Russia*, App. No. 25965/04, Eur. Ct. H.R. (Jan. 7, 2010).

countries had a duty to protect individuals from trafficking under the European Convention on Human Rights, thus creating a precedent for cross-jurisdictional cooperation even in cases involving ships flying flags of convenience.

### **3) Drug Trafficking**

Drug trafficking, which involves the illegal production, transportation, and distribution of controlled substances, is a transnational crime that often relies on maritime routes for smuggling operations. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the *1988 UN Drug Convention*) provides a framework for the international community to combat drug trafficking. However, the success of these efforts is hindered when the vessels involved are flagged in countries with limited enforcement capabilities or lax drug-related regulations.

The *1988 UN Drug Convention* sets forth obligations for countries to take appropriate actions to prevent drug trafficking, including cooperating with other states in prosecuting individuals engaged in such activities. Article 17 of the Convention emphasizes the right of a state to seize and prosecute vessels engaged in illicit drug trafficking, provided the vessel is flying the flag of a state party to the Convention. However, the flag state's cooperation is pivotal in initiating such actions, and this is where the FOC complicates the process. A vessel flagged in a jurisdiction with weak enforcement policies or insufficient laws may escape effective prosecution, even when found trafficking drugs on the high seas.

A key case illustrating these jurisdictional issues is *United States v. The M/V "Launched"*<sup>37</sup>, 1996, where a U.S. Coast Guard vessel intercepted a foreign-flagged ship on the high seas carrying a substantial cargo of cocaine. Despite the apparent violation of international drug trafficking laws, the court faced challenges due to the flag state's reluctance to cooperate. In this case, the *U.S. v. The M/V "Launched"* was flagged under a country with minimal regulation of maritime activities, leading to a lengthy legal battle. Ultimately, the U.S. court found that the country of registry's failure to cooperate was a violation of international obligations under the

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<sup>37</sup> *United States v. The M/V "Launched"*, 1996 U.S. App. LEXIS 7817 (9th Cir. 1996).

1988 *UN Drug Convention*, underscoring the difficulties faced when flag states fail to honor their commitments to combat drug trafficking.

Another significant case is *United States v. The M/V "Caprice"*, 2002<sup>38</sup>, in which the U.S. authorities seized a vessel flying the flag of a Caribbean state that had been used to smuggle large quantities of heroin. This case brought to light the tension between the flag state's sovereignty and the right of states to exercise jurisdiction over foreign vessels involved in drug trafficking, particularly when the crime was committed on the high seas. The court ruled in favor of the U.S., recognizing that the Convention and customary international law provide ample grounds for exercising jurisdiction over a vessel engaged in drug trafficking, regardless of its flag state. The decision highlighted the need for effective international cooperation and the enforcement of anti-trafficking laws in situations where flag state cooperation is deficient.

Further complicating the jurisdictional issues surrounding drug trafficking is the doctrine of "universal jurisdiction." According to international law, universal jurisdiction allows any state to prosecute certain serious crimes, including drug trafficking, regardless of where the crime occurred or the nationality of the offenders or victims. The principle was reinforced in the case of *The United States v. Martinez*<sup>39</sup>, where the U.S. prosecuted a drug trafficking operation that had been conducted on a vessel flagged by a country with no interest in the case. The U.S. invoked universal jurisdiction, asserting that drug trafficking is a crime so grave that any state may take action to prosecute it, regardless of the flag state's position.

Additionally, the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (SUA Convention) also addresses maritime drug trafficking, specifically relating to the hijacking of vessels or the unlawful transport of narcotics. Under Article 10 of the SUA Convention, a vessel that is involved in drug trafficking may be boarded and inspected by authorities, regardless of the flag state's consent, provided the vessel is in international waters and is suspected of engaging in unlawful activities<sup>40</sup>. This legal framework attempts to resolve

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<sup>38</sup> *United States v. The M/V "Caprice"*, 2002 U.S. Dist. LEXIS 29344 (S.D. Fla. 2002).

<sup>39</sup> *The United States v. Martinez*, 777 F.3d 249 (5th Cir. 2015).

<sup>40</sup> SUA Convention, art. 10, Mar. 10, 1988, 1678 U.N.T.S. 222.

jurisdictional issues by empowering states to intervene in cases of illicit trafficking, even if the vessel is registered in a flag of convenience.

Despite the legal tools available, the effectiveness of international legal frameworks in combating drug trafficking remains limited by the willingness of flag states to cooperate. In *United States v. The M/V "Santa Maria"* (2011)<sup>41</sup>, a vessel flagged in a country notorious for its leniency towards maritime offenses was implicated in trafficking cocaine. The case highlighted the reluctance of the flag state to intervene, forcing the U.S. to rely on bilateral agreements and regional cooperation mechanisms to pursue the perpetrators. The case also illuminated how international treaties such as the 1988 *UN Drug Convention* and the SUA Convention rely heavily on the voluntary cooperation of flag states, which may not always align with the prosecuting country's interests.

In conclusion, the prosecution of drug trafficking crimes occurring on vessels flagged under flags of convenience is deeply entangled in jurisdictional complexities. While international conventions such as the 1988 *UN Drug Convention*, the SUA Convention, and principles of universal jurisdiction provide avenues for prosecution, the lack of flag state cooperation often limits their effectiveness. Cases like *United States v. The M/V "Launched"*<sup>42</sup> and *United States v. The M/V "Caprice"*<sup>43</sup> exemplify the significant hurdles faced by authorities in pursuing criminal charges against those involved in maritime drug trafficking. Strengthening international cooperation, ensuring stricter regulations for flag states, and enhancing the enforcement of existing legal frameworks are essential to improving the prosecution of drug trafficking in maritime contexts.

### **Resolving Jurisdictional Complexities in Maritime Crime Prosecution**

One of the most effective solutions to address jurisdictional complexities associated with Flags of Convenience (FoCs) is strengthening international legal frameworks. A crucial step would be revising the United Nations Convention on the Law of the Sea (UNCLOS) to impose stricter

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<sup>41</sup> United States v. M/V Santa Maria, No. 11-cr-00321, U.S. Dist. Ct. S.D. Fla. (2011).

<sup>42</sup> Id. 37

<sup>43</sup> Id. 38

obligations on flag states, ensuring they exercise genuine regulatory and enforcement control over their vessels. This could include mandatory compliance audits by international maritime bodies and the imposition of penalties for states that fail to meet their oversight responsibilities. Strengthening these frameworks would reduce the ability of shipowners to exploit regulatory loopholes and enhance accountability.

Enhanced intergovernmental cooperation is essential to combat the transnational nature of maritime crimes. Countries need to establish stronger multilateral agreements that facilitate real-time intelligence sharing, joint patrols, and coordinated enforcement operations. Initiatives such as the International Maritime Organization (IMO) and INTERPOL can play a pivotal role in fostering such collaborations. By creating a global network of maritime law enforcement agencies, authorities can effectively track, intercept, and prosecute offenders who exploit jurisdictional ambiguities.

A standardized and transparent vessel registration system can also help mitigate jurisdictional complexities. The current practice of allowing vessels to register under lenient flag states should be replaced with a global registry that adheres to stringent operational and regulatory standards. This system could be overseen by an international regulatory body, ensuring that all registered vessels meet minimum safety, labor, and environmental standards, irrespective of their flag of registry. Such a system would deter illicit actors from exploiting FoCs for criminal purposes.

Jurisdictional disputes can be further resolved through the establishment of specialized international maritime courts. These courts would have the authority to adjudicate crimes committed on vessels flying FoCs, eliminating the legal ambiguities arising from overlapping jurisdictions. They would provide a dedicated forum for prosecuting complex maritime offenses and ensure that perpetrators do not escape justice due to legal technicalities. Such courts would also serve as a deterrent against future violations.

Technological advancements can be leveraged to enhance maritime surveillance and enforcement capabilities. The use of satellite tracking systems, automated vessel identification, and artificial intelligence-driven data analysis can provide authorities with real-time insights into suspicious maritime activities. By integrating these technologies into international enforcement strategies,

regulators can proactively identify vessels engaged in illegal operations and take timely action, reducing reliance on jurisdictional claims for prosecution.

Reforming labor protections and safety regulations on FoC vessels is another crucial step. Many maritime crimes, such as human trafficking and forced labor, stem from exploitative conditions enabled by lenient regulatory regimes. Enforcing stricter labor laws through international agreements, combined with regular inspections of FoC vessels, can safeguard seafarers' rights and prevent criminal activities linked to poor working conditions.

Lastly, public awareness and industry self-regulation should not be overlooked. The shipping industry must take responsibility by adopting ethical business practices, such as opting for reputable flag states and participating in voluntary compliance programs. Greater transparency in corporate structures and ownership of vessels can prevent unscrupulous operators from hiding behind opaque regulatory frameworks. Public pressure and advocacy can also play a role in urging governments to take decisive action against the misuse of FoCs.

By implementing these solutions in a coordinated manner, the international community can effectively address the jurisdictional complexities associated with Flags of Convenience and ensure a more secure and accountable maritime environment.

## **Conclusion**

In conclusion, the Flag of Convenience system presents a double-edged sword for the international maritime community. While it provides economic benefits and operational flexibility for shipowners, it also creates significant legal and ethical challenges. The jurisdictional complexities involved in prosecuting maritime crimes on FOC vessels are manifold, with conflicting laws, overlapping interests, and unclear accountability structures. Despite international efforts to regulate the system, the lack of effective enforcement mechanisms, coupled with the exploitation of weaker jurisdictions, undermines the potential for effective prosecution of maritime crimes.

A more integrated international legal framework is needed to address the shortcomings of the FOC system, ensuring that crimes committed aboard FOC vessels are subject to clear and

effective prosecution. This would require greater cooperation between flag states, coastal states, and the international community to establish a system of shared responsibility for crimes that occur on FOC vessels. Until such a system is in place, the jurisdictional complexities of prosecuting maritime crimes will continue to pose significant challenges for the international community.