

Sultan

International Law

Fall 1997

Jurisdiction over vessels is based on a theory akin to the nationality principle. A ship has the nationality of the state in which it is registered, regardless of the nationality of the owner or the crew. A nation is the sole judge of whether registration of a ship under its laws is appropriate but whether such registration will be recognized externally is determined by the international community. Some nations, especially those in the "Panlibhon Group" - Panama, Liberia and Honduras - permit ship registry with few prerequisites except the payment of a fee. This fact led to the creation of "flags of convenience," registration of ships having little or no connection with the country of registry to take advantage of ownership-favorable maritime regulatory regimes involving health and safety.

In modern times, flags of convenience have been challenged on the grounds that a "genuine link" must exist between the ship and the nation whose flag it flies. The 1958 Convention on the High Seas adopted the genuine link rule and added that the state of registry had a duty to exercise jurisdiction over ships registered to it. The Convention contained no provisions, however, indicating the consequences of registration when no genuine link existed. Both the requirement and the omission are repeated in Article 91 of the Law of the Sea Convention that has superseded the 1958 Convention. Under the Convention, a state's assertion of the right to extend diplomatic protection to a vessel may be rejected by another state if the asserting state has no genuine link with the vessel in question.

United States courts have held that United States maritime regulatory legislation will apply to ships registered in other countries when those ships have significant contacts with the United States.

Under Article 1(5) of the Law of the Sea Convention signatory states are required to adopt laws and regulations to prevent pollution of the marine environment by the dumping of sewage, sludge, and other waste materials into the ocean. These laws and regulations must be no less effective than global rules and standards. States must ensure that dumping is not carried out without the permission of the proper authorities of the state involved. Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf may not occur without the express prior approval of the coastal state, which has the right to permit, regulate and control such dumping.

In the United States, the 1972 Marine Protection, Research and Sanctuaries Act, as amended, makes unlawful the dumping of material by United States vessels into the territorial sea and waters beyond it, and by foreign vessels in the United States territorial sea or contiguous zone, unless in compliance with the Act. Under this legislation the Administrator of the Environmental Protection Agency ("EPA") has permit authority for the dumping of all wastes. After notice and opportunity for public hearing, the Administrator may issue permits for ocean dumping upon determining that such dumping will not "unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities." In making this determination, the Administrator must take into consideration designated factors, including: the need for the proposed dumping; the effect of the dumping on human health and welfare, fisheries resources, shorelines, and marine ecosystems; and the use of

land-based alternatives.

"Swift Removal" (SS) is a wholly owned subsidiary corporation of Wod Corporation, a multi-national corporation incorporated in Delaware and headquartered in Clifton, New Jersey. With gross assets of three billion U.S. dollars, Wod is one of the world's largest chemical and energy business enterprises. Wod disposes of its waste products through SS which owns five vessels that collect the waste at the various Wod global operation locations and then dumps them in the high seas off the West Coast of Africa. Very often prevailing tides and currents carry some of the waste to the beaches of numerous West African countries.

The five SS ships are registered in Liberia and are run by captains from India and crews largely from Indonesia. In support of its operations, SS always obtains permits from the EPA Administrator.

The seven impacted African nations have formed together as the "League of Seven". After unsuccessfully attempting diplomacy and congressional lobbying in Washington D.C., they subsequently took their cause to the United Nations where a Security Council Resolution condemning the dumping was vetoed by the U.S., Great Britain and Japan -the countries where Wod is most active.

The League has been far more successful in the General Assembly:

- By a vote of 154 to 3 (the vetoing countries), the Assembly passed a Resolution condemning the practice.
- By the same vote, it requested an advisory opinion from the International Court of Justice.
- By the same vote it has requested the Secretary General (who happens to be from Africa) to use his "good

offices" to end the dumping practices.

- By the same vote it has requested the newly created UN High Commissioner for Human Rights to determine if there are any possible human rights violations(s) resulting from the dumping activities.

The practice has also been condemned by (1) the organization for African Unity, a public international organization that includes as some of its members all seven League nations; (2) the Assembly or parliament of the European community (with Great Britain voting "no"); (3) various nongovernmental organizations like Greenpeace; and (4) a Declaratory Judgement" of the Law of the Sea Conventions International Tribunal for the Law of the Sea, that sits at Montego Bay, Jamaica -- also the location of the Administrative organs of the Law of the Sea Convention.

1. Evaluate the international legal status of SS's dumping operations.

2. Do any additional, more effective international or municipal remedies exist for the League of Seven? If so, what are they?

3. How do you predict the dispute will be resolved, and why do you so predict.