



**AN BILLE LOINGIS THRÁCHTÁLA (BRATACHA
ÁISIÚLACHTA A SHEACHAINT) 2005
MERCANTILE MARINE (AVOIDANCE OF FLAGS OF
CONVENIENCE) BILL 2005**

EXPLANATORY MEMORANDUM

Purpose of Bill

Article 91(1) of the UN Convention on the Law of the Sea provides that: “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.”

The purpose of this Bill is to give legislative effect to the requirement that there must exist a “genuine link” between an Irish registered ship and any state where it is proposed to re-register that ship.

The Law of the Sea Convention was signed at Montego Bay, Jamaica, on the 10th December, 1982, entered into force on the 16th November, 1994, and was ratified by the State on the 21st June, 1996.

Provisions of Bill

Section 1 provides in standard form for the short title and collective citation and construction of the Bill. It also provides that the Bill has effect notwithstanding anything in the Mercantile Marine Acts 1955 to 1983.

Section 2 sets out the circumstances where this Act applies. As matters stand, section 21 of the Mercantile Marine Act 1955 states that the Minister for Communications, the Marine and Natural Resources may, in his absolute discretion, on the application of a qualified person to register a ship under the law of another country, consent to such registry by that person. This section proposes to add new criteria in circumstances where a person applies to register an Irish ship under the law of another country, the ship concerned being one that regularly proceeds to sea from a port in the State to any other port in the State or to a port in any other Member State of the European Union (including the Channel Islands and the Isle of Man).

The Minister may consent to such registry by that person if but only if—

- the applicant is a national of a Member State or a body corporate established under and subject to the laws of a Member State, and
- the port at which it is proposed to register the ship is a port within a Member State.

Section 3 provides that, in deciding under this Act whether to consent to registration or not of a ship, the Minister must have regard to the United Nations Convention on the Law of the Sea and in particular to the need to ensure that the registry in the State of a ship will not be closed or transferred to a port outside the State in any circumstances that would amount to breach by the State of that Convention.

Further, the Minister must ensure that no recognition is given to the documents of registration issued by any other state to a ship in circumstances where no “genuine link”, within the meaning of the UN Convention, between that state and the ship concerned exists.

Section 4 is a penalty section. It states that a person who registers a ship under the law of another state in contravention of *section 2* is guilty of an offence. The person is liable—

- on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months, or to both,
- on conviction on indictment, to an unlimited fine or to imprisonment for a term not exceeding 5 years, or to both.

Provision is made for the consequential liability of directors, managers, and so on, of corporate bodies where such a corporate body is the principal offender.

*An Teachta Tomás P. Ó Bracháin,
Samhain, 2005.*