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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**A CRITICAL ANALYSIS OF SHIP
REGISTRATION SYSTEM IN THE UNITED
REPUBLIC OF TANZANIA**

By

MOHAMED MALICK SALUM
United Republic of Tanzania

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirement for the award of the degree of

MASTER OF SCIENCE
In
MARITIME AFFAIRS
(MARITIME LAW AND POLICY)

2019

DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

.....

Mohamed Malick Salum
24th September 2019

Supervised by: Dr. Maximo Q. Mejia Jr.
 Professor
 Director of PhD Programme
 Associate Academic Dean
 Head of Maritime Law and Policy

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ABSTRACT

Title of the Dissertation **A Critical Analysis of Ship Registration System in the United Republic of Tanzania**

Degree **Master of Science**

In the current decade, ships registration process in the United Republic of Tanzania is facing a stumbling block. Through Port State control measures under the Paris MoU (aiming at ensuring that international shipping is carried out in compliance with international maritime standards), the country is worse performing and blacklisted for hosting many sub-standard and fraudulent registered vessels. In principle, when a country grants its nationality to a ship, it is expected to exercise effective jurisdictional and administrative control over its vessels. This is aimed at ensuring ships registered and hoisting the national flag, are in compliance with the established local and international maritime standards regulating shipping, for the protection of the marine environment and safety of life at sea.

The ship registration system of Tanzania is regulated by two administrative bodies on each part of the union (Tanzania Mainland and Tanzania Zanzibar). On part (Tanzania Mainland) ships registration is limited only to Tanzanian nationals while on the other (Tanzania Zanzibar), foreign individuals and companies are also allowed to register vessels under the Tanzania Zanzibar International Register (TZIR). In that regard, this work, has studied the concept of ship registration and made a comparative analysis of the legal framework of ship registration system of the United Republic of Tanzania with other countries with more or less similar legal system of hosting more than one ship registry but are better performing under the Port State Control measures.

The work made an analysis of the UK and the overseas territory of Cayman Islands and People's Republic of China with the Hong Kong Special Administrative Region by evaluating their legal framework, for the purpose of understanding the structure of administration and control of ship registration between the two registries and made a comparison with the system in the Tanzania for the purpose of providing appropriate recommendations for the improvement of the system.

KEYWORDS: Compliance, Effective Control, Jurisdiction, Ship Registration

TABLE OF CONTENTS

DECLARATION	ii
ACKNOWLEDGMENTS	iii
ABSTRACT.....	iv
1.0 CHAPTER ONE	1
1.1 Background of the Study	1
1.2 Problem Statement.....	2
1.3 The Objective of Study	5
1.4 Research Questions.....	5
1.6 Significance of Study.....	6
1.7 Scope and Limitations of Study.....	6
1.8 Key or Basic Assumptions.....	6
2.0 CHAPTER TWO	8
2.1 Background.....	8
2.2 Duties of a State to registered vessels.....	8
2.3 Ship Registration and Freedom of State to fix Conditions for Registration 10	
2.4 Systems of Ship Registration.....	12
2.4.1 Closed Registry System.....	12
2.4.2 Open Registry System	13
2.5 The Fraudulent Registration and Fraudulent Registries of Ships	15
2.6 Legal Framework of Ship Registration in the United Republic of Tanzania 16	
2.6.1 Law Governing Ship Registration in Tanzania Mainland	17
2.6.2 Law governing Ship Registration in Tanzania Zanzibar	18
2.7 Challenges of the existing framework for ships registration in the United Republic of Tanzania.....	20
3.0 CHAPTER THREE:	21
SECONDARY AND INTERNATIONAL SHIP REGISTRIES.....	21

3.1	Introduction.....	21
3.2	The United Kingdom Ship Registration System and foreign territory of Cayman Islands.....	22
3.3	France and the Registry in the Kerguelen Islands	24
3.4	Norwegian International Ship Register.....	25
3.5	The people's Republic of China and the Hong Kong Administrative Region 26	
3.6	International Maritime Organization and efforts of elimination of sub-standard ships.....	28
4.0	CHAPTER FOUR:	31
	COMPARATIVE ANALYSIS OF SECONDARY/PARALLEL SHIPS REGISTRIES WITH TANZANIAN SYSTEM OF SHIP REGISTRATION	31
4.1	Introduction.....	31
4.2	The Competency of Jurisdiction of the Main Registry and a Secondary Registry.....	31
4.2.1	The United Kingdom and the Cayman Islands.....	32
4.2.2	The People's Republic of China and the Hong Kong Administrative Region 33	
4.2.2	The United Republic of Tanzania and Tanzania Zanzibar	34
4.3	Compatibility of the Rules of Registration between the two Registries....	36
4.3.1	The United Kingdom and the Cayman Island	36
4.3.2	The People's Republic of China and the Administrative Region of Hong Kong 38	
4.3.3	United Republic of Tanzania and Tanzania Zanzibar	40
4.4	The Recognized Organizations (ROs)	42
4.4.1	The United Kingdom and the Cayman Islands.....	43
4.4.2	The People's Republic of China and Hong Kong.....	43
4.4.3	United Republic of Tanzania and Tanzania Zanzibar	43
5.0	CHAPTER FIVE:	45
	CONCLUSION AND RECOMMENDATIONS	45

5.1	Introduction.....	45
5.2	Conclusion	47
5.3	Recommendations.....	48
	References.....	49

LIST OF ABBREVIATION

COLERGs	- International Regulations for the Prevention of Collisions as Sea
DRC	- The Democratic Republic of Congo
EEA	- European Economic Area
EEIG	- European Economic Interest Grouping
EU	- European Union
RIF	- Registre Internationale Francais
GISIS	- Global Integrated Shipping Information System
ILO	- International Labour Organisation
IMCO	- International Maritime Consultative Council
IMO	- International Maritime Organisation
INTERPOL	- International Police
ISM CODE	- International Safety Management Code
MARPOL	- International Convention for the Prevention of Oil Pollution from Ships
MLC	- Maritime Labour Convention
NIS	- Norwegian International Register
RO	- Recognised Organisation
SOLAS	- International Convention for the Safety of Life at Sea
STCW	- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
TASAC	- Tanzania Shipping Agencies Corporation
TZIR	- Tanzania Zanzibar International Register
UK	- United Kingdom
UNCCROS	- United Nation Convention on Conditions for Registration of Ships
UNCLOS	- United Nations Convention on the Law of the Sea
UNCTAD	- United Nations Conference on Trade and Development
URT	- United Republic of Tanzania
USA	- United States of America
ZMA	- Zanzibar Maritime Administration

1.0 CHAPTER ONE

1.1 Background of the Study

The United Nations Convention on the Law of the Sea (UNCLOS) grants rights to every state whether coastal or land-locked to sail ships flying its flag on the high seas¹. States are required to fix conditions for the registration, granting nationality in its territory and for the right of ships to fly its flag². States are further required to exert effective jurisdictional control in administrative, technical and social matters on ships flying its flag³. Thus, for a ship to sail on an international voyage, she must fly only one of a member state flag and shall be subject under exclusive jurisdiction of that state (Richard and Edward, 2013).

The United Republic of Tanzania (URT) is a sovereign state formed after a union of two independent states of Tanganyika and Zanzibar⁴. The state administration is provided under the constitution of the United Republic of Tanzania which recognizes the existence of the two separate state administrations being the United Republic Government and the Revolutionary Government of Zanzibar (Shivji, 2004). The former is vested with powers of administration in Tanzania mainland and matters of the union, and is headed by the President of the United Republic, and who is the head of the state. The latter is vested with administration of non-union matters affecting Tanzania Zanzibar and is headed by the President of the Revolutionary Government of Zanzibar⁵.

According to the URT Constitution, issues relating to maritime administrations, including ships registration, are not part of the union matters. Therefore, the revolutionary government of Zanzibar and the government of the United Republic of Tanzania, each has the mandate to regulate maritime administration. In Tanzania Mainland the Tanzania Shipping Agencies Corporation (TASAC)⁶ regulates the Merchant Shipping Act⁷ which provides for ships registration, while on the part of

¹ Article 90 of the United Nations Convention on the Law of the Sea, 1982

² Article 91 (1) *ibid*

³ Article 94 of the United Nations Convention on the Law of the Sea, 1982.

⁴ Article 1 of Constitution of the United Republic of Tanzania of 1977 and Article 1 of the Constitution of Zanzibar of 1984

⁵ Article 4 (2) & (3) read together with the first schedule to the United Republic of Tanzania Constitution of 1977

⁶ The Tanzania Shipping Agencies Act, No 14 of 2017

⁷ The Merchant Shipping Act, No. 21 of 2003

Tanzania Zanzibar, the Zanzibar Maritime Authority (ZMA) regulates the Maritime Transport Act⁸ that provides the registration of ships in Zanzibar.

In that regard, two separate registries administer ships registration in the URT. In Tanzania Zanzibar, a Minister responsible for shipping and seafarers, is empowered to appoint a person to be responsible for the registration of Tanzania Zanzibar Ships⁹. That person is to maintain a registry of Tanzania Zanzibar ships for Tanzania Zanzibar Ocean-Going Ships and Tanzania Zanzibar Register of Shipping for Coastal Ships¹⁰. In the Tanzania mainland, the Minister responsible for shipping is entitled to appoint a person to become a Registrar of Tanzanian Ships¹¹.

Therefore, the regulation of ships, fixing conditions for their registration and granting nationality is done by two independent administrative bodies. However, these bodies have distinct conditions for registrations of ships that impliedly may be obvious within the URT, but invisible to the outside world. The purpose of this research is to make a comparative analysis of this existing modal and see how does it affect the country ability to meet its international obligations established under the UNCLOS and International Maritime Organization (IMO) and thereafter provide appropriate recommendations.

1.2 Problem Statement

The need for registration and granting nationality to ships is underpinned on the need to have effective jurisdictional control over vessels while on a voyage. International law is vesting that duty to every state granting rights to vessels to fly its flag (Richard and Edward, 2013). The right of vessels to enjoy and utilize the freedom of navigation in the high seas is subject to the terms and conditions fixed by the flag state. Under International law, states are under obligation to take responsibility in exercising jurisdictional control on administrative, technical and social matters so as to ensure safety of life at sea. This is in regard, to the construction, equipment, and seaworthiness of ships and at appropriate intervals, ships are surveyed by a qualified surveyor of ships¹². Hence,

⁸The Maritime Transport Act, No. 5 of 2006

⁹ Section 7 (2) of the Maritime Transport Act, No.6 of 2006

¹⁰ Section 8 (1) (a & b) *ibid*

¹¹ Section 7 of the Merchant Shipping Act, No. 21 of 2003

¹² See Article 91 and 94 of the United Nations Convention on the Law of the Sea, 1982

granting nationality to a ship, a state is automatically subjected to the international rules and standards of ensuring effective control of all vessels flying its flag.

The URT Constitution, mandates the United Republic Government with issues of foreign relations on behalf of the state. This responsibility relates to negotiations, ratifications and domestication of international instruments¹³. Thus, when a question is raised regarding compliance with established international instruments (*SOLAS, MARPOL, STCW, MLC, COLERGs or ISM Code*) the URT government is one held responsible for such non-adherence. The international community is not very much aware of the country internal arrangements between the Tanzania Mainland and the Tanzania Zanzibar.

Since maritime administration is not a union matter, the Revolutionary Government of Zanzibar performs the duty of ships registration and regulates the standard of safety and security of its ships. According to act¹⁴, once a ship completes its registration, for purpose of the voyage, will hoist the United Republic flag. The issue is how existing legislation, creates a link and chain of responsibility and command of authority between the Tanzania Zanzibar registry and the URT registry, for the registration of all Ships flying the Tanzanian flag so as to ensure all ships, whether registered under Tanzania Zanzibar registry or Tanzanian registry are controlled, surveyed and monitored to ensure they meet the set international standards.

A Tanzanian ship as defined under the Merchant Shipping Act¹⁵, is a ship registered at any port in the *United Republic*. The condition for it registration, is if is wholly owned by persons qualifying to own a Tanzanian ship (*nationals of Tanzania, individual, or corporation owning ship hired out on bareboat charters to nationals of Tanzania*)¹⁶. In Tanzania Zanzibar, a Tanzania Zanzibar ship is defined to be a ship registered in any port at Tanzania Zanzibar, and additional to Tanzanian also foreign nationals and companies are allowed to register ships either in person or through their

¹³ Union matters as per Article 4 (3) read together with the first schedule, Articles 34 (1) and 102 (1) of the United Republic of Tanzania Constitution of 1977

¹⁴ Section 61 of The Maritime Transport Act No. 5 of 2006

¹⁵The Merchant Shipping Act No. 21 of 2003

¹⁶ See section 13 (1) of the Merchant Shipping Act, No. 21 of 2003

agents in the Tanzania Zanzibar International Register for Ocean-Going Ships (TZIR)¹⁷. These legal definitions of Tanzanian Ship and Tanzania Zanzibar Ship under the Merchant Shipping Act and Maritime Transport Act respectively, themselves creates a confusion and overlap of jurisdictional and effective state control.

In the past decade, ships flying Tanzanian flag, have evidenced poor standards of safety for the country flag to being blacklisted under the Paris MoU¹⁸, as an effect of Port State Control. Measures in ensuring shipping is carried out in compliance with international maritime environmental and safety standards (Sage, 2004). This came as a reaction to the generally-held belief that many flag states are unable to adequately perform their mandated duties of ensuring that ships flying their flag comply fully with the international standards formulated under auspices of the IMO (Pierre, Mejia and Francois, 2008).

Tanzanian registered vessels have been involved in criminal activities, for example, an oil tanker Kaluba was intercepted in the Caribbean with 1570kg of pure cocaine in its hold¹⁹. Another vessel Golendri arrested off the coast of Greece with Ukrainian Crew carrying 1,557,200 contraband cigarettes packs worth 6,019,186. 94 million euros²⁰. However, most of these vessels (*which are owned by foreign nationals*) are acclaimed to be registered under the Tanzania Zanzibar International Register (TZIR) through an open registry system.

This research has aimed at making analysis and understand the existing gaps of ship registration system of the United Republic of Tanzania causing the attraction and registration of substandard vessels. The study will be through a comparative study of other states having more or less the same ship registration model/arrangement to learn and understand what can be borrowed improve the existing system.

¹⁷ Section 8 (1) read together with section 9 (1) of the Maritime Transport Act, No. 5 of 2006

¹⁸ The White, Grey and Black list of 1 July 2019 to 30 June 2020 of the Paris Memorandum of Understanding on Port State Control, Signed January 1982. Paris, France.

¹⁹ <https://mg.co.za/article/2018-01-26-00-tanzanias-flags-of-inconvenience>

²⁰ <https://www.marinetraffic.com/en/ais/details/ships/shipid:4677413/mmsi:510446000/imo:9100968/vessel:GOLE>
NDRI

1.3 The Objective of Study

The subject of ship registration is well researched by many scholars. Extensive academic work regarding open registries systems also is already in place regarding the legal framework, states obligations, and responsibilities. But few have to dwell to analyse the effects if the responsibilities are performed by two separate Maritime Administrations (MARADS) with independent registries hosting different conditions of registration within single independent state. In that regard, the objectives of this research are as follows;

- a) To assess the existing legal framework of ship registration in Tanzania and analyze its effectiveness for granting nationality to ships.
- b) To analyze how effective is the existing framework of ship registration affect compliance with the international instruments for ships flying Tanzanian flag.
- c) To make a comparative study with other states with more or less the same system and analyze their policy and legal framework how is similar and different from our system.
- d) To analyze the existing relationship between the two maritime administration and how are they working to improve the standard of ship registration and eliminate the sub-standard ships.

1.4 Research Questions

Pertinent to this research, the following research questions would be answered:

- a) How the constitutional framework separating maritime administration within a sovereign state can be implemented effectively?
- b) How does the existing legal framework affect the effectiveness of state control of flagged vessels?
- c) How can a semi-autonomous state effectively operate an open registry within a better state framework?
- d) How can the existing system learn from examples of other countries?

1.5 Research Methodology

In conducting this research, the methodology used is a comparative study analysis of countries with similar or more less the same model of the ship registration system. The focus was on the structure of their legal framework with the existing structure in the URT.

1.6 Significance of Study

This research will have significance of improving maritime administration in Tanzania and especially the ship registration process. The study is focused on comparative study of the policy framework of maritime administration and ship registration process and assess its effects on state performance in regulating effective ships registries under two independent maritime administrations. Hence, despite contributing to the wider global knowledge, it will help to improve the policy and legal framework of the ship registration system in Tanzania aiming to minimize/eliminate the sub-standard vessels.

1.7 Scope and Limitations of Study

The scope of this research has covered the policy and legal framework of maritime administration in Tanzania and made a comparative study with other States. It aimed to understand other international practices of ship registration to recommend the required improvements. The limitation for the effective completion of this research can either be associated with the scarcity of funding for travel, confidentiality, and lack of cooperation from government officials.

1.8 Key or Basic Assumptions

Tanzania is performing worse in ship registration and currently the government has initiated effort to improve the system by prohibiting registration of foreign vessels under Tanzania Zanzibar International Register (TZIR). This research is working on the assumption that it will receive a positive response from my superiors as guidance for the improvement of the ship registration system in the United Republic of Tanzania.

1.9 Overview of this research

This work has been divided into five chapters. Chapter One is dwelt on giving a brief background of ship registration in the URT, problem statement, objective of the study, research questions, research methodology as well as scope and limitation and key assumptions. Chapter Two is focused on providing the academic background of the concept of ships registration and granting nationality to ships, flag state duties to registered vessels, the freedom of the state to fix conditions for registration of ships, and closed and open registry systems. Thereafter, the chapter discusses fraudulent registration of vessels and concluding by analysing the ships registration system of Tanzania.

Chapter three discusses the model of ship registration systems more or less similar to the Tanzanian system, by looking on countries hosting secondary and international ships registries. It analyses the legal framework and the established relationship for ships registration between two maritime administrations of the same state. Most of the discussions are focused on the United Kingdom with the offshore territory of Cayman Islands, China and its Hong Kong Administrative Region, France and Kerguelen Islands and Norway Registry and its International registry. Lastly, the chapter discusses the IMO efforts on the elimination and control of substandard vessels.

Chapter four is dwelt on critical analysis discussions through comparative analysis approach of ships registration systems. The main focus is on the UK and China model with their offshore territories of Cayman Islands and Hong Kong Administrative Region, by analysing and comparing their systems of ships registration with the URT. It has focused on looking on the existing legal framework, organisational structure and the relationship of the two registries with the reference to the existing system in the URT for the purpose of highlighting gaps for improvement. Chapter five provides recommendations and conclusion from what has been discussed and observed in chapter four.

2.0 CHAPTER TWO:

REGISTRATION AND GRANTING NATIONALITY TO SHIPS

2.1 Background

The freedom of the high seas is one of the fundamental principles of public international law, it gives the right to every state, whether coastal or land-locked to sail ships flying its flag on the high seas (Richard and Edward, 2013). The jurisdiction of vessels on the high seas resides solely with the state to which the vessels belong and ships have the nationality of the state whose flag is entitled to fly. A ship with no nationality enjoys no protection under international law (Rhea, 2010). For that reason, states are obligated to fix conditions for the registration and grant of nationality to ships in its territory and for the right to fly its flag (Li, K. X., & Wonham, J. 1999).

The Hague Court of Permanent Arbitration in *Muscat Dhows Case*²¹, stated that, *ship registration belongs to every sovereign to decide to who will accord the right to fly its flag*. Article 91 of the United Nations Convention on the Law of the Sea (UNCLOS)²² “requires states to fix 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 and shall issue a ship which has a right to fly its flag, documents as proof of registration”. In that regard, registration of ships is a public law function of entering a ship into public records for granting nationality and the state becomes a flag state (Ermal and Krisafi, 2013).

2.2 Duties of a State to registered vessels

A ship sailing in the high sea, is under the jurisdiction of a state flying its flag and the laws of that state will apply in all matters arising in the course of its operation (Mejia, 2013). Article 92 of UNCLOS requires ships to sail under a flag of one state only and be subjected to its exclusive jurisdiction in the high seas. A ship sailing under a flag of two or more states, cannot claim any of the nationalities in questions and may be assimilated to a ship without nationality (Barnes et al., 2017).

²¹ Muscat Dhows Case, France v Great Britain, Award, (1961) XI RIAA 83

²² United Nations Convention on the Law of the Sea, 1982

The decision in the Permanent Court of International Justice in the case of S.S. "Lotus"²³ deliberated the following;

"a ship in the high seas is assimilated to the territory of the flag State. This State may exercise its jurisdiction over the ship, in the same way as it exercises its jurisdiction over its land, to the exclusion of all other States. The Court held that the ... the offense produced its effects on the Turkish vessel and consequently in a place assimilated to Turkish territory in which the application of Turkish criminal law cannot be challenged, even concerning offenses committed there by foreigners."

Article 94 (1) of UNCLOS provides for flag state duties that compliments the right of exclusive jurisdiction above, by requiring every state to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag (Barnes et al., 2017). Article 92(2)²⁴ requires states, "to maintain a register of ships containing the names and particulars of ships flying its flag, assume jurisdiction under its internal law over each ship flying its flag and the master, officers, and crew in respect of administrative, technical and social matters concerning the ship".

Article 94 (3)²⁵ creates a requirement for "every state to take measures for ships flying its flag, that as are necessary to ensure safety at sea with regard, the construction, equipment and seaworthiness of ships; the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments; the use of signals, the maintenance of communications and the prevention of collisions". Such measures include ensuring that a ship "before and thereafter at appropriate intervals, is appropriately surveyed by a qualified surveyor of ships, and has onboard such charts, nautical publications, and navigational equipment and instruments as are appropriate for the safe navigation".

²³ (France v. Turkey) (1927) P.C.I.J., Ser. A No. 10

²⁴ Article 94 of the United Nations Convention on the Law of the Sea, 1982

²⁵ Article 94 (3) *ibid*

Article 94 (4) requires flag states to take measures to ensure, “a ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, prevention of collision, the prevention, reduction and control of Maritime pollution, and the maintenance of communications by radio”²⁶.

In taking those measures, a flag state under Article 94 (5)²⁷ is required;

“to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.”

The reference of this provision is key to instruments adopted under the IMO which are currently binding on 95-99% of world shipping by tonnage (Barnes et al., 2017).

2.3 Ship Registration and Freedom of State to fix Conditions for Registration

Under international law, states are allowed to determine conditions for registration of ships and rights to fly their flags. This principle was formally initiated in *the Muscat Dhows Case*²⁸ where the Permanent Court of Arbitration issued its fourth arbitral stating;

“Generally speaking it belongs to every Sovereign to decide to who he will accord the right to fly his flag and to prescribe the rules governing such grants.”

This principle was upheld by the United States Supreme Court in case of *Lauritzen v Larsen*²⁹, in which the Court stated:

“Each State under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and

²⁶Article 94 (4) of the United Nations Convention on the Law of the Sea, 1982

²⁷ Article 94 (5) *ibid*

²⁸ France v Great Britain, Award, (1961) XI RIAA 83

²⁹ *Lauritzen v. Larsen*, 345 U.S. 571 (1953)

acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag.

Following these decisions, the United Nations incorporated the same under *Article 5* of the Geneva Convention on the High Sea of 1958³⁰ which provides as follows;

"Each 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; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag."

Under the Geneva Convention, it was a precondition for the existence of a *genuine link* between the state and the ship, before the grant of nationality (Richard and Edward, 2013). This principle is based on the *Nottebohm Case*³¹, of which the brief facts of the case are as follows;

"In 1939, Nottebohm (a German citizen) visited Liechtenstein, and shortly after World War II began, he applied for citizenship. His application was approved and he became a citizen of Liechtenstein. Under German law, he lost his German citizenship. In January 1940, he returned to Guatemala on a Liechtenstein passport and informed the local government of his change of nationality. Guatemala joined the allied forces and arrested Nottebohm and sent him to the USA and seized his property on the argument he is a German citizen."

Liechtenstein sued Guatemala at International Court of Justice (ICJ) and in 1955, the issue before the court was whether the nationality of an individual and the state whose nationality he claims, has a legal bond having as its basis, a social fact of attachment, a genuine connection of existence, interests, and sentiments, together with the existence of reciprocal rights and duties. The Court held that,

³⁰ The United Nation Convention on the High Seas, of 1958

³¹ Nottebohm Case (Liechtenstein v. Guatemala) [1955] ICJ 1

“Nottebohm's naturalization as a citizen of Liechtenstein had not been based on any genuine link with that country, but for the sole purpose of enabling him to replace his status as the national of a belligerent state with that of a neutral state in a time of war. Guatemala is under no obligation to recognize a nationality granted in such circumstances.”

But the ICJ in its consultative opinion referred by the International Maritime Consultative Council (IMCO) over the meaning of Article 28A of the convention establishing IMCO³², the Court stated;

“neither the nationality of the stockholders or the shipping companies nor the notion of the genuine link is the relevant test for determining ship owning nation...the test of registered is that which is most consonant with international practice and Maritime usage.”

From the above decision, the interpretation given over Article 91 of UNCLOS is that the right to every state to fix conditions for the grant of its nationality to ships, for the registration of ships in its territory, whether coastal or landlocked in disregard of the genuine link between the ship and the state.

2.4 Systems of Ship Registration

2.4.1 Closed Registry System

The close registry system is regarded as traditional or national registry. This registry system involves a real connection of national, economic and social ties, among the owner of a vessel on one side, and the state on the other (Ready, 1998). The vessels under this regime are subjected to the jurisdiction and control of the flag state, which ensures that its flagship complies with the international treaties ratified by that state. Additionally, the ships in the close registry are subject to stringent rules in connection to the fiscal regime applicable in that particular state (Ready, 1998). The legislation of many states requires not just a legal link but also an economic and operational connection between the state and ships that are granted the right to fly its flag (Mejia, 2013).

³² Constitution of the Inter-Governmental Maritime Consultative Organization [1960] ICJ Rep. 150

A closed registry system, includes a requirement such as the beneficial owner and the majority of the shareholders must be nationals of the flag state (Li and Wonham, 1999). It is the requirement that the ship-owning company must be situated in the territory of the registry; the crew on board should also be nationals of the flag state. In several close registries, the ship-owner must be a natural-born citizen to be qualified for the registration. In other countries, a national can simply be a domicile or a resident without necessarily being a citizen of that state.

2.4.2 Open Registry System

Open registries may be described as the “national flags” of those states which allows foreign nationals to register vessels in their territory. The main reasons for these type of registries attracting foreign ships relates to the avoidance of fiscal obligation, the stringent terms, and conditions for registration, terms of engagement that would have been applicable if their tonnage was entered in the register of their own country (Farthing, Brownrigg and Mukherjee, 2013). A report by the United Kingdom Government on the Committee of Enquiry into Shipping (the Rochdale Report)³³ isolated six features common to open registries:

- a) *the country of registry permits ownerships of its ships by non-nationals,*
- b) *access to their registry is normally easy,*
- c) *the registration payment, and a tonnage base annual fee are generally the only charges,*
- d) *revenue taxes are not a requirement or are very low,*
- e) *the country of the registry is a small maritime power with no national requirements,*
- f) *the employment of its ships with non-nationals is allowed,*
- g) *the state of registration lacks an effective MARAD which imposes compliance to their vessels with national and international rules.*

³³ Committee of Enquiry into Shipping – Report, CMND 4337, HMSO

There are several countries registering vessels in the form of Open Registries, it began in Panama which attracted many ship owners from the USA, followed by Liberia which had also connections with the USA by implementing flexible registration policies. The commercial and financial impact of open registries caused apprehension among traditional maritime powers only after the 1940s, when the shipping industry experienced an immense transfer of tonnage from long-established national registries towards open registries (Ermal and Krisafi, 2013).

In an attempt to address the issue of Open Registries UNCTAD attempted to develop a Convention known as United Nations Convention on Conditions for Registration of Ships (UNCCROS)³⁴ but the convention never entered into force. It aimed at strengthening the genuine link between the state and the ships for exercising effective jurisdictional control over such ships flying its flag. This proposal failed to attract strong support from many ship owning nations (Rhea, 2010).

2.4.2.1 Criticisms on Open Registries

The open registries system has much criticism, firstly is on the lack of capacity or the will to monitor the safety and working conditions on ships, or to investigate accidents (Negret, 2016). Secondly, the casualty's records of open registry fleets reveal a considerably higher rate of losses than in the traditional maritime countries and wider disasters of recent years have involved vessels registered under open registries. Examples are the *Torrey Canyon in 1967*, the *Sea Empress in 1996* and the *Erika in 1999* (Richard and Edward, 2013). Thirdly, since ship safety certificates are provided by private classification societies, shipowners are allowed to choose any society they want, the worst offenders choose the least demanding classification societies (Negret, 2016).

Another criticism is that in open registries, shipowners can get a high degree of anonymity. Many open registries do not require shipowners to disclose their identities. In the event of environmental accidents and disasters (e.g. an oil spill), affected nations can have serious difficulties in holding the anonymous shipowner accountable (Negret, 2016). For instance, in 1999, an oil tanker, *the Erika*, sank off Brittany and polluted 250 miles of French coastline. The French government could

³⁴ United Nations Convention on Conditions for Registration of Ships, 1986

not penetrate a chain of shell companies in seven countries that stood between the ship and its owner.

2.5 The Fraudulent Registration and Fraudulent Registries of Ships

The LEG 105/11³⁵ report of the work program, submitted by countries of Cyprus, the Democratic Republic of the Congo, Fiji, Germany, Morocco, Spain, and Vanuatu, revealed the extent of the fraudulent registration of ships in the DRC. Out of 84 vessels flying the DRC flag 73 were fraud and the remaining 11 were registered and only trading locally within the DRC. This report triggered the IMO to issue directive of investigating the extent of the fraud through the Port States Control Memorandums of Understanding (PSC MOUs).

The fraudulent registration or fraudulent registries is associated with the registration of vessels without the knowledge or approval of the relevant national maritime administration. The fraudsters accomplished through the combination of tactics include; falsified documentation, seemingly-legitimate registry websites and shell companies purporting to conduct lawful functions of the cognizant flag state authorized to grant to ships the nationality of the state concerned³⁶. These activities deceptive shipping practices are a serious threat to the safety and security of international shipping and the life of seafarers working onboard the vessels.

Taking the seriousness of the matter, the IMO secretariat urged the member states to get involved in the establishing preventive and protective measures against the fraudulent registration of vessels. They impact the ability of flag state to meet their objectives and undermine the credibility of the legitimate registry³⁷. Therefore, it was recommended that robust registration procedures together with good enforcement ensure they meet their international obligations. The IMO secretariat study on the cases received reporting on fraudulent use of a flag or of the registry was submitted in the LEG 106/7³⁸ and noted in most cases there was an act of fraudulent use of the

³⁵ IMO Committee session LEG 105/11 of 19 January 2018 (Joint report of Cyprus, the Democratic Republic of the Congo, Fiji, Germany, Morocco, Spain, and Vanuatu)

³⁶ IMO Committee session LEG 106/7/2 of 11 January 2019 proposals submitted by the United States of America

³⁷ IMO Committee LEG/105/11

³⁸ IMO Secretariat Report to the Committee LEG 106/7 of 10 January 2019

country flag and/or fraudulent operation of a registry without the purported flag knowledge or permission. The countries reported to be victims included DRC, Federal State of Micronesia, Fiji, Maldives, Nauru, Samoa, United Republic of Tanzania and Vanuatu.

On the case of the United Republic of Tanzania since 13th October 2014 the government terminated the contract with Philtex Corporation (Belize) Ltd (former representative and deputy registry of the Tanzania Zanzibar International Register (TZIR), but the company continued to register ships illegally and issue renewals of the certificates on behalf of the Tanzanian Flag and 11 ships were intercepted fraudulently flying Tanzanian flag³⁹.

The comments on document LEG 106/7 submitted by the United Republic of Tanzania through LEG 106/7/5 noted that, following the termination of the Philtex Corporation (Belize) Ltd, ZMA decided to manage TZIR on its own but some owners fraudulently continued to use Tanzanian identity and went on to sail under the Tanzanian flag even after the vessels were deregistered by ZMA. Currently, more than 20 reported cases of fraudulent use of the Tanzanian flag and ZMA is continuing working on detecting the vessels, it urges establishment of legal procedures for each member state to publish names of the defaulting ships for immediate deregistration⁴⁰.

2.6 Legal Framework of Ship Registration in the United Republic of Tanzania

As highlighted in the previous chapter, the United Republic of Tanzania was founded after a union of two independent states of Tanganyika and Zanzibar. The Maritime Administration according to Article 4 of the URT Constitution read together with the first schedule, does not form part of union matters. Therefore, it is regulated by organs vested with executive powers on each part of the union.

In Tanzania Mainland, is the government of the United Republic through the Tanzania Shipping Agencies Act⁴¹, which regulates matters of maritime administration, maritime environment, safety and security, and maritime transport services at seaports and inland waterways in mainland

³⁹Paragraph 28 of the IMO LEG 106/7

⁴⁰IMO Committee LEG 106/7/5 of 05 February 2019

⁴¹ The Tanzania Shipping Agencies Act, No. 14 of 2017

Tanzania. In Tanzania Zanzibar is the Revolutionary Government of Zanzibar⁴².through the Maritime Transport Act⁴³ which applies to Tanzania Zanzibar Registered ships wherever they may be and all other ships while in any port in Zanzibar or a place within Zanzibar.

2.6.1 Law Governing Ship Registration in Tanzania Mainland

The Tanzania Shipping Agencies Act establishes the Tanzania Shipping Agencies Corporation (TASAC), with the mandate to carry out functions and exercising powers to enhance the benefits of maritime transport in Tanzania mainland⁴⁴. The function of the corporation in relation to regulation of maritime administration, maritime environment, safety and security includes the administration of the Merchant Shipping Act and conduct Port State Control (PSC) on all foreign ships and flag control of ships registered in mainland Tanzania⁴⁵.

The Merchant Shipping Act was enacted amongst other things to provide for the registration and licensing of ships and regulate proprietary interest in ships and the terms of engagement of seafarers and matters ancillary thereto⁴⁶. The act intended to apply to all Tanzanian Ships (*any ship registered or licensed under the provisions of the act, at a port in the United Republic*) wherever they may be, and all other ships, while in a port or place in or within the territorial sea, lakes, rivers and causeways under the jurisdiction of the United Republic⁴⁷. Section 10 (1) provides restriction of trading in Tanzanian waters (*the sea or other waters within the seaward limits of the territorial sea of Tanzania*) unless it is a Tanzanian Ship or is provided with a certificate of foreign registry. Only Tanzanian ships may be engaged in local trade in Tanzanian waters.

Section 7 empowers the Minister responsible for shipping “to appoint a registrar of Tanzanian Ships. A ship is to be a Tanzanian ship, if a ship is registered in Tanzania under the Part IV of the Act. For a ship to qualify to be registered in Tanzania, is unless “if it is wholly owned by persons

⁴² Article 4 (1, 2 & 3) read together with the first schedule to the Constitution of the United Republic of Tanzania [Cap. 2 R.E. 2002]

⁴³, Act No. 5 of 2006

⁴⁴ Section 4 (1) of the Tanzania Shipping Agencies Act, No 14 of 2017

⁴⁵ Section 11 (1) (a &b) of the Tanzania Shipping Agencies Act, No. 14 of 2017

⁴⁶ The Preamble to the Merchant Shipping Act, No. 21 of 2003

⁴⁷ Section 3 (1) (a &b) of the Merchant Shipping Act, No. 21 of 2003

qualified to own a Tanzanian ship, namely; nationals of Tanzania, individuals or corporations owning ships hired out on bareboat charters to nationals of Tanzania, individuals or corporations in bona fide joint venture shipping enterprise relationships with nationals of Tanzania as may be prescribed and such other persons as the Minister may by order, specify⁴⁸”. The port at which a ship is registered will be deemed to be the port of registry and the port to which the ship belongs.

2.6.2 Law governing Ship Registration in Tanzania Zanzibar

According to the Constitution of Zanzibar⁴⁹, Zanzibar is an integral part of the United Republic of Tanzania and it consists of the whole area of the Islands of Unguja and Pemba and all small Islands surrounding them and includes the territorial waters that before the union formed, then the People's Republic of Zanzibar. The legislative powers in Tanzania Zanzibar on all matters that are not Union Matters have been vested with the House of Representatives⁵⁰. Since maritime administration is not a union matter, the powers to legislate on matters of maritime administration affecting Tanzania Zanzibar are vested with the House of Representatives of Zanzibar.

The maritime administration in Zanzibar is regulated by the Maritime Transport Act⁵¹ which apply to Tanzania Zanzibar Registered ships wherever they may be, and all other ships while in any port in Zanzibar or a place within Zanzibar⁵². The general administration of the Act is vested with the Minister responsible for shipping and seafarers, who established a statutory body known as Zanzibar Maritime Safety Administration (ZMA) with the duty to oversee matters of maritime safety and security, administration, implementation and enforcement of the Act⁵³.

The officer responsible for Tanzania Zanzibar ships registration is the Registrar of ships who is appointed by the Minister. But for the better discharge of his functions, the director of ZMA who is appointed by the President of the Revolutionary Government of Zanzibar, may be appointed as Registrar of Ships, Seafarers and Receiver of wrecks. In Zanzibar there are two categories of

⁴⁸ Section 13 (1) (a, b, c, & d) of the Merchant Shipping Act, No. 21 of 2003

⁴⁹ The Constitution of Zanzibar of 1984 [R.E. 2006]

⁵⁰ Article 78 (1) of the Constitution of Zanzibar of 1984

⁵¹ The Maritime Transport Act, Act No. 5 of 2006

⁵² Section 3 (1) (a & b) of the Maritime Transport Act, Act No. 5 of 2006

⁵³ Section 4 & 5 of the Maritime Transport Act, Act No. 5 of 2006

registries. One is Tanzania Zanzibar International Register of Shipping, for Ocean-Going Ships and the other is Tanzania Zanzibar Register of Shipping, for Coastal Ships⁵⁴.

The qualify to own a Tanzania Zanzibar Registered Ship, is either to be a Tanzanian individual or corporation owning ships hired out on bareboat charter to nationals of Tanzania, individuals or corporations in bona fide joint venture or shipping enterprise relationships with nationals of Tanzania and bodies corporate incorporated in foreign countries as well as foreign individuals⁵⁵.

To comply and giving effect to international agreements, conventions, treaties or protocols to which the United Republic of Tanzania is a party, the ZMA is required to consult the body responsible for Maritime Safety Administration established under Tanzania Merchant Shipping Act, 2003⁵⁶. This duty is further clarified in Section 6 (3) (a) & (d) as follows;

The Maritime Safety Administration shall liaison with the Maritime Safety Administration established under Merchant Shipping Act 2003 for –

- a) the proper enforcing and harmonization of standards of Zanzibar Tanzanian ships and ships registered under the Merchant Shipping Act 2003 related to international conventions to which the United Republic of Tanzania is a party;*
- b)*
- c)*
- d) regulating the names of ships registered under the Maritime Transport Act 2006 and the Merchant Shipping Act 2003.*

In that regard, it is the requirement under the laws of Zanzibar for ZMA to have a mechanism of liaising with the TASAC (*empowered to oversee the implementation of the Merchant Shipping Act*) for the harmonization of ships registration and compliance with the international conventions to which the United Republic of Tanzania. Lastly, when a ship is registered under Tanzania Zanzibar Register, for the purpose of voyage it shall hoist a United Republic of Tanzania flag⁵⁷.

⁵⁴ Section 8 (1) (a & b) of the Maritime Transport Act, Act No. 5 of 2006

⁵⁵ Section 9 (1) (a, b, c & d) of the Maritime Transport Act, No. 5 of 2006

⁵⁶ Section 6 (2) *ibid*

⁵⁷ Section 61 (1) of the Maritime Transport Act, No. 5 of 2006

2.7 Challenges of the existing framework for ships registration in the United Republic of Tanzania

From the above analysis, it is evident that ship registration system in the URT is not well structured, for the safe and smooth operation of the process. The first challenge is that, according to the URT constitution, the maritime administration is not a union matter but the Merchant Shipping Act, was enacted with jurisdictional application of the whole of the United Republic of Tanzania. The act defines a Tanzanian ship, as a ship registered in any port in the URT. The registrar of ships under the Merchant Shipping Act has a jurisdiction to register ships in the whole of URT and it prohibits any ship to trade in territorial waters of Tanzania unless is a Tanzanian ship. The Maritime Transport Act creates jurisdiction for the registrar under ZMA to register Tanzania Zanzibar ships within the territorial waters of Zanzibar. Therefore, there is an overlap of jurisdiction between the two registries.

Secondly, the established framework is lacking a clear coordination mechanism and supervision to meet the international obligations. It is unclear has more superimposed powers over the other to ensure observance of standards by Tanzanian flagged ships. The challenge is that the Merchant Shipping Act does not recognize the existence of a Tanzania Zanzibar Ship Register or Tanzania Zanzibar Ships in order to harmonize the registration.

Thirdly, Section 6 (1) & (3) of the Maritime Transport Act, creates an obligation to ZMA to liaise with corresponding maritime administration created by the merchant shipping act for the implementation of international instruments to which URT is a party. But there is no corresponding any provision under the Merchant Shipping Act or Tanzania Shipping Agencies Cooperation (TASAC) recognizing the existence of Tanzania Zanzibar registry, and creating that duty. The established Maritime Administration (TASAC) has a limited jurisdiction within the mainland Tanzania, and the act has no provision vesting it with a responsibility of liaising with Tanzania Zanzibar Maritime Administration to ensure compliance with international instruments. In other words, the Tanzanian registries in Mainland and in Tanzania Zanzibar are operating without a unifying/central coordinating mechanism. To gather lessons on how to improve the situation, the following chapter examines systems of other countries operating parallel registries with similar model to Tanzania.

3.0 CHAPTER THREE:

SECONDARY AND INTERNATIONAL SHIP REGISTRIES

3.1 Introduction

Growth of open registries came at the expense of many national fleets of the traditional maritime states, and therefore many looked for ways to stem the “flagging out” of nationally registered vessels. Registries of countries like Panama and Liberia allowed hiring of crews from anywhere in the world and charged only registration and tonnage fees, but little or no income tax on the wages of the seafarers or the ship owning corporation (Carlisle, 2009).

In that regard, the traditional maritime states turned into creating their own “second” or “international” registries (De Sombre, 2006). The strategy was to attract back their shipowners, by establishing a second or parallel shipping register, that would offer many of the advantages of open registries, but which would not also permit or condone the lax practices and procedures associated with normal open registries of ships (Mejia, 2013). Traditional maritime nations that preferred to open and operate the second registries, most did in their offshore territories. Examples are, the United Kingdom (UK) in its offshore territories of Isle of Man, Bermuda, Cayman Islands, and Gibraltar; France on its Antarctic Territory of Kerguelen Island; Spain on the Canary Islands; the Netherlands in the Netherlands Antilles; and countries of Norway, Denmark, and Germany opened a new separate International Ship Registers within their territories ((Richard and Edward, 2013).

Although the laws and taxation systems established secondary registries varied accordingly, but most had several characteristics in common. Ships would still fly the national flag of the mother country or the flag of a semi-sovereign offshore dependency, there would be different manning rules, reducing or eliminating the provision that seamen aboard the ships had to be nationals of the home nation, laws guaranteeing labour union representation of ship-board workers were relaxed or eliminated and lastly new taxation code, both for corporate and income taxes, was drafted for the new secondary registry (Carlisle, 2009).

These measures meant that the secondary registers would allow the shipowners to keep his ships under the national flag of the home state or under that of an overseas dependency. At the same time, the owner could operate his ships at costs that were competitive on the world market (Carlisle, 2009). The new registries offered shipowners the quality registration, respecting all existing international obligations and offer significant cost and tax advantages to owners. As previously noted, the new registries aimed to attract back the national owners who had left their national registries to take advantage of the more liberal regimes offered by the states practicing open registries system (Mejia, 2013). Hereunder is an analysis of the legal framework of countries practicing a parallel or secondary registry system.

3.2 The United Kingdom Ship Registration System and foreign territory of Cayman Islands

The United Kingdom of Great Britain and Northern Ireland is a constitutional monarchy state whose head is Her Majesty, Queen Elizabeth II. The registration of the British Ships in the United Kingdom is governed by the Merchant Shipping Act 1995⁵⁸ and the Merchant Shipping (Registration of Ships) Regulations, 1993. Section 1 of the Merchant Shipping Act provides the following;

A ship is a British ship if—

(a) the ship is registered in the United Kingdom under Part II; or

(b) the ship is, as a Government ship, registered in the United Kingdom in pursuance of an Order in Council under section 308; or

(c) the ship is registered under the law of a relevant British possession;

The act recognizes ships that are registered under the law of the relevant British possession as part of the British Ships. Section 18⁵⁹ empowers Her Majesty by order in the council, “*to make provision for regulating the registration of ships in the relevant British possessions other than small ships and fishing vessels by reference to categories of registries established by the Order*”. According to those categories of registries, different restrictions on the registrations of ships in

⁵⁸ The Merchant Shipping Act, Cap 21 of 1995

⁵⁹ *ibid*

such possessions apply by reference to ships' tonnages or types of ships. The overseas possession of Cayman Island, Bermuda, and the Isle of Man have been classified as Category 1 where unlimited tonnage and type is applied (Richard and Edward, 2013).

A ship is entitled to be registered under British Flag is *if owned by persons qualified to own British ships* and according to Part III of the UK Merchant Shipping (Registration of Ships) Regulation of 1993⁶⁰, the qualified persons who are “UK citizen, British dependent territories citizen, British overseas citizen, company incorporated in one of the European Economic Area (EEA) countries, citizen of a EU member state exercising rights under Articles 48 or 52 of the EU Treaty in the UK, company incorporated in any British overseas possession which has its principal place of business in the UK or those possessions, company in an European Economic Interest Grouping (EEIG), Commonwealth citizens, non-United Kingdom nationals who are settled in the United Kingdom, bodies corporate incorporated in a Commonwealth state”. This has a meaning that the UK main register is limited to a certain type of qualified persons.

Cayman Islands (British Overseas Possession) are situated south of Cuba and opted to remain a British Overseas territory when Jamaica gained her independence in 1962 and in that regard, Parliament at Westminster retains the right to legislate. But according to the West Indies Act⁶¹, it empowers Her Majesty by Order in Council to make provision for the establishment of government in part of the former colonies⁶². On domestic issues, the Islands are ruled according to Cayman Islands Constitution Order of 1999 (*made by Her Majesty with the advice of Her Privy Council*)⁶³. It is ruled by the Governor who is appointed by Her Majesty and discharges his functions as prescribed by the Cayman constitution and any other laws⁶⁴. The local legislative assembly is mandated to legislate on domestic affairs issues.

⁶⁰ The Merchant Shipping (Registration of Ships) Regulations G.N No. 3138 of 1993

⁶¹ The West Indies Act of 1962

⁶² Section 5 & 6 of the West Indies Act of 1962

⁶³ The Cayman Islands Constitution Order of 1999

⁶⁴ Articles 29 and 31 of the Cayman Islands Constitution Order of 1999

The registration of ships under the Cayman flag is governed by Merchant Shipping Law (Revision 2016)⁶⁵. Section 2 recognizes Cayman as British Overseas Territory but it differentiates between a British Ship (*has the meaning given in section 1(1) of the Merchant Shipping Act 1995 of the United Kingdom*) and the Cayman Island Ship (*a ship registered in the Islands under the Merchant Shipping Law, 2016*).

The qualification of person entitled to register vessels in the Cayman Island is not only limited to British citizens or British Overseas Territories, Crown Dependencies citizens, but also a member states of the European Union or European Economic Area and further allows any overseas country and foreign companies as defined in section 183 of the Companies Law (2016 Revision) carrying on business within the Islands and which complies with the requirements of foreign companies to register vessels⁶⁶. A ship registered under the Cayman Island is not allowed to fly any colours other than the Islands' national colours specified under section 69 of the Act⁶⁷ as;

“the red ensign bearing the Islands’ coat of arms usually worn by merchant ships, or without the coat of arms.”

In that regard, there is no difference of colours flag between a British or Cayman Islands Ship, the act allows any colours consisting of the red ensign defaced or modified whose adoption for ships registered in Cayman Island and authorized or confirmed by Her Majesty through the Order in the Council. From the analysis, though Cayman Island have independent registry, still there is an exercise of control from the central government in the UK.

3.3 France and the Registry in the Kerguelen Islands

The French government was among the first flurry of traditional maritime states to establish the secondary/parallel register in 1986, with the creation of the French Terrier Antartiques et Anstrales Francaises (TAAF) at the French Territory of the Kerguelen Islands (*part of the French Southern*

⁶⁵ The Merchant Shipping Law (Revision 2016)

⁶⁶ Section 4 of the Merchant Shipping Law (Revision 2016)

⁶⁷ Read Section 28(1) together with section 69 (1) of the Merchant Shipping Law (Revision 2016)

and Antarctic Lands that are administered as a separate district). Although only solid and liquid bulk carriers were initially allowed on TAAF, the registry was opened to all internationally trading vessels in 1993 (Bernfeld, 2007).

The register was designed explicitly to allow French owners to crew their vessels with foreign seafarers and in doing so, France changed crewing requirements such that only 25 percent of the crew including four officers have to be French nationals (Bernfeld, 2007). Hence, the French government had full control of vessels registered in TAAF and was only limited to French Ocean-going vessels and was subjected to a French flag as the Kerguelen Islands was not even semi-autonomous state.

But the use of the Kerguelen Islands as a dependent territory register did not attract significant tonnage and was replaced in 2005 by the French International Ship Register (FIR) (*Registre International Français* (RIF))⁶⁸ and most of the tonnage registered in the Kerguelen Islands was transferred to FIR.

3.4 Norwegian International Ship Register

Norway, officially the Kingdom of Norway, is a country in northern Europe. As a response to the decline of Norwegian –owned tonnage, that was registered in Norway from 96% in 1978 to 38% in 1987 attributable to the high crewing costs of operating vessels on the Norwegian national register, the country enacted the Norwegian International Ship Register Act No. 48⁶⁹ relating to the Norwegian International Ship Register (NIS) (Richard and Edward, 2013).

The conditions for registration to the Norwegian International Ship Register is limited to self-propelled passenger and cargo ships and hovercraft as well as drilling platforms and other movable installations, provided they satisfy the nationality conditions in section 1 of the Maritime Act⁷⁰ or the owner, if he does not satisfy the nationality conditions, is a limited company or a limited

⁶⁸ Created by the Act of Parliament through law No.2005-412 of 3 May 2005

⁶⁹ The Act was enacted on 12th June, 1987 as Norwegian International Ship Register, No. 48 of 1987

⁷⁰ Section 1 of the Norwegian Maritime Code, No. 39 of 1994 does limit registration only to Norwegian nationals and Norwegian companies

partnership with its head office in Norway⁷¹. Thus, if it is a foreign company, it must be controlled from Norway, which makes government supervision very easy (Kappel, 1988). The Register is kept by the registration judge in Bergen City in Norway.

The act directs the Norwegian International Ship Register to be allotted signal letters by the Maritime Directorate which are different from the signal letters allotted to other Norwegian ships. These ships are also not permitted to carry cargo or passengers between Norwegian ports or to engage in regularly scheduled passenger transport between Norwegian and foreign ports⁷². Terms of pay and employment and other working conditions on ships in this register are to be fixed in a collective wage agreement collective wage agreements may be concluded with Norwegian or foreign trade unions⁷³.

Therefore the Norwegian shipowners, are permitted to crew the vessel with foreign nationals for all positions except the master who must be Norwegian (Rhea, 2010), but individual contracts of engagement for service on ships in this register must expressly state that the contract is subject to Norwegian laws and Norwegian courts⁷⁴.

3.5 The people's Republic of China and the Hong Kong Administrative Region

China is located in eastern Asia bordering the East China Sea, Korea Bay, Yellow Sea and the South China Sea between North Korea and Vietnam. It is a Communist state with its capital in Beijing. The President is the Chief of State and the Premier is the Head of Government. The Hong Kong Special Administrative Region of the People's Republic of China is a region in southern China. Hong Kong became a colony of the British Empire at the end of the First Opium War in 1842, sovereignty over the territory was to China in 1997. As a special administrative region, Hong Kong maintains government and economic systems that are separate from that of mainland China.

⁷¹ Section 1 of the Norwegian International Ship Register, No. 48 of 1987

⁷² Section 2 and 4 of the Norwegian International Ship Register, No. 48 of 1987

⁷³ Section 6 of the Norwegian International Ship Register, No. 48 of 1987

⁷⁴ Section 6 of the Norwegian International Ship Register, No. 48 of 1987

In mainland China, ship registration is governed by Regulations of the People's Republic of China Governing Registration of Ships⁷⁵, it aimed to strengthen the supervision and control over ships by the State⁷⁶. The ships that are allowed to be registered are those only owned by the citizens of China and residences or principal places of business are located within the territory if it is an enterprise it must be established under the laws of the People's Republic of China and whose principal places of business are located within the territory (Chen, Li, Liu and Li, (2017). Ships that are allowed to fly the national flag of the People's Republic of China after being granted the nationality of the People's Republic of China⁷⁷ and shall be manned by the Chinese citizen's⁷⁸.

The joint declaration of the government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China, with effect of 01st July, 1997, restored the territory of Hong Kong to China⁷⁹. In that declaration, *the Hong Kong Special Administrative Region* is established, by the provisions of Article 31 of the Constitution of the People's Republic of China. The Hong Kong Special Administrative Region is directly under the authority of the Central People's Government of the People's Republic of China and enjoys a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.

The Hong Kong Special Administrative Region is vested with executive, legislative and independent judicial power, including that of final adjudication. The laws that were in force in Hong Kong are to remain unchanged⁸⁰. In regards to shipping, Section VIII of Annex I to the declaration provides as follows;

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen.

⁷⁵ Regulations of the People's Republic of China Governing Registration of Ships of 1994

⁷⁶ Section 1 of the People's Republic of China Governing Registration of Ships of 1994

⁷⁷ Section 2 & 3 of the People's Republic of China Governing Registration of Ships of 1994

⁷⁸ Section 3 *ibid*

⁷⁹ Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong with Annexes of 1987

⁸⁰ Article 3 (1) (2) & (3) *ibid*

The Hong Kong Special Administrative Region shall be authorized by the Central People's Government to continue to maintain a shipping register and issue related certificates under its legislation in the name of "Hong Kong, China"

(emphasis mine)

In that regard, the Hong Kong Administration is registering vessels in terms of Merchant Shipping (Registration) Ordinance⁸¹ and a vessel is registerable if the majority interest in the ship is owned by one or more qualified persons and a representative person is appointed to the ship. The qualified person under section 11 (4) (c) includes a registered non-Hong Kong company as defined by section 2(1) of the Companies Ordinance⁸². The registry allows foreign nationals to register and own ships under the Hong Kong register open registration on any ships that fulfils international requirements in terms of maritime safety and technical conditions (Liyang, 2010). There is no provision to restrict the employment of foreign nationals.

Section 37⁸³ provides for proper colours of a flag for a registered ship as specified in *Schedule 1*, and flown in the manner specified therein. The schedule specifies the flag as the People's Republic of China flown directly above the regional flag of the Hong Kong Special Administrative Region. This clearly distinguishes a Hong Kong-flagged vessel from the Chinese vessel.

3.6 International Maritime Organization and efforts of elimination of sub-standard ships

In the meeting of the United Nation Commission on Sustainable Development⁸⁴, the attention was brought to the council concerning the governance of Oceans and Seas, decision 7/1 of the council recommended following the action on other Maritime activities;

“The Commission: invites IMO as a matter of urgency to develop measures, in binding form where IMO members consider it appropriate, to ensure that ships of all flag States

⁸¹ The Merchant Shipping (Registration) Ordinance, Cap 415 of 1990

⁸² The Companies Ordinance of Hong Kong Cap 622 of 2013

⁸³ Section 36 of the Merchant Shipping (Registration) Ordinance, Cap 415 of 1990

⁸⁴ United Nations Commission on Sustainable Development, report on the seventh session (1 May – 27 July 1998 and 19-30 April 1999) pp 12- 19

meet international rules and standards so as to give complete effect to UNCLOS, especially article 91 (Nationality of ships), as well as provisions of other relevant conventions”.

On 04th December 2013, the assembly of the International Maritime Organization (IMO) adopted a resolution A.1070 (28)⁸⁵ with the primary objective of ensuring member states have in place an adequate and effective system for exercising control over ships entitled to fly their flag and they comply with relevant international rules and regulations in respect of maritime safety, security and protection of the Maritime Environment.

The III Code requires flag states to effectively discharge their responsibilities and are advised to implement policies through issuing national legislation and guidance, which will assist in the implementation and enforcement of the requirements of all safety and pollution prevention conventions and protocols to which they are parties and assign responsibilities within their administrations to update and revise any relevant policies adopted, as necessary⁸⁶.

A flag state is required to take all necessary measures as part of enforcement, to secure observance of international rules and standards by ships entitled to fly its flag. Flag state must prohibit its ships from sailing until such ships comply with the requirements of international rules and standards. Flag states are required to conduct the periodic inspection of ships entitled to fly its flag so as to verify that the actual condition of the ship and its crew, whether are in conformity with the certificates it carries⁸⁷. Therefore the flag states are required to have surveyors with an appropriate qualification and relevant sea-going experience to perform duties as flag State surveyors who are obtained through documented training programs⁸⁸.

If a flag state delegates its authority to a recognized organizations (RO), for conducting surveys, inspections and audits, issuing of certificates and documents, marking of ships and other statutory works, is required to regulate such authorizations to determine if the recognized organizations

⁸⁵ IMO Instruments Implementation Code (III Code) adopted by the Assembly via Resolution A. 1070 (28) on 3rd December 2013 (Agenda item 10)

⁸⁶ Paragraph 15 (1 &2) of the III Code dealing with the Flag States Implementation.

⁸⁷ Paragraph 22 (1&2) of the III Code as part of the Flag States enforcement on its flagged vessels.

⁸⁸ Paragraph 28-32 of the III Code dealing with the flag state surveyors

(RO) has adequate resources in terms of technical, managerial and research capabilities to accomplish the tasks being assigned⁸⁹. The flag states are therefore advised to comply, implement and enforce all the above measures to improve flag states maritime administration to do away with the substandard vessels and improve the safety of life at sea and protection of the Maritime environment.

⁸⁹ Paragraph 18 (1, & 3) of the III Code concerning with the delegation of authority to recognized RO.

4.0 CHAPTER FOUR:

COMPARATIVE ANALYSIS OF SECONDARY/PARALLEL SHIPS REGISTRIES WITH TANZANIAN SYSTEM OF SHIP REGISTRATION

4.1 Introduction

The Tanzanian ships registration system (with registries under the United Republic Government (main registry) and the Revolutionary Government of Zanzibar), draws many similarities from countries allowing the existence of more than one registry (a secondary registry). The reasons/motives might be different but from a legal perspective, many comparatives can be drawn to attract an analysis to understand the system of control, structure and administration how is provided and supervised for not attracting substandard ships or not to be a source of fraudulent registration or fraudulent registries of ships.

This chapter has focused on making an analysis of laws regulating ship registration between URT and countries having secondary registries. The model that has been preferred is of the UK and the Cayman Islands and the People's Republic of China and the Hong Kong Administrative Region. The areas of focus will be on the following major aspects:

- a) The competency of the jurisdiction of the main registry and a secondary registry.
- b) Compatibility of the Rules of Registration between the two registries
- c) The Recognized Organizations (RO)

4.2 The Competency of Jurisdiction of the Main Registry and a Secondary Registry

According to the Black's Law ⁹⁰, competency of jurisdiction is when a government has a general power to exercise authority over all persons and things within its territory; a state's power to create interests that will be recognized, and in law, the authority of government to deal with specific matters. In most cases, competency of jurisdiction is always created by the country legislations. For a state to have the competency of the jurisdiction in maritime administration especially on

⁹⁰The Black's Laws Dictionary (8th ed. 2004) pp. 855

matters of ship registration, there is a need to understand the area of application of specific legislation.

4.2.1 The United Kingdom and the Cayman Islands

The competency of the jurisdiction of the Merchant Shipping Act⁹¹ is its recognition of the existence of the British ships and the United Kingdom Ships. The British ships are registerable ships under the UK registry, the government ships registered in the United Kingdom or ships that are registered under the law of the relevant British overseas possessions⁹².

But for a ship to become the United Kingdom Ships, it must be registered only in the United Kingdom under Part II of the Merchant Shipping Act⁹³. Therefore, the competency of jurisdiction is differentiated between the British ships and the United Kingdom ships. This is largely depending on laws applicable and the place of registration. The act creates a Central Register of British ships and is maintained by the Registrar General of Shipping and Seamen.⁹⁴ The persons qualifying to register ships under the Central Register of British ships are provided under UK Merchant Shipping (Registration of Ships) Regulation of 1993. Therefore, the UK Merchant Shipping Act has a competency of jurisdiction to all British Ships but regulates ships registered by the Registrar General of Shipping and Seamen which is the United Kingdom Ships but recognizes existence of other British ships that may be registered under relevant laws of Overseas British Possessions.

In the Cayman Islands (the British Overseas Possession), the Merchant Shipping Law recognizes the territory as part of British Overseas and acknowledges the existence of the British ships under section 1(1) of the Merchant Shipping Act 1995⁹⁵. The act defines the Cayman Island ships as ship registerable in the Island through the Merchant Shipping Law of the Cayman Islands⁹⁶. Therefore, within the broader scope of the British ships, the Cayman Islands have established a Cayman Island Ships, that are registered and regulated under a legal regime different from the United Kingdom.

⁹¹ Merchant Shipping Act, Cap 21 of 1995

⁹² Section 1 (1) of the Merchant Shipping Act, Cap 21 of 1995

⁹³ Section 1 (3) *ibid*

⁹⁴ Section 8 (1) & (2) of the Merchant Shipping Act, Cap 21 of 1995

⁹⁵ Section 2 of the Merchant Shipping Law, 2016

⁹⁶ Section 2 *ibid*

The most thing to be noted is that, under the provision of both legislations, a chain of link and connection has been established between the two registries. The UK Merchant Shipping Act, does recognize the existence of other British Ships in its overseas territories including the Cayman Islands. Equally, the Cayman Merchant Shipping law recognizes the existence of the British Ships as defined under the Merchant Shipping Act. The Maritime Authority of Cayman Islands has an exclusive right to Cayman Shipping Registry as established under Section 3 of the Maritime Authority Law⁹⁷, which provides shipping registration services in the island. The registrar of shipping is required to maintain a register of Cayman Island ships for the ships is registered in the Islands⁹⁸.

From the analysis, the competency of the UK Merchant Shipping Act on the jurisdiction of British ships is broad but its application is limited to ships registered under the Merchant Shipping Act. At the same time, it recognizes existence of other British ships registerable under the British Overseas Possessions but are not United Kingdom ships. The Cayman Island ships are still British ships but regulated under different legal framework separate from one applying to the United Kingdom Ships.

4.2.2 The People's Republic of China and the Hong Kong Administrative Region

In China, ships registration is governed by the Regulation of the People's Republic of China Governing the Registration of Ships, with purpose to regulate ships owned by citizens of the People's Republic of China, whose residences or principal places of business are located within the territory⁹⁹. In China a ship registered abroad is not granted with the Chinese nationality unless its former registration of nationality has already been suspended or deleted. The competency of jurisdiction is within the whole of China under the Harbour Superintendence Administration of the People's Republic of China¹⁰⁰. The Hong Kong ship registry is not referred anywhere in the regulations nor is there existence of competency of jurisdiction between China Registry and the Hong Kong registry.

⁹⁷ Maritime Authority Law No. 13 of 2013

⁹⁸ Section 3 (1) of the Merchant Shipping Law of 2016

⁹⁹ Article 2 (1) of the Regulations of the People's Republic of China Governing the Registration of Ships, Decree 155 of 1994

¹⁰⁰ Article 8 *ibid*

In Hong Kong Special Administrative Region, ships registration is governed by the Merchant Shipping (Registration) Ordinance¹⁰¹. The Director of Maritime has the power to appoint a person to become the Registrar of Ships whose competency of jurisdiction is imposed under the Ordinance¹⁰². The Registrar is to keep a register of registered or provisionally registered ships¹⁰³. A ship is only registrable, if the majority of interests in the ship are owned by the qualified persons, being an individual who holds a valid identity card and who is ordinarily resident in Hong Kong or a body corporate incorporated in Hong Kong and a registered non-Hong Kong company¹⁰⁴.

According to the established laws in China and Hong Kong, there is no direct connection between the two registries as each has a complete competency of jurisdiction within its territory. The connection between the registries, is brought by the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China¹⁰⁵. In the declaration, the People's Republic of China with effect from 1 July 1997, recovered the Hong Kong area as a common aspiration of the entire Chinese people. But Hong Kong Special Administrative Region has remained vested with executive, legislative and independent judicial power, including final adjudication. The laws in force in Hong Kong had been agreed to remain unchanged including Merchant Shipping (Registration) Ordinance and the region retained the status of a free port and has a separate customs territory which continues to maintain previous systems of shipping management and shipping regulation¹⁰⁶.

4.2.2 The United Republic of Tanzania and Tanzania Zanzibar

The competency of the jurisdiction of ship registration in the United Republic of Tanzania is regulated by the Merchant Shipping Act¹⁰⁷ with an authority to register the Tanzanian Ship (*a ship registered or licensed under the provisions of the act at a port in the United Republic*), wherever

¹⁰¹ Merchant Shipping (Registration) Ordinance L.N. 366 of 1990

¹⁰² Section 4 (1& 2) *ibid*

¹⁰³ Section 7 (1) of the Merchant Shipping (Registration) Ordinance L.N. 366 of 1990

¹⁰⁴ Section 11 (1) (a &b) of the Merchant Shipping (Registration) Ordinance L.N. 366 of 1990

¹⁰⁵ The Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong with Annexes, 5 Int'l Tax& Bus. Law. 424 (1987)

¹⁰⁶ Article 3 *ibid*

¹⁰⁷ The Merchant Shipping Act, No. 21 of 2003

they may be and all other ships while in a port or place in, or within the territorial sea, under the jurisdiction of the United Republic of Tanzania. There is no specific port of registry but for the ships means the port at which she is registered or is to be registered.

When the jurisdiction is that of the United Republic (according to the URT Constitution) it means to embrace the jurisdiction of mainland Tanzania and that of Tanzania Zanzibar. The act has not differentiated or separated the jurisdiction of Tanzania Zanzibar from that of Tanzania Mainland and created restriction of trading in Tanzanian waters unless it is a Tanzanian Ship¹⁰⁸ and only Tanzanian ships may be engaged in local trade in Tanzanian waters (*the sea or other waters within the seaward limits of the territorial sea of Tanzania*)¹⁰⁹. Therefore, under the Merchant Shipping Act the competence of jurisdiction for ship registration is the whole of the United Republic and the registrar of Tanzanian ships appointed by the Minister is meant to have jurisdiction for registration in the United Republic of Tanzania.

In Tanzania Zanzibar, the Maritime Administration Act¹¹⁰ applies to Tanzania Zanzibar registered ships wherever may be, and all other ships while in any port in Zanzibar¹¹¹. The Minister responsible for shipping in Zanzibar, is empowered to appoint the Registrar of Ships and who is an officer responsible for the registration of Zanzibar Tanzanian ships¹¹². Hence, there is an overlap of competency of jurisdiction for ships registered in the URT, as limitation and relationship between the two registries is not well defined. The Merchant Shipping Act does not have any provision recognizing the existence of a Tanzania Zanzibar Ship or Tanzania Zanzibar Registry and it was intended to have jurisdiction of the whole of Tanzanian territorial sea which includes Tanzania Zanzibar¹¹³.

¹⁰⁸ Section 2 of the Merchant Shipping Act, No. 21 of 2003 defines Tanzanian Ship as any ship registered under the provision of the Act in any port within the United Republic

¹⁰⁹ Section 10 (1) *ibid*

¹¹⁰ The Maritime Transport Act, No. 5 of 2006

¹¹¹ Section 3 (1) (a & b) *ibid*

¹¹² Section 7 (2) of the Maritime Transport Act, No. 5 of 2006

¹¹³ Section 10 (1) of the Merchant Shipping Act, No. 21 of 2003

4.3 Compatibility of the Rules of Registration between the two Registries

4.3.1 The United Kingdom and the Cayman Island

The rules for the ships registration in the United Kingdom and it's the Cayman Islands have some similarities and differences. In the United Kingdom, for a ship to be recognized as a UK ship, it must be registered under part II of the Merchant Shipping Act, and is only entitled to be registered, if it is owned by persons qualified to own the British ships and who are also to satisfy other prescribed conditions in the regulations¹¹⁴. In this regard, there is a limitation of persons qualified to register a British ship under the United Kingdom registry. The application for registration is made to the Registrar of the General Registry of Shipping and Seamen, either in person or by post and must be supported by the declaration of the eligibility approved by the secretary of the state and which include *a declaration of the British connection*¹¹⁵.

In the Cayman Islands, the rules of registration of ships are provided under the Merchant Shipping Law. Section 4 (1) of the Act, list persons qualifying to be owners of the Cayman ship, and in addition to those provided under the UK Merchant Shipping Act, the registry allows for registration of ships by persons who are under the Hong Kong (British Nationality) Order 1986, Cayman Islands citizens and bodies corporate, shipping entities or foreign companies incorporated, established or registered in-

- a) the United Kingdom or any of its Overseas Territories or Crown Dependencies;
- b) a Member State of the European Union or European Economic Area, including any overseas country, territory or dependency of such a Member State; or
- c) **an approved country or any overseas country, territory or dependency of such an approved country;**
- d) **foreign companies as defined in section 183 of the Companies Law (2016 Revision) carrying on business within the Islands which comply with all the requirements of foreign companies under that Law.**

(emphasis mine)

¹¹⁴ Section 9 (1 & 2) of the Merchant Shipping Act, Cap 21 of 1995

¹¹⁵ Regulations 20 & 22 of the Merchant Shipping (Registration of Ships) Regulations 1993

From the above list, the conditions of registration between the two territories are somehow different as Cayman Ships register, allows foreign companies doing business in Cayman Islands to register ships as well as shipping entities or foreign companies incorporated in an approved country. In that regard, the UK has limitation but it's overseas territory, no provision for such limitation has been provided.

But in Cayman Islands, when an applicant whose majority interest in the ship is not a resident, his application for registration will be allowed only if he appoints **a representative** (*an individual resident in the Islands; or a body corporate incorporated in the Islands and having a place of business there*¹¹⁶) in relation to the ship¹¹⁷. The appointed representative is required to provide information concerning the ship representing and carry out such instructions or directives, duties and responsibilities about such ship or its owner as may be required by the Director¹¹⁸.

Therefore, the responsibility of the registered ship by non-resident with majority interest in the ship, rest with its official appointed representative. The representative appointed must remain responsible to the ship for which he was so appointed, until the Registrar of Shipping is notified by the owner, of a change in the identity or address of the representative person¹¹⁹.

But by virtue of the Merchant Shipping Act, Her Majesty by Order in Council has powers to make such provision as she considers appropriate for giving effect to any provisions ratified by the United Kingdom and may direct and such Order to include provisions for the extension of any provisions of the Order, with or without modifications, to any relevant British Possession¹²⁰. Hence vesting the superiority of control over British Overseas Territories registries to Her Majesty through the UK Merchant Shipping Act.

¹¹⁶ Section 6 (2) (a &b) of the Merchant Shipping Law, 2016

¹¹⁷ Section 5 (3) & 6 (1) *ibid*

¹¹⁸ Section 6 (5) of the Merchant Shipping Law, 2016

¹¹⁹ Section 6 (6) (1) (a & b) *ibid*

¹²⁰ Section 121 (1) & (3) (e) of the Merchant Shipping Law, 2016

4.3.2 The People's Republic of China and the Administrative Region of Hong Kong

The rules and conditions for registration in the People's Republic of China and those provided in the Administrative Region of Hong Kong are quite different with minimal similarity. The Hong Kong Merchant Shipping Ordinance is much borrowed from the British common law system and has more similarity with the British Merchant Shipping Act.

In mainland China, the Regulation Governing the Registration of Ships¹⁹⁹³ aimed at strengthening the supervision and control of ships by the state and safeguarding the legitimate rights and interests of the parties involved in the registration of ships¹²¹. The person who qualifies to register ships are Chinese citizens with the place of business within the territory and the ships are to be manned by the Chinese citizens and recruitment of foreign seafarers, must have the approval of the competent authority¹²². A shipowner applying for registration in China, is required to submit to Ship Registration Administration at the port of registry the documents evidencing his legal status, and submit the originals copies of the documents evidencing his ownership over the ship¹²³.

In Hong Kong, a ship is registerable only if majority interest in the ship is owned by one or more qualified persons to own and register a vessel under the Hong Kong register, whether or not a majority interest in the ship is owned by one or more qualified persons and a representative person is appointed in relation to the ship¹²⁴. The qualified persons for registration include an individual who holds a valid identity card and who is ordinarily resident in Hong Kong, a body corporate incorporated in Hong Kong; and a registered non-Hong Kong company as defined by section 2 (1) of the Companies Ordinance¹²⁵.

¹²¹ Article 1 of the Regulations of the People's Republic of China Governing the Registration of Ships, No. 155 of 1994

¹²² Articles 2 & 7 *ibid*

¹²³ Article 13 of the Regulations of the People's Republic of China Governing the Registration of Ships, No. 155 of 1994

¹²⁴ Section 11 (1) (a & b) of the Merchant Shipping Ordinance, L.N 366 OF 1990

¹²⁵ Section 11 (4) (a, b & c) *ibid*

It further recognizes ships that were registered by the UK Merchant Shipping Act of 1894 as applied in or extended to Hong Kong immediately before the commencement date¹²⁶. Therefore, Ship registration in Hong Kong is not only limited to the citizens of its territory but extends to include foreign companies recognized in the Companies Ordinance which can apply for registration through an appointed representative person in Hong Kong.

The relationship between the Chinese and Hong Kong registries is limited. According to the Joint Declaration, the Hong Kong Special Administrative Region is directly under the authority of the Central People's Government of the People's Republic of China but enjoys a high degree of autonomy except on foreign and defensive affairs which are the responsibilities of the Central People's Government¹²⁷. The representatives of the Hong Kong Special Administrative Region, are allowed to participate, in international meetings and negotiations as part of the delegation of the People's Republic of China, on matters affecting the Hong Kong Special Administrative Region¹²⁸.

The Hong Kong Special Administrative Region is also allowed on its own, to use the name "Hong Kong China", to maintain and develop relations, conclude and implement agreements with other states, regions and relevant international organizations in the appropriate fields including shipping. The application of international agreements to which the People's Republic of China is or becomes a party is decided by the Central People's Government, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region but after seeking the views of the Hong Kong Special Administrative Region Government¹²⁹.

¹²⁶ Section 95 (1) of the Merchant Shipping Ordinance, L.N 366 OF 1990

¹²⁷ Article I of Annex I of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong with Annexes, 5 Int'l Tax & Bus. Law. 424 (1987)

¹²⁸ Article XI of Annex I *ibid*

¹²⁹ Article XI of Annex I of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong with Annexes, 5 Int'l Tax & Bus. Law. 424 (1987)

4.3.3 United Republic of Tanzania and Tanzania Zanzibar

The rules and conditions governing the ships registration under the Merchant Shipping Act and the Maritime Administration Act for the Tanzania Mainland and Tanzania Zanzibar respectively, are more or less different and with the limited relationship for coordination of the process. As previously observed, the Merchant Shipping Act was enacted to exercise jurisdiction within the United Republic of Tanzania and defines a Tanzanian ship with reference to a ship registered in any port within the United Republic of Tanzania¹³⁰.

The Tanzania Zanzibar Registry is not referred under the Merchant Shipping Act and even after the enactment of the Maritime Transport Act of Zanzibar, no amendments have been preferred to the Merchant Shipping Act for the alignment and recognition of Tanzania Zanzibar Ship registry. This creates challenges for smooth coordination and supervision of ships registration process within the URT. Currently, in Tanzania Mainland the registration is only limited to nationals of Tanzania, whether individuals or corporations entitled to own and register a Tanzanian ship¹³¹.

In Tanzania Zanzibar, the Maritime Transport Act has established a Tanzania Zanzibar ship registry under two categories (*Tanzania Zanzibar International Register of Shipping (for ocean-going ships)* and *Tanzania Zanzibar Register of Shipping (for coastal ships)*)¹³², it also provides for different conditions for registration, to allow not only Tanzanian nationals but also bodies corporate incorporated in foreign countries and foreign individuals to register ships¹³³.

The procedure for registration by the foreign bodies cooperation is through an application for registration made to the Registrar of Ships by a duly authorized officer of that body or by its agent¹³⁴. The person authorized to make declarations on behalf of the body corporate must sign a declaration of eligibility, referring to the ship and in the case of a foreign ship, a statement of her foreign name¹³⁵. Under Zanzibar International Registry, there is no existing requirement for a

¹³⁰ Section 2 (1) of the Merchant Shipping Act No. 21 of 2003

¹³¹ Section 13 (1) (a, b & c) of the Merchant Shipping Act, No. 21 of 2003

¹³² Section 8 (1) (a & b) of the Maritime Transport Act, No. 5 of 2006

¹³³ Section 9 (1) (d) of the Maritime Transport Act, No. 5 of 2006

¹³⁴ Section 11 (d) *ibid*

¹³⁵ Section 12 (d) of the Maritime Transport Act, No. 5 of 2006

foreign company to appoint a local representative who assumes responsibility to act on behalf of the foreign company for registration and compliance with the conditions of registration and be responsible to the registrar on behalf of the foreign company owning a Tanzania Zanzibar ship.

But to comply with the requirements and standards established under international instruments for safety and security of shipping by which have been ratified by the URT, section 6 (3) of the Maritime Transport Act ¹³⁶provides as follows;

The Maritime Safety Administration shall liaison with the Maritime Safety Administration established under Merchant Shipping Act 2003 for

- (a) the proper enforcing and harmonization of standards of Zanzibar Tanzanian ships and ships registered under the Merchant Shipping Act 2003 related to international conventions to which the United Republic of Tanzania is a party;*
- (b)*
- (c) regulating safety and security of ships trading between Zanzibar ports and Tanzania mainland ports; and*
- (d) regulating the names of ships registered under the Maritime Transport Act 2006 and the Merchant Shipping Act 2003*

For the effective implementation of the above requirements, there ought to have been a corresponding provision under the Merchant Shipping Act or the Tanzania Shipping Agencies Act to create an obligation to oversee the functions of Tanzania Zanzibar Maritime Administration especially the ship registration process. Section 60 (1) and (5) of the Tanzania Shipping Agencies Act states as follows:

- (1) Where the United Republic of Tanzania is a party to an International or Regional agreement or Convention relating to maritime transport services, the maritime environment, safety, and security the Minister shall in consultation with the Corporation;*
 - a) Initiate and prepare legislative proposals for purposes of implementing the agreement; and*

¹³⁶ Section 6 (3) of the Maritime Transport Act, No. 5 of 2006

b) Identify appropriate measures necessary for the implementation of the agreement.

(5) *International or regional agreements or Convention related to maritime administration, maritime environment safety and security shall apply to the United Republic of Tanzania*

Therefore, there is no established legal duty under the Tanzania Shipping Agencies Corporation (*with jurisdiction only in mainland Tanzania*) to coordinate or liaise the implementation of international obligations on the part of Tanzania Zanzibar Maritime Administration. Hence coordination of the implementation of international obligations for which the URT has ratified have been left to be hanging between the two responsible MARADs each lacking the effective authority to oversee their implementation.

4.4 The Recognized Organizations (ROs)

Under principles of IMO, states are allowed to authorize the recognized organizations (ROs) to act on its behalf, in conducting the surveys, inspections, and audits, issuing of certificates and documents, marking of ships and other statutory work. But states are required to regulate such authorization¹³⁷ to promote uniformity of inspections and maintaining established standards¹³⁸. The Guidelines for the Authorization of Organizations Acting on Behalf of Administration¹³⁹ requires any assignment of authorization to ROs, the state must determine the ROs has adequate resources in term of technical, managerial and research capabilities to accomplish the task being assigned.

The state is required to have a formal written agreement with the organization specifying instructions and detailing actions to be taken in the event that a ship is found not fit to proceed to sea without danger to the ship or person on-board¹⁴⁰. It is the requirement for the administration to provide the ROs with appropriate instruments of national law giving effect to the provisions of the

¹³⁷ Paragraph 18 of the IMO Instruments Implementation Code (III CODE), Res A.1070(28), 2013

¹³⁸ Paragraph 2 to the Annex of the

¹³⁹ Paragraph 2 of the Annex to Guidelines for the Authorization of Organizations Acting on Behalf of the Administration. Res A. 739 (18), 1993

¹⁴⁰ Paragraph 2 (1, 2, & 5) of the Annex to Guidelines for the Authorization of Organizations Acting on Behalf of the Administration. Res A. 739 (18), 1993

Conventions¹⁴¹ and for the need for upholding the standards of a ship registered, the responsible maritime administration must have a thorough knowledge of the ROs of which it assigns its responsibilities.

4.4.1 The United Kingdom and the Cayman Islands

According to the registered information under the IMO, the contracted ROs working with Maritime Administrations of the UK and those under its Overseas possession of Cayman Islands are separated. Though the ROs working with both administrations are the same each administration has separately signed contracts directing the responsibilities to be undertaken. The listed RO are; the American Bureau of Shipping (ABS), Bureau Veritas (BV), DNV GL AS (DNVGL), Lloyd's Register (LR) and the Nippon Kaiji Kyokai (NKK) and RINA Services S.p.A (RINA).

4.4.2 The People's Republic of China and Hong Kong

In the China People's Republic, the ROs working with the Maritime Administration are separated with those working with Hong Kong. In the mainland, the ROs working with the MARADs are the China Classification Society (CCS) and the China Overseas Fisheries Association (COFA). While in Hong Kong the contracted ROs are the China Classification Society (CCS), Russian Maritime Register of Shipping (RMRS), Korean Register of Shipping (KRS), American Bureau of Shipping (ABS), Bureau Veritas (BV), DNV GL AS (DNVGL), Lloyd's Register (LR) and the Nippon Kaiji Kyokai (NKK) and RINA Services S.p.A (RINA).

4.4.3 United Republic of Tanzania and Tanzania Zanzibar

The ROs working with the United Republic have been categorized between the United Republic of Tanzania and Zanzibar (United Republic of Tanzania). On the part of Zanzibar (United Republic), no information has been recorded regarding any ROs that are working with the MARADs in Zanzibar. On the part of the United Republic of Tanzania there are several ROs listed to be working on behalf URT namely; Cosmos Maritime Bureau Inc. (CMB), Danforth Maritime Survey & Certification Services (DMSC), Dromon Bureau of Shipping (DBS), Guardian Bureau of Shipping (GNB), Intertek Maritime Bureau (IMB), Macosnar Corporation (MC), Maritime

¹⁴¹ Paragraph 2 (4) of the Resolution A. 739 (18), 1993

Lloyd (ML), Mediterranean Shipping Register (MSR), Novel Classification Society S.A., novelClass (NCS), Phoenix Register of Shipping S.A (PHRS), Royal Bureau of Shipping (RBS) and Veritas Register of Shipping (formerly Venezuelan Register of Shipping (VRS)).

The detailed analysis of the listed ROs has transpired that the contracting agreements were entered with Tanzania Zanzibar International Registry of Ships (TZIRS) through the Zanzibar MARADs. It is further evidenced from the records all the ROs were engaged on the same date (22/02/2017) at Sharjah, United Arab Emirates questioning on whether sufficient due diligence of the respective RO was made by TZIRS to satisfy themselves of the competency of all ROs to discharge the assigned work.

5.0 CHAPTER FIVE:

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

As it has been observed in the previous chapters, the established framework of ships registration system of URT is under independent separate registries administered by two separate MARADs. The first is hosted by the URT government and the other is under the revolutionary government of Zanzibar. According to the existing legal framework, there is limited coordination between the two registries with some contradictions on the jurisdiction of application for the competency of registering and granting nationality to ships. Currently there are different conditions for registration of ships for the two registries resulting in the operation of parallel registries without a strong established coordinative legal framework creating a strong implication on the ability to ensure compliance with internationally agreed standards.

To understand the challenges and weaknesses of this existing system, the work made a comparative study analysis of other countries with a more or less similar system of ships registration. The focus of the work was with the UK and its offshore territory of the Cayman Islands and the People's Republic of China and the Hong Kong Administrative Region.

From the study it has transpired that, under the UK and Cayman Islands system of ships registration, there is an established link between the registries. The Merchant Shipping Act), defines a British Ship to include ships that are registered under the British Overseas Territories. It also distinguishes a British Ship from a United Kingdom Ship from the requirement that, a UK ship is only registered under Part II of the UK Merchant Shipping Act, but is still part of the wider meaning of British ships. The act also empowers Her Majesty the Queen, to provide the conditions for registration and type of vessels to be registered under the British Overseas Territories and make an order for the extension of the application of international instruments which have been UK ratified by the UK.

In the Cayman Islands, the Merchant Shipping law recognizes the existence of a British ship as defined under the Merchant Shipping Act of UK. The act establishes a Cayman Islands Ship, as a

registered ship in accordance with the Cayman Islands laws. In the Cayman Islands, the established registration law, allows foreign companies to register vessels, a condition which is not existing under the UK Merchant Shipping Act despite existence of great connection between the two registries. The Merchant Shipping Act, empowers Her Majesty the Queen to specify the category of vessels to be registered in the Cayman Island and the laws also allows on an application for transfer of vessels between the Cayman Islands to the United Kingdom Registries which creates the assurance of the quality of standard of ships registered. Lastly, in Cayman Islands it is a mandatory requirement for foreign companies to appoint a local representative for registration and compliance with all the requirement of the laws of registration and compliance.

On the part of People's Republic of China and Administrative region of Hong Kong, the system of ships registration is very different between the two registries. Hong Kong is still applying the common law system which has more relationship with the UK than to China. In China, ship registration is very limited only to Chinese nationals and companies but in Hong Kong, conditions for registration allows not only Hong Kong residents but also locally registered foreign companies to apply for registration. There is also a requirement for foreign companies to appoint a local representative to conduct registration and compliance activities on its behalf and be responsible to the Maritime Administration Authority.

The link between the two MARADS is established through the joint declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong. Under that agreement, Hong Kong has remained in control the whole shipping industry and registration of ships and still has a right to be represented by its government to all International Organisations meetings and the Central government of China is required to consult with Hong Kong Administration before deciding on anything affecting shipping.

These two examples show that there is great potential for a smooth and efficient operation of parallel registries in a state, and this can be achieved by having an established and well-coordinated legal framework for such existence to ensure they meet the set international standards for ships registration to avoid registration of substandard vessels.

Unfortunately, as we have seen in the previous chapters, there is a lack of coordination between the two registries of URT and Tanzania Zanzibar, which has resulted in confusion not only within the country but in other ports around the world and even at IMO. For instance, because of the lack of effective coordination there is shortfall of information of ROs as when it comes to the United Republic of Tanzania. The list of RO provided in the IMO under the URT was supposed to be reflected under Tanzania Zanzibar but lack of coordination between the registries creates this confusion.

5.2 Conclusion

Despite the challenges facing ship registration system in the URT as the flag the Tanzanian flag is perceived a source of substandard and fraudulent registrations of vessels, still there is a great potential for the improvement of the ships registration system in Tanzania. Currently, the legal framework of ships registration is not well coordinated between the two registries. The principal legislations on both parts of the union are structured to work independently without a framework of coordination and control to ensure registered ships meets the set local and international standards.

The outcome of study of other countries with similar system of registration by operating parallel registries with different conditions of registration (closed registry and open registry) likewise in Tanzania mainland and Zanzibar, is not a reason for a country to host substandard vessels. The maritime legislation of those countries has shown the existence of coordination between the registries by creating control authority on matters of compliance with international instruments. The open registries of those countries have strong conditions for allowing foreign companies to register their vessels contrary to what is being provided for the registration of Tanzania Zanzibar Ship in the Tanzania Zanzibar International Register where offshore agents are allowed to register on behalf of the organisation.

In that regard, there is a need for the review by formulation of the National Maritime Transport Policy (NMTP), to address the existing problem by creating an organisational structure of the Tanzania Maritime Administration and take consideration of the current challenges of the maritime

administration in Tanzania Zanzibar and Tanzania Mainland. This can help to create a mandatory framework of coordination and review of the existing legislation to take into considerations the current challenges which somewhat attract the existence of substandard vessels. This approach can assist in uncovering the existing gaps under the legislations and provide long-term solutions.

5.3 Recommendations

This research has come up with the following recommendations;

- a) The amendment of the Merchant Shipping Act for the purpose of rectifying the meaning of a Tanzanian Ship and taking onboard the definition of Tanzania Zanzibar Ships, within a wider framework of the United Republic of Tanzania. This will help to create and resolve the challenge of jurisdictional application and creating the coordination system for both registries to ensure compliance with the set registration standards and compliance.
- b) The need for the review of legislations establishing the jurisdiction of MARADS in Tanzania Mainland and Tanzania Zanzibar for establishment a system of coordination mechanism and the lead authority between the two administration for the creation responsibility of authority for the compliance with international obligations.
- c) In the light of minimizing fraudulent registration and substandard vessels, the Maritime Transport Act of Tanzania Zanzibar should be amended to introduce the provision regarding establishment of local representative's companies/agents, to act on behalf of foreign companies for the registration of ships and compliance requirements. This measure ensures ships that are registered are well known and locally represented to meet established conditions for registration and standards of operation.

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