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WORLD MARITIME UNIVERSITY
Malmö, Sweden

**ANALYSIS OF THE TUVALU SHIP REGISTRY
AND THE DELEGATION OF AUTHORITY TO
RECOGNIZED ORGANIZATIONS**

By

ANDREW PUGA SEMELI

Tuvalu

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirements for the reward of the degree of

MASTER OF SCIENCE

in

MARITIME AFFAIRS

(MARITIME LAW AND POLICY)

2020

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.

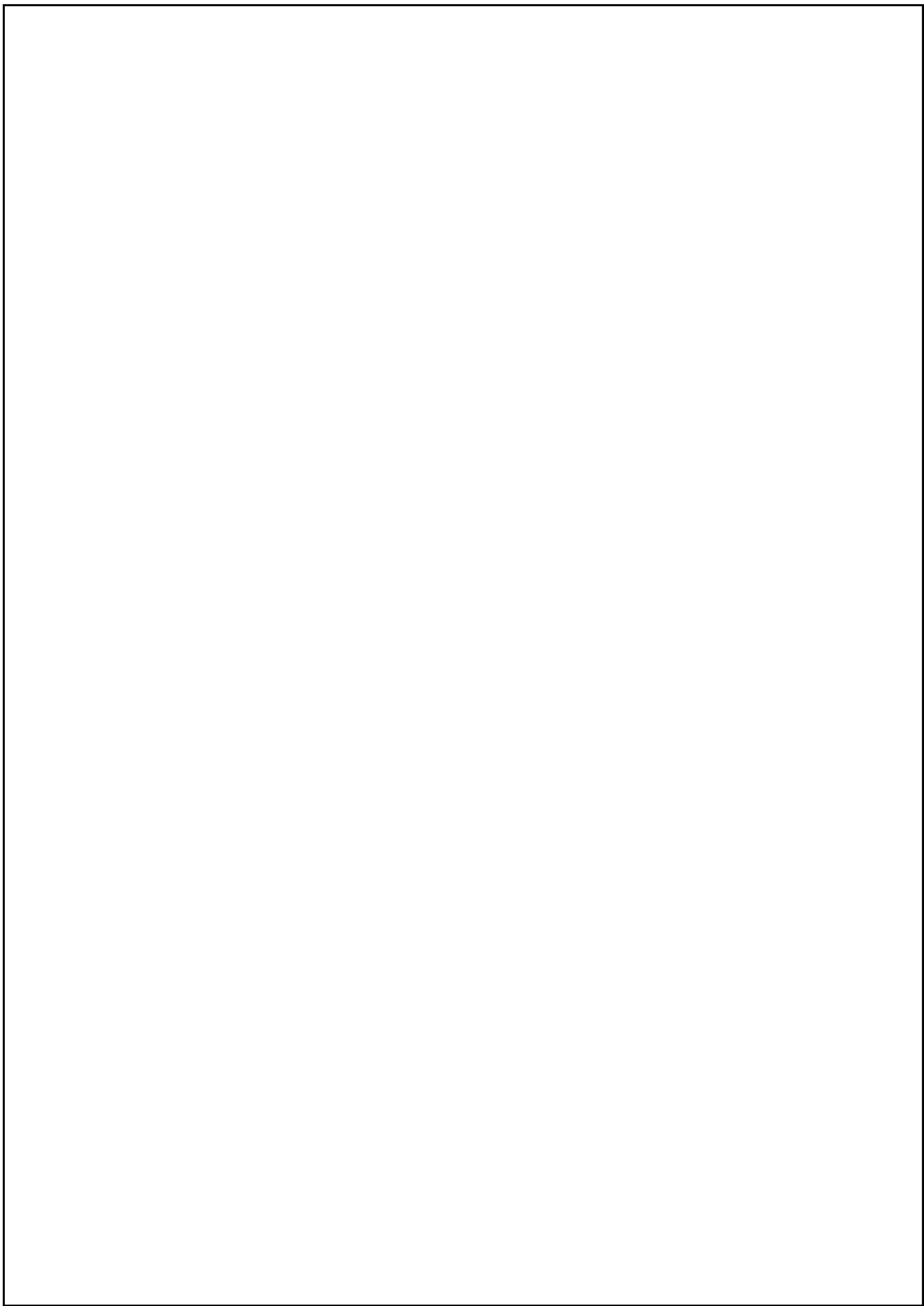
The contents of this dissertation reflect my own personal views,
and are not necessarily endorsed by the University.

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(Date): 05/10/20

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Supervisor's affiliation: World Maritime University



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ABSTRACTS

Title of Dissertation: **Analysis of the Tuvalu Ship Registry and the Delegation of Authority to Recognised Organisations**

Degree: **Master of Science**

The dissertation examines the ability of Tuvalu to monitor the performance of ships flying its flag to ensure compliance with international maritime conventions and Tuvalu national law.

Determining the level of compliance of Tuvalu ships has been measured against the requirements stipulated under international maritime conventions and the performance of Tuvalu ships detailed in the Tokyo and the Paris agreement.

As open ship registry is recognised under IMO conventions, Tuvalu opened its ship registry in Singapore. However, certain responsibility which Tuvalu has to uphold. Hence, Tuvalu lacks of resources and personnel resulted in delegating its statutory obligations to Recognised Organisations who are members of the International Association of Classification Societies.

Additionally, due to the highly competency of Tuvalu Recognised Organisations, Tuvalu ships have classified in the Tokyo MoU Report 2019 and Paris MoU Report 2019 as low risk ships. However, it has been identified that a number of Tuvalu ships possess serious deficiencies, this caused by a number of factors which includes the cooperation of ship owners with Recognised Organisations. The findings also reflect the influence of the flag State on the Recognised Organisations when the flag State has its own vessels. This reflects in the high number of deficiencies detected by Port State Control on the vessel owned by the flag State.

KEYWORDS: Flag State, Delegation of authority, Recognised Organisations, Performance, Oversight, Compliance, Deficiency

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LIST OF ABBREVIATIONS

DBFO	Design-Built-Finance-Operate
DMA	Danish Maritime Authority
CCMA	Competent Company Maritime Administration
EC	European Council
EMSA	European Maritime Safety Agency
EU	European Union
FTSA	Finnish Transport Safety Agency
GoT	Government of Tuvalu
IACS	International Association of Classification Societies
ICHCA	International Cargo Handling Co-ordination Association
III Code	IMO Instruments Implementation Code
ILO	International Labour Organisation
IMCO	Inter-Government Maritime Consultative Organisation
IMF	International Monetary Fund
IMO	International Maritime Organisation
IMSAS	IMO Member State Audit Scheme
ILLC	International Convention on Load Lines Convention
IOPPC	Internationally Oil Pollution Prevention Certificate
ITC	International Tonnage Certificate
MARPOL	International Convention for the Prevention of Pollution
MEPC	Marine Environment Protection Committee
MLC	Maritime Labour Convention
MoU	Memorandum of Understanding
PPP	Public-Private Partnership
PoT	Parliament of Tuvalu
PSC	Port State Control
QSMS	Quality Safety Management System

RO	Recognised Organisation
SOLAS	Safety of Life at Sea
SV	Sovereign Venture Company
TSR	Tuvalu Ship Registry
TRFVA	Tuvalu Registration of Foreign of Foreign Vessel Administration
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
VCA	Vertical Contract Audit
VIMSAS	Voluntary IMO Member State Audit Scheme

CHAPTER 1: INTRODUCTION

1.1 Background

“Ship construction”. “Survey”. “Inspection”. “Certification”. These are the few cross-cutting obligations of flag States normally entrusted to Recognised Organizations worldwide, subject to the existing conventions and national laws of each respective nation. However, the duty to ensure that the work performed by classification societies is fully completed in accordance with international standards enshrined in international instruments and are being followed, remains with the flag State (Hosanee, 2008).

Literature has classified shipping as a global and the largest industry in the world (Broeze, 1850). The Review of Maritime Transport 2019 report issued by the United Nations Conference on Trade and Development (UNCTAD), reflected that the combined market share of the top 10 container shipping lines has increased from 68% in 2014 to 90% in 2019 (United Nations Conference on Trade and Development, 2019). This depicts how world trade depends on the shipping industry.

Moreover, the proliferation of merchant vessels serving the world today in transporting goods requires a high level of effective implementation and monitoring of international standards, by flag States, to ensure the seaworthiness of ships (Mansell, 2007). It is understandable that countries rely on ships to facilitate the transportation of goods and commodities from one port to another. However, countries differ from one another in terms of their regulations, and, therefore ships flying their flag are bound to be obliged with the laws of another country when a ship is in ports (Anderson Iii, 1996). Failure to comply with international standards may result in ship detention. Hence, universal

standards are required to ensure the smooth and safe operation of ships.

Harmonization of international laws in shipping began to be recognized in 1948. As a result, the Geneva conference adopted the Convention on the International Maritime Organization to establish the Inter-Government Maritime Consultative Organization (IMCO), and later in 1982 the organization changed to International Maritime Organization (IMO). The convention recognized the IMO as a maritime specialised agency for the United Nations (UN) with its mandate to oversee, facilitate, and develop international standards to increase maritime safety, and to eliminate unethical and unregulated practices existed in maritime and trade internationally.

Therefrom, a number of IMO instruments such as the Convention on Safety of Life at Sea (SOLAS) 1974; International Convention on Load Lines (ILLC), 1966 and the International Convention for the Prevention of Pollution from Ships (MARPOL) 1973, as modified by the Protocol of 1978 relating to International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) was developed to increase safety at sea, provide decent conditions onboard vessels, protect the ocean and the environment, and all of these are part of preventative measures in protecting life, goods, and properties at sea (Carlsson, 2016).

From these international conventions, a number of duties and responsibilities of the flag State continued to accelerate, and therefore the capacity and the ability of the flag State to implement these international standards became questionable, especially in the case of small developing countries like Tuvalu (Hosanee, 2008). This is so basically because the shipping industry cannot protect life, goods, property, and the marine environment if flag States cannot play their role in implementing these conventions and monitoring the performance of classification societies recognized by the flag State to perform the above-mentioned obligations on their behalf.

This dissertation seeks to examine the delegation of powers by the Tuvalu Ship Registry

(TSR) to Recognised Organisations (ROs) to perform certain duties on its behalf. The main research focus is to explore how the Tuvalu Ship Registry copes with its core obligations as stipulated under the United Nations on the Law of the Sea (UNCLOS), IMO instruments, and national laws, and to identify ways for improvement.

Tuvalu became a full member of the IMO on the 19th of March 2004. Later in that same year, 2004, the Tuvalu Parliament passed the Merchant Shipping (Registration of Foreign Vessels) Regulations which contained the authority to establish the Foreign Ship Registration and the power of the Minister to appoint the Foreign Ship Administrator. As a result, the Sovereign Venture (SV) company based in Singapore was appointed as the Foreign Ship Administrator for Tuvalu. Therefrom, the Tuvalu Ship Registry was formally opened in that same year, and it is based in Singapore.

Under Article 94 of the UNCLOS 1982, Tuvalu has the legitimate right to effectively exercise its jurisdiction and control in administrative, technical, and social matters over ships flying its flag. Consequently, delegation of powers to Recognised Organisations to effectively perform these technical roles is essential and acceptable in accordance with IMO Conventions including Regulation 1/6 of SOLAS; MARPOL 73/78 Regulation 6 of Annex 1, Regulation 4 (3) Annex 1, Regulation 10 (2) of Annex 1, Regulation 8 of Annex II; Article 6, 7 and 8 of Tonnage Convention 1969; and Article 13 of Load Lines Convention 1966.

Additionally, Tuvalu is also a member of the International Labour Organisation (ILO), as a result Tuvalu ratified the Maritime Labour Convention, 2006 on 16 February 2012.

Since the inception of the Tuvalu Ship Registry in 2004, a limited number of studies on the Tuvalu Ship Registry identified, and no research studies on the authority for Tuvalu to delegate powers to Recognised Organisation. This research study provides the foundation knowledge for future researchers who are interested to carry out their studies on

the gaps that this study is yet to look at due to some limitations and restrictions on the accessibility to official documents such as analysing the model of contracts between the Tuvalu Ship Registry and Recognised Organisations.

1.2 Research objectives

This dissertation is based on the major question which is: *How to ensure that ships flying the Tuvalu flag comply with international standards?*

There are two variables that this research study is focussing on which includes 1. Compliance and performance of both Recognised Organisations and ships; and 2. Relationship between Recognised Organisations and ship deficiency.

Based on the above variables, the objectives of the research are to:

1. Examine the Tuvalu Ship Registry and its capacity to perform its statutory obligations.
2. Examine the delegation of authority to Recognised Organisations.
3. Examine the implementation of the oversight role of the Tuvalu Administration on the Recognised Organisations.
4. Assess the performance of Tuvaluan flag ships.

1.3 Research questions

To achieve the objectives of this research work the research questions surfaced are:

1. Does Tuvalu has the capacity to perform its statutory obligations?
2. Does Tuvalu comply with international standard in delegating the authority to Recognised Organisations to perform statutory duties on its behalf?
3. Does it necessary to monitor the performance of Recognised Organisation in performing the statutory obligations on behalf the flag State administration?

4. What are the requirements of implementing that oversight on the Recognised Organisation to ensure compliance with international standards?
5. How to assess the performance of Recognised Organisations in performing the statutory activities entrusted to them?

1.4 Research Methodology

The research methodology employed in the study is based on a legal-dogmatic methodology. The research is based on the legal provisions of the IMO Conventions and Tuvalu national laws on whether or not the Tuvalu Ship Registry comply with these provisions in delegating of the authority to Recognised Organisations to perform technical work such as survey, inspection, and certification on its behalf, as primary sources.

As secondary sources, in addition to literature review, the study is based on International Association of Classification Societies (IACS) annual reports, and the Paris MoU, and Tokyo MoU reports.

1.5 Research limitations

Some challenges were encountered during the course of the study. One of was the accessibility to official documents such the model of contract used for delegating authority to Recognised Organisations. The Marine Department is not willing to release such information, nor to collaborate with the author during the course of the research work. Based on that, the dissertation cannot analyse the credibility of the agreement used by the Tuvalu Ship Registry to employ Recognised Organisations.

Additionally, the limited number of research studies specifically on the performance on the Tuvalu Ship Registry and other maritime related issues on Tuvalu. Based on this, to get relevant resources related to shipping in Tuvalu is also a challenge.

1.6 Research structure

This dissertation consists of 5 Chapters which are:

Chapter 1: This chapter lays out the objectives of the research and the key research questions that helps to map out the research framework to achieve its objectives. The chapter also discusses the challenges encountered during the course of the research.

Chapter 2: This chapter lays out the concept of ship registration, its obligations, and the relevant legal provisions outlined in the international conventions and the national laws of Tuvalu. The establishment of the Tuvalu Ship Registry is discussed because, in order to have the authority to delegate powers to Recognised Organisations to undertake certain obligations on behalf of the flag State, a ship registry first needs to be established.

Chapter 3: This chapter discusses the IMO Code for Recognised Organisations which outlines the requirements that require to be met by Recognised Organisation in order to be recognized by the flag State to undertake statutory activities. The chapter will also be going to discuss the requirements for a formal agreement between the flag State and a Recognised Organisation. Due to the inability to access the formal agreement between Tuvalu and Recognised Organisations, this chapter will discuss agreements made by foreign countries as examples. Hence, the case of Tuvalu in engaging with Recognised Organisations will also be discussed.

Chapter 4: The focus of this chapter will be looking into the control and monitoring of Recognised Organisations where the requirement of oversight role of flag State administration will be discussed, and the necessity to monitor the work entrusted to Recognised Organisations.

Chapter 5: This is the final chapter of this dissertation where it laid out the research conclusion and recommendations.

CHAPTER 2: THE TUVALU SHIP REGISTRY

2.1 Introduction

This chapter will first examine the relevant international maritime conventions that Tuvalu has ratified pertaining to the establishment of a ship registry and the delegation of powers to Recognized Organizations. Secondly, the chapter will be looking into the establishment of the Tuvalu Ship Registry, in particular the legal steps to establish the Tuvalu Ship Registry and to appoint a Foreign Vessel Administration. The status of the Tuvalu Ship Registry as an open registry will be discussed thereafter and followed with the discussion on the relationship Ministry of Transport, Energy and Tourism, and Tuvalu Ship Registry. The chapter will close with a conclusion.

2.2 International maritime conventions ratified by Tuvalu

Tuvalu has ratified the United Nations Convention on the Law of the Sea (UNCLOS) 1982 which entered into force for the country on 8 January 2003. According to UNCLOS 1982, each State can set up a ship registry, the problem being the establishment of a genuine link between the ship and the State.

Tuvalu has acceded to a number of IMO Conventions, and, therefore Tuvalu is bound to comply with these conventions. Table 1 below outlined the conventions that Tuvalu has ratified.

Table 1: Treaties ratified by Tuvalu

Treaty/Convention	Ratification type	Date of treaty entry into force	Date of entry into force in co
IMO Convention	Acceptance	1958-03-17	2004-05-
AFS 2001	Accession	2008-09-17	2008-09-
BUNKERS 2001	Accession	2008-11-21	2009-04-
BWM 2004	Accession	2017-09-08	2017-09-

Treaty/Convention	Ratification type	Date of treaty entry into force	Date of entry into force in co
CLC 1969	Denounced	1975-06-19	1978-10-30 (Denounced: 2003-03-30)
CLC PROT 1992	Accession	1996-05-30	2004-09-01
COLREG 1972	Succession	1977-07-15	1978-10-30
FUND 1971	Succession	1978-10-16	1978-10-30
FUND PROT 1992	Accession	1996-05-30	2005-05-01
LL 1966	Accession	1968-07-21	1985-11-01
LL PROT 1988	Accession	2000-02-03	2004-10-01
LLMC 1976	Accession	1986-12-01	2009-05-01
LLMC PROT 1996	Accession	2004-05-13	2009-04-01
MARPOL 1973/1978	Accession	1983-10-02	1985-11-01

Treaty/Convention	Ratification type	Date of treaty entry into force	Date of entry into force in co
MARPOL Annex III	Acceptance	1992-07-01	1992-07-01
MARPOL Annex IV	Acceptance	2003-09-27	2003-09-27
MARPOL Annex V	Acceptance	1988-12-31	1988-12-31
MARPOL PROT 1997	Accession	2005-05-19	2006-03-19
NAIROBI WRC 2007	Accession	2015-04-14	2015-05-14
SOLAS 1974	Accession	1980-05-01	1985-11-01
SOLAS PROT 1978	Accession	1981-05-01	2004-09-01
SOLAS PROT 1988	Accession	2000-02-03	2004-09-01
STCW 1978	Accession	1984-04-28	1985-11-01

Treaty/Convention	Ratification type	Date of treaty entry into force	Date of entry into force in co
SUA 1988	Accession	1992-03-01	2006-03-
TONNAGE 1969	Accession	1982-07-18	1985-11-

Source: International Maritime Organisation. (n.d.). *GISIS: Status of Treaties*.

One of the conditions to register a ship is for ships to be surveyed as according to Article 94 of the UNCLOS 1982. In the list of IMO conventions provided in Table 1 above, a number of conventions emphasises the obligation of a flag State to undertake surveys, inspections, and certifications of ships. These conventions also emphasise the role of Recognised Organisations. According to Silos et al (2013), in most cases, States do not have the resources and qualified personnel to carry out surveys, inspections, and certifications of ships. In such situation, States normally reach-out to a Recognized Organization to perform this task on their behalf, as it is the case of Tuvalu.

The IMO Convention for the Safety of Life at Sea (SOLAS) 1974 enshrines the role of Recognized Organizations. Regulation 6 of the SOLAS Convention 1974 lays out in paragraph (a), that the role to carry out surveys and inspections rests with the flag State. Thus, the provision recognizes the significant role played by Recognized Organizations to provide the technical support in undertaking surveys and inspections to ensure that ships a seaworthy, and subject to certain conditions provided by the Administration of the flag State. Lagoni (2007) states that Recognized Organizations have more knowledge of the technical aspect of a ship than shipowners and the flag State Administration.

Regulation 6 (b) and (c) of the SOLAS 1974, emphasizes the important role of the flag State to provide conditions and the scope of the authority entrusted to a Recognized Organization, and that scope of responsibility has to be transmitted to IMO. In a situation whereby the Recognized Organization discovers and determines a substantial non-compliance with the international standards, immediate actions to notify the Administration shall be taken, and all process certifications shall be withdrawn with immediate effects.

The Load Lines Convention 1966 also lays out the authority for the administration of the flag State to delegate survey, and inspection of ships to Recognised Organisations. Article 13 of Annex A of the Convention outlines the requirement for ships to be surveyed and inspected, and the authority to delegate to Recognised Organisations to undertake this necessary task. These surveys have to be performed prior registration and periodic surveys after the initial survey as in accordance with Article 14 of the convention. The convention emphasises the importance for ships to be surveyed and inspected due to significant contribution of the loading of ships to stability and the safety of ships.

The International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78, on the other hand, it also emphasises the necessity for ships to be surveyed in accordance with specific conditions enshrined in Annex I and Annex II. Tuvalu have enforced the convention, and, therefore Tuvaluan flag ships have to comply with the convention. Curtis (1985) states that waste and oil spill discharged from ships posed a huge impact to the marine environment and that brings with it affected social costs such as substantial fisheries, recreational beaches and other social activities.

Annex 1 of the convention imposes a mandatory requirement for newly build of oil tankers to have double hull. This is to prevent oil pollution discharge from any operational activities and so accidents. To implement the aforementioned convention, pursuant to Annex I Regulation 4 (3) (a), the regulation emphasises the duty to survey ships to confirm whether they comply or not with the convention lies on the Administration of the flag State. The regulation extends the powers of the Administration to entrust to

Recognised Organisations the obligation to survey ships. Subsection (b) of this regulation illustrates the necessity for the Administration to empower the nominated Recognised Organisation to require repairs to a ship, and perform surveys upon a request from port authority. In that process, Regulation 5 (2) authorises Recognised Organisation to issue certifications to ships.

Furthermore, Regulation 6(1) of Annex 1 authorises the government of a member State to cause a ship to have a complete survey on the structure of the ship, fittings of the ship, the system and materials as in accordance with the Annex, and to authorise the issuance and the endorsement of the International Oil Pollution Prevention Certificate (IOPPC), subject to the request of the flag State Administration.

Consequently, MARPOL Annex II was developed to control pollution of noxious liquid substances in bulk. Annex II also emphasises the role of recognised organisations. Regulation 8 (2) has the same application with Regulation 4 (3) (a) which authorises the Administration of the flag State to entrust the surveys of ships by surveyors for the purpose of the Annex. Whereas Regulation 9 (2) lays out the authority for the nominated recognised organisation to issue certifications.

Tuvalu has also ratified the Convention on Tonnage Measurement 1969, and Article 6 outlines that the Administration is responsible to determine the gross and net tonnages of a ship. However, the Administration has a discretion to delegate the authority of determination of gross and net tonnages to any qualified person or organizations recognised by the Administration.

Furthermore, Recognised Organisations can also be authorised to issue International Tonnage Certificate (ITC) as in accordance with Article 7. Article 7 (2) clearly outlines that organisation duly authorised by the Administration can issue the International Tonnage Certificate to ships flying its flag, subject to the approval of the Administration. In addition, Article 8 (1) emphasises the important of working relationship between con-

tracting government. Thus, the aforementioned article permitted the contracting government to determine the gross and net tonnages of a ship and also issue certifications, subject to the request of another contracting government.

Moreover, the IMO Resolution A.873(20) adopted on 27 November 1997 recognises the implications encountered by flag States to implement international conventions due to the proliferation of amendments to IMO Conventions, that require working in partnership with competent organisations to provide the technical support that it is required by the flag State.

Based on the concept to develop an international standard for recognised organisations, IMO resolutions MSC.349 (92) and MEPC (65) were adopted on 21 June 2013. The resolution sought to update the guidelines set out in the Resolution A.789(19) on the function of recognised organisations acting on behalf of flag State. The resolution also recognised the need to establish a code for recognised organisations, and adopted the Code for Recognised Organisations (RO Code) that entered into force on 1 January 2015. The Code revokes Resolution A.789(19). The objectives and mandatory requirements enshrined under the RO Code will be discussed in the next chapter.

With the early development of ship registration in the United Kingdom from 1302, the status of Tuvalu as a flag State did not exist. Tuvalu gained its full independence in 1978, and in 2004 it became a full member of the IMO after gaining full membership to the United Nation in 2000. Thereafter, Tuvalu starts to involve and participates in maritime activities. Thus, Tuvalu has also opened its ship registry with a seat in Singapore in 2004.

2.3 The establishment of a Tuvalu Ship Registry

2.3.1 Legal steps to establish a Tuvalu Ship Registry and appointment of a Foreign Vessel Administrator

In the existence of a Regulation of Foreign Vessels 2004, Tuvalu decided to open the Tuvalu Ship Registry (TSR) in Singapore in May 2004. The Sovereign Venture (SV) company based in Singapore was appointed by the Ministry of Transport as the Foreign Vessel Administrator as per the power vested upon the Minister stipulated in the section 3 (1) of the Regulation for Foreign Vessels.

According to the Tuvalu National Government Budget (2015), the contract of the Sovereign Venture company as the Foreign Vessels Administrator expired in 2013. A new contract was renegotiated thereafter whereby the Sovereign Venture company nominated a subsidiary company called the Competent Maritime Administration (CCMA) Pte Ltd to the GoT as the administrator to manage the Tuvalu Ship Registry. In April 2014 the new contract for a duration of 10 years was finalised and signed in appointing the CCMA Pte Ltd as the new foreign vessel administrator to manage the Tuvalu Ship Registry (Government of Tuvalu, 2014).

The CCMA Pte Ltd is a private company based in Singapore located on the same building where the Sovereign Venture company is seated. The appointment of the CCMA Pte Ltd was made in accordance with section 3 (1) of the same regulation which the Sovereign Venture company was appointed under.

In a situation where the Foreign Vessels Administrator fails to perform its function, the conditions for termination of the administration contract on the grounds of inability to perform properly its function is not stated in the Regulation for Foreign Vessels.

Countries vary from one another in terms of their standards and the application of public administration law. For example, in France the State Council on the 30 September 1983 made a decision that they have the authority to terminate the administration contract of the contracting public authority, even if the contract is silent on the termination of contracts (Sararu, 2011). In the case of Romania, the government has the power to terminate the administration contract of the contracting public administrator under public administration law, and for private appointees under private law it is the courts has the authority to determine the termination of an administration contract (Chorus, 2016).

The case of Liberia, its Constitution does not provide any direct reference to public administration, whereas in Timor-Leste, its Constitution provides the standards and rights for its citizens in matters related to public administration (Bergling et al., 2010).

Similarly, in the case of Tuvalu the Tuvalu Constitution, Division 5 makes reference to matters associated with the removal or termination of employment contract. Section 162 of the Constitution laid out two grounds that the holder of an office or position can be removed which includes inability of a person to perform his or her duty, or misbehaviour.

Section 12 (2) of the Rules for the Interpretation of the Constitution recalls that reference made to the holder of an office or position in the Constitution is to any person acting lawfully, or performing the functions of the office or position. The term 'person' according the Rules for the Interpretation of the Constitution includes - (a) any body of persons, corporate or unincorporated; and (b) the holder (whether substantive or other) of (i) any office or position in a State Service; or (ii) any office or position established by this Constitution or by or under an Act of Parliament. Although the Regulation for Foreign Vessel is silence on the termination of contract, section 162 of the Constitution recalls that the condition of the holder of an office or position can be removed, and section 5 (b) of Rules for the Interpretation of the Constitution that the power to remove an office holder from his or her position is also refers to the power to terminate any contract of employment.

Based on the above, I can say that the government has the authority to terminate the contract of the Foreign Vessel Administrator when there is substantive grounds for not performing its function properly, even if the contract agreement is also silence on the termination of contract.

Vanhoonacker (2005) states that institutional framework sets out the formal structures of the organisation, rules and the organisational norms for the services rendered or intended to be provided by the institution. This reflects the importance to understand the institutional framework of an organisation, merely because it has an impact in boosting

the level of cooperation and success in the implementation of the organisational plan if everyone in the institution knows about the content of the institutional framework.

In the previous sections, the appointment of the administrator for foreign vessels by the Minister according to the relevant regulation was discussed. According to the allocation of portfolios for Cabinet Ministers, the Minister responsible for matters related to shipping is the Minister of Transport, Energy and Tourism. The primary role of Tuvalu Ship Registry is to manage the registration process of foreign vessels as according to the existing laws and policies, and for that reason Tuvalu Ship Registry falls under the Ministry for Transport, Energy and Tourism.

2.3.2 Tuvalu Ship Registry as an Open Registry

Registration of ships has a long history. Mansell (2007) explained that the British parliament enacted in 1960 the Navigation Act with the purpose to register all British ships, excluding foreign ships. It was mandatory for English shipowners to provide evidence of his/her British nationality. This is where the beginning of the concept of closed registration began. The rule to register British ships is that a ship cannot register in another territory, evidence of nationality of the shipowner is required, cost of the vessel, and the place where the vessel was purchased. In fulfilling these requirements, a certificate is issued to the shipowner. This certificate is kept by the Customs in London (Mansell, 2007). Thus, this practice became the basis of ship registration.

The issue of a genuine link signifies the close link of the State and the ship that is flying its flag. There is no clear consensus on what are the criteria for genuine link. However, a genuine link implies that the relationship between the State and a ship has to be real. Article 5 (1) of the Convention of the High Seas 1958 enshrined the right of the State to "fix conditions of granting 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 matter over ships flying its flag." This convention is

still important to be considered today because some country who are party to this convention are yet to ratify the UNCLOS 1982. On the same note, Article 91 (1) of the UNCLOS 1982 also emphasizes the same intention, that a "State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship."

The countries that have supported the concept of genuine link during the United Nations (UN) Conference on the Law of the Sea 1982 argued that, to maintain and control the public order on vessels board in the high seas is necessary to strength the genuine link between a State and a ship (Churchill and Hedley, 2000). However, there is no consensus on this regard as some States argued that the most effective way to control public order in the high seas is through flag State.

The fact that a ship sails through the high seas and flying the flag of Tuvalu as her passport to enter foreign ports does not mean that the ship has the freedom to engage in whatever activity. According to Mansell (2009), that right comes together with responsibilities. It is, therefore, the responsibility of the ship registered in the Tuvalu's registry to comply with the national law of the country as well as the international conventions to which Tuvalu is a party (See Article 91(1) of UNCLOS 1982). And it is Tuvalu's responsibility to ensure that a ship flying its flag complies with its laws and regulations.

One of the roles of the flag State is to register all details and particulars of ships. Providing safety measures to the construction of ships is a duty of the flag State to ensure the seaworthiness of ships and its safety at sea. The role of the flag State continues to ensure that all ships have to be surveyed before registration. Even after the registration, the flag State has to organise routine surveys for its ships when it deems appropriate. These survey works have to be performed by qualified ship surveyors (See Article 94(2), (3), and (4) of UNCLOS 1982).

Contrary to closed registries, a registry can be opened to ships which have been built abroad, and ships that are manned by foreign citizens based on conditions set out by

Tuvalu as in accordance with Article 91 (1) of the UNCLOS 1982. Once the ship is successfully registered with the Tuvalu Ship Registry, that ship will become as a national ship, and as a result, the flag State has the duty to exercise its jurisdiction and exercise control in her administrative, technical and social matters, in accordance with Article 94 (1) of the UNCLOS 1982. Hence, Tuvalu Ship Registry is an open registry, but it is in the responsibility of the Ministry of Transport, Energy and Tourism to ensure that ships flying Tuvaluan flag comply with the country's international obligations.

2.3.3 Ministry of Transport, Energy and Tourism, and Tuvalu Ship Registry

The Ministry of Transport, Energy, and Tourism is headed by the Minister, Honourable Nielu Meisake as shown in Figure 1 above. The Minister is an elected member of Parliament and is appointed to become a Minister under section 67 (1) of the Constitution of Tuvalu which states that the Minister shall be appointed by the Head of State in accordance with the advice of the Prime Minister. Through this process the Minister for Transport, Energy, and Tourism was appointed.

The following figure shows the relevant people in the Ministry for the time of writing this dissertation.

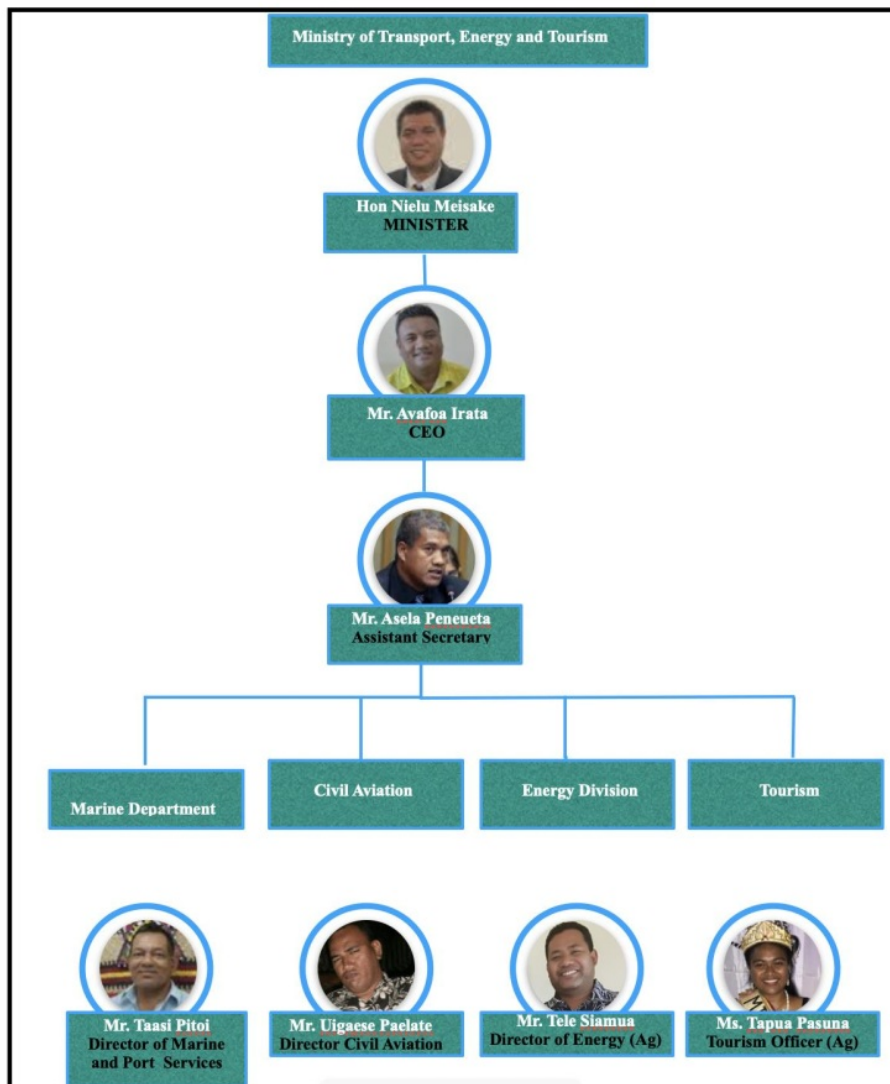


Figure 1: Ministry of Transport, Energy and Tourism Structure

Source: Author's Own Work

It becomes a norm that any new government comes into power soon after the country's general election, in most of the time, the structure of the existing ministries changed to suit their agenda and the intended new policies in place. Whatever changes are made

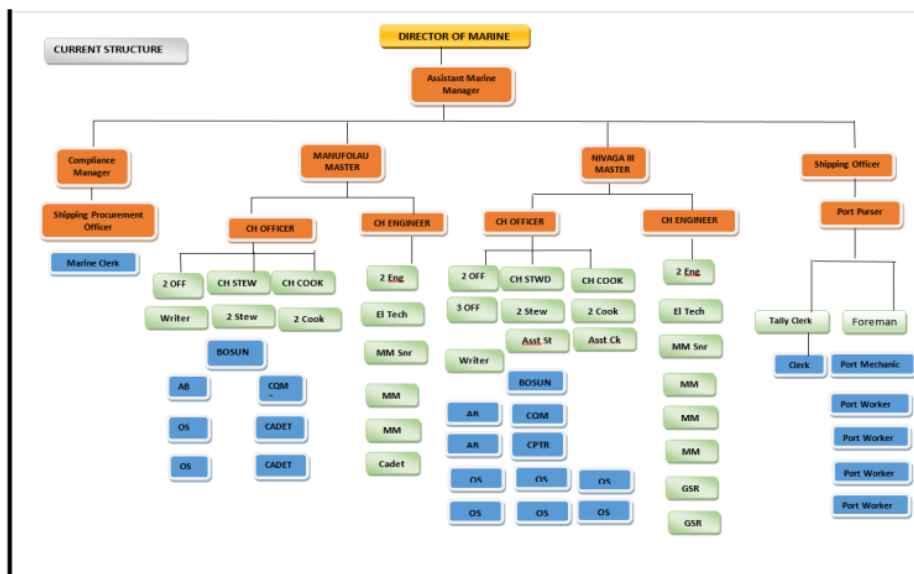
by any new government in readjusting the ministries and departments, section 62 (3) of the Constitution limits the number of offices of Minister not to exceed with the one half of the total membership of Parliament. The Tuvalu Parliament has 15 Members of Parliament and therefore the number of offices of Minister shall be not more than nine ministries excluding the office of the Speaker. The Ministry of Transport, Energy, and Tourism is amongst the nine ministries established under the Constitution.

The Minister as the head of the Ministry of Transport, Energy, and Tourism is responsible for the effective operation of the departments within the Ministry. The Minister has to ensure that government policies are implemented by the departments under his leadership. The Minister is the key decision maker and also the representative of the Ministry to the Cabinet, Parliament, and International Organisations such as the IMO and the International Labour Organisation (ILO) in negotiating and developing policies which later transform into legislations to implement.

For these important roles played by the Minister, (s)he requires the support of the Ministry as whole because the Ministry is leading the work in developing, monitoring and evaluating policies. It is the role of the Ministry to prepare policy paper or cabinet paper that proposing new ideas to enhance the performance of the Ministry, and that cabinet paper shall brief to the Minister to enable him or her to participate in formulation of government policy. The Ministry is responsible to provide provision of safe and secure transport; development and monitoring of energy policy, the administration of renewable energy projects and regulation of the storage and safe of petroleum fuel; and the promotion of tourism (Tuvalu National Budget, 2020). To fulfil the obligations of the Ministry, adequate number of staff in the Ministry with the relevant expertise is required.

The Marine Department is the driving force that drives the ministry to fulfil its obligations in implementing government policies, and harmonising international conventions with domestic laws in matters related to shipping.

Figure 2: Marine Department Structure



Source: Marine Department, Government of Tuvalu

It is evident the rapid increase in the number of amendments made internationally by IMO and ILO Members on International conventions that sets out international standards, and to enable the Ministry to effectively monitor, evaluate, and provide policy advices on these developments and in the best interest of the public, the Marine Department has to have the capacity to deal with any matter pertaining to international maritime.

In light of that, the Regulatory Unit was established in 2019 to leverage the capacity of the department in providing that leading role in policy development within the Ministry, monitoring, evaluating, work in collaboration with the Tuvalu Ship Registry and assist them in enforcing maritime regulations, both nationally and internationally. The Ministry through the Marine Department has to work in collaboration with the Tuvalu Ship Registry on any matters pertaining to foreign vessels.

There is no legal advisor recruited by the Ministry to serve in this new unit to provide the legal support required to the department and the Ministry as a whole taking into

consideration the complexity of the responsibility of the flag State to ensure compliance with international law. The Office of the Attorney General (AG's Office) is the office that provides legal support to the Ministry of Transport, Energy, and Tourism. However, in some instances, the legal counsels from the AG's Office are not available as they have other priorities to attend such as High Courts sitting, meetings, and negotiations with other priorities.

According to Paolo Urio (2010), it is quite difficult to merge both administrative structures of a public entity and a private entity due to different management approaches and policies adopted by them, however a public and private entities can work in collaboration under a "Public-Private partnerships (PPPs) model. The International Monetary Fund (IMF) Fiscal Department, PPPs are "the arrangements where private sector supplies infrastructure assets and services that traditionally have been provided by the government (Irwin et al., 2018).

There are two typical types of PPPs. First, the Design-Build-Finance-Operate (DBFO) scheme which is the arrangement that the government makes with the private sector and sets out what the government wants for the private sector to deliver. The private sector will then design, build and finance the asset to deliver in view of the required specific purpose. The other common PPP model is the traditional model whereby the government designs and finances the asset and contract the private sector to build the asset. Whatever model is adopted by the public and private sectors for any of their partnership investments, Paolo Urio emphasises the complex impact to merge the administrative structure of the public and the private sectors as it affects the increased efficiency in the service delivery of that public-private partnership arrangement.

The partnership between the Sovereign Venture company with the Tuvalu government in establishing the Tuvalu Ship Registry reflects the principles of PPPs was employed. The same notion on the relationship between the CCMA Pte Ltd and the government, the principles of partnership between a private entity and the public entity continued to uphold. As a result, the Tuvalu Ship Registry role is to deliver the service as according to the laws and the government's intention to uphold the role of Tuvalu as a flag State.

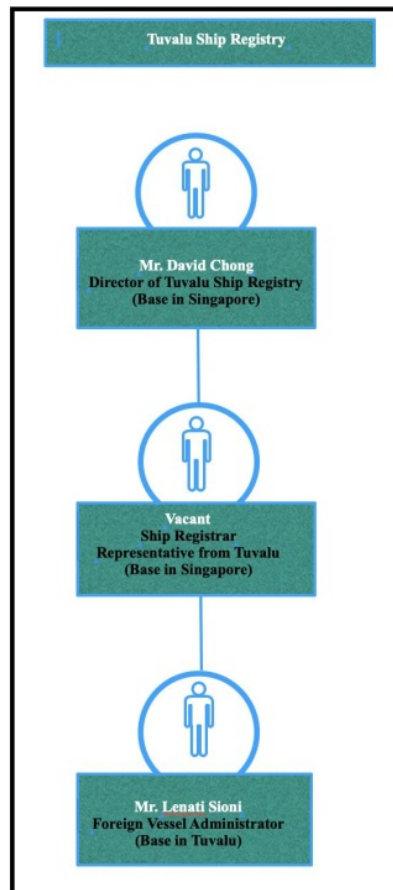
The role of the government is to monitor and develop laws to guide and protect the service provided by Tuvalu Ship Registry and shall be in conformity with international standards.

The national budget from 2014 to 2020 does not contain any budget allocation for Tuvalu Ship Registry. It also appears that in the government civil list - that lists all the names of all government civil servants - the Foreign Vessel Administrator based in Tuvalu is not listed therein. This signifies the independence of Tuvalu Ship Registry from the Ministry.

Based on all of this, it may be concluded that the arrangement made for the establishment of the Tuvalu Ship Registry is related to DBFO scheme model of PPPs, which focuses in boosting efficiency and generating revenue to the government. At the same time, in order to boost efficiency, the administrative structure of the private entity cannot be embedded in the public structure because the public entity is required to play the monitoring role. Therefore, the Tuvalu Ship Registry structure is based on the approach adopted and cannot be included into the structure of the Ministry.

Figure 3:
Structure

Tuvalu Ship Registry



Source: Author's Own Work

Figure 3 shows the separation of the Tuvalu Ship Registry structure from the structure of the Ministry. This is significant because it shows the impartiality of the ministry in its role in monitoring and evaluating the performance of the Tuvalu Ship Registry, to ensure it adheres to its functions and upholds the law in the best interest of the public.

Although the role of the Tuvalu Ship Registry focuses on the operation and the delivery of the service, whereas the Ministry through the Marine Department monitors the performance of Tuvalu Ship Registry and develops policies, both entities supports each other in some instances. For example, in developing new policies to conform with new

amendments to international laws, the Ministry can seek support from Tuvalu Ship Registry for their views and advise taking into consideration their direct involvement with ship owners and their expertise.

The position of the ship registrar remained vacant for more than 3 years and it has not been filled in so far. The position is important within the Tuvalu Ship Registry structure which requires a Tuvaluan to fill in that position based in Singapore. Due to the limited access to information, the reason why the position remains vacant could not be found. The position is significant because a representative from Tuvalu shall be present at the Tuvalu Ship Registry headquarters in Singapore on behalf of the government to work in collaboration and participate in the development of Tuvalu Ship Registry in the best interest of the nation.

The role of the ship registrar is to do a monthly reconciliation on the calculations of registration fees and tonnage taxes due to GoT; these registration fees and tonnage taxes are paid to GoT within 30 days at the end of each quarter. More importantly, the ship registrars co-ordinates with IMO directly on matters related to Tuvalu's obligation to international conventions, which Tuvalu acceded as per Table 1; submits information to IMO for all ships registered and deleted from the registry; keeps track of vessels that are inspected and detained under the Tokyo MoU, Paris MoU, and other MoUs which Tuvalu vessels falls under, and follows up on the vessel's status.

There is a Foreign Vessel Administrator station in Tuvalu as per the structure in Figure 3 above. This position is to serve as the representative of the Tuvalu Ship Registry in the country. For instance, if there is a high level dialogue in the country pertaining to issues handle by Tuvalu Ship Registry, there is a representative on the ground to liaise directly and update the relevant authorities. The position of the Foreign Vessel Administrator representative based in Tuvalu is appointed under section 3 (2) of the Regulation for Foreign Vessels whereby the ship registrar can appoint an agent based on the recommendation from the Foreign Vessel Administrator. The role of the agent is stipulated in section 3 (3) of the Regulation for Foreign Vessels and plays the same role as the Foreign Vessel Administrator on the issuance of certificates, etc.

Moreover, section 5 (1) of the Merchant Shipping Act states that the registrar shall keep at Funafuti (the capital of Tuvalu) a register of ships. That register shall contain all particulars of ships register under the Act. Keeping such register by the agent or the ship registrar is one of the fundamental duties of the flag State to produce documentation as proof of a ship that has a right to sail under the flag of Tuvalu. As a result, the Foreign Vessel Administrator based in Tuvalu came into existence.

2.4 Conclusion

In this chapter the international maritime conventions ratified by Tuvalu, and the relevant national legislation to the establishment of the Tuvalu Ship Registry, the registration of ships, and the delegation of powers to Recognised Organisations, have been examined. The establishment of the Tuvalu Ship Registry has also been discussed.

Apparently, there are some significant findings identified in the discussion. It is noted the Tuvaluan number of ratified international conventions including the UNCLOS 1982, MLC 2006, and IMO conventions including SOLAS 1974, Load Lines 1966, MARPOL 73/78, and Tonnage Measurement 1969. There are two related national legislations enacted which enshrines the authority to establish the Tuvalu Ship Registry, the appointment of the Foreign Vessels Administrator, and delegation of authority to Recognized Organization. These legislations are Merchant Shipping Act, and the Merchant Shipping (Regulation of Foreign Vessels) Regulation.

In the discussion, it was noted that Tuvalu has established an open ship registry based in Singapore and managed by a private company. However, it has been identified in the structure of both the Tuvaluan Maritime Administration and the Ship Registry that Tuvalu does not have the capacity to perform ship surveys, inspection, and certification, and has resulted in delegating these activities to Recognised Organisations.

It has also been found out that since the inception of the Tuvalu Ship Registry in 2004, the registry receives no financial support from the Government of Tuvalu. It has also

been identified in the discussion that the position of the Ship Registrar at the Tuvalu Ship Registry has been left vacant for more than 3 years until today.

CHAPTER 3: DELEGATION OF AUTHORITY TO RECOGNISED ORGANISATIONS

3.1 Introduction.

In the previous chapter the legal provisions on the delegation of authority to Recognised Organisations enshrined in a number of international maritime conventions and national legislations was explicitly discussed.

In this chapter, the IMO's Code for Recognised Organisations will be first discussed together with the requirement of the formal agreement between a State and the nominated Recognised Organisation, followed with the discussion on the minimum requirements that should be met by Recognised Organisations. Examples of the agreement of the delegations of powers to Recognised Organisations will be discussed in the next section where we will be looking into the model agreement used by Finland and Denmark. Lastly, the chapter will be looking into the case of Tuvalu, and then follow with the conclusion.

3.2 IMO's Code for Recognized Organizations

3.2.1 Presentation

Recognised Organisations play a crucial role in the maritime industry. Literature indicates that flag States rely heavily on Recognised Organisations to fulfill its public obligations. In the internationalisation of shipping, shipping industry has become more complex. The number of new legislation has increased in creating universal standards, but countries differ from one another in terms of their capacity. As a result, it becomes

difficult for some flag State to implement and for shipowners to comply with these legislations (Goh et al., 2014). Literature shows that flag States who do not have the capacity to perform surveys, inspections, and certification because of the lack of resources and qualified personnel are mostly found in open registry countries (Silos et al., 2013).

The role of Recognised Organisations are well emphasised under certain international maritime conventions discussed in the previous chapter which is to perform surveys, inspections, and certification of vessels. In most cases flag States assign inspections and certifications of vessels to Recognised Organisations if the administration of the flag State does not have suitable qualified personnel to undertake this statutory obligation which is in line with the existing laws (Lagoni, 2007). Thus, flag States also differ from one another not only in terms of their legislations, but also on their enforcement. Therefore, Recognised Organisations were bound to follow different rules. For example, the European Maritime Safety Agency (EMSA) encountered difficulties in controlling Recognised Organisations within the European Union (EU) because States has their own laws. As a result, to control Recognised Organisations the European Parliament and the Council have adopted regulation (EC) No 391/2009 on the requirement standards for ship inspection and survey organisation to be complied by all States of European Union (The European Parliament and the Council, 2009).

In 1995, the IMO Resolution A.789(19) was adopted in reaffirming the obligation of vessels to consistently conform to international conventions in their operation. The resolution also recalled the duty of the flag State to formulate conditions to ensure that ships flying its flag adhere to their duties stipulated under the relevant international conventions such as the Safety of Life at Sea Convention (SOLAS) 1974, the International Convention on Load Lines (ILLC), 1966, and the International Convention for the Prevention of Pollution from Ships (MARPOL) 1973/78.

The Resolution A.789(19) also recognised that a flag State has the power to authorise Recognised Organisations to carry out inspections and surveys in accordance with regulation I/6 of the 1974 SOLAS Convention and regulation 4 of Annex I and regulation 10 of Annex II of MARPOL 73/78.

In 1997 the issues encountered by flag States for having difficulties in implementing an increasing number of IMO conventions were addressed by the IMO Resolution A.873(20). As a result, it was then encouraging flag States to work in collaboration with competent Recognised Organisations to enable them to provide the technical support required.

Thereafter, discussions on the concept to develop the IMO benchmark for Recognised Organisation was concluded on 21 June 2013. As a result, the IMO Resolution MSC.349 (92) and Resolution MEPC (65) was adopted. The aforementioned resolutions were to update the guidelines of the functions of Recognised Organisations and to formulate a Code for Recognised Organisations. On 1 January 2015, the Code for Recognised Organisations was adopted by IMO Member States. In light of that, the RO Code revoked the IMO Resolution A.789(19).

There are three major objectives of the RO Code and that is to provide a standard requirement that should be met by Recognised Organisations; the requirements that a flag State can use to effectively scrutinise the performance of the Recognised Organisations; and the core responsibilities in the process of delegating the authority to Recognised Organisations.

The RO Code consists of three major parts includes:

1. Part 1 of the Code for Recognised Organisations is focusing on the scope of delegating of authority to Recognised Organisations which includes the purpose, scope, content, the delegation of authority, communication of information, and references. It also outlines that it is mandatory to disclose the list of Recognised Organisations recognised by a flag State through an official communication with the IMO headquarters based in London, and to deposit the

above-mentioned list with the Secretary General of the IMO. This list of Recognised Organisations will be conveyed to all parties involved to confirm their involvement in the process and remind them of their roles and responsibilities in undertaking the statutory obligation. This part of Code also outlines the general requirements for the delegation of authority. The details of this requirement will be further elaborated in section 3.2.2 of this chapter.

2. Part 2 of the Code is divided into 8 sections which includes the terms and definitions, general requirements for Recognised Organisations, management and organisation, resources, statutory certification and services processes, performance measurements, analysis and improvement, quality management system certification, and authorisation of Recognised Organisations.
3. Part 2 (1) of the Code outline the terms and conditions. This section is vital important because it provides the interpretation on the meaning of key terms existed in the text of the Code. It clarify doubts on the rightful application of the key terms used in the text.
4. The Code also defined the term ‘assessment’ as any activity performed by the flag State to determine whether the assessed organisation met the requirements in accordance with the relevant regulations or not.
5. The contract audit called Vertical Contract Audit (VCA) defined by Code as the audit production process conducted to assess the performance of a Recognised Organisation. This audit is about auditing the performance across the processes of the organisation. For example, auditing the entire documentation process, auditing the whole record keeping process, entire training process, auditing whole contract to assess the level of compliance, and non-compliance equipments (International Association of Classification Societies, 2013).

6. The general requirements that shall meet by a Recognised Organisations are include the Recognised Organisation shall be independence, impartiality, integrity, competence, responsibility, and transparency. However, these requirements will discuss in more detail in section 3.2.2 of this chapter.
7. The management and organisation emphasises that the Recognised Organisation shall establish its own quality management system (QMS), and it is its own responsibility to maintain the quality and the effectiveness of that quality management system. It is also emphasise that the role of a Recognised Organisation is to ensure its policy and objectives are well documented, and also to identify the appropriateness of the objectives with the purpose the organisation.
8. The Code recognised that sufficient resources is required to be made available to Recognised Organisations to ensure they are able to fulfil the assigned task allocated to them, and to improve the quality management system.
9. The documentation of the records on the assessment of the design, construction, equipment of vessels and the competency of the Recognised Organisation in performing the statutory obligations is mandatory under the Code.
10. The key requirements for a Recognised Organisations to undertake statutory certifications and services in relation to design and development input, output, and verification are dealt directly within this Part 2 (5) of the Code. It is recognised that the process utilised in assessing the performance level of whether the Recognised Organisation comply with the Code or not, the necessity to perform the audit and to employ the vertical contract audit (VCA) are highly required to ensure the quality management system is improving its performance and more effective. However, in many instances, a flag State tries to merge number of production cost such as labour, materials, necessary supplies as a cost saving approach. Hence, the procedures in which the vertical contract audit (VCA) shall be applied will not be followed (Valmohammadi and Roshanzamir, 2015).

11. The Code recognised the importance to conform with Recognised Organisations's quality management system (QMSC). To comply with QMSC it is mandatory to be certified by an independent certification entity that has been recognised by the flag State. It is also mandatory for the certification entity to comply with international standards. However, due to the proliferation of open ship registry many flag States fail to adhere to the working procedures to conduct the assessment and the certification of Recognised Organisations (Madar and Neacsu, 2016).

Part 3 of the RO Code shall not be regarded as mandatory. However, the purpose of the Part 3 is to provide a platform, a guideline, a mechanism to which a flag State can refer to in performing their oversight role in scrutinising the role of Recognised Organisation to ensure transparency and accountability to improve consistency and effectiveness in the implementation of international standards.

This part of the Code has 7 major sections which focusing on "purpose", "scope", "references", "terms and definitions", "establishment an oversight programme", "principle of auditing", and "managing an oversight programme".

Section 5 of Part 3 of the Code recalls the importance for flag State to develop and participate in performing its oversight function over Recognised Organisations to ensure their compliance with international conventions. The Code also emphasises and encourages flag States to provide sufficient resources to enable them monitor the performance of Recognised Organisations and to communicate with them consistently.

The principle of auditing is emphasised in the sixth section of this part of the Code. The Code outlined the importance of the principle audit as it determines the reliability of the oversight role performed by the flag State. In dealing with the principle of auditing, the Code laid out five key important concepts that the principle of auditing shall uphold which includes:

- a. The auditing shall employ an evidence-based approach. This means that there should be evidence collected or recorded in terms of records, observations, testing, and these records shall be properly stored as evidence.
- b. Independence. This simply refers to the upholding of the concept of independency, i.e. the auditor shall be independent in the course of the performance of its duty to ensure that no extrinsic forces influence the quality and the impartiality of their performance.
- c. Ethical conduct. This refers to the performance of the duty of the auditor, it is vital important to ensure they uphold ethical standards which literally refers to doing the right thing in accordance with the rules and procedures.
- d. Due professional care. This simply refers to the auditor to act diligently and professionally in the course of performing its duty. The auditor shall act or perform his or her duty with care in accordance with the procedures of the task they perform.
- e. Fair presentation. The fair presentation basically refers to the presentation of findings of the audit which shall be true and accurate.

The last section of this part of the Code recalls the importance for the flag State to verify that the Recognised Organisation meets the requirements stipulated in the Code. The Code recognised the importance to work in partnership based on mutual recognition in performing the oversight role between the flag State and Recognised Organisation. It is with the view that the oversight program cannot be completed with success if the process is not effective and practical.

3.2.2 Requirement of a formal agreement between the flag State and the recognised organization

The establishment of a formal agreement between two or more parties is an important requirement to be addressed. This merely due to that fact that contract agreement provides a clear understanding between parties involved on their obligations, to ensure that no one will claim of any misunderstanding when the agreement is implemented (Blouin, 2000). Agreement is a document that determines and legally binds the parties involved to comply with it. However, prior to concluding the agreement, there should

be possible to determine whether the parties to the agreement meet the requirements of the contract agreement or not (Moreira et al., 2003). The same notion applies to the formal agreement between the flag State and a Recognised Organisation.

To delegate the authority to Recognised Organisations to execute statutory provisions on behalf of the State, that process shall follow in accordance with the RO Code. Hence, it is important for the flag State to assess and determine the ability of the Recognised Organisation to undertake that statutory obligation. This simply because the RO Code emphasises clearly that flag State shall not delegate any statutory obligations beyond the capability of the Recognised Organisation. However, working in partnership between the flag State and the Recognised Organisation is highly recommended under the Code to ensure that Recognised Organisations adhere to the rules that they are entrusted with.

The formulation of an agreement between two companies shall employ key elements that require to be part of the agreement, and companies differ from one another. It depends on the existing laws of the business under which is operated. However, in relation to the agreement between the flag State and the Recognised Organisation, the key elements of the agreement are stipulated in the RO Code.

The Part 2 (1.2) of the RO Code outlines that the minimum key elements of the agreement between the flag State and Recognised Organisation enshrined in the Appendix 3 of the Code which consists of 10 major sections includes:

1. There should be an ‘application’ section in the agreement. The application section details who are the contracting parties to the agreement, and what are the rules that govern the agreement. This is important because not only the parties, but the courts are bound by these rules in any issue of dispute amongst the parties involved. This part of the agreement will easily identify the flag State and the Recognised Organisation.

2. The agreement should have a purpose. The purpose of the agreement will allow parties to the agreement to understand the purpose they are engaged under. It also outlines the purpose of the agreement. For example, this agreement is to delegate authority to the Recognised Organisation to perform surveys. The purpose of the agreement will also outline the content of the agreement. Without the purpose of the agreement, there is no clear direction of the agreement.
3. There should be a general conditions section of the agreement. It outlines the rules for parties involved to comply with. The limitation of the power delegated to the Recognised Organisations can be included in this section. For example, Recognised Organisation shall not perform activities outside of the scope of the work given under this agreement.
4. Another important element is for the agreement to have a clause in relation to the execution of the functions of the parties to the agreement. This will outline the role of the Recognised Organisations to execute the statutory activities as according to relevant laws.
5. The agreement shall have a section that outlines a legal basis. Knowing the relevant laws that the agreement is based on is important to guide the parties involved with their work and especially their powers.
6. The agreement should also outline the reporting procedures so that parties involved in the agreement know where they have to report in any case during the course of their work.
7. The section of the development of rules is also important because it provides a platform for the Recognised Organisation and the flag State to communicate with each other, and discuss on any matter arising, so they can make an immediate decision to address that particular issue.

8. Other conditions are vital requirements to be considered because this is where the bulk of the negotiations is involved between the parties on matters such as remuneration, financial responsibility to ensure adequate resources and budget, the grounds for the termination of contract, the procedures on any issues that might surface in the course of the work and how to deal with it.
9. Another important element is the specification of the authorisation from the flag State to the organisation. This is important because it contains details of the ship, and these specifications are needed to be checked by surveyors as according to international conventions. In order to issue classification for a ship, surveyors have to thoroughly check the design, operating equipment and procedures, standard of stability if the ship is new, and certificates.
10. The flag State has to supervise the delegation of authority to Recognised Organisations to ensure that they comply with international standards.

From these requirements of a formal agreement, flag States have to develop their own agreement with their respective Recognised Organisations and to take into consideration the above 10 major sections.

3.2.3 Minimum requirements to be met by the recognised organisations

The RO Code enshrines the requirements to be met by the Recognised Organisation which stipulated in Part 2 (2) of the RO Code. The requirements consist of:

1. Independence: The Recognised Organisation shall be independent. This means that the Recognised Organisation shall not perform its work under the ship owner in the course of his or her duty, or related to the master of the vessel. This is important to enable the Recognised Organisation in performing its duty independently without anyone influence his or her work.

2. Integrity: The Recognised Organisation shall perform the statutory obligations delegated by the flag State with honesty and integrity.
3. Competence: To carry out surveys and other statutory obligations, it shall be executed by a qualified surveyor. As explained in the above section that flag State shall not delegate these statutory obligations to Recognised Organisation who are not competent to carry out the work. It requires a competent or qualified personnel.
4. Responsibility: The scope of the duties and responsibilities of Recognised Organisations shall be well defined and clear in accordance with the Code. The Recognised Organisation shall be clear on what are their powers, their responsibilities, and what they are not supposed to do.
5. Transparency: In the course of the duty of the Recognised Organisation they should perform their role in a very transparent manner. They have to inform flag State any matter arises during the course of their duty.

3.3 Examples of agreements of delegation of authority to Recognized Organizations

There are two agreements of delegation of authority to Recognised Organisation that will be discussed in this section as a model or examples: the agreement between the Finnish Transport Safety Agency (FTSA) and a Recognised Organisation, and the agreement between the Danish Maritime Authority (DMA) and a Recognised Organisation.

The Finnish Transport Authority Agreement has 16 provisions whereas the Danish Maritime Authority Agreement with Recognised Organisations consists of 22 provisions. To analyse whether these two agreements meet the requirements stipulated under RO Code, I will be analysing both agreements in comparison with the key elements detailed in the Code.

Table 2 below contained the summary of the provisions contained in both agreements in comparison with the requirements of a formal agreements laid out in the Code.

Table 2: Summary of Agreements (FTSA & DMA)

Requirements outlined in the RO Code	Finnish Transport Safety Agency Agreement with RO	Danish Maritime Authority Agreement with RO
Application	1. General	1. Introduction
Purpose	2. Purpose	2. Purpose
General conditions	3. General conditions	3. General conditions
The execution of functions under authorisation	4. Statutory services	
The legal basis of the functions under authorisation	5. Special measures 6. Interpretations	5. Definition 6. Interpretation and equivalence 7. DMA's right to carry out a survey
Reporting to the flag State		8. RO reporting requirements 9. Ways of communication 10. Complaints and appeal 11. Temporary remedies/mitigation actions
Development of rules and/or regulations - information	7. Information and liaison	12. Information and liaison

Requirements outlined in the RO Code	Finnish Transport Safety Agency Agreement with RO	Danish Maritime Authority Agreement with RO
Other conditions such as: Remuneration Rules for administrative Proceedings Confidentiality Liability Termination Amendments Issue of the agreements, Settlement of the dispute, Breach of agreement	8. Remuneration 9. Confidentiality 10. Amendments 11. Governing law and settlement of dispute 12. Liability 13. Termination 14. Representation	13. Definition 14. Governing law and settle disputes 15. Liability 16. Suspension and termination 17. Confidentiality 18. Remuneration 19. General working conditions 20. Amendments 21. Exemption
Specification of the authorisation from the flag State to the organisation such as: Surveys, Reporting, Approval of materials, and Equipment, Approval of drawing	15. Surveys	22. Surveys
The flag State's supervision of duties delegate to the organisation	16. Supervision,	23. Monitoring of the RO

Source: Author's Own Work

Based on Table 2 above, both agreements between the above-mentioned States with Recognised Organisations indicate that the agreements are well developed in accordance with the Code. Both agreements meet the minimum requirements of a formal agreements. However, looking into the agreements which reflected in Table 2 above, the agreement between the Danish Maritime Authority and Recognised Organisations are more in depth in comparison with the agreement between the Finnish Transport Safety Authority and Recognised Organisations. The Finnish Transport Safety Agency Agreement has not covered the requirement on the reporting to the State, whereas the

Danish Maritime Authority Agreement imposes three provisions in relation into that regard.

3.4 The case of Tuvalu.

3.4.1 The relevant national legislations

In 2004, the Merchant Shipping (Regulation of Foreign Vessels) Regulation was enacted by the Tuvalu Parliament. The regulation established the Tuvalu Registration of Foreign Vessel Administration to be headed by the Foreign Vessel Administrator. According to Section 3 (1) thereof, his or her appointment depends on the Minister after consultation with Cabinet.

The enactment of the Regulation for Foreign Vessels is in line with section 4 of the Merchant Shipping Act which states that:

“There shall be an office of Registrar of Ships which shall be a public office.”

Section 141(8) of the Merchant Shipping Act sets out the content of the Regulation which states that:

(8) The Regulations made under section 8 (2) (d) may make provision for and in relation to:

- (i) the extent of the ownership of a ship or class of ships eligible to be registered under this Act; and*
- (ii) the proper administration and management of the registration of ships owned by any person other than a citizen of Tuvalu; and*
- (iii) the appointment of a person or a corporation not registered in Tuvalu, to administer the registration of foreign ships.*

The role of the Foreign Vessel Administration is covered under section 3(3) of the Regulation of Foreign Vessels. The aforementioned section lays out that the Administrator

for Foreign Vessels or his or her agent is authorised to issue certificates and other necessary documents for the purpose of the regulation such as license. The administrator also has the power to withdraw or remove any license or certificates issued to foreign vessels.

The authorisation of Recognised Organisations to carry out surveys and inspections on a ship is laid out in the Merchant Shipping Act 2008 consolidated edition. There are also specific provisions for the delegation of authorities to recognised organisations enshrined in other specific Acts such as the Marine Pollution Act 1991, Merchant Shipping (Foreign Vessel) Regulation 2004, and Merchant Shipping (Maritime Labour Convention 2006) Regulation 2013.

Section 8 of the Merchant Shipping Act sets out the registration of ships, and section 11 (1) thereof specifies that one of the conditions for ship registration is for ships to be surveyed by surveyors before registration. In subsection 2, it is emphasized that a ship that fails to register according to section 8 of the Act shall not be recognized. Hence, in order for a ship to register under section 8 of this Act to be recognized as a Tuvalu vessel, it shall be surveyed prior registration.

To have a clear understanding of who are the surveyors which section 11 (1) of the Act is referring to, Schedule 1 of the Act is the interpretation section, defines the term surveyor as a person or organisation appointed under section 139 of the Act.

The appointment of surveyors is stipulated under section 139 of the Act, according to which all recognised surveyors shall be members of the International Association of Classification Societies (IACS). However, the power to appoint surveyors is with the Minister under the Merchant Shipping Act. To enforce this provisions, under the Regulation for Foreign Vessel these powers has been delegated to the administration of the flag State.

The appointment of ship surveyors is strongly emphasizes under the Marine Pollution Act to appoint surveyors that are competent, has the experience and the knowledge on

new equipment requires to be installed on ships under international conventions to eliminate carbon emission. For example, a Master Mariner under the Merchant Shipping Act he or she is qualified to be a surveyor. However, to survey special equipments installed on ship with the purpose to lower carbon emission, surveyors with engineering background is recommended rather than master mariner. Hence, the appointment of a surveyor has to be appointed according to his or her expertise and it relevant to the needed task that requires to be performed (Akyrek and Bolat, 2020).

Section 139(4) of the Merchant Shipping Act refers to the process of accepting the appointment as a surveyor. A surveyor appointed under subsection 3 has to submit a notification of acceptance of the offer to the Minister, and therefrom, upon receiving that notification of acceptance, the Minister shall publish the appointment of the surveyor and the notice of the matter. This is for transparency purposes of upholding public duties in the best interests of the public.

3.4.2 The appointment of Recognised Organisations

The above section explained the relevant national laws that authorise the Minister to appoint the Foreign Vessel administrator, and the powers delegated by the Minister to the Foreign Vessel administrator to delegate authority to Recognised Organisations. It also indicated in the above section that Recognised Organisations recognised by Tuvalu shall be a member of the International Association of Classification Societies.

The Table 3 below shows the list of the current Recognised Organisations recognised by Tuvalu.

Table 3: List of Tuvalu Recognised Organisations

SN	Name of Recognised Organisation	Affiliation
1	American Bureau of Shipping (ABS)	IACS
2	Bureau Veritas (BV)	IACS
3	China Classification Society (CCS)	IACS
4	DNV-GL (DNV GL)	IACS
5	Indian Register of Shipping (IRS)	IACS
6	Korean Register of Shipping (KR)	IACS
7	Lloyd's Register (LR)	IACS
8	Nippon Kaiji Kyokai (NKK)	IACS
9	Polish Register of Shipping (PRS)	IACS
10	Registro Italiano Navale (RINA)	IACS
11	Russian Maritime Register of Shipping (RS)	IACS

Source: Author's Own Work

The appointment of a Recognised Organisation is appointed according to the Code. This is merely due to the fact that the Code has outlined the minimum requirements which the Recognised Organisation shall meet in order to be recognized by the flag State to entrust the public responsibility to perform on behalf of the flag State. Literally, this means that the Code has provided the minimum requirements as a guide for a flag State to comply with the appointment of Recognised Organisations. However, these requirements do not limit or restricted the flag State to increase the level or the number of requirements in appointing Recognised Organisations as in the case of the Danish Maritime Authority agreement with Recognised Organisations.

From the list of Recognised Organisations listed in Table 3 above, according to the International Association for Classification Societies (IACS) annual report 2018, it was indicated that the above listed Recognised Organisation met the minimum requirement for Recognised Organisations.

There are 8 Recognised Organisations from the above list that are also recognized by the European Union (EU). This includes Bureau Veritas, China Classification Society, Indian Register of Shipping, Korean Register of Shipping, Lloyd's Register, Nippon Kaiji Kyokai, Registro Italiano Navale, and Russian Maritime Register of Shipping (Silos et al, 2013). This signifies that the listed Recognised Organisations recognized by Tuvalu met the minimum requirements stipulated in the Code.

However, there is a caveat in this analysis and it is that due to restrictions in accessing these agreements, it is not possible to analyze the provisions contained in the agreement between Tuvalu and the said Recognized Organizations, in order to determine whether it meets the requirements of a formal agreement stipulated in the Code or not. Efforts have been made to reach out to the Tuvalu Ship Registry which in response there is an existing contract between Tuvalu and Recognised Organisations, however, the authority to access into the agreement is with the Marine Department in Tuvalu. As the necessity to access that mentioned agreement, I reached out to the Ministry of Transportation, Energy, and Tourism where the Ministry transmitted the request to the Marine Department. However, the response is negative.

However, looking into the examples of the agreement discussed in the above section, it appears that the flag State has to pay careful attention to the agreement due to the complexity of its obligations. Although the Tuvalu agreement with Recognised Organisations cannot be accessed, it reflects from the Tuvalu Ship Registry organizational structure and the no budgetary support from the government discussed in the previous chapter, that the Tuvalu Ship Registry is a revenue-generating initiative.

3.5 Conclusion

The chapter discussed the IMO Code for Recognized Organizations including the requirements of a formal agreement, and the minimum requirements to be met by the Recognised Organisation. Based on these requirements, due to the unavailability of the agreement between Tuvalu and Recognised Organisations, the chapter discussed the agreements between Finnish Transport Safety Agency and Recognised Organisations, and the agreement between the Danish Maritime Authority and Recognised Organisations as an examples.

In the discussion it clearly outlined that both agreements stated above as example are very advance from the minimum requirements laid out in the IMO Code for Recognised Organisations.

The IMO Code for Recognised Organisations requires the agreement explain the application of the agreement and its purpose, the general conditions covers under the agreement, the functions of the Recognised Organisation in executing its duties, the reporting procedures to the flag State, the procedures of developing rules and regulations, specification of the authority given by the flag State to surveys and reporting, other conditions such as liability, amendments to the agreement if needed to be made, the termination of contract if the Recognised Organisation failed to perform or meet the requirements, and the supervision duty of the flag State on the Recognised Organisation.

The requirements outlined in the IMO Code for Recognised Organisation are the minimum requirements which requires flag State to meet that benchmark in the process of nominating or appointing Recognised Organisations. However, these requirements does not limit the need of the flag State to develop an agreement that far more advance than the minimum requirements in the IMO Code for Recognised Organisation.

The requirements outlined in RO Code is to ensure the independence, integrity, competence, responsibility, and transparency of the Recognised Organisations on the work they assigning to undertake.

In the chapter, the case of Tuvalu in establishing its administration and the appointment of Recognised Organisations stipulated under the Merchant Shipping Act, and the enforcement provisions of these provisions enshrined in the Regulation for Foreign Vessels whereby the administration was appointed and delegated with the authority to administer the duties of the flag State including delegations of authority to Recognised Organisation by the Minister.

Thus, due to the necessity to have competent Recognised Organisations, all member of the International Association of Recognised Organisation has been appointed under section 129 of the Merchant Shipping Act.

In this discussion, the Tuvalu agreement with Recognised Organisation has not been analyzed as it is not available due to access restrictions. However, this chapter has provided the foundation for future researchers who are able to access the Recognised Organisation agreement with Tuvalu to analyze its conformity with the IMO Code for Recognised Organisations and to compare and contrast with the Finnish Transport Safety Authority, and Danish Maritime Authority agreement.

CHAPTER 4: CONTROL AND MONITORING OF RECOGNISED ORGANISATIONS

4.1 Introduction

In this chapter, we will firstly be looking into the requirement of oversight of the flag State administration on the Recognised Organisation activities where the necessity for the Directorate of the Maritime Affairs to monitor the activities performed by Recognised Organisations, and the issues of the required personnel will be discussed. Secondly, the chapter will be discussing the performance of the Tuvalu registered ships which we will be looking into the number of registered ships in the Tuvalu Ship Registry, and try to examine whether flag Ships have been detained. The chapter will be closed by a conclusion.

4.2 Requirement of oversight of flag State administration on the Recognised Organisation activities

Oversight plays a significant role in improving the performance of an organization by identifying weaknesses within the organizational structure and its system in place; points out the causes to major problems, risk, or any breakdown within the system; identifies the best practices approach; provides recommendations on ways that may help to address the existing problems; and helps the institution and its stakeholders to improve their policies and oversight performance to avoid any such situations or mistakes to be happening in the future (Office of the Auditor General of Ontario, 2012).

Studies also show that a number of organizations failed to perform due to being neglected to follow the organizational culture and the procedure in place, but rather fo-

ocusing on the survival of the organization (Bhattacharya and Tang, 2013). Such an organisation may find it difficult to survive because a company with low quality will affect the organisation good reputation, reliability, trust, clients' demand, and also breaching laws and regulations. Hence, conducting oversight programs help to improve the quality and the performance of the organisation. For example, the quality of past accidents at sea creates a new mindset and vision to the shipping industry on to improving maritime regulations, safety standards, and the oversight role of flag States internationally, to prevent the same situation from happening again in the future, by identifying the major causes and produce recommendations for safety improvement (Vatankhah, 2016).

The oversight role of the flag State administration on the Recognised Organisation and the activities they performed has a long history with the aim to ensure that a Recognised Organisation complies with international standards in the course of its duty, and performs the statutory roles entrusted to them by a flag State. This will avoid any maritime accident happening in the future, and promote safety and decent working conditions on ships (Afriyie, 2007).

In chapter 2, the powers of the flag State to delegate authority to Recognised Organisations enshrined under SOLAS 1974, MARPOL, and other IMO conventions were discussion, including their role to undertake statutory surveys and other necessary activities on its behalf. Based on this concept of delegation of authority to Recognised Organisations, IMO has developed a resolution to guide the implementation of this concept, to ensure there is a check and balance in the delegation of authority and are in compliance with international standards.

However, the delegation of authority is not mandatory, but it is a matter for the flag State to decide on whether to delegate its authority to Recognised Organisations or not depending on the capacity and the ability of the flag State. If the flag State so decided to delegate its authority to Recognised Organisations, it has to comply with IMO Resolution A.739 (18) and the agreement made between the flag State administration and Recognised Organisations on their functions in performing any delegated obligations

under that agreement in accordance with international conventions (International Association of Classification Societies, 2011).

Furthermore, the Recognised Organisation's quality management system shall consist and not be limited to the communication and reporting procedures to the flag State, evaluation and acceptance of the Recognised Organisation certification by flag State, the monitoring and the verification of class of vessels issued by Recognised Organisations. These shall be monitored by a flag State in accordance with Part 3 (5) of the RO Code (International Maritime Organisation, 1993).

In 2003 the IMO Resolution 946 (23) was adopted and approved for the establishment of the Voluntary IMO Member State Audit Scheme. The Voluntary IMO Member State Audit Scheme is to monitor the legal status of the development of national legislations of IMO Member States, and to ensure its conformity with IMO instruments (Afriyie, 2007). The aim of the Voluntary IMO Member State Audit Scheme was later diverted its aim to improve the level of compliance with IMO standards as in accordance with Resolution 974 (24) adopted in 2005 (International Maritime Organisation, 2005).

In light of Resolution 974 (24) adopted in 2005, the Tuvalu Ship Registry issued a Circular MC-9/2005/1 confirming that Tuvalu has recognized all members of the International Association of Classification Societies (IACS) as Recognised Organisations for Tuvalu. The circular outlined that all Recognised Organisations to comply with international standards and to take note of any potential issues that may amount to non-compliance on Tuvalu flagships to address as early as practicable to improve compliance of vessels with the international standard which may be subject to the Port State Authority (PSC) inspection. The circular also outlined that it is the primary duty of the Tuvalu Foreign Vessel Administration to monitor all Recognised Organisations acting on behalf of Tuvalu in performing statutory obligations (Tuvalu Ship Registry, 2018).

In Part 3 (5) of the RO Code outlined that it requires a flag State to develop its oversight programs on the quality management system of the Recognised Organisations where they observe or review the audit reports of the Recognised Organisation. The

review of the quality management system of the Recognised Organisation is to identify whether that system has been audited by an independent entity, whether the Recognised Organisation is competent to perform technical, administrative, and managerial obligations, whether or not the Recognised Organisation consistently maintaining the quality of its quality management system, whether or not the quality management system of Recognised Organisation has been certified by an independent entity (Park, 2012).

The principles of auditing were also emphasized in Part (5) of the RO Code which shall be upheld by the flag State and auditors to ensure integrity which is the umbrella of professionalism, fair presentation to reflect that accurate and the truth of the findings, confidentiality with the purpose to ensure the security of information are well protected not to be manipulated by anyone, the independence and the impartiality of the audit not influencing by anyone, groups, or authority, and the presentation of evidence as proof supplementing the quality of the findings in the report. Part 3 (7) of the Code for Recognised Organisation, laid out the requirements for the oversight role of flag State administration on the Recognised Organisations activities. These activities include the statutory certification and services on which the Recognised Organisations perform on behalf of flag State.

Moreover, criticisms by IMO Member States on the lack of implementations on IMO conventions raised the need to have a single document to use by member States to implement and monitor compliance with IMO conventions (Afriyie, 2007). As a result, IMO adopted the IMO Instruments Implementation Code (III Code) which purposely to improve maritime safety and marine environmental protection, and also helps flag State in implementing all IMO instruments.

Furthermore, the mandatory IMO Member States Audit Scheme (IMSAS) was established and superseded the Voluntary IMO Member States Audit Scheme (VIMSAS). Thus, to harmonize the implementation of all mandatory provisions in all IMO conventions, IMO Resolution A.1104(29) was adopted in 2015 as a guideline to flag State in relation to harmonizing the survey and certification procedures.

The mandatory audit requires the flag State agreement with Recognised Organisations to ensure the compliance of a flag State with the RO Code and IMO conventions, which the flag State ratified (Chatterjee, 2006). The Maritime circular circulated to communicate the appointment of Recognised Organisations by a flag State to the IMO is also a requirement to enable the IMO to transmit the appointments of Recognised Organisations to all stakeholders. In the case of Tuvalu, the circular number MC-9/2005/1 circulated which explicitly detailed that Recognised Organisations recognised by Tuvalu are all members of the International Association of Classification Societies.

To carry out the audit, three types of audits could be used on Recognised Organisations. A system audit that looks into the quality management system audit; the process audit which normally refers to the process of classification and the transferring of class of vessels or withdrawal of class; and the product audit which looks into survey performances and its compliance with the Code and other IMO conventions whether or not following the procedures (Størkersen, 2018).

4.2.1 Necessity for the Directorate of Maritime Affairs to monitor the activities of the Recognised Organisations

The above section discusses the requirements of the oversight role of a flag State on the Recognised Organisations. Thus, the mandatory requirements of the oversight function of a flag State outline the necessity to monitor the important statutory activities performed by Recognised Organisations, to assess its compliance with international standards enshrined in IMO instruments (Reuß and Pichon, 2007).

The RO Code and the III Code discussed in the above section emphasised that the oversight role on the Recognised Organisations is the sole responsibility of the flag State, and that oversight function is mandatory to be audited under the IMO Member State Audit Scheme. Hence, conducting an audit is to ensure that procedures in place are being followed, documents and activities conducted are properly recorded in accordance with an auditing standardised requirement, identifying the level of compliance

with IMO instruments and the signed contract. These audit objectives help to identify areas within the system which require improvement (Blank, 1999).

Moreover, audits play a very crucial role in identifying gaps between the regulations and the schedule of activities performed by a Recognised Organisation with the intention to maintain and improve the reliability of the quality management system, its efficiency and effectiveness. Audits provide factual information for policy makers and the management to make informed decisions (Russell, 2000).

Although audits have been conducted, and adequate regulations and procedures have been put in place, the blame game on the factors causing accidents at sea still continues (Shurtleff et al, 2012). This reflects that the cause of accidents was not only limited to technical and human factors, but it also included management and safety culture. These aspects play a vital role in improving safety and making communication more visible and clear (Størkersen, 2018). Hence, flag State and Recognised Organisations shall consider these important aspects in the course of implementing and reviewing regulations to improve the seaworthiness of ships and the level of compliance with international conventions (Ek* and Akselsson, 2005).

Moreover, one of the challenging aspects in improving compliance on the side of Recognised Organisation and ship owners is the effort spent to comply with auditing procedures in order to maintain their reputation and their ranking internationally (Hohnen and Hasle, 2011). Transforming their procedures, quality safety management system, and the entire working environment to be auditable impacted the practicability of the operational system. As a result, the focus on safety operation will become a secondary objective whereas auditing of the safety management system becomes a priority (Størkersen, 2015).

Table 4 below outlines that even though Tuvalu has recognised members of the International Association of Classification Societies as its Recognised Organisations, but Tuvalu flag Ships still encountered cases of serious accidents.

Table 4: Cases of Serious Accidents

Vessel Name	Problem	Port	Date of the problem	Type of casualty	Ship Type
Tuipuga	Fire or explosion	Fiji	15/08/2018	Serious	Fishing vessel
Theresa Arctic	Stranding/grounding due to loss of power and drifted towards the reefs of Kenya	Mombasa	20/06/2017	Less serious	Tanker
Hai Tuo 806	Foundering (water entered the steering gear compartment and then sank)	Zhuhai	19/05/17	Very serious	Tug
Harita Berlian 18	Sinking (drifted and sank)	Singapore	16/02/2017	Very serious	Pusher Tug
ANA	Stranding/grounding (capsized and sank)	East China Sea	23/07/2014	Very serious	General cargo
Theresa Bitung	Fire or explosion	Vietnam	27/11/2013	Very serious	Tanker

Source: Figure extract from the International Maritime Organisation. (2020). *GISIS: Marine Casualties and Incidents*.

The Table 4 above indicates that there are no serious incident cases occurred in 2019. However, the necessity to monitor the performance of the Recognised Organisation is an ongoing process to ensure compliance with the required standards at all times.

4.2.2 Issues of the required personnel

As alluded to in the above section that one of the reasons of delegating authority to Recognised Organisations was due to lack of personnel. I have also discussed in chapter 2 the organisational structure of the Tuvalu Ship Registry based in Singapore. In the structure it clearly shows that Tuvalu lacks with personnel to administer the responsibilities of a flag State. Hence, in order for Tuvalu to comply with IMO instruments, it is necessary to delegate its authority to Recognised Organisations to carryout the statutory obligations on its behalf.

The Recognised Organisations for Tuvalu are all members of the International Association of Classification Societies as in accordance with the Tuvalu Merchant Shipping

Act. Table 5 below listed the Recognised Organisations and the number of personnel serving under each Recognised Organisations.

Table 5: Tuvalu Recognised Organisations' Staff Personnel

Name	Functions		Number of Staff							
	Surveys	Certification	Supervisory Personnel		Technical Personnel		Survey		Administrative	
			Head quarter	Field	Head quarter	Field	Head quarter	Field	Head quarter	Field
Bureau Veritas (BV)	√	√	36	80	164	360	4	924	66	460
American Bureau of Shipping (ABS)	√	√	139	210	116	553	14	1397	156	464
China Classification Society (CCS)	√	√	7	226	173	292	33	915	114	507

Name	Functions		Number of Staff							
DNV GL AS (DNVGL)	√	√	115	182	846	200	83	2590	274	266
Indian Register of Shipping (IRS)	√	√	33	31	64	0	20	126	60	45
Korean Register (KR)	√	√	54	47	178	6	152	235	142	53
Lloyd's Register (LR)	√	√	70	120	108	369	10	1111	18	287
Nippon Kaiji Kyokai (NKK)	√	√	122	209	280	31	0	598	186	235
Polish Register of Shipping (PRS)	√	√	15	9	42	0	9	50	32	16
RINA Services S.p.a (RINA)	√	√	13	15	82	63	11	302	26	131

Name	Functions		Number of Staff							
Russia Maritime Register of Shipping (RMRS)	√	√	48	49	132	511	133	648	272	351

Source: Figure extract from the International Maritime Organisation. (2020). *GISIS: Marine Casualties and Incidents*.

The Table 5 above shows the well equipped of each Recognised Organisations with qualified technical personnel. In comparison the number of surveyors employed by each Recognised Organisations with the 168 Tuvalu vessels with valid registrations signify that these Recognised Organisations are able to perform the statutory obligations on behalf of the flag State.

There is no specific number of surveyors specified under certain IMO conventions nor Tuvalu regulations requires to be employed by a Recognised Organisation in proportion to the number of Tuvalu registered vessels.

4.3 Performance of Tuvalu registered ships

The Tuvalu Ship Registry has not published any annual reports nor any quarterly reports on the performance of Tuvalu registered ships. According to D. Chong (personal communication, September 22, 2020), that this is due to the low number of detained Tuvalu registered ships in the past years. However, the performance of Tuvalu registered ships can be assessed through the IMO Member State Audit Scheme (IMSAS) which is a mandatory IMO audit scheme for all IMO Members, and the International

Safety Management (ISM) Code where vessels will be assessed their level of compliance with the Code (Park, 2012). Furthermore, the performance of Tuvalu vessel can also be assessed using data from Port State Control (PSC) reports which includes the Paris Memorandum of Understanding (MoU) reports and Tokyo MoU reports (Chen et al, 2019).

The above section has discussed data from the IMO which can also reflects the performance of Tuvalu registered ships, such as Tuvalu flag ships involved in serious incidents tabulated in Table 4 above. It reflects in Table 4 that there are gaps in the process of assessing compliance with universal maritime standards which flag State lacks in controlling to maintenance of the seaworthiness of ships, and at the same time increases safety and decent working conditions on ships (Takei, 2013). This gap is where Port State Control comes into play to inspect foreign vessels entered their ports to ensure that these ships are safe to transport goods, safe to carry people, and also safe to the environment as in accordance with IMO conventions (Chen et al, 2019). The paramount function of Port State Control is to improve the safety standards in the maritime industry and to ensure inspections are conducted in accordance with the relevant international conventions, and detain ships fails to comply with international maritime standards (Emecen et al, 2020).

The findings of inspections performed by Port State Control on Tuvalu flag ships can determine the performance of Tuvalu ships. Tuvalu flag ships are subject to be inspected by Port State Control under conventions that Tuvalu have ratified, and conventions that Tuvalu have not acceded they receive a 'no favorable treatment 'from the Port State Control (Firestone and Corbett, 2005). As compliance determines the performance of Tuvalu ships, therefore, factors that determine the compliance of ships will be discussed in the following sections of this chapter.

4.3.1 Number of registered ships in Tuvalu Ship Registry

Obtaining data for this research is a challenge because it was not possible to physically access into the registry ship register to extract the number of registered ships currently

registered in the Tuvalu Ship Registry. However, in correspondence received from the Director of Tuvalu Ship Registry, since the inception of the Tuvalu Ship Registry in 2004, the total number of Tuvalu registered ships is 3,778 ships, and out of this number, currently there are only 168 ships still registered under the Tuvalu Ship Registry flying the Tuvalu flag (D. Chong, official communication, September 22, 2020).

The Director of Tuvalu Ship Registry mentioned that maintaining the small number of registered ships is due to the limited number of Recognised Organisations appointed by the Administration. As a result, Tuvalu could not flag as many vessels as it would like to. The organisations recognised by Tuvalu are limited to members of the International Association of Classification Societies only as in accordance with section 139 of the Tuvalu Merchant Shipping Act. However, maintaining the small number of registered ships is a critical step to be taken in order to improve the performance of Tuvalu ships in international arena as it is easy for a small maritime administration of less than 10 personnel to monitor and control (D. Chong, official communication, August 16, 2020).

4.3.2 Examination of whether flag Ships have been detained

According to Santa (2018), the major contributing factor to ship detention is the age of a ship. However, it is not the age of the ship that makes it to be detained. A ship can only be detained if the results of the inspection or the assessment identified that a ship fails to comply with international conventions, and ship inspectors based on their expert viewpoint determined that there is a clear ground of serious deficiency that can cause serious problems (Chen et al, 2019).

It is not possible for Port State Control to conduct inspections on all ships visiting their ports, as a result, Port State relies on reports from other ports States in order to set their target for the most wanted vessel, especially sub-standard vessels, which pose high risk to human life, property, and the environment when it continues to sail considering the seriousness of the condition and the number of deficiencies the ship has. A ship can only be released from being detained if all outstanding deficiencies have been repaired,

all conditions of equipment have been restored, and all major fault in the management system have been rectified (Kiehne, 1996).

The examination of whether Tuvalu flagged ships have been detained is based on the data from the Tokyo MoU 2019 report contained in Table 6, and the Paris MoU 2017 - 2019 reports contained in Table 7 below.

Table 6: Tuvalu Ships' Performance under Tokyo MoU Report 2019

2019			
Inspections	No. of inspection with deficiencies	No. of deficiencies	No. of detention
131	82	328	

Source: Author's Own Work

Table 6 above shows that there are 131 Tuvalu flag ships inspected under the Tokyo MoU in 2019. From these 131 inspected vessels, there are number of vessels inspected with deficiencies but do not pose high risk when they proceed sailing in their routes. Only 4 inspected vessels were detained based on the professional judgment of the Port State Control officers.

Table 7 below laid out the details of the 4 inspected vessels detained under the Tokyo MoU in 2019.

Table 7: Details of detained vessels under Tokyo MoU - 2019

Months	Year ship was build	RO	Ship type	Ship company	Days of detention	Nature of detention
January	1999	BV	Chemical Tanker	Raffles Shipmanagement Services Pte Ltd	2	<ol style="list-style-type: none"> 1. Cargo tank vent system (No responsibility of RO) 2. Water/weathertight (No responsibility of RO) 3. Conditions: Ventilators, air pipes, casing (No responsibility of RO)

April	2015	Nippon Kaiji Kyokai	Passenger ship	Government of Tuvalu	10	<ol style="list-style-type: none"> 1. Certificate and Documentation: Ship certificates - International Oil Pollution Prevention (IOPP) (No responsibility of RO); minimum safe manning documents (No responsibility of RO); passenger ship safety (No responsibility of RO). 2. Emergency systems: Fire drills (No responsibility of RO); abandon ship drills (No responsibility of RO). 3. Safety navigation: Charts (No responsibility of RO) 4. Life saving appliances: Distress flares (No responsibility of RO); line throwing appliances (No responsibility of RO); Lifeboats (No responsibility of RO) 5. Fire safety: Ready availability of fire fighting equipment (No responsibility of RO); fire fighting equipment and appliances (No
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Months	Year ship was build	RO	Ship type	Ship company	Days of detention	Nature of detention
June	2004	BV	Oil tanker	Raffles Shipmanagement Services Pte Ltd	31	<ol style="list-style-type: none"> 1. Cargo operation including equipment (No responsibility of RO) 2. Emergency system: emergency source of power, emergency generator (No responsibility of RO) 3. Life saving appliances: Rescue boats (No responsibility of RO) 4. Pollution prevention: Ballast water, ballast water exchange (No responsibility of RO)

Months	Year ship was build	RO	Ship type	Ship company	Days of detention	Nature of detention
October	1999	Nippon Kaiji Kyokai	General cargo	Pioneer Logistics and Trading Co Ltd	1	<ol style="list-style-type: none"> 1. Safety of navigation: Nautical publication (No responsibility of RO) 2. Water/weathertight conditions: Doors (No responsibility of RO) 3. ISM: Safety and environment policy (No responsibility of RO) 4. Pollution Prevention: MARPOL ANNEX VI, incinerator including operation and operating manual (No responsibility of RO)

Source: Author's Own Work

Table 7 above shows that the 4 detained vessels possessed serious deficiencies. On the other hand, Table 8 below outline the data extract from the Paris MoU 2019 report on the number of Tuvalu flag ships detained under the above-mentioned MoU.

Table 8: Tuvalu Ships' Performance under Paris MoU Report 2019

2019			
No. of Inspection	Inspection with deficiencies	Inspections with detention	No. of ships deficient
9	7	1	6

Source: Author's Own Work

Table 8 illustrates that there were 9 Tuvalu flag ships inspected by Port State Control under the Paris MoU, and out of that number, only 1 vessel was detained based on the professional judgement of the Port State Control ship inspectors. The grounds for the detention of this vessel outline in Table 9 below.

Table 9: Details of detained vessels under Paris MoU - 2019

Months	Year ship was build	RO	Ship type	Ship company	Days of detention	Nature of detention
October	1992	Russia Maritime Register of Shipping (RMRS)	General cargo	El-Amira for Maritime Agencies	7	<ol style="list-style-type: none"> 1. Seafarers' employment agreement (SEA) (No responsibility of RO) 2. Fuel change-over procedure. 3. Wages (No responsibility of RO) 4. Calculation and payment of wages (No responsibility of RO) 5. Emergency, lighting, batteries, and switches. 6. Enclosed space entry and rescue drill (No responsibility of RO)

Source: Author's Own Work

Table 9 illustrates that apart from safety issues identified by ship inspectors of the Port State Control, it clearly shows the undermined by the shipping company its responsibility to look after the welfare of seafarers in term of conditions of their contract including their wages.

The figures in Table 4 to Table 9 indicates the importance of Ports State Control in providing additional security measures to fill up the gaps missed by flag States during the survey, inspection, or certification carried out by Recognised Organisations on behalf. The tables above reflect the critical role play by Port State Control to prevent and protect life, property, and the environment and eliminate the number of sub-standard vessels (Akyrek and Bolat, 2020).

Furthermore, based on the figures presented above, it can be said that there are a number of Tuvalu flag Ships that have been legally detained by Port State Control in 2019 under the Paris MoU and the Tokyo MoU, due to the seriousness of the conditions of equipments, and other deficiencies.

Therefore, in comparison between the 5 Tuvaluan ships detained by Port State Control in 2019 with the 168 of the current total number of registered ships at the Tuvalu Ship Registry, it can be concluded that the performance of Tuvalu ships even tough it ships has low risk, it needs more improvement to achieve zero satisfactory on detention rate (Paris MoU, 2019).

4.4 Conclusion

In conclusion, this chapter the requirement of oversight of flag State on the Recognised Organisation and the performance of Tuvalu registered ships. The chapter outlines the profound obligation of the flag State in upholding its public duties it is important to ensure that the Recognised Organisations under their watch performed their role within the parameters of the law to ensure Tuvalu's good reputation in shipping continue to improve.

The chapter lays out the critical important requirements of oversight of flag State on the Recognised Organisation is to assess the competency of the Recognised Organisation and its independency. It also a requirement under Resolution A.739 (18) for the Recognised Organisation to develop its own quality safety management system and shall be certified by an independent entity.

The chapter further elaborates that performing of the oversight role of the flag State on the Recognised Organisation is subject to the IMO Member State Audit Scheme. The necessity to have an audit is based on the fact that audit will be able to identify gap for improvement in the system, and provide accurate and reliable information for informed decision making.

Moreover, it reflects in the discussion that implementing and enforcing the oversight obligation of the flag State creates a positive impact on making a profound decision in appointing the most competent Recognised Organisations that have been recognised worldwide on the quality of their service to serve as Recognised Organisations for Tuvalu.

The performance of the appointed Recognised Organisations are best reflected in the performance of Tuvalu flag ships for being recognised as low risk ships and its impact on the Tuvalu Ship Registry is that Tuvalu is amongst countries with low detention rates.

However, in Table 7 it was appeared that the vessel that has the most serious number of deficiencies is the passenger vessel owned by the Government of Tuvalu who is on the other hand the principal or the flag State. This indicates that in some degree the influence of the key stakeholders such as the flag State or ship owners still exists which affected the independency of the Recognised Organisations. Fortunately, the Port State Control has been established and as an extra pillar providing security measures to close or minimise the risk of having sub-standard ships.

As there still a degree of influence on the role of Recognised Organisations, the gap on the best approach to be employed to avoid such influences from the flag State on the Recognised Organisations especially when the flag State wants to register its own fleet under its own ship registry.

CHAPTER 5: RECOMMENDATIONS AND CONCLUSION

The purpose of the dissertation is to examine how Tuvalu can ensure that ships flying its flag comply with international standards. It has been noted in the discussion that many flag States lack qualified technical personnel and resources to enable them to

fulfill their obligations enshrined in international laws and national laws of the country. In this regard, it has been well established in the discussion that Tuvalu has opened its ship registry based in Singapore in 2004. The research identified that based on the functions and criteria together with the national laws passed by the Parliament of Tuvalu, the Tuvalu Ship Registry based in Singapore is an open registry.

However, the focus of the research is on the ability and the capacity to monitor the compliance of Tuvalu ships with the existing laws and standards, the registration process, the delegation of powers to Recognised Organisation, and the performance of Tuvaluan flagged ships.

Hence, in Chapter 2 the international legal framework was outlined and it was identified that UNCLOS 1982 was the foundation of rights of the State to issue nationality and establish conditions to monitor the administration of ships granted with the Tuvaluan nationality. The UNCLOS 1982 is also the source of law that has enabled IMO to develop specific conventions to ease the work of flag State in implementing these rights. It was identified the discussion that rights come together with responsibility, and therefore it is the responsibility of the flag State to ensure that obtaining the right to decide and issue nationality to a foreign vessel the flag State has the full responsibility to monitor that particular vessel to ensure it complies with national laws and also complies with universal standards laid out in IMO conventions.

Based on this, considering the smallness of Tuvalu and the limited resources it has, the research is interested in its ability to fulfill its obligations. The establishment of the Tuvalu Ship Registry was also discussed in Chapter 2 which was established under the Merchant Shipping (Regulation for Foreign Vessel) Regulation. The same regulation gives that power to the Minister to appoints the Foreign Vessel Administration.

Henceforth, in examining the establishment of the Tuvalu Ship Registry and the resources it has, to enable to determine the ability of Tuvalu to monitor the compliance of Tuvalu ships with international standards. It has been identified that the Tuvalu Ship Registry lacks personnel. The Tuvalu Ship Registry organizational structure clearly

outlines that the position of Ship Registrar was left vacant for more than 3 years. There is no section or department under the organizational structure of the Tuvalu Ship Registry which their work is specifically looking after survey and inspection activities.

One of the important aspects of a ship registry to have is to ensure that it has adequate resources. It has been identified in Chapter 2 that from Tuvalu government national budget reports from 2015 - 2020, Tuvalu Ship Registry since its inception in 2004 there is no budget assistance from the Tuvalu government to assist the registry in providing additional resources which can help and assist the administration in the performance of their duties.

In light of the above, although there are adequate laws to establish the Tuvalu Ship Registry and the operation of its own affairs, to fulfill the obligations of Tuvalu as a flag State is questionable due to the lack of resources and personnel.

Furthermore, the discussion was extended further to the delegation of power or authority to Recognised Organisations. The literature identifies that Recognised Organisations play a significant role in assisting the flag State in fulfilling their statutory obligations. According to discussions in Chapter 3 identified the long history of the delegation of authority by flag State to Recognised Organisation. This authority enshrined in IMO conventions such as SOLAS, MARPOL, Load Lines Conventions, and the purpose of the delegation of authority to entrust the authority to Recognised Organisations to undertake statutory obligations on behalf of the flag State.

It has been identified in Chapter 3 that the authority of the administration of the Tuvalu flag State to entrust its authority to Recognised Organisations was also laid out in the Tuvalu Merchant Shipping Act.

However, although there are laws in place to delegate powers to Recognised Organisations to perform statutory activities such as surveys, inspections, and certifications, what is important in this process is the ability and the capacity of Tuvalu to monitor the process to ensure that its obligations are being fulfilled.

The discussion of Chapter 3, that the appointment of Recognised Organisations has to comply with the Code for Recognised Organisation which outlined the process of nominating the competent Recognised Organisation and the requirements it shall meet. What Recognised Organisations are all members of the International Association of Classification Societies. Hence, there shall be an agreement made between Tuvalu as a flag State and Recognised Organisations to formalize the appointment of the Recognised Organisation with the scope of work entrusted to the Recognised Organisations, and this shall be communicated to the IMO to enable the IMO to circulate the information to stakeholders for their information and commitment to the process.

Based on this, attempts were made to Tuvalu Ship Registry to obtain any of the contracts between Tuvalu and Recognised Organisations. Response received to communicate directly to the Marine Department of Tuvalu for their authority. Attempts were made to obtain a copy of the agreement and unfortunately no response in relation to that matter. Therefore, the compliance of Tuvalu with the Code for Recognised Organisations to determine the scope of the entrusted to Recognised Organisations and the role of parties involved to identify the ability of Tuvalu to monitor the delegation of powers cannot be assessed due to the unavailability of the contract.

Even though the research work used the contract between the Danish Maritime Authority with Recognised Organisations, and the agreement between the Finnish Transport Safety Agency with a Recognised Organisation as a model of an example. In this model agreement, it indicates the status of the agreement made by both authorities with their Recognised Organisation is above the minimum requirements outlined in the Recognised Organisation Code. As a result, this model or level of agreement used by both mentioned authorities can be adopted by Tuvalu to advance its existing agreement in a case where its agreement is not up that level, with the intension to put more measures to ensure the Recognised Organisations perform to its utmost while undertaking statutory duties on behalf of the flag State.

Although there is no contract available to examine the ability of Tuvalu in monitoring the process, the chapter presents valuable information that provides a foundation knowledge to future researchers who interested to research on the agreement made between Tuvalu and Recognised Organisations.

Moreover, as the Recognised Organisations has been entrusted with the authority to perform the statutory obligations on behalf of the flag State, the only way to ensure that Recognised Organisations performed their duty with integrity and in accordance with international standards is to monitor their performance.

Monitoring the performance of the Recognised Organisation requires the flag State administration to implement its functions vested under Part 3 of the Recognised Organisation Code to enforce the oversight role of the flag State on the Recognised Organisation.

In Chapter 4 discussion, it was outlined that the performance of Recognised Organisations can be assessed in different ways and includes 1. Assessing the competency of the Recognised Organisation against the minimum requirement laid out in the Recognised Organisation Code, 2. Assessing through the IMO Member State Audit Scheme, and 3. Assessing through the performance of Tuvalu ship internationally based on the number of cases filed against Tuvalu ships by Port State Control.

Based on this different level of assessment, it has been identified that even though a flag State appointed Recognised Organisations to perform their work on its behalf with the expectation to improve compliance and the level of security and decent conditions on ships to protect life, property, and the environment.

However, this cannot be achievable if the shipowner fails to adhere to recommendations from Recognised Organisations. As a result, a vessel that fails to adhere to the expert recommendations from Recognised Organisations can reflect on reports from Ports State Control, where that vessel will be detained for serious number deficiencies which pose a high risk to life, property, and the environment.

The discussion in Chapter 4, clearly identified that Tuvalu employed the most competent Recognised Organisations but due to the failure in ship owners to comply with recommendations from Recognised Organisations resulted in having 5 of its registered ships detained in 2019 by Port State Control with a serious number of deficiencies, and also number its ships facing serious incidents in the past years.

The chapter also identified that the vessel has the most serious deficiencies is the Tuvalu passenger ship owned by the Tuvalu Government. This reflect the influence of the flag State on the statutory activities entrusted to Recognised Organisations by the flag State.

In light of all the outcomes of the discussion, this dissertation is important as it provides a foundation of knowledge to future scholars who interested in the Tuvalu Ship Registry to identify gaps in the agreement between Tuvalu and Recognised Organisations which this study have not been to examine. The study also important, because the outcome of this study can help to inform Tuvalu decision-makers on areas that require the Tuvalu Ship Registry to improve on.

Based on that, it is strongly recommended that:

1. To review the structure of the Tuvalu Ship Registry to ensure that the new structure will be able to fulfill the obligations of the flag State.
2. Assess the possibility for the Government of Tuvalu to allocate resources within the Tuvalu national budget to ensure that adequate means are being provided to the Tuvalu Ship Registry in performing their functions.
3. Ensure that Recognised Organisations are able to perform their role without favor, fear, influence by any stakeholders including flag State in the future.

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