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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**FRAUDULENT REGISTRATION OF VESSELS UNDER TANZANIAN FLAG. A
POLICY OR LEGISLATION CONSTRAINT**

By

RANIEL ELISANTE SWAI

United Republic of Tanzania

**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)

2022

Raniel ELISANTE SWAI, 2022

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.

(Signature):

(Date):

Supervised by: *

Supervisor's affiliation:

NB The supervisor's signature is not required.

ACKNOWLEDGEMENT

Psalms 116:12 (NKJV)

What shall I render to the Lord, For all His benefits toward me?

First, I wish to thank God for his grace and mercy to me throughout my life and particularly for helping me to get an opportunity to accomplish my studies at World Maritime University (WMU). Glory be to God, for his mercy endureth for ever.

I am grateful for my family whose constant love and support keep me motivated and confident. My accomplishments and success are because they prayed and believed in me. Deepest thanks to my parents, Mr. and Mrs. Evg. Elisante N. SWAI, my beautiful wife, Adv. Irene R. MCHAU and Ronelle, our daughter. Finally, I owe my deepest gratitude to Emmanuel SWAI and Ivonne MCHAU. I am forever thankful for the unconditional love and support throughout the entire studying process and every day.

I would like to express my deepest appreciation to Tanzania Shipping Agencies Corporation (TASAC) of the United Republic of Tanzania for allowing me to study for a Master's of Science degree at the World Maritime University (WMU). Further, I acknowledge the generous full financial support from the distinguished Sasakawa Peace Foundation Scholarship, the Chairman and all Nippon Foundation team.

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Psalms 136: 1 (KJV)

“O give thanks unto the Lord; for he is good: for his mercy endureth for ever”.

ABSTRACT

Title of Dissertation: **Fraudulent registration of vessels under Tanzanian Flag. A policy or Legislation constraint.**

Degree: **Master of Science**

Fraudulent registration is the series of unlawful practices associated with registration of ships without the knowledge or approval of the relevant national maritime administration. This dissertation is a study of the fraudulent registration of vessels under Tanzanian flag. Fraudulent registration is among the current major underlined threat towards safety and security of maritime transport globally. The study will focus on the efficacy of the policy and legislations regulating the maritime sector in the United Republic of Tanzania and further examine the practicability of the principle of genuine link in executing flag State obligation to ship flying its flag in international waters.

The United Republic of Tanzania is the union government formed by two independent sovereign States Tanganyika and Zanzibar in January, 1964. Each government has its mandate on administering union and non-union matters as listed under the first schedule of the Constitution of the United Republic of Tanzania, 1977. Amongst the twenty-two (22) union matters listed under the Schedule, maritime transport and administration are not among the union matters. There exist two registries administered by different MARADs formed under different maritime legislations. The study will focus on the policy strategies behind the established systems and particularly shall examine the legislation regime as major and the most important instrument to combat the alleged unlawful practices associated with the fraudulent registration and fraudulent registries of vessels flying the Tanzanian flag and violating international shipping standards.

Lastly, the dissertation describes reasons for the increase of unlawful practices associated with fraudulent registration of vessels and the socio-economic impact to IMO Member States and particularly to the United Republic of Tanzania (URT) as the affected flag State. The research recommended the need to implement IMO concrete proposed measures to prevent unlawful practices associated with fraudulent registration and fraudulent registries of ships and other deceptive shipping practices.

KEY WORDS: Fraudulent registration, Registration of Vessels, Flag State, Legislation, Policy.

DEDICATION

With honour, this work is dedicated to my parents Mr. and Mrs. Evg. Elisante N. SWAI, my wife Adv. Irene R. MCHAU, my daughter Ronelle R. SWAI and my brother Emmanuel E. SWAI. May God bless and keep you. Amen.

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LIST OF ABBREVIATIONS

DRC	-Democratic Republic of Congo
FR	-Fraudulent Registration and Fraudulent Registries
FSC	-Flag State Control
FSQC	-Flag State Quality Control
GISIS	- Global Integrated Shipping Information System
IMO	-International Maritime Organisation
INTERPOL	- International Police
LEG	-Legal Committee
MOU	-Memorandum of Understanding
MSA	- Merchant Shipping Act
MTA	- Maritime Transport Act
NMTP	-National Maritime Transport Policy
NTP	-National Transport Policy
PRC	-People's Republic of China
SOLAS	- International Convention for the Safety of Life at Sea
TASAC	-Tanzania Shipping Agency Corporation
UN	-United Nations
UNCCROS	-United Nations Conference on Conditions for Registration of Ships
UNCLOS	-United Nations Convention on the Law of the Sea
UNCTAD	-United Nations Conference on Trade and Development
URT	-United Republic of Tanzania
VLCC	- Very Large Crude Carrier
ZMA	-Zanzibar Maritime Administration
RO	- Recognised Organisation
ZMA	-Zanzibar Maritime Administration

01. CHAPTER ONE

1.1 Background of the Study

The background of this dissertation will focus on historical developments of ship registration in United Republic of Tanzania considering the major changes that can be traced back from the mediaeval period when the seaborne trade was introduced, the Geneva Convention on the High Sea, the United Convention of the Law of the Sea (UNCLOS), 1982 and then the establishment of International Maritime Organisation (IMO). All these are important international instruments and legislation to be looked upon when conducting this study.

The study will focus on the United Republic of Tanzania (URT), a sovereign State located in East Africa formed in 1964 by union of two independent States of Tanganyika and the Revolutionary Government of Zanzibar¹, the Union is based in the provision of Articles 4 read together with Union matters listed in the First Schedule of the Constitution. However, according to Article 4(3)² maritime transport and administration, in particular ship registration is not listed under in the First Schedule and hence regarded as non-union matters.

Registration of ship Tanzania Mainland is governed by the Merchant Shipping Act, 2003³ and administration activities are done by the Tanzania Shipping Agencies Corporation (TASAC)⁴. While in Tanzania Zanzibar, ship registration and associated maritime happenings are administered by the Zanzibar Maritime Authority (ZMA) which administers the Maritime Transport Act, 2006⁵. In this administrative regime, TASAC and ZMA are two registries with distinct conditions of registration of vessels⁶.

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

² Article 4 (3) Ibid

³ The Merchant Shipping Act, Na. 21 of 2003

⁴ The Tanzania Shipping Agencies Act, Cap. 415

⁵ The Maritime Transport Act, No. 5 of 2006

⁶ Bendera, I., (2017) Admiralty and Maritime Law in Tanzania, (pp. 90-102), Law Africa Publisher (K) Ltd

The United Republic of Tanzania is a member State of IMO since 1974 and has ratified several maritime international instruments including the United Nations Convention on the Law of the Sea (UNCLOS) on October 7, 1994 and come into force on June, 25 1998, hence enjoys rights as any other State to register ships flying its flag on the high seas⁷. Such right comes with responsibility to fix condition for registration and granting nationality to a vessel and confers right to fly its flag⁸. State's responsibilities include to ensure it effect fully jurisdictional power and control in administrative, technical and social welfares on vessels⁹. A ship without such characteristics is regarded as a stateless ship¹⁰, also ships obtained such character illegally and without approval of the flag State falls under the same category.

The purpose of this research is to study and analyse efficacy of National Transport Policy, 2013 and strength of legislation on preventing fraudulent registration of vessels and examine to what extent the country is affected from effect of fraudulent registered vessels that fly its flag and lead to infringe IMO member State responsibility established under UNCLOS and thereafter provide lesson to be leant and necessary recommendations.

1.2 Problem Statement

States are under obligation to ensure they exercise full jurisdiction on controlling technical, administrative and social related matters to vessels flying their flags to ensure safety of life at sea¹¹. Fraudulent registration of vessels frustrates States from achieving safe navigation due to the increased number of substandard ships likely to cause marine accidents and lead to environmental pollution. It was further highlighted by Fleet¹² that, "addressing fraudulent practises effectively was vital to promoting maritime safety, security and environmental protection."

⁷ Article 90 of the United Nations Convention of the Law of the Sea, 1982

⁸ Article 91 (1). Ibid

⁹ Article 94. Ibid

¹⁰ Coles, R. (2018). Ship registration: law and practice. Informa Law from Routledge.

¹¹ Ibid

¹² FLEET, D. S. (2019). ENVIRONMENTAL INDICATORS. REVIEW, 70.

In April 2018, during the 105th session IMO Legal Committee, (LEG 105), number of Member State submitted reports on fraudulent registration and fraudulent registries from their jurisdictions. It was noted that Democratic Republic of the Congo (DRC) was highly affected whereby out of 84 vessels flying the DRC flag, 73 had been registered without knowledge and approval of the Flag State. This was the beginning of the member State to address the fraudulent registration of ships collectively and set a target to its completion in 2021¹³ and hence build and increased confidence to the affected States on obtaining support from the Organisation and other Members at large.

The URT started to undertake international Ship registration in 2017. On the 106th session of the Legal Committee meeting held at IMO, the URT submitted comments with a view to update the LEG on the prevailing situation to ships flying Tanzanian flag and submitted the list of 26 vessels from Tanzania Zanzibar registry which have been reported to fraudulently use the Tanzanian flag from 2016 to 2019¹⁴. Based on the report submitted by URT, the flag State recommended on adoption of the collective measures to get rid of the problem¹⁵. The URT is solely responsible for nonconformity of the ratified international instruments to include Safety of Life at Sea; Prevention of Pollution from Ships; Standards of Training, Certification and Watchkeeping for Seafarers; Load Lines; Tonnage Measurement of Ships; and Regulations for Preventing Collisions at Sea¹⁶.

The United Republic of Tanzania is amongst the five (5) blacklisted flag States with medium to high risk due to non-adherence to the international instruments and poor standard of maritime safety and security¹⁷. Apart from lack of transparency, trade constraints and embargos, it contributes to the weakening international authority of the flag

¹³ International Maritime Organisation, (2022). Legal Committee, 105th session, 23-25 April 2018: Fraudulent registration of ships – added to agenda

¹⁴ IMO LEG 106/7/5, Measures to Prevent Unlawful Practices Associated with the Fraudulent Registration and Fraudulent Registries of Ships. Submitted by United Republic of Tanzania, 5th February, 2019 LEG 106/7/5: Comments on Doc.106/7 Submitted by the United Republic of Tanzania, 5th February 2019. p.1

¹⁵ Ibid.p.2

¹⁶ Emphasis mine

¹⁷ Paris MoU, (2020). Paris MoU Annual report "Port State Progression; detention rate down"

State and causes its merchant fleet to be targeted by other Port State Control (PSC) and cause frequent, lengthy burdensome inspection and detention¹⁸.

This dissertation aimed at analysing efficacy of Tanzania National Transport Policy and strength of the URT maritime legislations on addressing fraudulent practises by examining the existing gap on preventing fraudulent registration of vessels. The comparative study of legal instruments and maritime administrative approaches will be conducted by examining stringent measures and mechanisms to be learnt and improve the existing policy.

1.3 The Objective of Study

Fraudulent registration of vessels is amongst the major reasons for flag States not to attain maritime safety and security. It is one of the many maritime crimes, breach of the International maritime agreements including Conventions, related to interfere with implementation and achievement of United Nations Development Sustainable Development Goals (UNSDGs), especial “Goals 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development and Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”¹⁹ and hence leads to economic detriment and other UN sanctions. This crucial academic study regarding fraudulent registration and fraudulent registries of vessels (FR) flying Tanzanian flag will examine the existing National Transport Policy, 2003²⁰ and legislations governing ship registration. Therefore, the hereunder listed the objectives of the study:

- i. To identify reasons for fraudulent registration of vessels in United Republic of Tanzania;
- ii. To analyse inadequacies resulting from the fraudulent registration and fraudulent registries of vessels of State both at national and international level;

¹⁸ Plachkova, T. (2019). Ensuring of maritime safety: PSC, duties of the flag State and practice of Ukraine. EVROPSKÝ POLITICKÝ A PRÁVNÍ DISKURZ, 24.

¹⁹ United Nation: Development of Economic and Social Affairs: 17 Sustainable Development Goals, 2021

²⁰ The United Republic of Tanzania: National Transport Policy, 2003

- iii. To analyse the effectiveness of the existing maritime policy and legislative instruments on preventing fraudulent registration of vessels, considering practice of other selected ship registries in the world; and
- iv. To recommend an appropriate measure to be deployed by the flag State to combat this fraudulent activity.

1.4 Research Questions

For the Researcher to achieve the above-mentioned objectives, the following questions will be answered:

- i. What are the contributory factors underpinning fraudulent registration?
- ii. How are States affected by fraudulent registration practices at national and international level?
- iii. How can the existing maritime policy and legislations prevent further rapid increase of fraudulent registration of vessels in URT?
- iv. What are the measures to be taken collectively to get rid of the fraudulent registration practices in maritime industry? and
- v. Whether a new more comprehensive policy and relevant legislations required?

1.5 Methodology of the Research

The methodology used to attain the intended objectives of this research is literature review. The study focused on analysing primary and secondary legal materials, describing effectiveness of international Conventions and structure of the United Republic of Tanzania maritime legislations on combating fraudulent registration. In order respond to research questionnaires, the International Maritime Organisation Legal Committee (IMO LEG) meetings on developing guidelines on appropriate measures to prevent unlawful practices associated with fraudulent registration and fraudulent registries of ships was considered as the most suitable bunkering option in this study.

1.6 Significance of Study

Unlawful practices associated with fraudulent registration for vessels flying Tanzania flag has affected initiatives of the governments on achieving United Nations Development

Sustainable Development Goals (UNSDGs), especial “Goals 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development and Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”²¹ inclusively. It has been one of the reasons hindering State from achieving safe navigation and increase number of substandard ships. Therefore, the significance of this study is to look on the policy and specific legislations governing ship registration and control fraudulent registration. It is in the heart of the researcher that, despite triggering improvement on policy and legal framework of controlling fraudulent registration globally still there is a need to amplify such mechanisms to individual State and increase scope on collective implementation of measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships.

1.7 Key assumptions and potential limitations

Fraudulent registration of vessels in United Republic of Tanzania has been a core study of this dissertation. The assumption was to conduct a concrete study on effectiveness of the international Conventions and national maritime legislation on get rid of fraudulent registration of vessels. The limitation of this research was an outbreak of Covid19 pandemic with travelling restriction to conduct survey and effective data collection but also rules of confidentiality to official officers of the Flag State in providing necessary information has been another barrier of the study.

²¹ United Nation: Development of Economic and Social Affairs: 17 Sustainable Development Goals, 2021

02. CHAPTER TWO

FRAUDULENT REGISTRATION OF VESSELS

2.1 Introduction

In the idea of comprehensive rationality, a ship flying a flag of a sovereign State and a member of the international shipping community is truly trusted to have met minimum international standards on technical designing aspects, periodic maintenance, operational requirements and is presumed to comply with safety standards at sea. The Port State where the ship may call or the Coastal State ships pass would have no reasonable doubt on safety standards of a ship. But in the real maritime world where the foundation of safety and security to ship are determined by the level of compliance of the international and municipal laws. The right to granting nationality to ship is the State's promise to exercise its jurisdiction on ships flying its flag.²²

2.2 Ship Registration and the principle of 'genuine link'

Ships were constructively considered as a floating part of the State even before the concept of ship registration which has its history back in the mediaeval period. States established connections with ships based on customary practices. Early in the 17th Century registration of ships started to be significant in Britain. Kitchen²³ showing the reasons explained that, "ship registration was to confine privileges, to acquire British nationality to afford protection of vessel and business, to acquire proof of documents of title and later registration was considered important for taxation to State". During that time registration of ships was not an international concern rather for obtaining a registration document- "a document of title". The British States provided protection to ships under customary practices until registration developed under the auspices of the Merchant Shipping Act, 1894²⁴.

²² Mansell, J. N. (2009). Flag state responsibility: Historical development and contemporary issues. Springer Science & Business Media.

²³ Kitchen, J. (1977). Temperley's Merchant Shipping Acts. By Michael Thomas and David Steel. (British Shipping Laws, Vol. 11). [London: Stevens & Sons. 1976. ci, 933, and (Index) 67 pp.£ 28.50 net.]. The Cambridge Law Journal, 36(2), 394-396.

²⁴ The Merchant Shipping Act, 1894

Since the end of the Second World War (WWII) the international law has developed and given rise to inter-governmental organisations having interest in ships. For example, the UN found it necessary to register and to sail ships under the United Nations flag²⁵. The development of ship registration and condition to fly a flag of a State was also noted by the United States Supreme Court while giving opinion on the case of *Lauritzen v. Larsen*²⁶, the Court held:

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

The same principle given in *Lauritzen v. Larsen* was adopted by the body of international community and is clearly reflected under Article 5 (1) of Geneva Convention on the High Seas²⁷ which provides to the effect that:

“Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag”.

The Geneva Convention gives the right to a sovereign State to fix conditions to give nationality to ships registered under its municipal law regime governing its territory and grant such ships the right to fly its flag. Mansell²⁸, emphasised that the law of the flag regulates all conduct on board the ship while it is on the high seas.

²⁵ United Nations Flag on Vessels, UN Doc. A/Conf. 13/ C. 2/ L. 87 appearing in 1958

²⁶ *Lauritzen v. Larsen*. 73 S. Ct. 921; 345 U. S. 571. Decided May 25, 1953

²⁷ Convention on the High Seas. Done at Geneva on 29th April 1958

²⁸ Mansell, J. N. (2009). Flag State responsibility: Historical development and contemporary issues. Springer Science & Business Media.

Similar rights were provided in the wording of Article 91 of the United Nations Convention of the Law of the Sea,²⁹ which express that:

“Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.”

These two international instruments did not define the concept of “genuine link”. However, the concept is emphasised in numbers of Court rules and judgements including the *Nottebohm (Liechtenstein v. Guatemala)*³⁰ a landmark case that expounded the concept of genuine link. The Court held that:

“Nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”

Registration of the ship, granting of the nationality and right to fly a flag of the registering State creates a link between the State and the ship but does not suffice to extract the genuine link. Genuineness of a link can be established by in a several ways, by a State has a discretion as to how it ensures that either through requirements relating to ownership of vessels and managements of crew, effective exercise of jurisdiction and control of all matters on board ship through domestic legislations and conducting necessary surveys of the ship flying its flag and verifying qualifications and rights of crews.

Sloane³¹, explained that, “effective exercise of jurisdiction and control over its ships is one of the principal ways in which a flag State may demonstrate that the link between itself and its ships is genuine.” Churchill,³² emphasised that, link must be genuine or and real, as opposed to sham, artificial, casual or tenuous. Therefore, wherever there is no genuine link

²⁹ Article 91 of the United Nations Convention of the Law of the Sea, 1982

³⁰ *Nottebohm (Liechtenstein v. Guatemala)* Judgment of 18 November 1953

³¹ Sloane, R. D. (2009). Breaking the genuine link: The contemporary international legal regulation of nationality. *Harv. Int'l LJ*, 50, 1.

³² Churchill, R. R., & Hedley, C. (2000). The meaning of the "genuine link" requirement in relation to the nationality of ships. Pg.12

between the State and ship flying the flag of a registering State, there is no jurisdictional control over the ship and hence creates a loophole for unlawful practices associated with registration of vessels including fraudulent registration and fraudulent registries and increase challenges to maritime security, safety and environment.

2.3 Ship Registration in United Republic of Tanzania-Legal concept and administration

2.3.1 Historical Development

Ship registration is considerable right and practice which can be exercised by a sovereign State by granting its nationality and right to fly its flag. Mahalu³³, emphasises that, “it’s thus the subjects of international law that enjoy the right to own maritime flag”.

The United Republic of Tanzania is a sovereign State formed by union of two independent States of Tanganyika and the Revolutionary Government of Zanzibar³⁴. Maritime matters including registration of ships is not amongst the list of the twenty Union Matters³⁵ listed in the Constitution of the United Republic of Tanzania, 1977³⁶ as amended.

Through the Treaty for East African Co-operation Act³⁷ the East African Merchant Shipping Act, 1966 was enacted and applicable to all State parties to the Community (including Zanzibar) until when the URT enacted the Merchant Shipping Act of 1967 which was then repealed by the Merchant Shipping Act, 2003³⁸ (was not applicable in Zanzibar). The Act recognises ships registered or licensed under its provisions be referred to as Tanzanian ship and hence allowed to fly a flag of a State -national symbol subject to the domestic laws³⁹. On application of Merchant Shipping Act, 2003, Section 3 (1) provides:

“Unless otherwise expressly provided, this Act shall apply to:

³³ Mahalu, C. R. (1984). Public international law and shipping practices: the East African Aspirations (No. 11). Nomos Verlagsgesellschaft.

³⁴ Article 1 of the Constitution of the United Republic of Tanzania of 1977 and Article 1 of the Constitution of Zanzibar of 1984

³⁵ Article 4 (3) and the First Schedule, Paragraph 10. Ibid

³⁶ The Constitution of the United Republic of Tanzania of 1977, as amended.

³⁷ The Treaty for East African Corporation Act, No. 42 of 1967

³⁸ The Merchant Shipping Act, No. 21 of 2003

³⁹ The National Emblems Act, Cap. 10 R.E 2002

- a. all Tanzanian ships wherever they may be;*
- b. all other ships while in a port or place in, or within the territorial sea, lakes, rivers, and cause ways under the jurisdiction of the United Republic of Tanzania.”*

On the other hand, Zanzibar continued to apply the Merchant Shipping Act, 1894 until it was repealed by the Maritime Transport Act, 2006⁴⁰ the law governing the maritime transport, ship registration and establishes the flag state control (FSC) in Zanzibar. On the application of the Maritime Transport Act, 2006, the Act recognises Tanzania Zanzibar registered ship to be governed by the Act as per Section 3(1) provides:

“Unless otherwise expressly provided, this Act shall apply to: -

- a. Tanzania Zanzibar Registered ships wherever they may be;*
- b. All other ships while in any port in Zanzibar or a place within Zanzibar.”*

According to the UN⁴¹“following the ratification on 26 April 1964 of Articles of Union between Tanganyika and Zanzibar, the United Republic of Tanganyika and Zanzibar continued as a single Member, changing its name to the United Republic of Tanzania on 1 November 1964”. Subsequently, the United Republic of Tanzania became a member State of the International Maritime Organisation on 1974⁴².

Therefore, URT is a recognised sovereign State capable of exercising rights conferred to under Article 92 (1) of the UNCLOS by ensuring full applicability of its domestic laws on board ship flying its flag and further ensure responsibilities of a Flag State Control on all matters related to registration of ships, prevention of pollution from ships and administer all matters on maritime safety and maritime security and consolidate the laws relating to shipping and for connected matters.

⁴⁰ Maritime Transport Act, No. 5 of 2006

⁴¹ United Nation:<https://www.un.org/en/site-search?query=UNITED+REPUBLIC+OF+TANZANIA>. Accessed on 17.08.2022 01:40Hrs

⁴² International Maritime Organization (IMO), (2019): Member States

2.3.2 System of registration and Maritime Administration

In 2007 the United Republic of Tanzania commenced to administer international ship registration through Zanzibar international registry, IMO⁴³. According to the United Nations Conference on Trade and Development (UNCTAD), the United Republic of Tanzania has registered a total of 320 ships having about 731 thousand Deadweight tonnage⁴⁴. To attain and increase this statistic, State has to fix most attractive conditions to grant their nationality to ships in accordance with the Article 91 of the UNCLOS⁴⁵.

i. Ship registration under the Merchant Shipping Act, No. 21 of 2003

The Merchant Shipping Act, 2003 (MSA, 2003) is a legislation governing ship registration, procedure for registration, nationality, character and flag and associated maritime governance. According to Section 3 the Merchant Shipping Act⁴⁶ is applicable to all Tanzanian ships and all other ships while in a port or, and cause ways under the jurisdiction of the United Republic of Tanzania.

The Merchant Shipping Act, 2003 qualify a Tanzanian ship as a ship registered or licensed in accordance with the MSA, 2003⁴⁷ and at a port in United Republic of Tanzania, hence this is an implied notion that, ships registered under Zanzibar registry do not qualify to be Tanzanian ships because are not registered in accordance with the Merchant Shipping Act, 2003⁴⁸. In exercising registration of vessels, the URT has enacted Merchant Shipping (Registration and Licensing of Vessels) Regulations, 2005⁴⁹ as a subsidiary legislation governing ship registration and provides eligibility to register a vessel under the URT ship registry.

⁴³ International Maritime Organisation, (2019). Legal Committee, LEG 106/7/7, Measures to prevent unlawful Practices Associated with the Fraudulent Registration and Fraudulent Registries of Ships, Comments on document LEG 106/7

⁴⁴ The United Nations Conference on Trade and Development (UNCTAD): Conditions for Registration of Ships (report by the UNCTAD Secretariat, 1982, Doc. TD/B/AC.34.2)

⁴⁵ Article 91 of the United Nations Convention of the Law of the Sea, 1982

⁴⁶ Section 3 of the Merchant Shipping Act, No. 21 of 2003

⁴⁷ Section 2 of the Merchant Shipping Act, No. 21 of 2003

⁴⁸ Section 12 of the Merchant Shipping Act, No. 21 of 2003

⁴⁹ Merchant Shipping (Registration and Licensing of Vessels) Regulations, 2005, GN. No. 198 of 2005

As a consequent to the principle laid down in 1905 by the Hague Court of Permanent Arbitration in the *Muscat Dhows Case (France v Great Britain)*⁵⁰ where the Court held that, “generally speaking, it belongs to every sovereign to decide to whom he will accord the right to fly his flag and to prescribe the rules governing such grant”, the URT expressed criteria for a ship to fly the Tanzanian flag under Section 13 of the MSA, 2003⁵¹ to:

- a. *“nationals of Tanzania;*
- b. *individuals or corporations owning ships hired out on bareboat charters to nationals of Tanzania;*
- c. *individuals or corporations in bona fide joint venture shipping enterprise relationships with nationals of Tanzania as may be prescribed;*
- d. *such other persons as the Minister may by Order, specify.”*

Based on the above criteria, URT is administering closed system of ship registration. Chen, et al. and Salum⁵², described these criteria as one connected directly to the flag State social-economy and the vessels so registered are subject to domestic law regime including fiscal regime hence regarded as traditional or national registry. The same criteria were observed by Watt & Coles⁵³ that the same criteria are used in British ship registry which is administered under the UK Merchant Shipping Act 1894.

Maritime administration in URT is steered by the Tanzania Shipping Agencies Corporation (TASAC). The Administration is representing the URT in the IMO and administer both the International Conventions like UNCLOS, 1982, SOLAS, 1974, MARPOL, 1973 STCW, 1978 and MLC, 2006 and further ensure the application of the Merchant Shipping Act, 2003. The Tanzania Shipping Agencies Corporation (TASAC) is a body corporate established under Section 4 of the Tanzania Shipping Agencies Act, 2007⁵⁴ with statutory duties to carry on Flag State Control, FSC on Tanzanian ships and Port State Control, PSC on all foreign flagged vessels calling at Tanzanian ports.

⁵⁰ Muscat Dhows (1916) Hague Court Reports 93, Permanent Court Arbitration, 1916

⁵¹ Section 13 of the Merchant Shipping Act, No. 21 of 2003

⁵² Chen, J., Li, K. X., Liu, X., & Li, H. (2017). The development of ship registration policy in China: Response to flags of convenience. *Marine Policy*, 83, 22-28. and Salum, M. M. (2019). A critical analysis of the ship registration system in the United Republic of Tanzania

⁵³ Watt, E., & Coles, R. (2013). *Ship registration: law and practice*. Informa Law from Routledge.

⁵⁴ Section 4 of the Tanzania Shipping Agencies Act, Cap 415 of 2017

ii. Ship registration under the Maritime Transport Act, No. 5 of 2006

The Maritime Transport Act, 2006⁵⁵ is the basic legislation governing ship registration in Zanzibar; the Act was passed by the House of the Representative on 2006. Maritime administration in Zanzibar is carried out by the Zanzibar Maritime Authority, ZMA established by the Zanzibar Maritime Authority Act⁵⁶. All matters of registration and licensing of vessels are governed by the Maritime Transport (Registration and Licensing of Vessel) Regulations, 2007⁵⁷.

Unlike the fact of URT, Zanzibar has two registries established under the Maritime Transport Act, 2006 (MTA, 2006) which define ships registered under the Act as “Tanzania Zanzibar ships”. The provision of Section 8 (1) of the MTA, 2006⁵⁸ provides to the effect that:

“There shall be established the registers of Tanzania Zanzibar ships to be known as-

- a. Tanzania Zanzibar International Register of Shipping, for ocean going ships; and*
- b. Tanzania Zanzibar Register of Shipping, for coastal ships.”*

Based on the above provision, Zanzibar is administering two registries (Open registry for international going ships and Close registries for the coastal ships). Section 9 (1) of the Maritime Transport Act, of 2006 provides criteria for ship registration in Zanzibar to include:

“...a ship shall not be registered in Zanzibar under this Act unless she is owned wholly by persons qualified to own a Tanzania Zanzibar ship, namely -

- a. Tanzanians,*
- b. individuals or corporations owning ships hired out on bareboat charter to nationals of Tanzania;*
- c. individuals or corporations in bona fide joint venture shipping enterprise relationships with nationals of Tanzania as may be prescribed;*

⁵⁵ The Maritime Transport Act, No. 5 of 2006

⁵⁶ Section 3 of the Zanzibar Maritime Authority, Act No.3 of 2006

⁵⁷ The Maritime Transport (Registration and Licensing of Vessel) Regulations, 2007 G.Vol. CXVI No. 6203 of 2007

⁵⁸ The Maritime Transport Act, 2006

d. Bodies corporate incorporated in Foreign Countries and foreign individuals.”

Unfortunately, there is neither legal provision connecting the principal legislation governing maritime affairs, that is to say, the Merchant Shipping Act, 2003 and the Zanzibar Maritime Transport Act, 2007 the nor legal coordination amongst the maritime administration established under the Tanzania Shipping Agencies Corporation Act, 2017 and Zanzibar Maritime Authority Act, 2003. This connotes that, the URT has no FSC over ships registered under MTA, 2003 especially when it comes to international matters and concern high seas. This was evidenced in *MV. Hamal case*⁵⁹ where a ship flying a Tanzania flag owned by Kiev Shipping and Trading Corporation registered in Zanzibar was investigated by British and 3.2 metric tonnes of cocaine were found on board. The Court held, even though the ship was not registered under MSA, 2003 but flying a flag of URT, this implies the duty to exercise and ensure flag State control to ship still lies with the URT.

2.4 Fraudulent registration and fraudulent registries

The first definition of fraudulent registration and fraudulent registries was developed by the IMO Legal Committee, at its 106th session held from 27 to 29 March 2019 where the Committee described FR as “registration of ships without the knowledge or approval of the relevant national maritime administration”⁶⁰ Albeit, while conducting this study, three basic criteria to prove FR; first, existence of falsified documentation; second, existence of fraudulent registry; and third, identified ship illegally flying a flag of a cognizant State. Vrus⁶¹, addressed FR as amongst the present maritime fraud which has not been spoken much or written about and considered it to be an aberration of the system rather than the real threat to seaborne trade and its participants; but FR continuer to injure the flag States that intends to benefit from the right conferred by the international Conventions.

⁵⁹ *MV. Hamal case (Unreported)*

⁶⁰ IMO Legal Committee, 106th session (LEG 106), 27 to 29 March 2019

⁶¹ Vrus, D. (1998). Maritime fraud and international maritime law.

2.5 Stages on confronting FR by the International Maritime Organisation, IMO

i. Legal committee, 105th Session (LEG 105)⁶²

The IMO LEG 105 Committee meeting added a new agenda and paved a way for the member States who submitted to the Committee on the existence of the fraudulent uses of their flag. The Democratic Republic of the Congo (DRC) as one of the IMO member State submitted their report after allowed the investigation of her vessels to be carried by the International Criminal Police Organization, INTERPOL⁶³. Subsequently the investigation revealed about 73 out of 84 vessels flying DRC flag had been fraudulently registered since 2015. Vrus⁶⁴, observed that, a lot of statistic on piracy, maritime terrorism, illicit trafficking by sea, i.e., narcotics trafficking, small arms and light weapons trafficking, human trafficking, global climate change, cargo theft, armed robbery, unlawful discharge of oil and other associated marine litters⁶⁵, tax avoidance and illegal, unreported and unregulated (IUU) fishing⁶⁶ are available but the main source of information, the maritime administrations, the marine insurers and other players are isolated. Other flag States reported the same fraud was Fiji which reported 91 illegally registered ships under its flag, the Federated States of Micronesia reported 150 ships illegally registered and fly the flag since 2017 without the knowledge of the maritime administrations⁶⁷.

The Committee further addressed FR as a matter of public law in nature and since was submitted as added agenda it was resolved to be effectively taken as an international matter of regulation of ships for all States to be responsible⁶⁸. The capability of IMO's Global Integrated Shipping System (GISIS) was considered as one of the useful databases for member State may use to disseminate information⁶⁹. Nevertheless, the LEG Committee⁷⁰ concluded by encouraging member States to ensure effective implementation and

⁶² IMO Legal Committee, 105th Session (LEG 105), 23 to 25 April 2018

⁶³ The International Criminal Police Organization, INTERPOL. Founded in 1923, Vienna, Australia

⁶⁴ Vrus, D. (1998). Maritime fraud and international maritime law.

⁶⁵ Feldt, et al., (2013). Maritime security–Perspectives for a comprehensive approach. ISPSW Strategy Series: Focus on Defense and International Security, 2.

⁶⁶ Food and Agriculture Organisation of the United Nation (2022): Illegal, Unreported and Unregulated (IUU) fishing

⁶⁷ IMO Legal Committee, 105th Session (LEG 105), 23 to 25 April 2018

⁶⁸ Jacobsson, M. Is there a future for the unification of maritime law? Doctor Luis Cova Arria, 927. and IMO Legal Committee, 105th Session (LEG 105), 23 to 25 April 2018

⁶⁹ IMO Legal Committee, 105th Session (LEG 105), 23 to 25 April 2018

⁷⁰ Ibid

enforcement of the mechanism to discourage FR ships from engaging in international seaborne trade and set a target to get rid of FR reaching the year 2021.

ii. Legal Committee, 106th Session (LEG 106)⁷¹

This was the second IMO LEG Committee session defined FR and related unlawful practices. The Committee analysed the model of its accomplishment combination of tactics to include falsified documentation, seemingly-legitimate registry websites, and shell companies purporting to conduct delegated function of flag State including fraudulent representation to the IMO without the consent of flag State and others been conducted by ship owners who continuing to fly the flag after registration has expired or otherwise been terminated. Following that, LEG Committee recommended for the best practices to assist in combating fraudulent registration and fraudulent registries of ships (LEG.1/Circ.10)⁷².

The Committee further explained that “it is difficult for State which are victims of the fraud to trace the raiders” (LEG 106); therefore, the meeting is marked as an important turning point for IMO Legal Committee to reach consensus on measures to prevent fraudulent registration and fraudulent registries of ships and agree to be submitting to IMO Assemble for adoption by way of tacit procedure and further to be implemented by member States. As explained by Shi, and Knudsen, & Hassler⁷³, tacit acceptance procedure is an effective procedure that enables IMO to respond promptly to the problems submitted by member States⁷⁴, whether falls under maritime safety, prevention and control of pollution from vessels, liability and compensation and tonnage measurement, facilitation of maritime traffic and unlawful acts against shipping and salvage⁷⁵.

The IMO Assembly adopted Resolution A.1142 (31)⁷⁶ after noting the duties of the flag State under the international law of the sea, including provisions of Article 91 and 94 of

⁷¹ Legal Committee, 106th Session (LEG 106), held on 27-29 March, 2019

⁷² IMO LEG.1/Circ.10. Dated 8 May 2019

⁷³ Shi, L. (1998). Successful use of the tacit acceptance procedure to effectuate progress in International Maritime Law. USF Mar. LJ, 11, 299. And Knudsen, O. F., & Hassler, B. (2011). IMO legislation and its implementation: Accident risk, vessel deficiencies and national administrative practices. Marine Policy, 35(2), 201-207.

⁷⁴ Shi, L. (1998). Successful use of the tacit acceptance procedure to effectuate progress in International Maritime Law. USF Mar. LJ, 11, 299.

⁷⁵ Convention on Facilitation of International Maritime Traffic, Apr. 9, 1965; International Convention on Tonnage Measurement of Ships, June 23, 1969; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Mar. 10, 1988; and International Convention on Salvage, Apr. 28, 1989

⁷⁶ IMO Resolution A.1142(31) Adopted on 4 December 2019

SOLAS, 1982 and increase in number of cases of fraudulent registration which endanger the integrity of maritime transport, and undermine the legal foundation of the IMO treaty and regulatory regime causing negative impact on maritime safety, security and protection of environment.

The Assembly believed that, FR could have been better prevented if the flag State fulfil its obligation to disseminate information and make it available to all maritime stakeholders at all time through the Global Integrated Shipping Information System (GISIS) while ensuring the information regarding the legitimate registries are transmitted securely to the Secretary-General⁷⁷.

iii. Legal Committee, 107th Session (LEG 107)⁷⁸

While the Committee was discussing the serious matter of FR, member States reported the increase in number of the affected flag States. The Kingdom of Cambodia notified the Organisation⁷⁹ regarding the ship named SONG WON: IMO/LR No. 8613360, Flag: DPRK formerly registered with Cambodia's ship Registry of the fraudulent use of its flag after the closure of Cambodian Registry of ships engaged in international voyage from 17th August, 2016.

Moreover, there had been fraudulent insurance of Samoan ships registration certificates issued by an identified company operation an illegal Samoa Ship registry under the domain named <http://samoaregister.com/> and also the same was identified in Zambia ship registry under the domain named <http://zambiaships.com/> which attempted and managed to register vessels under Gabon flag illegally⁸⁰. Manchuk⁸¹, described these unlawful practices as a current threat to the seaborne trade which led to chaos and unsafe navigation. To cure such maritime threat, Lord M. Whiteman explained the importance of having a ship registry in *United States v. Marino-Garcia*,⁸² where the Court held "the registration of ships and the

⁷⁷ IMO Resolution A.1142 (31) Page.2

⁷⁸ Legal Committee, 107th Session (LEG 107), held on 27, 30 November and 1 December 2020 (Virtual Session)

⁷⁹ Circular Letter No.4309 dated 01 July, 2020: Ref. No. 2361 MPWT

⁸⁰ Legal Committee, 107th Session (LEG 107), held on 27, 30 November and 1 December 2020 (Virtual Session)

⁸¹ Manchuk, G. (2007). The law of the flag and maritime criminal jurisdiction: a new rule to replace an outdated, inconvenient doctrine. Tul. Mar. LJ, 32, 221.

⁸² *United States v. Marino-Garcia*, 679 F.2d 1373 (11th Cir. 1982).

need to fly the flag of the country where the ship is registered are considered essential for the maintenance of order on the open sea."

iv. Legal Committee, 108th Session (LEG 108)⁸³

The forum for discussion on the FR amongst the agenda of the Committee and Delegates agreed and developed a draft Assembly resolution on "Encouragement of Member States and all relevant stakeholders to promote actions for the prevention and suppression of fraudulent registration and fraudulent registries and other fraudulent acts in the maritime sector" (LEG 108).

Resolution A.1142(31)⁸⁴ was the outcome of the LEG Committee which was adopted by IMO Assemble as one of its functions under Article 1 of the Convention on the International Maritime Organisation, 1958. While noting the duties of the flag state under Articles 91 and 94 of the UNCLOS, 1982, the Assemble recognises the FR as 'the most current threat in maritime industry that endanger the integrity of maritime transport, and undermine the legal foundation of the organisation's treat and regulatory regime' (IMO Resolution A.1142(31)). Moreover, adopted resolution A.1162(32)⁸⁵ on 'Encouragement of Member States and all relevant stakeholders to promote actions for the prevention and suppression of fraudulent registration and fraudulent registries and other fraudulent acts in the maritime sector'.

The Global Integrated Shipping Information System (GISIS) was mentioned to be a useful centralised repository of ships' information to be used by flag states as provided for under the adopted resolution. However, the Committee described the adopted Resolution as one step ahead and not an adequate instrument to address FR.

v. Legal Committee, 109th Session (LEG 109)⁸⁶

Amongst remarkable resolutions from LEG 109 is the extension of targeted completion year for measures to prevent FR from 2021 agreed in LEG 105 to year 2024. The meeting

⁸³ Legal Committee, 108th Session (LEG 108), held on 26-30 July, 2021

⁸⁴ Resolution A.1142(31). Adopted on 4 December 2019

⁸⁵ IMO Resolution A.1162(3228). Dated January 2022

⁸⁶ Legal Committee, 109th Session (LEG 109) held remotely from 21 March to 5 April 2022

advanced in considering reports of corresponding groups of LEG 109/6⁸⁷ which *inta alia*, developed three instances where ‘false documents’ could be considered to develop. According to the submission, false document may be referred to as “any document, whether in electronic or paper format that is forged or falsified to obtain or issue a ship registration certificate; a forged or falsified ship registration certificate; or issued based knowingly on the forged or falsified ship registration certificate.” Furthermore, the Committee agreed on proposals to share information on cancelled certificates of registration and to explore the possibility to have a QR code or barcode on the certificates of registration of ships⁸⁸, encouraging member states to provide relevant information on the Continuous Synopsis Records in the relevant model of GISIS using the appropriate form as provided for under Circular Letter No.4190⁸⁹.

On the other side, the Committee requires member states to have a look at the best practice of international and effective legal suctions for FR buy considering available penal sanctions and administrative measures which may be imposed both to vessels as well as the body facilitating such malpractices.

2.6 Report on cases of fraudulent registration and fraudulent registries of ships

i. Democratic Republic of Congo (DRC)

Democratic Republic of Congo, DRC is the second largest country in Central Africa. In 2015 the International Criminal Police Organisation, INTERPOL requested the DRC to prosecute two vessels flying DRC’s flag purported to have been involved in large shipments of narcotics on board in Spain. Following the investigation 77 of 84 vessels flying DRC flag revealed to have been illegally registered without the approval of the maritime administration⁹⁰. Only 11 legally registered were trading locally⁹¹ Barnes, and Kovats⁹², expressed that traditionally, the state has duties to exercise jurisdiction and

⁸⁷ LEG 109/6. Dated 14 January 2022 (Report of the Correspondence Group Submitted by the United States of America) Page. 4

⁸⁸ LEG 109/WP.1/Rev.1 Page 19 Para. 6.7

⁸⁹ Circular Letter No.4190. Dated 17 December 2019

⁹⁰ IHS Markit Maritime & Trade Expert, (2018). Fraudulent ship registries fall under the radar

⁹¹ LEG 104/15. Dated 10 May 2017 Page 2

⁹² Barnes, R. A. (2015). Flag states. and Kovats, L. J. (2006). How flag states lost the plot over shipping's governance. Does a ship need a sovereign?. Maritime Policy & Management, 33(1), 75-81.

control over ships flying its flag; if the third party exercises such duty, the duty is not effectively exercised.

ii. Fiji

Fiji maritime administration maintains a closed ship registry for registration of the domestic ships and does not operate an international ocean-going ships registry like other Pacific countries. In 2017 the local police in Fiji Islands on behalf of the maritime administration investigated vessels fraudulently flying flag of the State⁹³, whereas 91 ocean-going ships were identified to be illegally registered and fraudulently flying the Fijian flag while some with unknowing flags. The information was circulated and reported to IMO⁹⁴.

iii. Federated States of Micronesia (FSM)

Although Federated States of Micronesia (FSM) not a member State of the IMO but is a party to STCW 1978 has been affected by FR. In November, 2015 people who purported to act on behalf of the Government and introduced themselves as officials from FSM maritime administration approached IMO Regional Office in the Philippines with forged documents asking for IMO membership and ratification of additional IMO instruments. IMO secretariat provided an Administrator Account with username and password to enable FSM application; however, it was later discovered that the documentation and information used was deceitful and fraud.

In 2017 more than 150 ships were identified to be illegally registered and flying the Micronesian flag⁹⁵. There was neither domestic legislation to govern registration for ships flying the FSM flag, nor had the state delegate such functions to any recognised organisation (RO)⁹⁶. The report led the LEG Committee to consider the need to enhance flag states' capabilities for the detection and reporting of FR documentation and inclusion of non-governmental organisations, the private sectors like maritime insurance, ship

⁹³ Maritime Safety Authority of Fiji, 2017

⁹⁴ Circular Letter No.3798. Dated 6 October 2017.

⁹⁵ IHS Markit Maritime & Trade Expert, (2018). Fraudulent ship registries fall under the radar

⁹⁶ Legal Committee, 106th Session (LEG 106), held on 27-29 March, 2019

brokers and relevant maritime stakeholders in combating practices associated with FR of vessels.

iv. The Republic of Nauru

The Republic of Nauru is an island country in Micronesia, northeast of Australia and the 174th IMO member since 2018. Early after join the IMO, the Government of the Republic of Nauru, informed the Organisation⁹⁷ on a suspected fraudulent operation of international ships registry in the name of “Nauru Maritime Administration” using the commercial domain: *www.maritimenauru.com* operated by fake entity based in Sweden.

During the investigation of the crime, it was revealed that the fraudulent practices were apparent operated from Singapore, where the government of Nauru had contracted the National Project Ltd (NPL) based in Hong Kong (with an office in Singapore) as the Recognised Organisation, (RO)⁹⁸. Measures developed by the government to get rid of FR were to display a permanent message on the administration official page for the public to know about the illegal and fake websites carrying out FR in the names of Nauru and implementing measures proposed by the IMO LEG⁹⁹.

v. The United Republic of Tanzania (URT)

In accordance with paragraph 6.6.5 of the organisation and method of work of the LEG committee (LEG 1/Circ.9), the URT on LEG 106th session on 5th February 2019 updated the Committee on the fraudulent use of its flag. Since 2007 when the URT started to undertake international ships, registration has contracted Philitex Corporation Ltd resides (Belize) based in Dubai to undertake ROs duties for a 10years period. The Zanzibar Maritime Authority, ZMA terminated the contract with Philitex in 2014 due to its involvement in registration of sanctioned vessels.

Philitex Corporation even after termination of the agreement purported to continue with registration of ships and issuing of documentation, certificates and right to fly URT flag

⁹⁷ Circular Letter No.3855 dated 20th June 2018

⁹⁸ Circular Letter No.3855 of 20 June 2018.

⁹⁹ Legal Committee, 106th Session (LEG 106), held on 27-29 March, 2019

without the consent of the flag state¹⁰⁰. Moreover, URT submitted that some owners fraudulently continued to operate and sail vessels under URT flag even after vessel been deregistered by ZMA¹⁰¹. Comprehensive list of more than 25 vessels with IMO number, type of vessel and date reported to be involved in fraud using the URT flag from 2016 to 2019¹⁰² were submitted by URT for the Committee to note and guide on the appropriate mode to get rid of the phenomena which is a current threat to the development of maritime transport in URT.

2.7 Conclusion of the Chapter

In this chapter, the concept of ship registration and the principle of '*genuine link*' between the registering State and ships flying the flag of the State are inseparable. The two are major factors for a FS to ensure implementation of measures to prevent fraudulent registration of vessels.

Apparently, the discussion of the LEG Intersessional Correspondence Groups on steps, actions, proposals and measures to get rid of FR was well considered and dominated the discussion and further considered the IMO LEG Committee deliberations in the LEG Committee progress meetings (from the 105th to 109th sessions). This chapter noted that, FR has been termed as among the major current maritime threat that has severely affected IMO member States. Matters of ship registration was recognised as quite complex, as it involved aspects of public international law and private law, therefore, single member States cannot manage to develop concrete measures to prevent fraudulent registration and fraudulent registries of ships without inclusion of all other member States and other stakeholders in the maritime sector.

At the level of a single States like URT, there is a need of considering proper implementation of the international Conventions governing ship registration and management and ensure that domestic legislations like MSA No. 21 of 2003 and MTA No.

¹⁰⁰ LEG 107/INF.3 Annex, Page 23

¹⁰¹ LEG 106/7/5. Dated 5 February 2019: Comments on document LEG 106/7 submitted by URT

¹⁰² LEG 106/7/5 Annex, Page 1

5 of 2006, are harmonised in order to ensure proper administration and regulation of ship registration in the URT.

03. CHAPTER THREE

FRAUDULENT REGISTRATION AS A THREAT TO CURRENT SHIP REGISTRATION REGIME

3.1 Introduction

This chapter will cover the development of ship registration models which have been affected by social economic changes from time immemorial. This section of the chapter will discuss a number of legal conditions for ship registration and give a reader a basic picture on the evolution of ship registration models in the early 20th Century and its contribution to the rise of fraudulent registration of vessels.

In order to achieve the objectives of this study, this chapter will discuss deceptive shipping practices contributing to fraudulent use of the flag of the IMO Member States and finally, analyse disadvantages for the fraudulent registration and fraudulent registries of vessels to the State at national and international level.

3.2 The legal concept of ship registration

The evidence of utilisation of sea vessels can be traced back in 6,000 BC according to the Egyptian rock drawings¹⁰³ when man has built sea vessels and deployed them at sea for various activities including transportation of goods and passengers, exploitation of natural resources like fishing and some time for naval warfare and tourism. Ships were owned by individuals, family and enterprises interested in shipping. The rise of sovereign states makes ship registration mandatory although governed by customary practices which established connection between ship and the sovereign state under the concept of ship nationality. Flag was amongst the symbols used to identify the nationality of the ships.

In 17th Century, British started to undertake ship registration after the enactment of the Navigation Act¹⁰⁴ which required all British ships to be registered with the Customs at home port. The key features of the current British Central Registry are established under

¹⁰³ Encyclopaedia Britannica, Vol 10, p.746. Egyptian Historical records reveal sea vessels were utilized

¹⁰⁴ Navigation Act, 1660

the Merchant Shipping Act¹⁰⁵ and detailed in the Merchant Shipping (Registration of Ships) Regulations 1993. According to Yvonne¹⁰⁶, the UK centralised registry system is complemented in the relevant British possessions and classified into two categories and all the assignments of each relevant British possession to a category of registry is done by means of Orders in Council. Later on, the rise of other maritime powers like France made registration compulsory to preserve the commercial interests and protect trade routes¹⁰⁷.

Kitchen¹⁰⁸, revealed factors that contributed to the development of ship's registration in British from its early days at the Lloyd's Coffee House. Factors includes the *modus operandi* and organisation structure of the ship registries under the auspice of the Merchant Shipping Act, 1993, the evidence of nationality as it was in the case of *Leigh v Cave*¹⁰⁹, where the Court held that, "registration in British is termed as privileges of British trade to British ships"; also ship owners accepted registration to afford protection of the ships including being issued documentary of title as well-known as 'Certificate of Title (CT)' after the Court held and declared CT as *prima facie* evidence of title in the case of *Hibbs v. Ross*¹¹⁰. Economically, registration of vessels becomes a source of taxation to the British State¹¹¹.

The rapid development of seaborne trade was a catalyst for freedom of the high seas to become a fundamental principle of public international law¹¹², and therefore contributed to adoption of the Geneva Convention of the High Sea, 1958¹¹³ which provides that:

"The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. *Freedom of the high seas is*

¹⁰⁵ Chapter 21 of the Merchant Shipping Act, 1995

¹⁰⁶ Yvonne B. (2014). Maritime Law: Vol. Third edition. Informa Law from Routledge

¹⁰⁷ Argüello, G. (2003). Bareboat Charter Registration: A Practice in the Maritime World that is aimed to Stay. Journal, Vol, 27(6).

¹⁰⁸ Kitchen, J. (1977). Temperley's Merchant Shipping Acts. By Michael Thomas and David Steel. (British Shipping Laws, Vol. 11). [London: Stevens & Sons. 1976. ci, 933, and (Index) 67 pp.£ 28.50 net.]. The Cambridge Law Journal, 36(2), 394-396.

¹⁰⁹ *Leigh v Cave* 545, [1865] 169 ER 1508

¹¹⁰ *Hibbs v. Ross* (1865-66) LR 1 QB 534

¹¹¹ Coles, R., & Serdy, A. (2019). Ship Registration and Brexit. Tulane Maritime Law Journal, 43(2), 289–318.

¹¹² Ibid

¹¹³ Geneva Convention of the High Sea, 1958. Done at Geneva on 29 April 1958. Entered into force on 30 September 1962. United Nations, Treaty Series, vol. 450, p. 11, p. 82.

exercised under the conditions laid down by these articles and by the other rules of international law...¹¹⁴”.

However, cardinal rules to implement such principle was developed by international law and explained in the case of *The Angel Bell*¹¹⁵ that “the state is required to exercise full jurisdiction to ship flying its flag in the high sea and all vessels using the high seas must possess a national character”. Watt & Coles¹¹⁶ explaining the two principles indicated that, “a ship possessing no nationality was unable to engage in trade and enjoy protection in international law”.

The enactment of United Kingdom Merchant Shipping Act, 1995¹¹⁷, makes it mandatory to all foreign ships calling any British ports to be granted clearance only after such a ship declares to a customs officers the name of the national which the ship belongs to. The Privy Council accepted the provision of the Act in the decision of the case of *Naim Malvan v. Attorney General for Palestine*¹¹⁸ and further elaborated that:

“In the interest of order on the open sea, a vessel not sailing under the maritime flag of a State enjoys no protection whatsoever, for the freedom of navigation on the open sea is a freedom for such vessels only as to sail under flag of a State”.

The rationale of this judgement generally is to emphasise that registration is the only term to describe the national character to ship. It's the sovereign states that may maintain ship register- a public record book where all particulars of ships required are entered for ships to be issued with documentation and right to fly the flag of a state. it was emphasised in *Muscat Dhows Case (France v Great Britain)*¹¹⁹ that in international law each State is allowed to determine the requirements by which a vessel may enter its registry and fly its flag.

¹¹⁴ Article 2 of the Geneva Convention of the High Sea, 1958

¹¹⁵ *The Angel Bell* [1979] 2 Lloyd's Rep. 491

¹¹⁶ Coles, R., & Serdy, A. (2019). Ship Registration and Brexit. *Tulane Maritime Law Journal*, 43(2), 289–318.

¹¹⁷ Section 6(1) of the United Kingdom Merchant Shipping Act, 1995

¹¹⁸ *Naim Malvan v. Attorney General for Palestine* [1948] A.C. 351

¹¹⁹ *Muscat Dhows* (1916) Hague Court Reports 93, Permanent Court Arbitration, 1916

The United Nations Convention on the Law of the Sea,¹²⁰ provides that:

“Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship”.

Also, the Convention on the High Seas, 1958¹²¹ specifically states that,

“Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry”.

Notwithstanding the generality of freedom for the States to fix conditions for ships to fly its flag, FS has a responsibility to ensure effective jurisdictional power and control in administrative and technical aspects to all ships fly its flag. This responsibility carries more weight and is universality applicable test for controlling vessels flying a flag of a State in international waters.

3.3 The Evolution of ship Registration models in early 20th Century

In international law, each state is allowed to determine the requirement by which a vessel may enter its registry and fly its flag. Amongst the concrete reasons for most of the flag States to introduce and adopt new ship registration policy is desire to strengthen ship management and expand fleet to tonnage in order to maintain and win competition in the shipping industry. Apart from such reasons, the new governance framework has been designed to bring new ideas and mechanisms for ship registration in place. This part of the chapter intends to describe ship registration models in the early 20th and provide information on their contribution to the current adverse situation of fraudulent registration.

¹²⁰ Article 91 of the United Nations Convention on the Law of the Sea, 1982

¹²¹ Article 6 of the Geneva Convention on the High Sea, 1958. Done at Geneva on 29 April 1958. Entered into force on 30 September 1962.

3.3.1 Closed Registration Model

Closed registration model is an earliest system of ship registration sometimes referred to as 'traditional registration' which sets requirements on ownership, management and manning of the vessel to be registered and subjected to the flag State jurisdiction and control in social-economic aspect subject to stringent rules of the particular state. Seldom such requirements differ from one flag State to another¹²². The United State of America (USA) and the People's Republic of China (PRC) are the good example of the closed registries with the following features:

i) The People's Republic of China (PRC)

Registration of vessels in the People's Republic of China (PRC) uses stringent rules which requires a ship to have a link with the flag State and hence gives a PRC wider range of control to ships flying its flag. According to the Laws of the People's Republic of China (Ship Registration Regulation) of 1994¹²³ registration is conducted to:

- a) *Ships owned by citizens of the People's Republic of China whose residences or principal places of business are located within the territory thereof;*
- b) *Ships owned by enterprises with legal person status established under the laws of the People's Republic of China and whose principal places of business are located within the territory thereof, provided that foreign investment is involved, the proportion of registered capital contributed by*
- c) *Chinese investors shall not be less than 50 per cent;*
- d) *Service ships of the Government of the people's Republic of China and ships owned by institutions with legal person status;*
- e) *Other ships whose registration is deemed necessary by the competent authority of harbour superintendency of the People's Republic of China.*

¹²² Li, K. K., & Wonham, J. J. (1999). New developments in ship registration. *International Journal of Marine and Coastal Law*, 14(1), 137-154.

¹²³ Article 2 of Chapter II of the Laws of the People's Republic of China (Ship Registration Regulation) of 1994

ii) The United State of America (USA)

Another more stringent rules are provided under the United States Code, 1994¹²⁴, whereas to qualify for USA registration, a vessel must be owned by:

- 1) *an individual who is a citizen of the United States;*
- 2) *an association, trust, joint venture, or other entity:*
 - a.all of whose members are citizens of the United States; and*
 - b.that is capable of holding title to a vessel under the laws of the United States or of a State;*
- 3) *a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;*
- 4) *a corporation established under the laws of the United States or of a State, whose president or other chief executive officer and chairman of its board of directors are citizens of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum;*
- 5) *the United States Government; or*
- 6) *the government of a State.*

3.3.2 Open Registration Model

Open registration model can well be described by its common features. The model developed as a result of liquor prohibition laws in the United State of America, the effect of World War I and political events that occurred in Europe during the 1930s¹²⁵. the United Kingdom Committee of Inquiry into Shipping (the Rochdale Report) 1970¹²⁶ listed amongst others common features of open registry:

- a) The country of registry allows ownership and/or control of its merchant vessels by non-citizens;*

¹²⁴ Section 12105 of Chapter 121 of United States Code, 1994 Edition, Supplement 2, Title 46 - SHIPPING

¹²⁵ Llácer, F. J. M. (2003). Open registers: past, present and future. *Marine Policy*, 27(6), 513-523, pp. 18-19

¹²⁶ Report of the Committee of Inquiry into Shipping (London, HMSO, 1970) (Rochdale Report), p. 51

- b) *Access to the registry is easy. A ship may usually be registered at a consul's office abroad. Equally important, transfer from the registry at the owner's option is not restricted;*
- c) *Taxes on the income from the ships are not levied locally or are low. A registry fee and an annual fee, based on tonnage, are normally the only charges made. A guarantee or acceptable understanding regarding future freedom from taxation may also be given;*
- d) *The country of registry is a small power with no national requirement under any foreseeable circumstances for all the shipping registered, but receipts from very small charges on a large tonnage may produce a substantial effect on its national income and balance of payments;*
- e) *Manning of ships by non-nationals is freely permitted; and*
- f) *The country of registry has neither the power nor the administrative machinery effectively to impose any government or international regulations; nor has the country the wish or the power to control the companies themselves.”*

Based on the above features the policy of the FOC States does not aiming to impose sovereignty and control over their flag shipping; rather treat registration as a mere service which can be acquired easier to anyone wishes in order to escape the financial, safety and social consequences if registration is undertaken in their own national flag¹²⁷. The foreign element is what characterises FOC and for this reason, open registries have been accused of lacking genuine link¹²⁸. According to Lloyd’s List¹²⁹ Panama is a leading FOC in the world followed by Liberia, Marshall Island, Hong Kong, Singapore, Malta, China, Bahamas, Greece and Japan. The model has been criticised for ships' unseaworthiness, poor seafarers’ specialisation scheme, poor labour conditions, and poor pollution’s prevention measures¹³⁰.

¹²⁷ Lillie, N. (2004). Global collective bargaining on the flag of convenience shipping. *British journal of industrial relations*, 42(1), 47-67.

¹²⁸ Mukherjee, P. K. (2000). New horizons for flag states. *Maritime review*, 110-114.\

¹²⁹ Lloyd’s List (2020). The Top 10 flag states ranking is based on gross tonnage data supplied by Lloyd’s List Intelligence. It includes all vessel types above 500 GT

¹³⁰ Toh, R. S., & Phang, S. Y. (1993). Quasi-flag of convenience shipping: the wave of the future. *Transportation Journal*, 31-39.

3.3.3 Hybrid Ship Registration Model

The hybrid ship registration model was established as a model to avoid vessels flagging out and diminishing maritime fleet. Flag states use hybrid models by combining the conditions for open and closed ship registration and try to exercise genuine link between the shipowner, vessels and the flag State. The Luxembourg Maritime Administration in Western Europe¹³¹ is a good example of emerging small European country practising hybrid ship registration model by allowing seagoing registration of vessels without requirement of nationality to ownership or crew but requires the master of the ship to be a European Union nationality. However, the Registrar has power to waive such requirements if such other social conditions on board ship comply with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978¹³². This model is an attempt to compete other models but apart from restrictions imposed there is a possibility of loss of genuine connection, interest and sentiments¹³³ between a flag State and the vessels.

i) The Tanzania Zanzibar International Register

According to the Maritime Transport Act, of 2006¹³⁴ Maritime administration in Zanzibar allows bodies corporate incorporated in a foreign countries and foreign individuals to register ships under the MTA 2006. Allowing foreigners to register ships is one of the distinguished criteria signifying the operation of the open registry in Zanzibar as provided for under the provision of Section 9(1) (c) which stipulates that:

“Subject to section 53 of this Act a ship shall not be registered in Zanzibar under this Act unless she is owned wholly by persons qualified to own a Tanzania Zanzibar ship, namely-

a) ...;

b) ...;

c) Bodies corporate incorporated in Foreign Countries and foreign individuals.”

¹³¹ Luxembourg Maritime Administration (2022): Hybrid Ship Registration, Luxembourg, EU

¹³² The 2010 Manila Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 2014, 2015, 2016 and 2021

¹³³ *Nottebohm case* (Liechtenstein v Guatemala) (1955), ICJ, Rep. 4

¹³⁴ Section 9 of the Maritime Transport Act, of 2006

On carry out registration of vessels pursuant to Section 8 (1) of the MTA, 2006, the applicant is required to comply with minimum standard set under the Maritime Transport (Registration and Licensing of Vessels) Regulations¹³⁵. Any type of vessel regardless of its age can be registered under the MTA, 2006, so long as the owner of a vessel qualifies the provision of Section 9. Additionally, registration of ships can be done by Deputy Registrar of ships who may be any person of any nationality or corporation(s) appointed by the Minister responsible for shipping in accordance to Section 7 (10) of the MTA, 2006¹³⁶.

3.4 Deceptive shipping practices: Reasons contributing to fraudulent use of the flag of the IMO Member States

On February 1986, the United Nations Conference on Trade and Development (UNCTAD) without prejudice to any other right conferred by other Convention, regarding right of a sovereign state to fix conditions for the grant of its nationality to ships, attempted to address and unify ship registration models and address their challenges in registering ships by developing a Convention well known as the United Nations Conference on Conditions for Registration of Ships (UNCCROS)¹³⁷ which never come into force. The IMO Legal Committee has been a focal point for an open discussion and contribution of member States on proposing concrete measures to prevent unlawful registries of ships.

The IMO LEG at its 105th session¹³⁸, agreed on identified deceptive shipping practices which interfere with the management and administration of national shipping registries, hamper port State control effectiveness, efficiency and stability¹³⁹, and undermine IMO and regulatory regime aimed at preventing unlawful practices associated with the fraudulent registration of ships and establishment of fraudulent registries. According to LEG 105/11¹⁴⁰ registration of vessels without the knowledge or approval of the relevant national maritime administration is one of the major deceptive shipping practices contributing to the issuance of falsified documentation by shell companies using the

¹³⁵ The Maritime Transport (Registration and Licensing of Vessels) Regulations, 2018

¹³⁶ Section 7 (10) of the Maritime Transport Act, No. 5 of 2006

¹³⁷ United Nations Conference on Conditions for Registration of Ships, 1986

¹³⁸ IMO Legal Committee 106th session, LEG 106/7/2. Dated 11 January 2019

¹³⁹ Li, K. X., & Zheng, H. (2008). Enforcement of law by the Port State Control (PSC). *Maritime Policy & Management*, 35(1), 61-71.

¹⁴⁰ IMO Legal Committee 105/11. Dated 19 January 2018

seemingly-legitimate registry websites purporting to conduct lawful functions of the cognizant flag State.

In addition to the above tactics, the United State of America submitted document LEG 106/7/2¹⁴¹ to the Legal Committee highlighting a host of deceptive shipping practices that undermine the administration of national shipping registers and weaken United Nations sanctions. The documents listed the following additional practices that have aggravated the growing problem of FR:

- i) *“Terminated Registry: This tactic involves a vessel, formerly entitled to fly the flag of a given State, continuing to fly that flag after the vessel's registration with the flag State has expired or has otherwise been terminated;*
- ii) *Fraudulent Representations to IMO: This tactic involve the submission of fraudulent documentation to IMO, without the knowledge of the cognizant flag State authority, in order to obtain IMO documentation and ship identification numbers; and*
- iii) *Broadcasting Falsified Automatic Identification System (AIS) Data: This tactic involves the intentional manipulation of AIS data to materially alter the ship's identifying information or to reflect the AIS data of an entirely different vessel.*

3.5 Effect of fraudulent registration and fraudulent registries of vessels

Article 217 (1), (2) and (3) of the Convention¹⁴², impose a fundamental duty to flag State to ensure effective enforcement of international rules and standards as well as laws and regulations before and after issuing nationality to ships. Effective enforcement of international rules and standards is the duty primarily rest on flag State¹⁴³. FR prevents flag State from effectively discharge this duty by preventing a lawful registry from taking appropriate legal measures to ensure vessels flying their flag or registered under their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards.

¹⁴¹ IMO Legal Committee 106/7/2. Dated 11 January 2019

¹⁴² Article 217 of the United Nations Convention of the Law of the Sea, 1982

¹⁴³ Watt, E., & Coles, R. (2013). Ship registration: law and practice. Informa Law from Routledge.

Issuing forged documentation to vessels deprive both safety, security and pose a threat to the environment. This has been observed by IMO and concluded that FR endangering the vessels' crew and posing an increased threat of damage to the marine environment as fraudulent registered vessels may not be in compliance with regional and international safety, security and environmental standards¹⁴⁴.

The IMO Legal Committee noticed the existence of the high possibility of the lawful registries being deprived from obtaining legitimate revenue while unjustly enriching fraudulent actors. As in the case of United Republic of Tanzania more than 26 FR vessels were reported to be fraudulent registered¹⁴⁵ and exacts unjustified reputational harms on States especially when such vessels engage in illicit activities under the cloak of a fraudulent registration. The port state organisation Paris MoU¹⁴⁶ listed URT amongst other 13 flag states having the world's worst safety records between 2015 and 2017.

Fraudulent practices of the vessels undermine the effective implementation of the United Nations Security Council resolutions. On January 2022, Lloyd's List reported on the three very large crude carrier (VLCC) Phoenix IMO: 9181194, Ethan IMO: 9293741 and Vera IMO: 9203277 with unknown class, flag and insurance shipped 10% of Iran-China crude¹⁴⁷. MV Vera and MV Ethan were falsely flagged in Samoa while Phoenix was classified as 'unknown' after the ship was removed from Tanzania's flag registry in May 2021. This threatens vessels as well as their owners, operators and service providers who may be duped into contracting with these vessels; and potentially undermines a flag State's registry if it fails to accurately verify the identity of a vessel seeking to reflag to its registry.

It is difficult for the other flag States and port States to verify the registration of a particular vessel for lack of clear contact information with the other registry since fraudulent practices deny vessel owners, operators and the public with proper location to verify the identity of entities authorised to issue registration certificates for vessels on behalf of a flag State. In

¹⁴⁴ IMO LEG 106/7/2. Dated 11 January 2019 p. 4

¹⁴⁵ IMO LEG 106/7/5. Dated 5 February 2019 Annex, Pg. 1

¹⁴⁶ Port State Control, Paris MoU: Safeguarding, Responsible and Sustainable. Shipping Annual Report 2017 pg.14

¹⁴⁷ Bockmann, 2022: Lloyd's List, 05 January 2022. (Three tankers with unknown class, flag and insurance shipped 10% of Iran-China crude)

the level of IMO, the fraudulent practices delayed member States to exchange information that may assist law enforcement in identifying, investigating and prosecuting criminal activities used to facilitate fraudulent registration practices and the establishment of fraudulent registries.

3.6 Conclusion of the Chapter

As discussed in this chapter, registration of vessels is among the oldest practice which goes back several Centuries, and for such a long time in memorial several significance registrations models have been practised. The freedom of the State to fix conditions and granting nationality to ships flying its flag has led to the formulation of ship registration policies which support the registration model preferred by a flag State.

This chapter evidenced that, the provision of Article 94 (2) (a) and (b) of the UNCLOS requires a flag State to maintain a register of ships with names and particulars of ships flying its flag and assume jurisdiction under its internal law over each ship flying its flag. A duty to 'maintain a register' requires a flag States to have an established monitoring procedures for registration of vessels to increase degree of control and manage a register of ships.

The roles of flag State and port State should be hardened to influence proper management of ship registry and ensure effective compliance of international and national legislation. As observed in this chapter, its often difficult for a State which is a victim of FR to suggest appropriate measures to get rid of the FR and associated practices. Therefore, there is a need to establish an agreement treasured with clear monitoring procedural measures, regulatory and policy response to govern ship registration it will ease the member States initiatives to agree and act collectively and eliminate this current maritime threat.

04. CHAPTER FOUR

AN ANALYSIS OF THE LEGAL REGIME FOR SHIP REGISTRATION MODELS IN UNITED REPUBLIC OF TANZANIA

4.1 Introduction

Under international law, ship registration is a mandate of a sovereign State recognised by the international community. In spite of the existing ship registration models established under different legal frameworks, it's the only sovereign State that can confer its flag on its ships capable of proceeding in the oceans and visiting other sovereign States. It has been observed in the preceding Chapters that, ship registration regime in the URT is regulated by two distinct legislations and administered by two different competent maritime administrations.

The Merchant Shipping Act, 2003¹⁴⁸ applies to the registry in Tanzania mainland which is administered by the Tanzania Shipping Agencies Corporation (TASAC) while, the Maritime Transport Act, 2006¹⁴⁹ applies to Tanzania Zanzibar registry and is administered by the Zanzibar Maritime Authority (ZMA). This Chapter exclusively intends to analyse the two existing legal regimes administering the two ship registries in URT. It will also analyse the distinct registration models (open and close registry) and examine their effectiveness in preventing the escalation of FR and associated practices.

4.2 Critical analysis of the existing legal regime administering ship registration in URT

4.3 Scope of Application: Legislation governing Ship registration in URT

As enlightened in the preamble of this Chapter, the URT maritime sector is regulated by two distinct legal regimes and administered by two separate maritime administrations. The Merchant Shipping Act was intended to apply to both Tanzania Mainland and Zanzibar as per the provision of Section 3 (1)¹⁵⁰ which provides for the effect that:

3.-(1) *Unless otherwise expressly provided, this Act shall apply to: -*

¹⁴⁸ The Merchant Shipping Act, No. 21 of 2003

¹⁴⁹ The Maritime Transport Act No. 5 of 2006

¹⁵⁰ Section 3 of the Merchant Shipping Act, No. 21 of 2003

- (a) all **Tanzanian ships** wherever they may be;
- (b)...

The subject 'Tanzania' means the union between two sovereign States of Tanzania Mainland and Tanzania Zanzibar. The MSA, 2003 recognise the sovereignty of the two States subject to the definition of the Tanzanian ships under Section 2 of the Act¹⁵¹ which define "Tanzanian ship" as *a ship registered or licensed under the provisions of this Act at a port in the United Republic*. The MTA, 2006 was enacted to apply only to Tanzania Zanzibar Registered ships as provided under Section 3¹⁵² of the Act that:

- 3.-(1) *Unless otherwise expressly provided, this Act shall apply to: -*
 - (a) **Tanzania Zanzibar Registered ships** wherever they may be;
 - (b)...

Ships registered under MTA, 2006 are not recognised under the provision of MSA, 2006 since there is no legal provision between the two legislations that unit the two co-existing registries. There is a gap in the administration of ship registration in URT and hence difficult to prevent further escalation of FR.

4.4 Appointment and legal functions of Registrar

The two sets of legislation give power to the Minister responsible for maritime transport to appoint Registrar. According to MTA, 2006 the Registrar is appointed as per Section 7¹⁵³ to be an officer responsible for registration of Zanzibar Tanzanian ships, engagement and welfare of seafarers and all other matters. The Registrar appointed under MSA, 2006 is responsible for registration of Tanzanian ships, seafarers and wrecks¹⁵⁴.

There is neither legal provision connecting the two Registrars nor their statutory duties or functions. The Registrar appointed under MSA, 2003 is the representative of the URT in the international maritime community unlike the one appointed under MTA, 2006. To give effect to regional and international convention, treaties, protocol which the URT is a party, ZMA is bounded to consult the body responsible for maritime administration in Tanzania

¹⁵¹ Ibid, Section 2

¹⁵² Section 3 of the Maritime Transport Act No. 5 of 2006

¹⁵³ Ibid, Section 7

¹⁵⁴ Section 7 of the Merchant Shipping Act, No. 21 of 2003

Mainland established under MSA, 2003¹⁵⁵ although there is no provision under MSA, 2003 that gratifies the Registrar to consider and act when consulted.

Operating without a central coordinating mechanism led to difficulties in considering and implementing IMO recommended best practices to assist in combating FR¹⁵⁶ including proper uses of IMO Global Integrated Shipping Information System (GISIS), verification of IMO number on vessels when receiving an application for registration, proper survey and inspection, ensuring the information of the flag State Administration is updated and ensuring the applicability of Continuous Synopsis Record on-board.

4.5 The role of Maritime Administration

Though there is no problem for a flag State to have two maritime administration, ship registry or even Registrar of ships. It is virtual for a flag State to have a well-defined legal procedure established to administer maritime affairs and for the ships under its sovereign control and rules. It further involves a competent Authority having a legal mandate to ensure the highest international maritime standards are maintained. There is a need to harmonise the MSA, 2003 and the MTA, 2006 and establish a Flag State Quality Control (FSQC) to ensure the quality of URT registries and their compliance with both national and international requirements. FSQC can assist the maritime administrations in administering maritime transport uniformly by maintaining a proper ship registry and exercise effective jurisdiction over administrative, technical and social matters on ships flying the Tanzanian flag.

4.5.1 The effectiveness of the National Transport Policy (NTP)¹⁵⁷:

The maritime transport sector in Tanzania is characterised by high cost, low quality services due to various reasons including absence of National Maritime Transport Policy (NMTP). The current National Transport Policy, 2003 provides the guiding decisions on the need to restructure national road, railway, aviation and maritime transport infrastructures. Maritime transport and other water transport have been addressed by

¹⁵⁵ Section 6 (2) of the Maritime Transport Act No. 5 of 2006

¹⁵⁶ Legal Committee, 106th Session, Dated 27-29 March 2019

¹⁵⁷ The United Republic of Tanzania: The National Transport Policy, 2003

prioritizing restructuring ports infrastructures, safety, security and operations efficiency while other shipping activities remained unaddressed.

05. CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

Each State has the right to set and establish conditions for granting the nationality and to fly its flag to ships they register. The international regime regarding ship registration can be traced back from the 7th century where different ship registration models appeared and dominate international shipping. Although some international instruments like the High Sea Convention, 1958 and UNCLOS, 1982 were adopted to set the yard stick on requirement of international registration of ships and followed by UNCROS, 1986 (not come into force) which tried to unify the conditions, the intended objectives were not achieved.

Since then, registration of ships remained internationally unregulated. Various registration models like open, closed and hybrid registration as discussed in chapter III has brought great controversy in ship registration and lead to increase in unlawful practices associated with the fraudulent registration and fraudulent registries of ships. FR has been termed as among the maritime threats with great negative impact to the national and international shipping community. The URT has been amongst the flag States affected by FR since 2016 and hence this research concentrated studying on appropriate legal and institutional measures to combat FR in URT.

5.2 Conclusion

Chapter I addressed the background and statement of the problem of this study by focusing on the historical development of ship registration and the rise of fraudulent registration of ships. Further, the study aimed at analysing legal and institutional measures to address fraudulent practices associated with the fraudulent registration and fraudulent registries of ships flying the Tanzanian flag. The road map to attain the intended objective was laid down under this chapter, and the researcher used a legal methodology to study and counter research questions.

In Chapter II the problem of FR was addressed in detail by considering the most affected flag States. The IMO initiatives on the subject matter were well addressed. This was immediately after DRC submitted a report of 77 vessels fraudulently flying the DRC's flag and then followed by other States including the United Republic of Tanzania. The URT submitted comments on LEG 106/7 with the list of vessels fraudulently flying the Tanzanian flag. Various meetings have been held at IMO under the LEG Committee Secretariat to develop legal and institutional measures to prevent and combat FR.

This chapter analysed the cases submitted to IMO regarding FR. It was revealed that all the legally registered ships, were conducting their activities in the internal waters. The vessels flying a fraudulent flag were found conducting their activities and voyages in international waters. Most of the affected FS do not undertake international ship registration. Documentation and Certificates were issued fraudulently through a setup of illegal "international registries".

Reference to the international laws like the High Seas Convention, 1958 and UNCLOS, 1982 pointed out the right of States to set the conditions to register ships and maintain the principle of genuine link. The concept of genuine link and ship registration was a midpoint of this study. The legal concept of ship registration in URT was a major topic and it was discovered that the URT has two MARADs (TASAC and ZMA) administering maritime activities and regulated by two different laws (MSA, 2003 and MTA, 2006). There is a great contradiction on the applications of the two maritime legislations especially when ship registration is concerned. For example, once the ship is registered under MSA, 2003 is titled "Tanzanian ship" while under MTA, 2006 is titled as "Tanzania Zanzibar ship". This contradicts the flag State to effect fully jurisdictional power and control in administration to ships and ensure genuine link to ships flying its flag. As a consequence, it cannot combat the fraudulent registration of vessels and associated practices effectively.

Chapter III covered the evolution of ship registration models which are the impact of social economic changes in shipping industry and hence prove the fact that registration of ships by State has an impact on the economy of the registering State. Registration of vessels without the knowledge or approval of the relevant national maritime administration

revealed to be among the obstacles for FS to obtain legitimate revenue while unjustly enriching fraudulent actors.

Furthermore, various ship registration models: closed, open and hybrid were discussed and differentiated by conditions set by flag States. It was revealed that neither the High Sea Convention 1958 nor UNCLOS, 1982 has a provision to regulate ship registration. States has freedom to choose the models as per the domestic maritime legislations and policy. Unfortunately, such unregulated freedom rendered legal and institutional measures to prevent FR ineffective.

It was further revealed that, a very minimal supervision of the Tanzania Mainland closed registry and Tanzania Zanzibar open registry escalated opportunities to fraudulent actors and open more loopholes for ways such as falsified issuing of documentation, fraudulent registry websites and increase number of illegal international companies which purport to register ships and fly a Tanzania flag. From an economic point of view, the loss of revenues is unknown by URT although it is believed to be huge compared to the number of vessels reported to be fraudulently using the Tanzanian flag.

There is a need to harmonize the legal system governing ship registration and in order to ensure proper management and administration of maritime affairs the maritime administrations in URT should be united by creating a central registry which will administer international ship registration. Such intended objective may be reached by amending the two existing legislations governing maritime affairs and ensure proper communication between the coexisting MARADs. URT should learn from other FS with the same political and legal structure like UK and its overseas territories as observed in chapter III of this study.

Chapter IV the response and intervention of URT on fraudulent registration of ships and the concern of its effects was analysed in this chapter. After critical study and analysis on the scope of application of the two URT maritime legislations administering ship registration it was revealed that, there is no provision providing for discouraging the unlawful practices associated with FR, rather the scope of applications are is not clear

especial after ships enter into national registry and start flying the national flag. The existence of two Registrars performing same functions based on different legislations and political will is another huge challenge on administration of ship registry. Absence of National Maritime Policy evidenced the lack of proper maritime administrative strategies. Although, in practice there is a slight coordination between the two MARADs especially when there is an international maritime matter like attending IMO meetings and other regional conferences, but not on other maritime domestic matters including ship registration and maritime governance.

5.3 Recommendations

This research has come up with the following recommendations:

- i. In the light of get rid of fraudulent registration and fraudulent registries of ships, one of the measures that must be taken by the United Republic of Tanzania is the implementation of IMO concrete proposed guidelines on measures to prevent unlawful practices associated with fraudulent registration and fraudulent registries of ships and other deceptive shipping practices proposed by the IMO Legal Committee;
- ii. For perfect implementation of the IMO guidelines, there is a possible need to review and amend legislations regulating ship registration in URT: to harmonise the MSA, 2003 and the MTA, 2006 in order to create a concrete coordination between two registries formed thereunder so as to create a central registry which will administer all ships flying Tanzanian flag;
- iii. There is a need to formulate the National Maritime Transport Policy (NMTP) for the URT. The scope of application of the NMTP should be to cover all sides of the Union and provide proper strategies to include maritime affairs to the list of Union matters; this will solve the challenge of jurisdiction on ensuring safety, security and environment protection and soften implementation and compliance of international established standards for administration of maritime affairs; and
- iv. On strengthening the coordination between the MARADs in Tanzania mainland and Zanzibar, the Government may establish a Flag State Quality Control (FSQC)

to ensure the quality of URT registries and their compliance with both national and international requirements. FSQC can assist the maritime administrations in administering maritime transport uniformly by maintaining a proper ship registry and exercise effective jurisdiction over administrative, technical and social matters on ships flying the Tanzanian flag and hence get rid of FR.

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