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**THE SHIP REGISTRATION ACT
OF
THE REPUBLIC OF THE SUDAN, 2014**

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Submitted By: Wahya Almansurry (The Sudan)

Supervisor: Ms Ramat Jalloh

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Explanatory Notes

Introduction

International shipping transport has long been the major source of transport, as well as essential communication link connecting coastal States. Nowadays about 90 per cent of world trade is carried by sea. Shipping is the most efficient and cost-effective method of international transportation of goods. Also the trade competitiveness of all countries, developed and developing alike, including land locked countries, depend heavily on effective access to international shipping services.¹

Following development in international law, it was accepted that the seas and oceans between States should not be regarded as part of State's territories. The legal principle of the freedom of high seas was recognised. The 1958 Geneva Convention on the High Seas², Article 2, provides that "The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty".

The high seas were defined in Article 86 of the United Nations Convention on the Law of Sea 1982³(UNCLOS) as all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in internal waters of a State or in the archipelagic of an archipelagic State. Article 87 of the UNCLOS provides for the freedom of the high seas: "The high seas are open to all States, whether coastal or land-locked." Such freedom means the unrestricted access of vessels belonging to all nations, including land-locked States, to all parts of the sea.

However, international law lays down rules providing a frame work for the exercise of that freedom, and these rules are enforced by individual States through the jurisdiction exercised over their national vessels. In this respect, there are two main rules: first, jurisdiction over a vessel on the high seas resides solely with the State which the vessel belongs; second, all vessels using the high seas must possess a national character.⁴ This means the nationality of ship. The nationality is the legal tie linking a ship to a State, that State is known as the State of nationality or flag State.⁵ Article 5 of the High Seas Convention provides that "ships shall have the nationality of the State whose flag they are entitled to fly."

It is a known fact that registration entitles a ship to nationality of State. Therefore the term registration is generally used to describe the attribution of national character to a vessel, and with registration in a State, a ship comes within the national jurisdiction of that State. In this regard a State undertakes the national and international responsibility of a Flag State in relation to that ship.

¹ <http://www.business.un.org/en/entities/13>, last accessed on 29 January 2014.

² Convention on the High Seas, Geneva, 29 April 1958, in force 3 January 1963.

³ United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, in force 16 November 1994.

⁴ OYA, OZCAYIR; Port State Control, 2th ed., Infra Professional, London, 2004, p.8.

⁵ Odeke, Ademun; Bareboat Charter (ship) registration, 1st ed., Kluwer Law International, London, 1998, p.13.

The conditions and requirements of registration is different in each State. The matter of deciding the conditions of registration of ships lies within each State's exclusive competence.⁶

The 1930 Hague Convention on the Conflict of Nationality Laws⁷ provides in Article 1 "It is for each State to determine under its own laws who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom and principles of law generally recognized with regard to nationality."

The principle of nationality was first recognized by the Hague Court of Permanent Arbitration in the case of the *Muscat Dhows: Great Britain v. France*.⁸ This case was about the legality of granting the right to fly the French flag to dhows, which were owned by subjects of the Sultan of Muscat. Britain argued that France was restricted by certain treaty provisions from granting the right to fly the French flag to the Sultan of Muscat, and that the dhows, being owned by the subjects of Muscat, should fly the British flag. The Court, before dealing with the question of whether France's rights were limited by treaty provisions, proclaimed the right of a State to grant its nationality to such ships as were entitled under its laws and stated as follows:

"Whereas generally speaking it belongs to sovereign to decide to whom he will accord the right to fly his flag and prescribe the rules governing such grants, and whereas therefore, the granting of the French Flag to subjects of His Highness the Sultan of Muscat in itself constitutes no attack on the independence of the Sultan...for these reasons {the Court} decides and pronounces as follow:
1. Before the second of January 1982, France was entitled to authorize vessels belonging to subjects of His Highness the Sultan of Muscat to fly the French Flag, only bound by her own legislation and administrative rules."

So this case as the leading precedent, supports the principle of international law that each State decides what conditions it will impose for the registration of its vessel under its flag.

The national flag constitute the primary source of State responsibility in relation to a ship. On the high seas only the Flag State has exclusive right to exercise legislative and enforcement jurisdiction over it. This principle was stated in the *Lotus Case*,⁹ where it was held that "vessels on high seas are subject to no authority except that of the State whose flag they fly."¹⁰

The effect of a ship not having a national character-a stateless ship- is that it does not have any protection under international law. This principle was first adopted by English courts in *Naim Molvan v. Attorney General for Palestine*.¹¹ In this case, the vessel *Asya*, sailing to Palestine, was flying the Turkish flag, which she was not entitled to fly. She also did not have any documentations on board of nationality. She was arrested by a British destroyer 100 miles off the Palestinian coast. The Palestinian court ordered the forfeiture of the vessel, even though she had been seized on the High Seas. On appeal, the Privy Council rejected the proposition that the principle of the freedom

⁶ OZCAYIR OYA, op. cit. 10.

⁷ Convention on Conflict of nationality laws, Hague, 12 April 1930, in force 1 July 1937.

⁸{1916} Hague Court Reports p. 93.

⁹ Turkey v. France, {1927}, PCIJ, Series A, No. 10, p. 25.

¹⁰ OYA ,OZCAYIR; op. cit, p.21

¹¹{1948} A.C.351.

of the High Seas extended to a ship possessing no nationality, and accepted as a valid statement of the law the following passage from Oppenheim's International Law:

*“In the interest of order on the open seas, a vessel not sailing under the maritime flag of a State enjoys no protection whatsoever, for the freedom of navigation on the open seas is a freedom for such vessels only as sail under the Flag of a State”.*¹²

Also a vessel which fly two flags can be regarded as a stateless ship, and such ships do not normally enjoy the protection of any State, because when a vessel flies two flags it has been treated as falling outside the protection of the law of either nationality it is claiming. In order to prevent ships from sailing under more than one flag, the International Law Commission (ILC) proposed that such ships should not be permitted to claim any of the nationalities in question with respect to any other State and “may be assimilated to a ship without nationality.” This rule was adopted in both Geneva Convention on the High Seas (Article 6 {2}) and repeated in UNCLOS (Article 92 {2}).¹³

The Concept of Genuine Link

The basic principle of nationality and registration of ships is recognized and adopted universally. Thus in the Geneva Convention on the High Seas 1958, in UNCLOS 1982 and in the UN Convention on Condition for Registration of Ship, 1986¹⁴ this position is made very clear. Article 5 of Geneva Convention on the High Seas provides “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 concept genuine link was introduced in 1956 into the deliberations of the ILC. In the draft 1958 Geneva Convention on the High Seas, the requirement was included that a genuine link must exist between ship and registry to ensure effective control and jurisdiction over such vessel by its State of registry. As there was no precise definition of genuine link, the conference had several possibilities: the retention of the genuine link clause as it had been drafted by the ILC; the definition of the genuine link concept's essentials; or the rejection of the concept altogether.¹⁵

Another possibility was to refer the whole issue to a specialized body like the Inter-Governmental Maritime Consultative Organization (IMCO), (now IMO)¹⁶. In this regard and on the legal issues States delegates reflected their interests on the problem directly and indirectly. The traditional maritime countries of Europe were in favour of the introduction of the genuine link clause. On the other hand other States recommended the principle of “flags of convenience” which is preferred to the principle of genuine link. Some example of those States are Liberia and Panama. The majority of delegates agreed that the formulation of the criteria for determining the existence of

¹² 6th ed. Vol.1, p.546.

¹³ OYA, OZCAYIR; op. cit., p. 9.

¹⁴ United Nations Convention on Condition for Registration of Ship, Geneva, 7 February, 1996, not in force.

¹⁵ OYA, OZCAYIR; p.12.

¹⁶ International Maritime Organization, established in 1948 in Geneva.

genuine link between the State and the ship had great difficulties because of the great diversity of domestic laws.¹⁷

After that the general agreement was that effective exercise of jurisdiction and control should be the responsibility of the State of the ship's nationality. The flag of convenience (FOC) group States recognized the principle of genuine link.¹⁸ In effect, the Geneva Convention on the High Seas 1958 in connection with the emergence of flag of convenience appeared to limit this national discretionary power by adding to the traditional principle a provision to the effect that there must exist a genuine link between the State of registry and the ship. Also that "in particular the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag."

The establishment of requirement of genuine link was largely influenced by the decision of the International Court of Justice (ICJ) in the *Nottebohm case*,¹⁹ in which the Court ruled that "Nationality serves above all to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the State in question grants to or imposes on its nationals..." It's therefore important to note that the fundamental principle on which nationality is based on the existence of a real, effective link between the State and its citizens.²⁰

The concept of the genuine link was dealt with further in 1960 when the International Court of Justice was requested to deliver an advisory opinion in connection with the Constitution of the Maritime Safety Committee of IMCO.²¹ The Convention establishing the Organization provided for the appointment of a Maritime Safety Committee having certain duties with regard to, among other matters, aids for navigation, construction and equipment of vessels, manning and safety procedure.²²

The issue before the Court was in effect the meaning of the phrase "the largest shipowning nations". The Court concluded that "that the determination of the largest shipowning nations depends solely upon the tonnage registered in the countries in question". The Court held that the concept of genuine link was irrelevant for determining the meaning of this phrase and that those nations with the largest registered tonnage fell within the terms of the phrase, whether or not they were flags of convenience. The Court declined this opportunity of giving its support to the requirement of a genuine link.

Flag of Convenience (FOC)

The practice of shifting maritime activity from one flag to another and registering vessels in States with more convenient laws or practice is not new. Historically the flag of convenience concept appeared from the Roman Empire, when Roman shipowners registered their ship under the Greek flag. In the middle of 19th century, many British shipowners sailed their vessel under the

¹⁷ OYA, OZCAYIR; op. cit. p.12.

¹⁸ Ibid.

¹⁹ 1955, ICJ. Report p. 4.

²⁰ OZCAYIR OYA, op.cit. p. 13.

²¹ 1960, ICJ. Report, p. 150.

²² OYA, OZCAYIR; op. cit. p. 23

Norwegian flag, but the modern use of the term ‘flag of convenience’ started in 1920s during the prohibition in the United States of America. This prohibition caused a considerable number of transfers to the Panama flag.²³

Functionally, a “flag of convenience” can be defined as the flag of any country allowing the registration of foreign-owned and foreign-controlled vessels under conditions which, for whatever the reason, are convenient and opportune for the persons who are registering the vessels.²⁴

The International Transport Workers’ Federation²⁵ (ITF) in 1974 defined FOC as: Where beneficial ownership and control of a vessel is found to lie elsewhere than in the country of the flag the vessel is flying, the vessel is considered as sailing under a flag of convenience. The ITF campaign against flags of convenience.²⁶

A flag of convenience also referred to as “open registries” or ”flags of necessity ” and the reasons for considering the open registry is usually for economic advantages ‘relates to investment and to cost/revenue consideration’ and also to avoid taxation and social security requirements. The increasing use of flags of convenience by States, has resulted in a lax of flag State controls which has subsequently led to an increase in major maritime disasters. The reasons cited for these disasters are usually a failure to enforce regulations and the use of inexpensive and untrained labour. The records of open registry fleets show that the causality rate for the flag of convenience fleet is substantially higher than that of the regulated fleet. For instance, for many years Panama had a reputation for permitting the operation of substandard ships. As a result of this practice Panamanian ship had a very high accident rate compared with vessels which flew the traditional maritime countries’ flag. After increasing pressure, in 1997 the Panamanian government enacted laws and provided for stricter inspection of vessels flying its flag. However, despite this new legislative improvement Panama lost more ships and more tonnage than any other Flag State in the world. The Panamanian-Flagged ships have the highest number of reported deficiencies in certification, safety, navigation, pollution and operations of all Flag States.²⁷

Flag of convenience States accounted for 13 of 32 countries that suffered ship losses during 2001. This number accounted for half (58%) of all ships lost, and nearly two-thirds (63) of the gross tonnage. Panama continues to be worst for casualties.²⁸

The widest known open registry vessel casualty is the *Torrey Canyon* in 1967, an American owned super-tanker under the Liberian Flag. Because of wreck, 80,000 tons of oil escaped into the sea and polluted large area of the coasts of England and France.

Also the *Amoco Cadiz*, in which a fully loaded VLCC ran aground off the Brittany coast of France in March 1978, spilling her entire cargo of 65 million gallons of crude oil on the water and adjoining

²³ Ibid.

²⁴ Richard Coles, Edward Watt; *Ship Registration Law and Practice*, 2ed. Infora Law, London, 2009, p. 23.

²⁵ The International Transport Workers' Federation is a global union federation of transport workers' trade unions, founded in 1896.

²⁶ <http://www.itfglobal.org/flags-convenience/index.cfm>, last accessed on 5th of February 2014.

²⁷ OYA, OZCAYIR; op. cit. p. 26.

²⁸ Ibid, p.27.

shoreline. The Amoco Cadiz Company was owned by Indiana and registered in Liberia. The claims against the Amoco parties were grounded in maritime tort alleging negligence in the design, construction, maintenance and operation of the vessel. There was some evidence at the Liberian Inquiry into the loss of the Amoco Codiz that the disaster resulted of the design of the tankers fairlead.²⁹

The Erika disaster in December 1999. The *Erika* sailed and with a heavy cargo of around 31,000 tons of fuel oil. She ran into a heavy storm, and she broke in two and sank, releasing thousands of tons of oil into the sea, killing marine life and polluting shores around Brittany and France. The owner of the ship lives in London, She was registered under a Maltese flag.³⁰

Other such disasters are *the Sea Empress* in 1996 and the *Prestige* in 2002. The common element in all these disaster is the fact that these tankers flew the FOC States.

It should be noted that, that since the mid-1970s, the United Nations Conference on Trade and Development (UNCTAD) has concentrated on finding an acceptable interpretation of the constituent elements of the genuine link doctrine. UNCTAD believed that the purpose of the genuine link clause in Article 5 of the Geneva Convention on the High Seas was to make sure that States would ensure the exercise of effective jurisdiction and control over vessels in their registry. Further, that the interpretation of “genuine link” should be made within the context of the material requirements for the registration of ships to reflect economic ties between vessel and flag State and, therefore, administrative control by the State. It was thought that this type of interpretation should include the following elements:³¹

- i. The vessel or the company owning the vessel should be beneficially owned as to a substantial part by nationals of the Flag State;
- ii. The principal place of business and effective management of the legal entity should be located in the Flag State;
- iii. The principal officers of the shipping company should be nationals of the Flag States;
- iv. The Flag State should exercise final control by subjecting the profits of the shipping company to taxation;
- v. The State of registry should exercise full and regular control over the standards of the vessel and qualifications and conditions of employment of the crew.

In 1974, the Shipping Committee of the United Nations Conference on Trade and Development (UNCTAD) secretariat adopted Resolution 22(IV) on Economic Co-operation in merchant shipping and began a study on the growth and the competitive nature of open registries¹⁵. It produced a report entitled "Economic Consequences of the Existence or lack of a Genuine Link between Vessel and Flag Registry"¹⁶. An ad hoc intergovernmental working group was

²⁹ {1984}, 2 Lloyds's Rep. 304, (N. D.III).

³⁰ Veronica Frank; *The European Community and Marine Environmental Protection in the International Law of the Sea*, 1st ed., Martinusnijhoff Publisher, 2006. 36.

³¹ OYA, OZCAYIR; op. cit. p. 17.

established and asked by the Shipping Committee to report on the economic effects of the existence or non-existence of a 'genuine link' between flag states and their ships. They reported that "the expansion of open registries has adversely affected the development and competitiveness of fleets of countries which do not offer open-registry facilities, including those of developing countries."

In 1979 UNCTAD published two reports. They recommended the redistribution of world shipping through cargo sharing and the elimination of flags of convenience by the year 2000.

In 1980 the UNCTAD shipping Committee convened two special meetings on the 'phasing out' of open registries. Finally the committee recommended the holding of a conference on the adoption of a convention on the conditions for the registration of ships providing rules for the establishment of the registration of ships and the mechanisms by which open registries could be transformed into normal registries. In response, the General Assembly called a plenipotentiary conference with the purpose of adopting an International agreement for the conditions under which vessels should be accepted under national registries.³²

Also UNCTAD's annual statistical publication "Review of maritime Transport" issued in December 2007 reported that no general conclusions can be drawn as regards the safety of foreign-flagged versus nationally flagged vessels.³³

ITF who had spearheaded the opposition to the open registry system, and over the past 50 years the ITF's maritime affiliates have developed a set of policies which seek to establish minimum acceptable standards applicable to seafarers serving on FOC vessels. The policies form the basis of an ITF Standard Collective Agreement which sets the wages and working conditions for all crew on Flag of Convenience vessels irrespective of nationality. It is the only agreement normally available to shipowners who run into industrial action. All FOC vessels covered by an ITF-acceptable agreement are issued an ITF Blue Certificate by the ITF Secretariat, which signifies the ITF's acceptance of the wages and working conditions on board. About a quarter of all FOC vessels are currently covered by ITF agreements, thus giving direct protection to over 123,000 seafarers.³⁴

Compliance with ITF-recognised agreements is monitored by a network of over 130 ITF inspectors in ports throughout the world. ITF Inspectors are union officials who are either full time or part time working directly with the ITF. By inspecting FOC ships, they monitor the payment of wages and other social and employment conditions and if necessary take action to enforce ITF policy. In recent years the number of inspectors has doubled and they are now to be found in ports in every region of the world.³⁵

In addition, ships entered on certain "second" registers may be considered as flying under flags of convenience; their status as such depends upon whether or not they are owned by nationals of the flag country and whether or not crew Wage Agreements acceptable to that country's unions have been entered into.³⁶

³² http://www.uni-mannheim.de/edz/pdf/dg4/SOCI107_EN.pdf, last accessed on 7th of February 2014.

³³ Richard Coles, Edward Watt, op. cit., p. 29.

³⁴ <http://www.itfglobal.org/flags-convenience/>, last accessed on 7th of February 2014.

³⁵ Ibid.

³⁶ Ibid.

Port States Control

In recent years, beside the Flag States, there is increase reliance on Port States to monitor compliance with international standards. Intervention by Port States is sanctioned by the UNCLOS 1982 and numerous other international Conventions, including SOLAS,³⁷ MARPOL,³⁸ and STCW.³⁹ The effectiveness of control by Port States in policing compliance with international standards depend upon co-ordination between maritime authorities on a regional basis, otherwise owners and charterers might simply avoid ports where sub-standard ships are more likely to be subject to inspection and detention.⁴⁰

The Paris Memorandum of Understanding (MOU) of 1982 represented the first step towards establishing uniformity of Port States control on a regional basis. The MOU requires each authority to maintain an effective system of Port State control in order to ensure that foreign merchant ships visiting its ports comply with the International Convention relating to Safety of Life at Sea, Prevention of Pollution and working conditions on board. Under MOU, each authority must achieve an average annual total of inspections corresponding to 25% of the number of foreign merchant ships entering its ports. The success of Paris MOU has led to the establishment of regional Port States control measures beyond Europe into other parts of the world, these include the 1997 Mediterranean MOU, the 1993 Tokyo MOU, the 2000 Black Sea MOU, The Riyadh MOU in 2006 and others.⁴¹

At a European Union level, the European Commission's communication, in order to reduce sub-standard shipping in EU waters and approved in principle, established a Council Directive 95/21/EU for control of ships by Port States and harmonising procedures on inspection and detention throughout the EU. The Directive builds on the experience gained through the operation of the Paris MOU, but seeks to develop a better targeting system. The maritime authority in each EU Member State is required to publish quarterly information concerning ships detained during the previous three-month period and which have been detained more than once during the past 24 months, this information include the Flag States of the vessels concerned. In November 2002 the European Parliament and Council established the body first proposed in principle 1993, founding the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS). This legislation tasks COSS with ensuring conformity between the maritime legislation of the European Union and International Treaty Law concerning, inter alia Port State control, SOLAS and MARPOL as implemented by its Member States.⁴²

³⁷ 1974 International Convention for the Safety of Life at Sea, London, in force 25 May 1980.

³⁷ International Convention for the Prevention of Pollution from Ships (MARPOL), London, in force 2 October 1983.

³⁹ The International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW), 1978, London in force 1 February 1997.

⁴⁰ Richard Coles, Edward Watt, *op. cit.*, p. 29.

⁴¹ *Ibid*, p. 30.

⁴² *Ibid*.

In addition to Port State control measure, the International Safety Management (ISM) Code adopted by IMO and the 1995 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW 1978) are also having an effect in improving operating standards. The main purposes of ISM Code are to ensure safety at sea, prevention of human injury and loss of life. The ship operators are required to develop, implement and maintain a safety management system covering, inter alia, a safety and environment protection, instruction and procedures to ensure safe operation of ships. The compliance by a ship operator with the ISM is evidenced by a Document of Compliance (DOC) relevant to the owner, operator or manager of the ship issued by the government of the Flag State, by an organization recognised by that State (such as an approved Classification Societies) or by another government acting on behalf of the Flag State.⁴³

As already mentioned, there is in existence a range of conventions which are directly concerned with or connected to ship registrations. Their task is to look on the individual states to ensure compliance with the rules they lay down for the exercise of the freedom of the high seas as discussed above. Therefore it is important to have a look on these conventions as they are forming the skeleton for the national laws. Especially the problem of the genuine link between the legal character, manning and management of the ship to be registered and the flag State will be shown up in the presentation of some of these Conventions.

Convention on the High Seas 1958

It is a fact that the fundamental importance of the 1958 Convention on the High Seas which established the basic principles of nationality and registration of ships, and existence of the principle of genuine link between the State and the ship. This is stated in Article 5 of the Convention. Also the Convention tried to prevent ships from sailing under more than one flag by provided that such ships should not be permitted to claim any of the nationalities in question with respect to any other State “stateless ship”, Article 6(2). However the 1958 High Seas Convention establish only the duty and not the right of the State to determine the registration condition. Also since the 1958 Convention came into force, the genuine link requirement had little influence on State practice.

Thus the United Nations International Law Commission prepared for the conference, and there was step forward in the 3rd UN Conference on the law of the Seas.

United Nations Convention on the Law of the Sea (UNCLOS) 1982

UNCLOS dealt with the registration of vessel in Article 91 to 94. Article 91(1) stipulates that every State shall fix the conditions for granting its nationality to ship, for 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. And paragraph (2) every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.⁴⁴

⁴³ Ibid, p. 40.

⁴⁴ Article 91 of the 1982 Law of the Sea Convention.

Article 92 of the Convention defines the status of ships and reinforces the fact that ships sail under the flag of one State only and shall be subject to its exclusive jurisdiction on the High Seas. (There are exceptional cases to this regulation that are expressly provided for in international treaties or in this Convention). A ship may not change its flag during a voyage or while in port of call, unless there is a real transfer of ownership or change of registry. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the two nationalities in question with respect to any State, and may be considered to be a ship without a nationality.

Article 93 defines the ships which flies the flag of the United Nations, and its agencies and the International Energy Agency, and these ships do not fall under the general registration procedure of ships.

Article 94 of the Convention enumerates the duties of Flag State as follow:

Every State shall take such measures for ships flying its flags necessary to ensure safety at sea as follows “the construction equipment and seaworthiness of ships, the manning of ship labor conditions and training of crew”. The Article also provide that every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. In particular each State shall maintain a register of ships containing the names and particulars of ships flying its flag, and assume jurisdiction under its internal laws over its ship flying its flag in respect of administrative, technical and social matters concerning the ship”. Also Article 94 provide that “each State is required to conform to generally accepted international regulations, procedures and practice and to take any steps which may be necessary to secure their observance”.

Article 217 of UNCLOS obliges Flag States to ensure compliance by their vessels with international rules and standards as well as laws and regulation adopted in accordance with the Convention for the protection of the marine environment from pollution.

It appears that UNCLOS includes only the provisions on the determination of the registration conditions for nationality by flag State rather than by international law, although the registration of ship requires conditions and regulations for registration both in national and most important in international legal level. In other words, these conditions shall be determined by an international agreement to be concluded between different States.⁴⁵

Like the 1958 Convention, UNCLOS did not expressly defined the genuine link, and did not provide much guidance for the interpretation of genuine link. UNCTAD made extensive studies of flag of convenience and the United Nations Convention on Conditions for registration of ships 1986 was adopted.⁴⁶

The United Nations Convention on Conditions for Registration of Ships 1986

This Convention spells out the conditions that a Contracting State shall require to be fulfilled before it accepts a vessel in its register. It aims to strengthen the genuine link between the ship and the flag State, also to ensure that states effectively exercise jurisdiction and control over their ships,

⁴⁵ OYA, OZCAYIR; op.cit. p. 17.

⁴⁶ Ibid.

not only in relation to administrative, technical and social matters, but also with regard to identification and accountability of shipowners and operators.⁴⁷

The Convention is not yet in force, and until January 2014 only 14 States have signed this Convention and 15 ratified it. Article 19 of the Convention provides:

1. This Convention shall enter into force 12 months after the date on which not less than 40 States, the combined tonnage of which amounts to at least 25 per cent of the world tonnage, have become Contracting Parties to it in accordance with article 18. For the purpose of this article the tonnage shall be deemed to be that contained in annex III to this Convention.

2. For each State which becomes a Contracting Party to this Convention after the conditions for entry into force under paragraph 1 of this article have been met, the Convention shall enter into force for that State 12 months after that State has become a Contracting Party.⁴⁸

The Convention points out the connection between the genuine link and effective control and jurisdiction of the flag state over ships flying its flag. We can find it in its preamble, where the Convention guarantees to strengthen both of them.

Article 5 of the Convention emphasizes that the Flag State must have a competent and adequate national maritime administration. Although it is one of the strongest provisions of the Convention, the terms “competent” and “adequate” are not defined.

Under Article 7 the state has the right to decide which requirement best suits its national interests and circumstances.

Article 8 of the Convention obliges Flag States to set up the level of national participation in ownership. This level should be sufficient to permit the Flag State to exercise effectively its jurisdiction and control over ships flying its flag.

On manning of ships, under Article 9 of the Convention, it is for the Flag State to decide what a “satisfactory part of the complement” is. And there is no minimum level for this satisfaction.

Article 10 covers the role of the Flag State with respect to the management of shipowning companies and ships. This Article provides that the requirement of the location of management is optional and some open registry States provide that an agent or a locally incorporated legal entity is sufficient in meeting that requirement.

Article 11 deals with register of ship and provides that the register will include a great deal of information on the ship, its name, the place or port of registry, the name of builder, the name and address of owner, charterparties and mortgages.

The Convention was adopted after a long debate which started in UNCTAD as a move to eliminate flag of convenience in shipping, and like the 1958 High Seas Convention and UNCLOS 1982, it refers to a genuine link between the flag state and the ship. But the wider concept of genuine economic link was not approved. When the Convention is examined as a whole, the vagueness of

⁴⁷ Ibid.

⁴⁸ Article 19 of the UN Convention on Condition for Registration of Ship 1986.

its terms, the different standards created and the failure to come into force since its adoption in 1986 together make it clear that the Convention has failed to establish adequate measures to confront the problem of flag of Convenience.⁴⁹

IMO and IMO associated Conventions

The International Maritime Organisation is the United Nations' specialised agency responsible for improving maritime safety and preventing pollution from ships. To improve these purposes, the IMO has prepared several important conventions, which are important to ship registration, as the ratifying Flag State has to safeguard and supervise the standards set out in these Conventions on the ships on its register. They are also important for the application procedure for a register, as ships to be registered have to satisfy the requirements set out in the Conventions. In the following some of the most important IMO Conventions will be discussed briefly.

a. The International Convention for the Safety of Life at Sea 1974

The main objective of the SOLAS Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. Flag States are responsible for ensuring that ships under their flag comply with its requirements, and a number of certificates are prescribed in the Convention as proof that this has been done. Important general provisions are concerning the survey of the various types of ships and the issuing of documents signifying that the ship meets the requirements of the Convention.⁵⁰

b. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978 established basic requirements for training certification and watchkeeping for seafarers on an international level. Important amendments to STCW were adopted in 1995 which include enhanced procedure for the exercise of Port State control, and which also provide greater uniformity of application among Flag States. The amendments impose strict obligations regarding implementation of the Convention provisions. The participating Flag States are required to provide detailed information to the IMO concerning administrative measure taken to ensure compliance with the Convention by establishing that they have the administrative, training and certification resources necessary for its implementation, and thus enabling one Flag State to place reliance on certificates of competency of seafarers issued by another.⁵¹

C. The International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)

The Convention has two Protocols dealing respectively with Reports on Incidents involving

⁴⁹ OYA, OZCAYIR; op. cit. p. 19.

⁵⁰ Ibid.

⁵¹ Richard Coles, Edward Watt; op. cit., p. 40.

Harmful Substances and Arbitration; and five Annexes which contain regulations for the Harmful Substances and Arbitration; and five Annexes which contain regulations for the prevention of various forms of pollution. Important for the registration of ships are several provisions which are demanding special requirements for the design and construction of a ship. These are for example: that all oil-carrying ships are required to be capable of operating the method of retaining oily wastes on board through the "load on top" system or for discharge to shore reception facilities. Or new oil tankers are required to meet certain subdivision and damage stability requirements, so that they can survive after damage by collision or stranding.⁵²

The IMO also introduced a White List of those countries deemed to have given "full and complete effect" to the STCW Convention. The increasing global application of the STCW standards is demonstrated by the growth of the White List. When it was first published in December 2000, it contained 71 countries. The White List in May 2008 counts 119 States.⁵³ In May 2012 counts 122 States of the total 158 Contracting Parties.⁵⁴

ILO Conventions

The ILO, like the IMO is an agency of the United Nations. One of its purposes connected to the field of ship registration is to provide appropriate working conditions for seafarers, like working times, working environment and different kinds of insurance. E.g. to provide a minimum age for seafarers, sickness insurance and pensions, inspection of seafarers working and living conditions. Their impact on ship registration is, that the flag State has to provide the appropriate national laws to adopt these Conventions and the surveillance of the conditions on ships on its register. The shipowner self has to provide these conditions on the ship flying a flag appropriate to the laws of this state. As seafarers wages, pensions, working times and insurances are an important economic factor, the choice of a flag State is highly influenced by the ILO Conventions. To ensure worldwide high standards for the conditions of the seafarers, the ITF is releasing regarding technical standards and social welfare the so called "Blue Certificate". This is a certificate that is released to shipowners which are operating their vessels under certain standards fixed by the ITF even if the flag State has not ratified certain important ILO Conventions.⁵⁵

The Need for a Ship Registration Act in the Sudan

As seen above, in order to operate internationally, international law requires that every merchant ship be registered in a country. Ship must be registered in a recognised ship register, which will then permit the ship to fly its flag. In effect the State of registration will then become the ship's "Flag State". The Flag State's have obligations and responsibilities towards ships carrying its flag.

⁵² <http://www.grin.com/en/e-book/96629/registration-of-ships-the-international-registers-of-norway-panama>. Last accessed on 19th of February 2014.

⁵³ Ibid.

⁵⁴ https://www.google.com/mt/?gws_rd=cr&ei=OA0ZU7yGJaO84ATFj4CYDQ#q=imo+white+list+countries+2012, last accessed on 19th of February 2014.

⁵⁵ Ibid.

With maritime traffic increasing worldwide especially after the exploration and exploitation oil and gas in last 90's, in addition to a large number of the passenger ships sailing to Saudi Arabia for pilgrimage and Ommrah, registration act is important for the Sudan to compliance with the generally accepted international rules and standards provided by international conventions. Also to satisfy the requirements for ship to be registered.

The first maritime law in the Sudan was enacted in 1961 when the Sudan Shipping Lines Company was established to cover the company transaction in registration of vessels and employment of sailors under the Sudanese Flag.

The Maritime Shipping Act 1961 provided for establishment of the Sudanese merchant shipping, the registration of Sudanese ships and general regulation of merchant shipping. According to the Act, no person other than the Sudanese national or the Sudanese company shall be entitled to be registered as owner of a Sudanese ship.

Since that time the Maritime Shipping Act has not been amended to cope with the technological development in maritime carriage industry. In 2010 the 1961 Act has repealed, and a new Act came into force cited as the Maritime Carriage Act 2010.

This Act deals with registration of vessels, among all maritime issues in Chapters III, IV, V and VI of the Act. The new Act provides that vessels acquires the Sudanese nationality when registered in Port Sudan, and its proprietor is of the Sudanese nationality, or it's being co-owned in undivided shares by several owners, and most of them being of the Sudanese nationality, or owned by Limited Liability Company or Companies where the shareholder are Sudanese nationals. The act provides also that every Sudanese vessel shall fly the Sudanese flag. Also a Sudanese vessel may fly flag other than the Sudanese flag, in case of necessity, for which international maritime agreements provide.

Also the Act provides for the establishment of vessels registration unit and administrative matters like the appointment of the registrar, maritime vessels licensed, ships instrument and vessels inspection. This Act differ from the previous one in that it gives power to the Minister to grant the Sudanese nationality to a ship, the shareholders are non-Sudanese on condition that it shall be registered at Sudanese port or the headquarters of the Company shall be in the Sudan.

Although the Sudan Maritime Carriage Act is regarded as a new Act, in case of vessels registration, it covers very limited issues.

The above is the limited area of vessel registration which is covered by the Sudan Maritime Act 2010. It is indeed a limited area.

It is a known fact today that as a result of freedom of High Seas, maritime industry and global shipping efficiency depends largely on the free movement of ships. Thus there are international requirements and standard provided by the International Conventions and that all ships engaged in maritime transport must meet.

Although our Maritime Act is regarded as new (being enacted in 2010) however as has been stated above, the Articles which deals with the registration of vessels does not deal in anyway with the

indepth method which has been prescribed by the Convention as international requirement and condition for the registration of vessel as provided by the UNCLOS 1982 (of which the Sudan has been a party since 23 January 1985), or by the United Nations Convention on Conditions for registration of Ships 1986 or by the IMO.

The best solution lies in creation a new Act for registration of vessels which fulfill all international requirements and conditions relating to ships registration and repeal the Articles of ships registration in current Act.

The Law Making Process

Interim National Constitution of the Republic of the Sudan 2005 gives the President of the Sudan powers to assent to laws.

Article 91(5) the Constitution of Republic of the Sudan states that every bill of Act shall be tabled to the National Assembly (Parliament).

In Article (106) the President of the Republic, the Presidency, the National Council of the Ministers, a national Minister or a committee of the National legislature may table a bill before a National Assembly. So in this case the Sudanese Minister of Transport, Roads and Bridges who is concerned with maritime carriage prepare the legislative drafting and table it to the National Assembly.

The stages which the bill has to go through in the Parliament are as follow:

Under Article 107, there are procedure for presentation and consideration of bills, for example (1) Bills presented to the Chamber of the National Assembly shall be submitted for the first reading by being cited by the title, and shall then be submitted for a second reading for general deliberation and approval in Principle. Should the bill be passed in the second reading, there shall be a third reading for deliberation in detail and introduction of, and decision upon, any amendment. The bill shall then be submitted in its final form for the final reading, at which stage the text of the bill shall not be subject to further discussion and shall be passed section by section and then passed as whole.

(2) After the first reading, the Speaker shall refer the bill to the appropriate committee which shall make a general evaluation report for the purpose of second reading. The committee shall also present a report on the amendments that the committee might or might not have endorsed in the third reading. The Speaker may also refer the bill once again to the appropriate committee to prepare a report on the final drafting in preparation for the final reading.

(3) The Speaker or the appropriate committee, may seek expert opinion on the viability and rationale of the bill, an interested body may also be invited to present views on the impact and propriety of the bill.

(4) The Chamber may by special resolution, decide on any bill as a general committee or by summary proceeding.

Article 108 of the Constitution emphasize that any bill approved by National Legislature shall not become law unless the President of the Republic assents to it and signs it into law. If the President

withholds assent for thirty days without giving reasons, the bill shall be deemed to have been so signed.

Explanation of the Draft Text

The provided Act is divided into seven chapters and 47 Articles.

Chapter I in the draft Act is the general provision, the interpretation Article designate the Maritime Mercantile Department as competent authority, which shall assume supervising the maritime activity of ships.

Chapter II regulate the procedures for registration, which include, the appointment of the registrar, types of ships subject to registration, the cases where the ship acquires the Sudanese nationality and the documents and the data required for registration and Records in the State Ship's Registry.

Chapter III deals with the name of ship registered and certificate of registration issue from the Registrar, the change of name, the ground for refusal to register the ship, and rules for registration of alteration.

Chapter IV tackles the registration of the ships Bareboat charter registry, the information to be recorded at Bareboat Charter Register and the temporary right granted to ship to sail under the State Flag of the Republic of Sudan.

Chapter V gives an outline of the suspension of registration, for example, the transfer of registration of the ship under the flag of a Foreign State, the cases of suspension of the right of sailing under the state Flag of the Sudan. Procedure of the lifting of the suspension of the right of sailing under the State Flag of the Sudan.

Chapter VI regulate the ship's instrument and certificate of seaworthiness, the conditions laid down by the Competent Authority on the issue of the ship's sea-worthiness certificate, cases where the ship's sea-worthiness certificate shall terminate, and termination of the ship's sea-worthiness certificate validity.

The last Chapter covers removal, loss, liability and entry into force. The cases where the ships shall cease to be registered, when a ship is considered missing, conditions for the removal ship from State Ship's Registry, liability for violation of procedure of ship registration, and finally the entry into force.

This act is a necessary and relevant document that will govern the registration of ships in the Sudan in accordance with International Conventions.

In the Name of Allah, the Gracious, the Merciful

THE SHIP REGISTRATION ACT, 2014

Be it hereby approved, by the National Assembly, and signed, by the President of the Republic, in accordance with the provisions of the Interim Constitution of the Republic of the Sudan, 2005, the following Act:-

Chapter 1

General Provisions

Article 1

Title and Commencement

This Act sited as the “Ship Registration Act, 2014”, and shall come into force, as of the date of signature.

Article 2

Repeal and Saving

This Act shall repeal the Chapters III, IV, V and VI which deals with vessel registration in the Maritime Carriage Act, 2010. Provided that there shall remain in force the regulations made thereunder, until revoked or amended in accordance with the provision of this Act.

Article 3

Interpretation

For the purpose of this Act:-

“Bareboat Charter”, means a contract for the lease of a ship, for stipulated period of time, by virtue of which the lessee has the complete possession and control of the ship, including the right to appoint the master and crew of the ship, for the duration of the lease;

“Bareboat Charter registry”, means registry of the foreign ships under bareboat charter;

“Competent Authority”, means Maritime Mercantile Department.

“Foreign Ship”, means a ship which is registered under the law of foreign country;

“Minister”, means minister of Transport, Roads and Bridges;

- “Port”, means ports and internal and external harbours, in accordance with the Sea Port Corporation Warrant of Establishment, 2007;
- “Port Authority”, means the body competent of management of sea port, in accordance with the Sea Port Corporation Warrant of Establishment, 2007;
- “Registration”, means the process of entering vessels in the public records of the State;
- “Ship”, means every self-propelled sea going vessel used in international seaborne trade for the transport of goods, passengers or both with exemption of vessels of less than 500 gross registered tons;
- “Ship Owner”, means—unless clearly indicated otherwise, any natural or juridical person recorded in register of ships of the State of registration as an owner of the ship;
- “Ship Registration Number”, means the number of a ship, which is assigned to her in accordance with the procedure established by this Act, and maintained by it during the period of registration;
- “State Ship’s registry”, means the official register in which particulars about ship are recorded;
- “Sudanese Vessels”, means every vessel registered at a Sudanese ports and flies the Sudanese flag;

Article 4

Application and Exclusion

1. The provisions of this Act shall apply to the registration of all ships as defined in article 3.
2. A ship shall be registered as a Sudanese ship if it is:
 - a) Of 500 net registered tonnage or more;
 - b) Owned by person qualified to own a Sudanese ship; and
 - c) Not exempted from registration.
3. This Act shall not apply to:
 - a) War ships, military auxiliary craft and boarder guard ships;
 - b) Fishing boats; and
 - c) Pleasure boats used for non- profit purpose.

Article 5

The Competent Authority

1. The Competent Authority shall assume supervising the maritime activity of all ships. Their control and inspection, in accordance with the powers conferred thereon under the provisions of this Act, and the international and regional agreements, which the Sudan has ratified.
2. Notwithstanding the provisions of sub-section (1), the Minister, may establish maritime inspection offices at any of the Sudanese ports, provided that such offices shall be subject to supervision of the Competent Authority.

Chapter II

Procedures for Registration

Article 6

Appointment of the Registrar

The Minister shall appoint a Registrar to register the Sudanese Ships, and all the legal transactions are conducted thereon.

Article 7

Public Disclosure of the Ship's Registries

The information of the State Ship's Registry will be available to the public.

Interested persons can obtain extracts that have been duly made from the Ship's Registry by paying fixed tariffs that are established in accordance with the legislation of the Republic of the Sudan.

Article 8

Types of Ships Subject to Registration

In the State Ship's Registry, the following ships shall be registered: passenger ships, passenger-cargo carries, bulk oil carrying ships and other self-propelled ships having a main engine capacity of not less than 55 K W and non-self-propelled ships of 80 tones except pleasure boats used for non-profit purposes.

Article 9

Serial Registration Number

A serial registration number will be assigned by the State Maritime Administration and recorded

in the State Ship Registry, which contains records of rights on the ship, the original transfer and termination of such rights.

Article 10

Ship Files

A ship's file shall be opened for each ship and is identified by the ship's serial registration number. The ship file comprises of:

- a) Documents accepted for the registration of the ship;
- b) Issued registration certificate; and
- c) Provided reference note and abstracts of the State Ship's Register.

Article 11

Ship's Nationality

1. A ship acquires the Sudanese nationality in any of the following cases:-
 - a) It's being registered at one of the Sudanese ports, and its shipowner enjoying the Sudanese Nationality;
 - b) It's being co-owned in undivided shares by several owners, and most of its shipowner are enjoying the Sudanese Nationality;
 - c) It's being owned by a limited liability company, or a company owning part thereof, provided that all the shareholders shall enjoy the Sudanese Nationality.
2. Notwithstanding the provisions of sub-section (1), the Minister may make regulations prescribing the manner and conditions under which any other ships may own the Sudanese nationality.

Article 12

Data of the Registration Application

The ship register shall record the following:

- a) The name of ship the current and former, in Arabic and English languages, port of the ship's previous registration and date of its suspension (if available);
- b) Identification number of a ship assigned by International Maritime Organization;
- c) The ship call-sign;
- d) The name of the builders, place of build and the year of building of the ship;
- e) Type and purpose of the ship, her navigation area;
- f) The description of the main technical characteristics of the ship;
- g) The name, citizenship and address of the ship-owner;
- h) The right of operational control of the ship;
- i) The share of each of the joint owners in the joint share ownership, if there are several owners;

- j) The limitation of ownership and other rights to the ship;
- k) The date of making records;
- l) Name of official, who has made the registration, and his signature.

In the records of the limitation of the rights should be:

- a) The contents of limitation (encumbrance), the term of its action;
- b) The persons for whose benefit the rights are limited;
- c) The document on which basis the limitation (encumbrance) of the rights arise, the time of its action.

Article 13 Documents to Registration

1. Registration is made on the basis of an application of the shipowner, or a person authorized thereto, provided such person has a properly made out letter of Attorney.
2. The documents which are necessary to register a ship and rights over her in the State Ship's Registry, are the following:
 - a) The completed ship register form (according to the form set in Annex No. I of this Act);
 - b) Bill of sale, ship yard Certificate;
 - c) Certificate of Measurement;
 - d) Sea-worthiness Certificate;
 - e) Classification Certificate;
 - f) Passenger Certificate (for a passenger ship);
 - g) Information on Identification Number of the ship assigned by the International Maritime Organization;
 - h) Recent certificate issued in compliance with SOLAS, Load Line and MARPOL resolutions;
 - i) Oil Pollution Certificate (CLC).

Also any other documents required by the legislation of Republic of the Sudan.

Article 14 Registration of Ship under Construction

A ship under construction may be entered in the Register Book of ships construction from the date of the signing of the contract for construction until it is placed on another register after completion.

Article 15

Registration fees

As defined in order issued by the Government of the Republic of the Sudan fees are collected for registration of ships in the State Ships Registry and Bareboat Charter Registry.

Article 16

Instruments and Documents

All instruments and documents in the registration application shall be in Arabic and English language.

Article 17

Records in the State Ship's Registry

State Ship's Registry is kept on paper and, whenever possible, also in electronic version. In case of any discrepancy between records on paper and electronic version, the record on paper shall prevail. In case of any discrepancy between records in the State Ship's Registry and the title document, the latter shall prevail.

Article 18

Duration of Registration

The registration of ship shall be completed within one month from the date of which application is submitted.

Chapter III

Name and Certificate

Article 19

Name of Ships

1. Every ship registered in the register shall have a name, and no two ships or more shall bear the same name.
2. A ship shall not be described by any name other than that by which it is for the time being registered under.

3. A Registrar may, in accordance with the provision of any regulation made under this Act, refuse the registration of any ship by the name by which it is proposed to register if such a name is already the name of a registered the Sudanese ship or a name so similar as calculated.

Article 20

Certificate of Registration

1. On the completion of the registration of a ship, and upon payment of the fees, the Registrar shall be grant a certificate of registration comprising the particulars respecting her entered in register.
2. To obtain registration of ships and rights to them the Competent Authority shall issue the following documents:
 - a) Certificate of the right to fly under the state flag of Republic of the Sudan;
 - b) Certificate of ownership of the ship.

Article 21

Custody of Certificate

The Certificate of Registry shall be used only for the lawful navigation of the ship and shall not be subject to detention by reason of any title, lien, charge or interest whatsoever had or claimed by any owner or any other person to, on or in the ship.

Article 22

Suspension of Procedure

1. Registration can be suspended for no more than one month if the presented documents are sent to confirm their authenticity. The applicant shall be notified in writing of the decision to suspend the registration procedure and on the ground for such a decision.
2. The applicant shall be refused registration if the reasons hindering registration are not eliminated during the time-limits indicated in the present Article, and corresponding record thereof shall be made in the Book of Record-Keeping Documents.
3. In the procedure established by the legislation of the Republic of the Sudan the registration can be suspended on the basis of a court ruling or decision. Upon suspension of registration a corresponding note shall be entered into the State Ship's Registry.

Article 23

Change of Name

1. A change shall not be made in the name of a ship without the previous written permission of the Registrar of ships.
2. An application to effect a change of ship's name shall be in writing and if the Registrar of Ships is of the opinion that the application is reasonable he may grant permission, and thereupon require notice thereof to be published in such form and manner as he think fit.
3. On being granted permission to change the name of the ship, the owner shall forthwith ensure that the change is in the register and in the ship's certificate of registry and on her bows and stern.
4. Where it is shown to the satisfaction of the Registrar of Ships that the name of any ship has been changed without his permission he shall direct that her name be altered to that which she bore before the change, and the name shall be altered on her bows and stern accordingly.

Article 24

Ground for Refusal to Register the Ship

Registration of ship and rights to her can be denied in the following cases:

- a) If the wrong person files an application for registration;
- b) Failure to meet the requirements about exclusion of the ship from a previous register of ships;
- c) When the documents presented for registration do not meet the requirements of the legislation of the Republic of Sudan;
- d) When the person who has issued the appropriate document on the ship is not authorized to dispose the rights to the ship;
- e) When the rights to a ship about whose registration the applicant asks are not the rights subject to registration according to the Carriage of Goods by Sea Act of the Republic of the Sudan.

When a decision is made to refuse to register the rights, the applicant shall be informed in writing of the grounds for the refusal within five days at the end of time limit set for examination of application and copy of such communication shall be placed in the ship's file.

The refusal of registration, as well as other acts of the Competent Authority that contravene the legislation of the Republic of the Sudan and breach the rights and legal interests of citizens can be appealed by interested person in the court.

Article 25

Registration Anew on Change of Ownership

Where the ownership of any ship is changed, the Registrar may on the application of the owners of the ship, register the ship anew.

Article 26

Rules for Registration of Alteration

1. For the purpose of the registration of an alteration in a ship, the Ship's Certificate of Register shall be produced to the Registrar of ships within sixty days after the alteration and shall either:-
 - a) Retain the Certificate and grant a new Certificate of Registry containing a description of the ship as altered; or
 - b) Endorse and sign an existing Certificate a Memorandum of the Alteration.
2. The particulars of the alteration and the fact of the new certificate having been granted or an endorsement having been made shall be entitled by Registrar in the Register Book.
3. The particulars of the alteration so made, and the fact of new certificate have been granted, or an endorsement having been made, shall be entered by the Registrar in the register.

Article 27

Renewal of Registration

The registration shall remain valid for 2 years after its issue, and shall be renewed for a similar period under the same procedures and terms stipulated in this Act.

Chapter IV

Registration of the Ships Bareboat Charter Registry

Article 28

Information to be Recorded at Bareboat Charter Register

Any ship, which has been registered in Ship's Register of a Foreign State, should be registered in

the Bareboat Charter Register within the period of one month from the date of the decision that grants her the right to navigate under the State flag of the Republic of the Sudan.

A ship shall be registered on the basis of an application of the charterer of a ship under bareboat charter enclosing the following documents necessary for registration:

- a) Abstracts of the Register of Ships A Foreign State where the ship has been registered immediately before the change of flag, including the data on the shipowner;
- b) The written consent of the shipowner of the ship to transfer the ship under the State Flag of the Republic of the Sudan;
- c) The documents issued by a competent body of a Foreign State where the ship has been registered before the change of flag confirming that the right to sail under the flag of such a State is suspended for the term that the right of sailing under the State of the Republic of the Sudan has been granted to the ship;
- d) The copy of Bareboat Charter;
- e) Seaworthiness Certificate;
- f) Certificate of Measurement;
- g) Passenger Certificate (for a passenger ship);
- h) Information on identification number of the ship assigned by the International maritime Organization;
- i) Recent Certificate issued in compliance with SOLAS, Load Line and MARPOL resolution;
- j) Oil pollution Certificate (CLC);
- k) The document confirming that the charterer of the ship under the Bareboat Charter meets the requirements made to the shipowner under this Act;
- l) Decision of the State Maritime Administration on granting to the foreign ship the temporary right to sail under the State flag of the Republic of Sudan, and about defining such ship's name.

Article 29

Data of the Registration of Application

The following principal data shall be recovered in the Bareboat Charter Register:

- a) Name of the ship;
- b) Name and address of shipowner;
- c) Name and address of the charterer of the ship under the Bareboat Charter;
- d) Date of the Bareboat Charter and its duration;
- e) The closing date of time-limit for which the ship was granted the right to sail under the Flag of the Republic of Sudan;
- f) Information on the register of ships of a Foreign State where the ship has been registered prior to change of the flag, specifically the legislation applicable to the property right to the ship and also mortgage of the ship or encumbrance of a ship.

The record on registration of a ship accepted into a Bareboat Charter is identified by registration number which is assigned accordingly.

Article 30

Temporary Right to Sail

1. When a ship is registered in the Bareboat Charter Registry, the certificate shall be issued on the right to sail under the State Flag of the Republic of Sudan for the term indicated in the decision to grant a ship the temporary right to sail under the State Flag of the Republic of the Sudan.
2. In Bareboat Charter Register a ship shall be subject to registration within one month from the date of decision to grant such a ship the temporary right to sail under the Flag of the Republic of the Sudan.

Chapter V

Suspension of Registration

Article 31

Transfer of Registration of the Ship under the Flag of a Foreign State

1. When a ship registered in the State Ship's Registry is granted for use and possession to a foreign freighter under a Bareboat Charter such a ship can temporarily be transferred under the flag of a Foreign State on the basis of a decision of the Competent Authority with suspension of the right of sailing under the State Flag of Republic of the Sudan.
2. The decision to transfer the ship under the flag of a Foreign State shall be made and formalized by Competent Authority on the basis of written application of the shipowner.

Article 32

Suspension of the Right of Sailing under the State Flag of the Sudan

To register the suspension of the right of sailing under the State Flag of Sudan in the State Ship Registry, the shipowner shall forward to the Competent Authority an application expressing his consent to transfer the ship under a foreign nation's flag.

The following documents are necessary for such registration:

- a) Permission of the Competent Authority stating the period for which the transfer under a foreign nation's flag allowed and the country whose flag it is temporarily allowed to fly;
- b) A duly certified appropriate document of competent bodies of the State of freighter or the other foreign State under whose flag the ship is being transferred, confirming that legislation of that State contains no provisions to grant a ship registered in the State's Ship Registry, the right of sailing under the flag of such a State and the return of a ship under

the State Flag of the Republic of the Sudan after the expiry of term granting to a ship the right of sailing under the flag of such a State;

- c) A document confirming the granting of the right of sailing under a foreign nation's flag or that this right will be granted at the time of suspension of the right of sailing under the State Flag of the Republic of the Sudan;
- d) The Bareboat Charter.

Article 33

Procedure of the Lifting of the Suspension of the Right of Sailing under the State Flag of the Sudan

1. After the examination of the documents and in the absence of grounds for refusal, in Article 24 the State Registry shall be specified the Competent Authority that made the decision to transfer the ship under a foreign nation's flag and the date of such decision, the period for which it is allowed to transfer the ship under a foreign nation's flag, name of the State whose flag the ship is permitted to fly, the name and address of the foreign charterer under the Bareboat Charter, date of suspension of the right to sail under the State Flag of the Sudan.
2. The date of suspension of the right to sail under the State Flag of Republic of the Sudan is deemed the date of entering a corresponding note of the State Ship's. The note shall be made within ten working days from the date of suspension of an application and necessary documents. A corresponding certificate shall be issued.
3. During the term for which the right of the ship to sail under the State Flag of the Republic of the Sudan marked with the note that this right is suspended.

Article 34

The Interim Certificate

1. A ship bought outside the Republic of the Sudan has the right to sail under the Flag of the Republic of the Sudan from the time a consular office (Diplomatic Mission) of the Republic of the Sudan issues the Interim Certificate to the present Rules certifying such right and which is valid up to registration of ship in State Ship's Registry but for no longer than six months.
2. The Interim Certificate on the right to sail under the State Flag of the Republic of the Sudan is issued by a consular office (Diplomatic Mission) of the Republic of the Sudan, on the basis of an application of the right –holder enclosing the following documents:

- a. Bill of lading, ship yard certificate;
- b. Documents describing the basic specifications of the ship, including her capacity (gross and net), full tonnage and overall dimensions of the ship;
- c. The certificate issued by the authorities of the State of the previous registration of the ship (if available before the submission date) to certify that the ship has been excluded from the register of ship of that state;
- d. Certificate of Measurements;
- e. Seaworthiness Certificate;
- f. Passenger Certificate (for passenger ship);
- g. Recent Certificate issued in compliance with SOLAs, Load Line and MARPOL resolutions;
- h. Oil Pollution Certificate (Tankers only) (CLC).

Article 35

Duty of Consular Office (Diplomatic Mission)

1. Upon acceptance of the required documents an official of a Consular Office (Diplomatic Mission) of the Republic of the Sudan shall make a corresponding record in the Book of Record-Keeping of Documents. Each record about issuance of the Interim Certificate is identified by a registration number. Such number is assigned upon receipt of the documents and it shall match the incoming number of the accepted documents. Upon verification of the presented documents the consular office (Diplomatic Mission) of the Republic of the Sudan shall issue the Interim Certificate. Within ten days a notice on the issued Interim Certificate enclosing a copy of the Interim Certificate shall be sent by the consular office (Diplomatic Mission) of the Republic of the Sudan to the Competent Authority.
2. The initial registration in the State Ship's Registry of a ship bought outside the Republic of the Sudan must be made according to the present Act within one month from the date of its call at a trading port of the Republic of the Sudan.

Chapter VI

Ship's Instruments and Certificate of Seaworthiness

Article 36

Ship's Instruments

1. Every ship rigged for navigation on the High Seas shall carry on board the following instruments:
 - a) A valid ship's Registration Certificate issued by the Registrar;
 - b) A list of the names of the crew members, including the last amendments, which are entered in the ship's crew members, authenticated at the last port of call;
 - c) A valid Certificate of the Seaworthiness;

- d) A Certificate of Safe Crew Members;
 - e) The emergency policy, for readiness and facing marine pollution;
 - f) A certificate of insurance for civil liability resulting from marine oil pollution and harmful substances, set out in the International Convention of Civil Liability;
 - g) A valid and validated Certificate of Ability for crew members and master;
 - h) The ship's log book;
 - i) A Marine Book for every one of the sailors;
 - j) Any other Certificates or documents as may require by this Act, or the regulations or order made thereunder the International convention, regional agreements, protocol or codes, according to the type and size of the ship.
2. Every mercantile ship, in addition to the instruments provided for in sub-section (1), shall be bound to carry the following instruments:
- a) A sailing Permit issued from the last port of call;
 - b) A Custom Statement, signed on part of the customs authorities as the case may be;
 - c) A Health Certificate issued at the last port of call of the ship, from the health, agricultural or veterinary quarantine authorities, as the case may be.

The shipowner, agent, charterer or master of the ship shall produce the ship's instruments, provided for in sub-sections (1) and (2), upon being required by the competent authority.

- a) Port State Authority, where they are conducting the operations of fishing, tugging, pilotage or coastal navigation on the Sudanese waters, after obtaining the approval of the Competent bodies;
- b) Provision of safety conditions, in pursuance of the international conventions having connection;
- c) The presence of a validity certificate from the competent bodies, in case of the goods loaded at the Sudanese ports.

Article 37 Certificate of Ship's Sea-Worthiness

The Competent Authority shall assume the issue of ship's sea-worthiness, upon application of the shipowner or the agent of the ship, after satisfaction of the necessary conditions in accordance with the provisions of this Act.

Article 38 Conditions of the Issue of Ship's Sea-Worthiness certificate

1. The competent Authority shall specify the conditions of the issue of the ship's Sea-Worthiness Certificate, in accordance with the regulations.
2. The Competent Authority shall grant the ship's Sea-Worthiness Certificate, after viewing the ship, and verifying its sea-worthiness, and compatibility with the provisions and

requirements of the International Convention or Regional Agreements, Protocol, Codes and the provisions of this Act.

3. Subject to the provisions of sub-section (2), the Competent Authority, or the Sudanese Embassy, or whoever assumes the duties thereof abroad, as the case may be, may grant the ship a temporary Sea-Worthiness Certificate, in case of necessity, which requires completing its journey.

Article 39

Termination of the Ships Sea-Worthiness Certificate

1. The ship's Sea-Worthiness Certificate shall terminate in any of the following two cases:
 - a) The ship being subject to an accident, or injury, which makes it sea-unworthy; or
 - b) Conducting substantial changes to the ship.
2. The master, or shipowner of the ship shall inform the Competent Authority of the accident, injury or substantial changes, which have occurred to the ship.
3. The Competent Authority shall grant a new Sea-Worthiness Certificate, after viewing the ship and verifying its satisfaction of the requirements necessary for navigation.

Article 40

Termination of the Ship's Sea-Worthiness Certificate Validity

Where the validity period of the Ship's Seaworthiness Certificate ends, during the journey, such certificate shall automatically be valid until the ship reaches the nearest the Sudanese ports, or the first foreign port, wherein there is a Sudanese Embassy, or whosoever may carry its duties. In all cases the ship's Sea-Worthiness Certificate shall not be valid for a period more than thirty days, of the date of its termination.

Chapter VII

Removal, Loss, Liability and Entry into Force

Article 41

Removal of the Ship from the State Ship's Registry

The following ships shall cease to be registered:

- a. A lost or missing ship;
- b. A structurally lost ship;

- c. A ship that has lost its qualities as result of rebuilding or any other changes;
- d. A ship that has ceased to meet the requirements established for granting the right of sailing under the State Flag of the Republic of the Sudan.

Article 42
Missing Ship

A ship is considered missing if no news has been received from the ship during the time exceeding twice her normal course from a place of last report about the ship up to its port of destination. The time necessary for pronouncing a ship missing cannot be less than one month and more than three months from the date of the last report about the ship. In condition of hostilities this time cannot be less than six months.

Article 43

Conditions for the Removal Ship from State Ship's Registry

1. A ship shall be removed from the State Ship's Registry in cases stipulated by sub items 'a', 'b', 'c' of Article 41 of this Act on the basis of application of the shipowner. The application must enclose documents confirming the facts stated in it as well as Certificates issued upon registration of the ship.
2. A ship shall be removed from the State Ship's Registry in cases stipulated by sub item 'd' of Article 41 of this Act by the official person on the basis of a written decision he receives from the Competent Authority.

Article 44
Removal of Ship in Certain Circumstances

1. The removal from the State Ship's Registry in cases when there are contradiction with the provisions of the Maritime Carriage Act of the Republic of the Sudan, is made by the Competent Authority on the basis of application by the owner of the ship with a title document confirming the payment of appropriate fees.
2. In cases of the forced sale of a ship by the Sudan competent body to a foreign citizen or a foreign legal entity a ship shall be removed from State Ship's Registry upon submission of a document of the aforesaid body performing the forced sale to confirm that the ship was sold and is not charged with any mortgages, except for those taken up by the buyer.

Article 45
Loss of the Certificate of Registry

Duplicate Certificates

1. Where it is shown to the satisfaction of the Registrar of Ships that the Certificate of Registry has been lost, stolen or destroyed or has become defaced or illegible, he may issue to the owner a duplicate of that certificate, which shall be marked as such, and shall be of the same effect as the original.
2. In case of loss the certificate of the Interim Certificate shall be issued by the consular office (Diplomatic Mission) of the Republic of the Sudan on the basis of the application of the ship master.
3. If the Certificate of Registry is then available or if it is subsequently found or recovered, the duplicate shall be forthwith surrendered to the Registrar.

Article 46
Liability for Violation of Procedure of Ship Registration

Persons evading the obligatory registration of a ship, or who have registered her in one of the registers of the Republic of the Sudan in breach of the established procedure or who have violated the obligation to inform of changes in information entered in the Register of Ships shall be liable in the administrative procedure according to the legislation of the Republic of the Sudan.

Article 47

Entry into Force

This Act shall enter in force from the date of signature.