CONFORMITY OF ZANZIBAR MARITIME LEGISLATION WITH INTERNATIONAL SAFETY CONVENTIONS AND ITS IMPLEMENTATION TO SAFEGUARD SAFETY OF LIFE AT SEA.

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# TABLE OF CONTENTS

1. Conformity of Zanzibar Maritime Legislation with International Conventions and its implementation to safeguard safety of life at sea ............ 1  
   1.1 Introduction ........................................................................................................ 1  
   1.2 Why the topic is interesting .............................................................................. 2  
   1.3 Research methodology ..................................................................................... 3  
   1.4 Maritime administration under the United Republic of Tanzania .............. 4  
2. International Convention for the Safety of Life at Sea (SOLAS), 1974 ........ 8  
   2.1 Introduction ........................................................................................................ 8  
   2.2 Set up of SOLAS Convention ........................................................................... 10  
      2.2.1 Introduction .................................................................................................... 10  
      2.2.2 Construction of vessels ............................................................................... 11  
      2.2.3 Ship equipments .......................................................................................... 15  
      2.2.3.1 Life Saving appliances .......................................................................... 15  
      2.2.3.2 Radiocommunication ............................................................................. 19  
      2.2.3.3 Navigation equipments ........................................................................... 21  
      2.2.4 Carriage of cargoes .................................................................................... 22  
      2.2.5 Safe management of ship ........................................................................... 25  
      2.2.6 Maritime security ......................................................................................... 28  
   2.3 Obligation of the States to maritime safety ...................................................... 30  
      2.3.1 Flag State control ........................................................................................ 31  
      2.3.2 Port State control ....................................................................................... 33  
   2.4 Conclusion .......................................................................................................... 36  
   3.1 Introduction ......................................................................................................... 39  
   3.2 Implementation of SOLAS Convention ............................................................. 40  
   3.3 Adoption of other International Instruments ..................................................... 45
3.4 Conclusion ........................................................................... 48

4. Problems on applicability of SOLAS Convention in Zanzibar .......... 50
   4.1 Introduction .......................................................................... 50
   4.2 Problem facing Zanzibar Maritime Authority .............................. 50
   4.3 Surveys and certification of ships in Zanzibar ......................... 53
   4.4 Control of foreign ships while in Zanzibar ............................... 56
   4.5 Procedure used in registration of ships .................................. 58
   4.6 Law, regulations and maritime administration between Zanzibar and Tanzania Mainland .......................................................... 59

5. General Conclusion ..................................................................... 61

6. Sources ..................................................................................... 64

1.1 Introduction.

Zanzibar is a semi-autonomous part of United Republic of Tanzania. Despite the fact that Zanzibar is part of United Republic of Tanzania, it still enjoys a high degree of autonomy within the union. According to the Constitution of the United Republic of Tanzania\(^1\), matters pertaining to Maritime Administration are not part of union matters.

Zanzibar has its own Legislation concerning Maritime administration which is Maritime Transport Act No 5 of 2006 of the laws of Zanzibar. On the other side Tanzania mainland have Merchant Shipping Act which is dealing with Maritime administration and other matters relating to shipping.

The aim of this work is to see how Zanzibar Maritime legislations are in conformity with International conventions on safety of life at sea, and how and to what extent the revolutionary Government of Zanzibar has implemented the conventions and put them in real practice.

In this work, an overview of SOLAS Conventions 1974 as amended will be presented in Chapter II, where I will address the characteristics features of SOLAS Convention. The provisions of The Maritime Transport Act No 5 of 2006 including Part IX of the act on the Safety of life at Sea will be presented in chapter III. In this chapter, I will focus on the extent to which Zanzibar Maritime Transport Act domesticate safety conventions.

The problems the Revolutionary Government of Zanzibar is facing on the proper implementation and applicability of SOLAS convention in Zanzibar will be presented in chapter IV. According to Maritime Transport Act\(^2\), Safety

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\(^1\) Art. 4 & 1st schedule of United Republic of Tanzania Constitution, 1977 as amended.

\(^2\) S.187
Conventions with its related instructions that have been acceded by the United Republic of Tanzania shall be applied to all Zanzibar ships engaged on International voyages and to all foreign ships while in Zanzibar.

Moreover, since the Government of United Republic of Tanzania has the responsibility for the International rights and obligation arising from the application of the conventions in Zanzibar, this chapter will also show the conflicts of the Maritime legislations within United Republic of Tanzania and its effect to Zanzibar Maritime administration.

Throughout my research I will try to answer the following specific questions; to what extent Zanzibar Maritime Legislations domesticate the International conventions on the Safety of Life at Sea, and what happen in practice in relation to its enforcements e.t.c. taking into consideration that the Revolutionary Government of Zanzibar doesn’t have the mandate to ratify any International agreement.

1.2 Why the topic is interesting

The topic is interesting because in many years Zanzibar was not having specific laws which aim in protecting life at sea. The laws which concerned to maritime matters in Zanzibar prior to 2006 was outdated and not inconformity with international standards.

For example, up to 2006 the maritime legislation, which was applied in Zanzibar, was the Merchant Shipping Act, 1894 of United Kingdom. This Act was adopted in Zanzibar through section 8(1) of 1st Schedule to the Zanzibar Act of 1963. Section 8(1)³, provides that “The Merchant Shipping Acts 1894 to 1960 shall apply in relation to Zanzibar as they apply in relation to the Commonwealth countries mentioned in section 1(3) of the British Nationality Act, 1948”.

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³ Zanzibar Act, 1963, 1st Schedule
Applicability of maritime legislation in Zanzibar was therefore not compatible with the conventions adopted by IMO. Since the Union of 1964 between the then Tanganyika and Zanzibar, which form the United Republic of Tanzania, it is the United Republic that have the mandate to accede International Conventions.\(^4\)

Under the terms of this union however, as I have said earlier, the Zanzibar Government retains a considerable local autonomy, including Maritime Administration.

Recently the Government of Zanzibar enact the law which explicitly aimed in safeguarding safety of life at sea on International level. As I believe many people are not aware of maritime legislations, this topic will help to raise awareness to all subjects concerned to the topic so as to make sure that the law is implemented and put on practice. Moreover, the work will be used as reference in my country as the law relating to Maritime matters is very new.

### 1.3 Research Methodology

Generally, the ordinary legal research methods were used when writing this work. Therefore I used two techniques to conduct the research. First Data collection was made by reading books such as, The EU Maritime Safety Policy and International Law, which was written by Ringbom Henrik, Port State Control, 2\(^{nd}\) Edition by Dr Ozcayir Z. Oya, and Maritime Safety Security and Piracy by Talley Wayne K. Apart from books, I also read journals, online materials, statutes and International Conventions, such as, The Maritime Transport Act, No 5 of 2006 of the laws of Zanzibar, and SOLAS Convention 1974 as amended.

Second I consulted Institutions, which deal with Maritime administration in Zanzibar including, Registrar of ships office and Attorney General’s office to collect different information concerning this research such as safety regulations and other relevant materials. I also visited the High Court library in Zanzibar for the purpose of observations on any cases subject to my research.

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\(^4\) Section 2, 1\(^{st}\) Schedule of United Republic of Tanzania Constitution, 1977 as amended.
Moreover other information was solicited through interviews from different people on the Institutions dealing with the maritime administration in Zanzibar. Some of the person interviewed for the purpose of this work was Mr Abdalla M. Abdulla, the Registrar of Ships Zanzibar, Mr Haji Vuai Ussi, senior officer at the Registrar of ships office, Zanzibar, Hon Justice Omar Othman Makungu, a Judge of the High Court of Zanzibar, and, Mr Hassan A. Haji, State Attorney at Attorney General’s Office, Zanzibar.

1.4 Maritime Administration under the United Republic of Tanzania.

The United Republic of Tanzania was formed out of the union of two sovereign States namely Tanganyika and Zanzibar.

Tanganyika became a sovereign State on 9th December, 1961 and became a Republic the following year. Zanzibar became independent on 10th December, 1963 and the People's Republic of Zanzibar was established after the revolution of 12th January, 1964.

The two sovereign republics formed the United Republic of Tanzania on 26th April, 1964. However, the Government of the United Republic of Tanzania is a unitary republic consisting of the Union Government and the Zanzibar Revolutionary Government⁵.

According to the Articles 34 and 102 of the United Republic of Tanzania Constitution, two set of authority have been provided under the said union. The Government of the Union has authority with respect to all Union Matters in and for the Union and all other matters in and for Mainland Tanzania.

The Revolutionary Government of Zanzibar, on the other hand, has executive authority with respect to all non-Union Matters in and for Zanzibar. Thus with respect to Zanzibar, each of the two Governments in the United Republic has exclusive jurisdiction in its own sphere.

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⁵ [http://www.tanzania.go.tz/profile1f.html](http://www.tanzania.go.tz/profile1f.html)
Furthermore, Article 4 of the United Republic of Tanzania Constitution goes on to prescribe that all functions of the state authority shall be exercised and controlled by two Governments: the Government of the Union and the Revolutionary Government of Zanzibar; two Judiciaries: one for the Union and the other for Zanzibar; and two legislatures: the Parliament of the Union and the House of Representatives of Zanzibar.

For more efficient discharge of public affairs and the effective division of the functions spelled out above amongst the designated organs, Article 4(3) of the Constitution categorizes affairs into Union Matters, which are contained in the First Schedule of the said Constitution, and non-Union Matters, which are all other matters not so listed on the schedule.

Shipping is among the matter which is not listed on the first schedule of the Constitution. hence, it is a non-Union matter.

Since Zanzibar enjoys high degree of autonomy within the union, it have its own legislations enacted in Zanzibar by the House of Representative. Maritime Transport Act no 6 of 2006 is among the legislation enacted in Zanzibar.

According to the structure of the union between Tanganyika and Zanzibar, which formed United Republic of Tanzania, Zanzibar is not a Sovereign State outside this union.

Both Tanganyika and Zanzibar ceased to be International entities as from 26th April, 1964 whereby after the union one new International entity called United Republic of Tanzania was formed. From then, both Tanganyika and Zanzibar surrendered their treaty-making powers to the United Republic of Tanzania.

According to the above facts therefore and despite the fact that Zanzibar has her own legislation in relation to maritime administration, it is the United Republic of Tanzania who is the member of IMO and not Zanzibar.
In order for the International Conventions to be adopted in Zanzibar legislations for non-Union matters, special arrangement must be made by the Government of United Republic of Tanzania who becomes responsible to Zanzibar for all treaties and conventions entered into by the United Republic.

United Republic of Tanzania is a member of several International conventions including SOLAS convention of 1974 as amended time to time. Tanzania therefore has the duty to see to it that Zanzibar has adopted legislation in accordance with the SOLAS.

On the implementation of the IMO instruments, the United Republic of Tanzania confirms to IMO’s Secretary-General that the acceded conventions are applicable to the Revolutionary Government of Zanzibar.

Furthermore, it was confirmed by the Government of Tanzania that all matters mentioned on the code for the implementation of the IMO instrument under the General flag state obligations will be performed by the United Republic of Tanzania, while specific obligations of the flag state will be performed by both, Zanzibar Maritime Administration and Surface and Marine Transport Authority of Tanzania mainland.

In this arrangements however, all matters relating to International Convention on Standards on Training, Certification and watchkeeping for Seafarers (STCW 1978), SOLAS Chapter XI-2 on Special measures to enhance maritime security and ISPS Code have been left solely under the hands of the United Republic of Tanzania.

Zanzibar in adherence to safety standards set by IMO, have a provision in the Transport Maritime Act No 5 of 2006\(^6\) which provides that, “The Minister shall make such regulations as may appear to him to be necessary and expedient to give effect to the Safety Convention and its related instruments; and to provide generally for safety at sea, referred to as "Safety Regulations" which shall

\[^{6}\text{Section 189 of the Maritime Transport Act No 5 of 2006 of the Laws of Zanzibar.}\]
prescribe the requirements for the hull, life saving appliances, equipment and machinery of Safety Convention ships and their survey and inspection”.

As the flag State within the Union, Zanzibar is supposed to make sure that the standard sets for the safety conventions are fully implemented.

However, like many developing countries, many of their laws are just ink on the paper hence it is not surprising to find that practically nothing is done.

It is the above facts which motivate me to write this work on this area in relation to Zanzibar.
2. International Convention for the Safety of Life at Sea (SOLAS), 1974

2.1 Introduction.

There are various losses and damages which may be caused by the disasters with ships, such as loss of human life, economical loss and ecological damages. In trying to safeguard safety of life at sea, some conventions dealing with maritime safety has been ratified. Most important is the International convention for the Safety of Life at Sea (SOLAS) of 1974 as amended time to time.

SOLAS is one of the oldest safety conventions and covers many aspects of safety at sea. The first version of SOLAS was adopted at the conference held in London in 1914. The incident which led to the convening of this International SOLAS conference of 1914 was the sinking of the White Star Liner Titanic which on her maiden voyage collided on the high seas with an iceberg on April 1912, causing the loss of about two thousand lives and a total loss of vessel and cargo.\(^7\) Due to the Titanic disaster the United Kingdom Government proposed an international conference to develop international safety regulation. The Conference was convened and attended by representatives of 13 countries, as the founder of the first SOLAS Convention which was adopted on 20\(^{th}\) January 1914.

Since 1914, there had been several versions of SOLAS convention. The second version of SOLAS was in 1929, the third in 1948, and the fourth in 1960\(^8\).

It was The International Maritime Organization (IMO), which established in 1948 maintains and develops SOLAS.

The 1960 SOLAS Convention was the first major task for IMO in modernizing regulations and in keeping pace with technical developments in the shipping industry.\(^9\) The intention of IMO was to keep SOLAS up to date by periodic

\(^7\) International Aspects of Titanic Case, Arthur K. Kuhn, *The America Journal Of International Law*, Vol 9, No. 2 (April 1915) pg 1
\(^9\) Ibid
amendments, but practically was not possible to secure entry into force of amendments within reasonable time.

As a result the 1974 SOLAS conference was held in London from 21 October to 1 November, which was attended by 71 countries whereby the new convention was adopted and included amendment agreed upon until that time as well as the new amendment procedure ‘the tacit acceptance procedure’ which designed to ensure that changes or amendments could be made and accepted within specified period of time.\(^\text{10}\)

Moreover following the capsized and sinking of the roll-on/roll-off passenger ferry Herald of Free Enterprise shortly after leaving Zeebrugge in Belgium on the night of 6\(^{th}\) March 1987\(^\text{11}\), the United Kingdom send a request to IMO that a series of emergency measures be considered for adoption. Consequently IMO adopted Guidelines on Management for the safe operation of the Ships and pollution prevention in 1989\(^\text{12}\). The aim of the guidelines was to ensure safety, prevent injury or loss of life, and to avoid damage to the environment or to property.

After the period of the refinement in the use of the guidelines, IMO adopted them as the International Management Code for the Safe Operation of Ships and for pollution Prevention (the ISM Code) in 1993 which become mandatory in1998\(^\text{13}\).

The ISM Code has been made to be part of SOLAS convention 1974 as amended and it is provided in Chapter IX. Other safety Conventions of The IMO which integrated with SOLAS Convention are The International Convention on Standard of Training, Certification and Watch-keeping for Seafares of 1978 (STCW), The Convention on the International Regulations for Preventing Collisions at Sea (COLREG), The International Convention on Loadlines (Loadlines Convention), The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) etc.

\(^{10}\) The tacit acceptance procedure is governed under Article VIII of SOLAS Convention 1974, as amended.

\(^{11}\) http://en.wikipedia.org/wiki/MS_Herald_of_Free_Enterprise


\(^{13}\) Ibid.
IMO as International instrument has no policing powers. Enforcements of all of its conventions depend on the efficacy of the national and local maritime authorities in member countries (Flag State and Port State control).

In this Chapter, I will discuss the setup of the SOLAS Convention 1974 as amended and the important elements which the convention aims to accomplish in order to maximize safety of the vessel hull and machinery, safety for people on board as well as environmental safety.

### 2.2 Set up of SOLAS Convention.

#### 2.2.1 Introduction.

SOLAS Convention 1974 contained two sets of rules, Substantive and Subsidiary. In the substantive rules, SOLAS contained general rules to be followed by all vessels engaged on international voyage.

These rules provides for the requirements on the construction of the vessels, equipments which shall be installed and or kept on board, requirements on carriage of goods and for safe management of the vessels.

Even though these rules are generally applicable for all vessels engaged on international voyages, there are some other specific rules that were made special for different kinds of vessels, for example rules on constructions of bulk tankers are not quite the same with the rules on the construction of passenger ship etc.

On the other hand, the subsidiary rules that can be seen in SOLAS Convention are those contained ‘do’ and ‘don’ts’ rules. These rules set out the procedure on what to do, the way of doing it e.t.c., and are made to ensure that substantives rules are executed.

Therefore, when SOLAS Substantive rules generally provide for duties, obligation and liability on Contracting Governments through its respective national administration, and ship owners. SOLAS Subsidiary rules set the procedure on the proper implementation of the standards as set by substantive rules.
2.2.2 Construction of Vessels.

One of the important substantive rules SOLAS convention has, is the requirement on the construction of the vessel hull and machinery.

The rules stated that the construction of the vessel must be in the standard with which will ensure maximum safety to the vessel itself, passenger on board and environment.

The convention therefore provides for the provision which deals with the construction of the vessels, its subdivision and stability, machinery and electrical installation\(^\text{14}\) as well as fire safety.

As I have explained earlier in 2.2.1 above, requirements for the construction of the vessels are not similar to all kind of vessels. In this part, I will briefly address some of the general requirements for the construction of the passenger and cargo ships as well as to specific requirement on the construction of the oil tankers and bulk carriers.

Construction of Passenger and Cargo Vessels; the rules on the construction of passenger and cargo vessels are found on Chapter II-1 of the SOLAS convention.

The main requirements in construction, subdivision and stability which are found on SOLAS is that ships shall be designed, constructed and maintained in compliance with structural, mechanical and electrical requirements of recognized classification society or with applicable national requirements of the Administration.

The above requirements also apply to ships the kneels of which are laid or which are at the stage at which construction identifiable with a specific ship begins and assembly of that ship has commenced comprising at least 50 tonnes or one percent of the estimated mass of all structural material, whichever is less, on or after 1\textsuperscript{st} July 1986.

\(^{14}\) Chapter II-1, SOLAS 1974, as amended.
On the subdivision and stability, ship is required to be divided into watertight compartments whereby after assumed damage to the ship’s hull, the vessel will remain afloat in stable position.

The degree of subdivision—measured by the maximum permissible distance between two adjacent bulkheads—varies with the ship’s length and the service in which it is engaged. The highest degree of subdivision applies to ships of the greatest length primarily engaged in the carriage of passengers\(^\text{15}\).

**Rules on the installation of machines**\(^\text{16}\). All machinery, boilers and other pressure vessels, associated piping system and fittings for the passenger ships and cargo ships must be of a design and construction adequate for the service for which they are intended and they should be installed and protected as to reduce to a minimum any danger to persons on board.

In the installation of machines, due regards must be paid to moving parts, hot surfaces and other hazards. The design must have regard to material used in construction, the purpose for which the equipment is intended, the working conditions to which it will be subjected and the environmental condition on board.

The electrical installations on passenger ships and cargo ships are supposed to be designed to ensure that all electrical auxiliary service necessary for maintaining the ship in normal operational and habitable condition will be without recourse to the emergency source of electrical power, and that electrical service essential for safety will be ensured under various emergency conditions\(^\text{17}\).

SOLAS convention also set a requirement to the ship, which is under the construction to comply with chapter II-2 of the convention.

Chapter II-2 deals with fire safety and its objectives are to prevent the occurrence of fire and explosion, to reduce the risk to life caused by fire, to reduce the risk of damage caused by fire to the ship, its cargo and the environment, to contain,


\(^{16}\) Chapter II-1, Part C of SOLAS 1974 as amended.

\(^{17}\) Chapter II-1, Regulation 40 of SOLAS 1974, as amended.
control and suppress fire and explosion in the compartment of origin, and to provide adequate and readily accessible means of escape for passengers and crew.

The convention contain regulations which are designed to ensure that fires are first of all, prevented from occurring by making sure that, among other things, materials such as carpets and wall covering are strictly controlled to reduce the fire risk. Secondly, that any fires are rapidly detected, and thirdly, that any fire is contained and extinguished.

The regulation\textsuperscript{18} therefore contains detailed fire safety provisions for all ships and specific measures for passenger ships, cargo ships and tankers. These provisions are based on the following principles;

i. Division of the ship into main and vertical zones by thermal and structural boundaries.

ii. Separation of accommodation spaces from the remainder of the ship by thermal and structural boundaries.

iii. Restricted use of combustible materials.

iv. Detection of any fire in the zone of origin.

v. Containment and extinction of any fire in the space of the origin.

vi. Protection of the means of escape or of access for fire-fighting purposes.

vii. Ready availability of fire-extinguishing appliances.

viii. Minimization of the possibility of ignition of flammable cargo vapour.

Construction of oil tankers and bulk carriers; oil tankers and bulk carriers have additional requirements which are provided in Chapter XII of SOLAS Convention.

These requirements are in addition to the general requirements on the construction of ships as discussed above.

\textsuperscript{18} Chapter II-2, Regulation 2 of SOLAS 1974, as amended.
The convention provides for the corrosion prevention of seawater ballast tanks for oil tankers and bulk carriers constructed on or after 1 July 1998, safe access to tanker bows and emergence towing arrangements on tankers.

It is the requirement, that all dedicated seawater ballast tanks must have an efficient corrosion prevention system, such as hard protective coating or equivalent. The coatings are preferred to be of light colour, and the scheme for selection, application and maintained of the system must be approved by the national maritime administration.

For the purpose of the safe access to tanker bow, every tanker shall be constructed in a way that it will enable the crew to gain safe access to the bow even in severe weather conditions. And for tankers, emergence towing arrangements must be fitted at both ends on board every tanker of not less than 20,000 tonnes deadweight, however, for the tankers constructed on after 1 July 2002, the arrangements shall, at all times, be capable of rapid deployment in the absence of main power on the ship to be towed and easy connection to the towing ship. At least one of the emergency towing arrangements shall be pre-rigged ready for rapid deployment, and that emergency towing arrangements at both ends shall have adequate strength taking into account the size and deadweight of the ship, and expected forces during bad weather conditions.

Additional safety measures for the construction of bulk carriers\(^{19}\). For the construction of the bulk carriers, SOLAS provides for additional safety measures apart from the general safety measures stated on the requirements for the construction, subdivision and stability of the ships.

The structural requirements for bulk carrier over 150 meters in length and upwards of single side skin construction designed to carry solid bulk cargoes having a density of 1000 kg/m\(^3\) and above, must have sufficient strength to withstand flooding of any one cargo hold in all loading and ballast conditions, while taking into account dynamic effects resulting from the presence of water in

\(^{19}\) Chapter XII SOLAS Convention 1974 as amended.
the hold, and taking into account the recommendations adopted by the Organization.

2.2.3 Ship Equipments.

Ship equipments are very important in the safe operation of the ship in order to maximize sea safety.

The convention therefore set standards on what kind of equipments important for the operation of the ship should be on board the ship, and which standards needed on the general operation of the ship.

Ship equipments which will be subject of discussion herein are Life saving appliance, radiocommunication and navigation equipments.

2.2.3.1 Life Saving Appliances.

The requirements for life boats, rescue boats and life jackets are explicitly explained in chapter three of SOLAS Convention. The chapter contains two parts, Part A and Part B.

Part A is on subsidiary rules and it contains general matters such as application, definition, exemptions, evaluation and testing and production test.

It is the requirements according to this part that the National Maritime Administration must approve life-saving appliances and arrangements. Before granted an approval, the Administration shall ensure that such life-saving appliance and arrangements are tested, to confirm that they comply with the requirements of chapter III of the convention in accordance with the recommendations by IMO, or that they have successfully undergone, to the satisfaction of the Administration, tests which are substantially equivalent to those specified in the recommendations.
Moreover, before granting an approval to the novel life-saving appliances or arrangements, the Administration shall make sure such appliances or arrangements provide safety standards at least equivalent to the requirements of the chapter III and have been tested and evaluated in accordance with the recommendations by IMO, or have successfully undergone, to the satisfaction of the Administration, evaluation tests which are substantially equivalent to those recommendations.

National Maritime Administration also shall require life-saving appliances to be subjected to such production tests as are necessary to ensure that the life-saving appliances are manufactured to the same standard as the approved prototype.

Part B is on the substantive rules on life saving appliance. These Substantive rules on life saving appliance applies to passenger ships and to cargo ships and it is divided into two sections, one for the Radio life-saving appliances and another for Personal life-saving appliances.

Radio life-saving appliances: It is the requirement according to SOLAS regulation 6 of Chapter III that, at least 3 two ways VHF radiotelephone apparatus to be provided on every passenger ship and on every cargo ship of 500 gross tonnage and upwards.

For the cargo ship which is of 300 gross tonnage and upward but not less than 500 gross tonnage, the 2 ways VHF radiotelephone apparatus must be provided on board.

The performance of these apparatus needs to conform to the performance standards not inferior to the ones adopted by IMO. Moreover, there is a requirement for carrying at least one radar transponder on each side of every passenger ship and of every cargo ship of 500 gross tonnage and upwards as well as to cargo ship of 300 gross tonnage and upwards but less than 500 gross tonnage.

21 Chapter III, regulation 7, supra.
The performance of Radar transponder needs also to conform to performance standards not inferior to those adopted by IMO.

**Personal life-saving appliances:** According to the SOLAS Conventions, different types of life-saving appliances are required to be on passenger ships and on cargo ships, these appliances are such as lifebuoys, lifejackets, immersion suits and anti-explosive suits, life boats etc.

**To start with lifebuoys,** the SOLAS convention requires every passenger ship and every cargo ship to be provided with lifebuoys, which shall be distributed as to be readily available on both sides of the ship and on all open decks extending to the ship sides.

One of the lifebuoy should be placed in the vicinity of the stern and so stowed as to be capable of being rapidly cast loose, and not permanently secured in any way. Furthermore, on each side of the ship, at least one lifebuoy must be fitted with a buoyant lifeline equal in length to not less than twice the height at which it is stowed above the waterline in the lightest seagoing condition, or 30 m, whichever the greater.

Apart from the above requirements, not less than half the total number of the lifebuoy must be provided with self-igniting lights, not less than two of these lifebuoy shall be provided with lifebuoy self-activating smoke signals and be capable of quick release from the navigation bridge.

These lifebuoy (with lights and those with lights and smoke signals) must be equally distributed on both sides of the ship.

**For the lifejackets,** it is the requirements that every person on board the ship shall be provided with it, and in addition, a number of lifejackets suitable for children equal to at least 10% of the number of the passengers on board must be provided or such greater number as may be required to provide a lifejacket for each child and that sufficient number of the lifejackets has to be carried for person on watch and for use at remotely located survival craft stations.
These lifejackets has to be stowed on the bridge, in the engine control room and at other manned watch station. Lifejackets must be fitted with lights and whistle and the provision is made for the use of retro-reflective materials in order to make it easier for survivors to be located.

There is also a requirement for **improved personal life-saving appliance** including immersion suits (protective suits which reduce the body heat-loss of a person in cold water) and thermal conductivity aids (a bag or suit made of waterproof material with low thermal conductivity). The appliances must be provided for every person assigned to crew the rescue boat or assigned to marine evacuation system party\(^{22}\).

The SOLAS Convention also provides for additional requirements for passenger ships and cargo ships.

For the passenger ships the requirements for the survival craft are explicitly provided, that the passenger ships engaged on international voyages which are not short international voyage shall carry partially or totally enclosed lifeboats which will be equipped with an engine, and that, all totally enclosed boats must be self-righting.

It is also the requirements for the passenger ships engaged on long international voyage to carry partially or totally enclosed lifeboats on each side able to accommodate not less than 50 percent of all persons on board. However, passenger ships on short international voyages (ferries) are permitted to substitute liferafts for some of the lifeboats.

Additional requirements for cargo ships; The cargo ships must carry sufficient totally enclosed lifeboats on each side to accommodate all on board. Cargo ships must also carry liferafts for launching on each side which will accommodate all on board.

Chemical and oil tankers must carry totally enclosed lifeboats equipped with a self-contained air support system. These lifeboats must afford protection against

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\(^{22}\) Ibid.
fire for at least eight minutes (where the cargo is flammable). Boats which are designed to rescue persons at the time of distress and to marshal survival crafts (rescue boats) are also required.

Generally, it is the requirement that all life-saving appliances to be kept in good condition that can be used promptly in the event of emergency. For example regulation 13 requires that survival craft be capable of being launched when the ship has a list of 20 degrees in either direction.

2.2.3.2 Radiocommunication.

It is the requirement that all ships of 300 gross tonnage and upwards be provided with radiocommunication service by the contracting Governments. Every ship therefore is required to carry radiocommunication equipments.

Radiocommunication equipments: SOLAS Convention requires every ship to have on board a VHF radio installation capable of transmitting and receiving Digital selective calling (DSC) on the frequency 156.525 MHz (channel 70), radiotelephony on the frequencies 156.300 MHz (channel 6), 156.650 MHz (channel 13) and 156.800 MHz (channel 16).

Ships are also required to have a radio installation capable of maintaining a continuous DSC watch on VHF channel 70 and a radar transponder capable of operating in the 9 GHz band.

For ships which are engaged on voyages in any area where an international NAVTEX is provided, the said ships must have on board a receiver capable of receiving international NAVTEX service broadcasts (according to Regulation 1 of chapter IV, SOLAS Convention, International NAVTEX service means the co-ordinated broadcast and automatic reception on 518 kHz of maritime safety information by means of narrow-band direct-printing telegraphy using English language).

23 Chapter IV, Regulation 5 of SOLAS 1974, as amended.
Lastly, for the purpose of searching and rescue, every passenger ship is required to be provided with means for two-way on-scene radiocommunication using the aeronautical frequencies 121.5 MHz and 123.1 MHz from the position from which the ship is normally navigated.

**Installation for Radiocommunication:** Chapter IV, Regulation 4 of SOLAS Convention 24 requires all ships while at sea to be capable of transmitting ship-to-shore distress alerts by at least two separate and independent means.

Each means should use;

1. Radiocommunication.
2. Receiving shore-to-ship distress alerts.
3. Transmitting and receiving ship-to-ship distress alerts.
4. Transmitting and receiving on-scene communications.
5. Transmitting and receiving signal for location.
6. Transmitting and receiving maritime safety information.
7. Transmitting and receiving general radiocommunications to and from shore-based radio systems or network subject to regulation, and
8. Transmitting and receiving bridge-to-bridge communications.

Furthermore, every ship is required to be provided with radio installation which shall be so located that no harmful interference of mechanical, electrical or other origin affects its proper use, and so to ensure electromagnetic compatibility and avoidance of harmful interaction with other equipment and system.

The radio installation shall also be located as to ensure the greatest possible degree of safety and operationally availability, be protected against harmful effects of water, extremes of temperature and other adverse environmental conditions, the installation shall further be provided with reliable, permanently

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24 Chapter IV, Regulation 4 of SOLAS 1974, as amended.
arranged electrical lighting, independent of the main and emergence sources of electrical power for the adequate illumination of the radio controls for operating the radio installation, and shall be clearly marked with the call sign, the ship station identity and other codes as applicable for the use of radio installation\(^{25}\).

### 2.2.3.3 Navigational equipments.

SOLAS Convention also addresses safety of navigation\(^{26}\).

The provisions for safety of navigation was made applicable to all ships in all voyages (except warships, naval auxiliaries and other ships owned or operated by the contracting Governments and used only on Governmental non commercial services, and ships solely navigating the great Lakes of North America).

These provisions are generally of operational nature and provides for the kind of the navigation safety services which contracting Governments should provides, including:

i. The maintenance of meteorological services for ships, the ice patrol service, routeing of ships, provisions for search and rescue services, requirements for the fitting of the radar and other navigational aid, etc.

ii. An obligation and procedures for masters of the ship to provide for assistance to those who are in marine distress. For instance, regulation 33 provides an obligation to the master of a ship at sea which is in a position to be able to provide assistance on receiving a signal from any source that persons are in distress at sea, to proceed with all speed to their assistance.

iii. Shipborne navigational equipments\(^{27}\) is also provided to all ships. The equipments which must be fitted on the ships are inter alia; a standard

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\(^{25}\) Chapter IV, Regulation 6 of SOLAS 1974, as amended.

\(^{26}\) Chapter V, SOLAS Convention 1974 as amended.

\(^{27}\) Chapter V, Regulation 19, Supra.
magnetic compass to determine the ship’s heading and display the reading at the main steering position, a pelorus or compass bearing device to take bearing over an arc of the horizon of 360 degrees, nautical charts and nautical publications to plan and to display the ship’s route for the intended voyage and to plot and monitor positions throughout the voyage, a receiver for global navigation satellite system or a terrestrial radionavigation system, suitable for the usage at all intended voyage to establish and update the ship’s position by automatic means, and a telephone or other means, to communicate heading information to the emergence steering position.

2.2.4 Carriage of cargoes.

SOLAS Convention did provide for the requirements for carriage of cargoes, which owing to their particular hazards to the ships or persons on board, may require special precaution.

Chapter VI of SOLAS covers all kind of cargoes except liquids and gases in bulk.

It is the requirement that Contracting Government is supposed to ensure that appropriate information on cargo and its stowage and securing is provided, specifying, in particular, precaution necessary for the safe carriage of such cargo.

The shipper also required to provide to the master of the vessel or his representative with appropriate information on the cargo in advance of loading to enable the precaution which may be necessary for proper stowage and safe carriage of the cargo to be put into effect.

There are also several requirements for stowage and securing of cargo, cargo units and cargo transport units.

For example, cargo, cargo unit and cargo transport carried on or under deck is required to be loaded, stowed and secured as to prevent, throughout the voyage,
damage or hazard to the ship and the persons on board, and loss of cargo overboard.

For the carriage of heavy cargo or cargo with abnormal physical dimensions, it is the requirements that, appropriate precautions is taken during loading and transporting them, in order to ensure that no structural damage to the ship occurs and that adequate stability is maintained throughout the voyage.

Chapter VI also covers carriage of grain. It is well known that grain has an inherent characteristic of shifting while carried and its effect on ship’s stability is very disastrously.

Regulation on chapter VI therefore recognizes carriage of grain and specifies a method for calculating the adverse heeling moment caused by shifting of cargo in ships carrying bulk of grain. Therefore, each ship must carry a document of authorization, grain loading stability data and associated plans of loading.

Requirement for the carriage of dangerous goods is the subject of chapter VII of the convention. The chapter has regulations which set conditions for carriage of goods in package form and it prescribes the classification, packing, marking, labeling and placarding, documentation and stowage of such goods.

Contracting Governments are required to issue or cause to be issued detailed instructions concerning the carriage of dangerous goods, and for this purpose the International Maritime Dangerous Goods Code was adopted by IMO in 1965 and made mandatory by the chapter in carriage of dangerous goods.²⁸

Furthermore there is regulation for carriage of dangerous goods in solid form in bulk and it covers documentation, stowage and segregation requirement for those goods.²⁹

Chapter VII also deals with the construction and equipment of the ships carrying dangerous liquid chemicals in bulk.

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²⁹ Ibid
It is a requirement that chemical tankers built after 1 July 1986, must comply with International Bulk Chemical Code (IBC Code).

The regulation in this part provides that “a chemical tanker shall comply with the requirements of the International Bulk Chemical Code and shall… be surveyed and certified as provided for in that code. For the purpose of this regulation the requirements of the Code should be treated as mandatory”.

There is also a requirement for the construction and equipment of ships carrying liquefied gases in bulk and gas carriers constructed after 1 July 1986. It is mandatory for gas carrier to comply with the requirements of the International Gas Carrier Code (IGC Code)\(^\text{31}\).

Moreover, there is special requirements on the carriage of package irradiated nuclear fuel, plutonium and high-level radioactive wastes on board ships, the regulation requires ships carrying such kind of products to comply with the International Code for the Safe Carriage of Package Irradiated Nuclear Fuel, Plutonium and high-Level Radioactive Wastes on Board Ships (INF Code)\(^\text{32}\).

For the nuclear ships, there are basic requirements for nuclear powered ships and in particular it is concerned to radiation hazards\(^\text{33}\). These requirements are the ones which were supplemented by various recommendations contained in an attachment to the Final Act of the SOLAS conference of 1974. The recommendations have now been overtaken by the comprehensive Code of Safety for Nuclear Merchant Ships which was adopted by the IMO Assembly in 1981\(^\text{34}\).

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\(^\text{30}\) Chapter VII, Regulation 10, SOLAS 1974 as amended.
\(^\text{31}\) Chapter VII, Regulation 13, SOLAS 1974 as amended.
\(^\text{33}\) Chapter VIII, SOLAS 1974 as amended
2.2.5 Safe Management of ship.

More than 80 percent of all high-consequence marine disasters have been the result of human error. These disasters resulting discharge of oil and oil wastes from the vessel which causing pollution at sea and other ecological damage.

It is thus believed that most of this marine environment contamination is due to crew negligence or ineffective management, lack of incentives, shortage or absence of reception facilities at the port, poor techniques employed to fight the problem and inefficiency of the law.

In the aim of reducing marine accidents as well as to protect marine environment, SOLAS convention adopt the International Management Code for the Safe Operation of Ships and for Pollution Prevention, (ISM Code), which provides an international standard for safe management and operation of ships and for pollution prevention. It thus addresses the need for commitment to safety management from the highest level of the organization.

Therefore according to chapter IX, it is mandatory for the shipowner or any person who assumed responsibility for the ship to comply with International Safety Management (ISM) Code.

Generally, ISM code has an objective to provide for safe practices in ship operation and safe working environment, also it establish safeguards against all identified risk, and it continuously improve safety management skills of personnel ashore and aboard, including preparing for emergencies related to safety and environment protection.

According to regulation IX.2, application of ISM code is for passenger ships, oil tankers, gas carriers, bulk carriers and cargo high speed craft of 500 gross tonnages and over not later than 1 July 1998 and for all other cargo ships not later than 1 July 2002.

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36 George P. The ISM Code: Legal implications pg 1
37 Chapter IX Regulation 3, SOLAS 1974 as amended.
In this part I will present the application of ISM code as an integral part of chapter IX of SOLAS Convention.

The International Management Code for the Safe Operation of the Ships and for Pollution Prevention (ISM Code) was adopted under IMO on 4 November 1993 by resolution A.741 (18).

The Code requires a safety management system (SMS) to be established by the company (‘the company’ is defined by the Code as the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who assumed the responsibility for the operation of the ship from the ship owner and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the Code)\(^{38}\).

The company is therefore required to provide for a comprehensive safety management system (SMS) to ensure that mandatory rules and regulation are complied, and that applicable codes, guidelines and standards recommended by the Organization, Administrations, classification societies and maritime industry organizations are taken into account\(^ {39}\).

Furthermore, every company is required to develop, implement and maintain a SMS which include functional requirements such as safety and environmental-protection policy, instruction and procedure to ensure safe operation of the ship and protection of the environment, defined levels of the authority and lines of communication between, and amongst, shore and shipboard personnel, procedure to prepare for and respond to emergency situations and procedure for internal audits and management reviews\(^ {40}\).

Safety management system (SMS) is described and implemented with the document which according to the ISM Code is referred to as the Safety Management Manual (SMM).

\(^{38}\) [http://www.imo.org/](http://www.imo.org/)

\(^{39}\) Section 1.2.3 ISM Code

\(^{40}\) Ibid Section 1.4.
A ship should be operated by a company issued with a Document of Compliance (DOC). The DOC should be issued by the Administration or by an Organization recognized by the Administration. The Administration or an Organization recognized by it shall also issue the Safety Management Certificate to a ship after being verified that the company and its shipboard management is operating in accordance with the approved safety management system\textsuperscript{41}.

According to section 3.1 of the Code, the Company is supposed to define and document the responsibility, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention. The Company is also responsible for ensuring that adequate resources and shore based support are provided to enable the designated person who is in charge of the safety to carry out his function.

The Company has the duty to clearly define and document the Master’s responsibility with regards to inter alia implementation of the safety and environment-protection policy of the company, and reviewing the safety management system (SMS) and reporting its deficiencies to the shore-based management\textsuperscript{42}.

Moreover, it is the responsibility of the Company to ensure that the master is properly qualified for command, conversant with the Company’s SMS and provided adequate support for the execution of his duties\textsuperscript{43}.

The flag States has responsibility to ensure that companies operating under its flag are in compliance of the ISM Code. It is ship owners and operators who are held to effectively demonstrate how existing safety regulations are implemented. Therefore, the flag State should set procedure in its legislation on how to enforce the convention as well as to provide for sanctions for the non compliance of the same.

\textsuperscript{41} Section 13.1 & 13.7 of the ISM Code
\textsuperscript{42} Section 5 of the ISM Code.
\textsuperscript{43} Section 6 of the ISM Code.
2.2.6 Maritime Security.

SOLAS convention provides for an obligation of the contracting Governments with respect to security, whereby national Maritime Administration is required to set security levels and ensure the provision of security-level information to ships entitled to fly their flag and when changes in security occur, security level information must be updated as the circumstances dictates.

Furthermore the Administration is supposed to set security levels and ensure the provision of security-level information to port facilities within their territory, and to ships prior to entering a port or whilst in a port within their territory, and when changes in security level occur, security –level information must be updated as the circumstances dictates.

The Convention therefore has an instrument which is aiming on protecting people on board against piracy attack, terrorist etc. This instrument is the International Ship and Port Facility Security Code (ISPS Code) and is implemented through chapter XI-2 of SOLAS.

The overall objectives of the ISPS Code is to establish an international framework involving co-operation between contracting governments, government’s agencies, local administrations and the shipping industry to detect maritime security threats such as cargo theft, illegal drug trafficking, stowaways and piracy as well as take pro-active measures against potential terrorist attacks against ships and/or port facilities which are vital instruments of the international trade.

The ISPS Code applies to ships engaged on international voyages including passenger ships it is include high- speed passenger craft, cargo ships including high-speed craft of 500 gross tonnage and upwards, mobile offshore trading units, and it is also applies to port facilities, serving ships engaged on international voyages.

44 M. Yilmazel & E. Asyali, ‘An analysis of port state control inspections related to the ISPS Code’, Dookuz Eylul University, School of Maritime Business and Management, Turkey
The code provides for three different security levels. First, it assumes that, there will be in place of security level I, the level at which minimum appropriate protective security measures shall be maintained at all times. Secondly, in a state of heightened risk of a security incident, the security measures need to reach security level 2. And thirdly, in a situation where a security incident is probable or imminent, even if it is not possible to identify the specific target, the measure required for security level 3 should be maintained.

The Code also set a requirement for all ships, shipping companies and for port facilities. The requirement for all ships is that;

1. They require a security officer who will be a person on board the ship, accountable to the Master, who will be responsible for the security of the ship.
2. A ship security assessment, this will be the responsibility of the company security officer. It may be executed by a contracting Government or a recognized security.
3. A ship security plan. This will be drawn up pursuant to the assessment, and will set out requirements for the vessel in order to maximize its security. It will include security measures for the vessel when not interfacing with ISPS compliant ship or port facility.

Shipping companies on the other hand are required to have security plan which explicitly emphases the masters authority and responsibility to make decisions with respect to the safety and security of the ship.

Shipping companies also are required to have a company security officer who will be responsible for ensuring that the ship’s security assessment is carried out and the ship security plan is prepared.

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45 Section 2.1.9 ISPS Code.
46 Section 2.1.10 ISPS Code.
47 Section 2.1.11 ISPS Code
48 Section 6, ISPS Code.
All Port are required to appoint port facility security officer, who will be responsible for the port facility security plan, he will also perform a port facility security assessment, which is to be carried out by the contracting Government or recognized security organization. Furthermore, port facility security officer is responsible to develop a port facility security plan.

The application of the ISPS Code to the ports must be implemented by domestic legislation of the port state of the SOLAS Contracting Governments. Therefore, some SOLAS Contracting governments are applying the Code to their domestic ships and port facilities and some governments domesticate the Code at their own domestic maritime legislation.

2.3 Obligation of States to maritime safety.

Contracting Governments has an obligation to ensure that the substantive rules set by the SOLAS Convention are executed properly.

The convention therefore has rules which set out the obligation of the Contracting Governments through their Maritime Administration on how to ensure that the standards set out in substantive rules are complied by the shipping subjects.

On that base therefore, the contracting Governments has been provided with two kinds of authority for exercising regulatory control over the vessels.

First is the regulatory control, which State has control over the vessel which is registered under its flag. This kind of control is known as Flag State Control (FSC). Second is the regulatory control which contracting Government is conferred against the foreign ships which entered at her port, known as Port State Control (PSC)
2.3.1 Flag State control.

Flag State Control refers to the authority under which a State exercises regulatory control over the vessel which is registered under its flag. This involves the inspection, certification, and issuance of the safety and pollution prevention documents.

The flag State as defined under the United Nation Convention of the Law of the Sea (UNCLOS)\textsuperscript{49} has overall obligation and responsibilities as members of the International Maritime Organization (IMO) to comply with organization’s convention to which they are party. The flag State must ensure that all ships registered at their register meet all requirements laid down by those conventions which were signed to promote safety of life at sea and promotion of marine environment.

The flag State is required to take such measures for ship flying its flag as necessary to ensure safety at sea with regard, inter alia, construction, equipment, seaworthiness, manning, labour condition and crew training and prevention of collision\textsuperscript{50}. States are required to monitor the condition of vessels flying their flags through appropriate surveys of the equipment and manning. Moreover, the flag State is required to ensure observance with generally accepted international regulations, procedures and practices.

The kind of control normally conducted by the flag states is direct control whereby the ship is physical inspected to see whether she is inconformity with the standard set by the convention.

The inspection and survey of the ships is regulated under the provision of chapter one of the SOLAS Convention. There are difference requirements on inspection and survey with respect on passenger ships, cargo ships, life saving appliance, hull and machinery, and equipments.

\textsuperscript{49} Art. 92 (1) UNCLOS 1982

\textsuperscript{50} Art 59, supra.
The inspection and survey is supposed to be carried out by the officers of the Administration\(^{51}\). The Administration shall institute arrangements for unscheduled inspections to be carried out during the period of validity of the certificate. Such inspections shall ensure that the ship and its equipment remain in all respects satisfactory for the service for which the ship is intended. It is not necessary for the Administration to perform this duty by herself. The Administration may entrust this duty of inspection and surveys either to surveyors nominated for the purpose or to organizations recognized by it\(^{52}\) such as classification societies.

The convention in order to ensure that maximum preventive measure is taken, has set a provision for the special measure to enhance maritime safety. This provision addresses requirements relating to authorization of recognized organizations responsible for carrying out survey and inspections (that they shall comply with the guidelines developed by the Organization by resolution A.739(18), as may be amended by the Organization and the specifications adopted by the Organization by resolution A. 789(19), as may be amended by the Organization.) It also addresses enhanced surveys for bulk carrier and oil tanker, ship identification number scheme, and State control on operational requirements\(^ {53}\).

The survey requirements for the passengers ship and cargo ship: Both passenger ships and cargo ships are subject survey before the ship is put into service, as well as to a periodic survey.

The initial survey for the passenger ships and cargo ships includes a complete inspection of the ship structure, machinery and equipment, including the outside of the ship bottom and inside and outside of the boiler.

The periodic survey for the passenger ships in most cases must be done once in every twelve months, and additional surveys as the occasion arises. The periodic survey in passenger ships includes an inspection of the structure, boilers and other

\(^{51}\) According to Regulation 2[b] ‘Administration’ means the Government of the State whose Flag the ship is entitled to fly.

\(^{52}\) Chapter I, Regulation 6 SOLAS 1974 as amended.

\(^{53}\) Chapter XI-1, Regulations 1, 2, 3 and 4, SOLAS 1974 as amended.
pressure vessels, machinery and equipment, including the outside of the ship’s bottom.

The periodic survey for the cargo ship is normally done at the intervals specified by the National Maritime Administration but not exceeding five years in respect of life-saving appliance and other equipment and the same requirement is applied in respect of radio installation\(^{54}\) and in respect of hull, machinery and equipment\(^{55}\).

After the inspection and survey various certificates have to be issued by the flag State as proof that a ship has been inspected and found to be in compliance with the requirements of the convention\(^{56}\).

These certificates are such as Passenger Ship Safety Certificate which is issued after the inspection and survey to a passenger ship, Cargo Ship Safety Construction which is issued after the survey to cargo ship, Cargo Ship Safety Equipment which is issued after the inspection to a cargo ship, and Cargo Ship Safety Radio certificate which is issued to a cargo ship which complies with requirements of Radiocommunication as provided in Regulations of Chapter IV of the Convention. There is also an exemption certificate which is issued when an exemption from requirements is granted by the flag State.

### 2.3.2 Port State control.

The convention\(^{57}\) laid down control procedures which is called Port State Control (PSC) and is designed to enable port State officers to ensure that foreign ships calling at their ports possess valid certificates.

The objective of the inspection of the foreign ships in national ports is to verify that the condition of the ship and its equipment comply with the requirements of

\(^{54}\) Chapter 1, Regulation 9 SOLAS 1974 as amended.

\(^{55}\) Chapter 1, Regulation 10 SOLAS 1974 as amended.

\(^{56}\) Chapter 1, Regulation 12 of SOLAS 1974 as amended.

\(^{57}\) Chapter 1, Regulation 19 of SOLAS 1974, as amended.
international standards and that the ship is manned and operated in compliance with those international safety standards.

These safety standards are not only those provided for under the provisions of SOLAS convention but also other safety convections such as, the International Convention on Standard of Training, Certification and Watchkeeping for Seafares, (STCW 1978), as amended, the International Convention for the Prevention of Pollution from Ships (MARPOL 1973), as amended, the International Convention on Load Lines, 1966 and the International Convention on Tonnage Measurement of Ships, 1969.

The control of foreign ship is necessary as preventive measures as it aims to detect and inspect substandard ships and help to remove potential threats to marine accidents.

Therefore, there is a procedure on inspection of the foreign ship, whereby the inspection may be undertaken on the basis of initiative of the authorities or information regarding a ship which is provided by other authority or information from the member of the crew, a professional body or any other individual with an interest in the safety of the ship, its crew, passengers or protection of marine environment  

Port state control is carried out by a Port State Control Officer (PSCO). The authority of PSCO derives solely from the sovereign State which employs him and is subject to the national laws of the country in which he is operating. The PSCO should be an experienced person qualified as a flag state surveyor and able to communicate with the master and key crew members in English  

PSCO is required to carry an identity card issued by their maritime authorities. The identity card is used as evidence of the authority to carry out inspections.

59 Ibid, at p. 7
PSCO should, when boarding a ship present to the master or to the representative of the owner, if requested to do so.

Inspections may be carried out by a single PSCO or a team of PSCOs depending to some extent on the size and type of ship and the resources available on any particular day.

Procedure in carrying out inspection by the PSCOs may begin at the time when the port State receives information regarding the ship. PSCO may proceed to the ship and before boarding, and from its appearance in the water, and the impression perceived by him of its standard of maintenance from such items as the condition of its paint work, corrosion or pitting or unrepaired damage. The PSCO, should, as earliest possible opportunity ascertain the year of build and size of the ship for the aim of determining which provisions of the conventions are to be applied.

When PSCO boarding the vessel, and after introduced themselves to the master or the responsible ship’s officer, they should examine the vessel’s relevant certificates and documents which the vessel should have in compliance with IMO. If it appears that the certificate are valid and the PSCO’s general impression and visual observations on board confirm a good standard of maintenance, the PSCO should confine the inspection to reported or observed deficiencies, if any. But if it will appear that, the PSCO from their general impression or observations on board has ‘clear grounds’ for believing that the ship, its equipment or its crew does not substantially meet the requirements, the PSCO should proceed to a more detailed inspection.

Clear grounds to conduct more detailed inspection may include, the absence of the principal equipment or arrangements required by the conventions, evidence from a review of the ship’s certificates that a certificate or certificates are not valid, evidence from the PSCO’s general impression and observation that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weathertight integrity of the ship, and information or evidence that the master or crew is not familiar with essential shipboard operations relating to
the safety of ships or the prevention of pollution, or that such operations have not been carried out.

In general, if any of the deficiencies discussed above will be proved to exist as the result of the inspection, the ship will be regarded as substandard.

When the ship is regarded as substandard by the PSCO, it is responsibility of the flag State to ensure that corrective action is taken to safeguard the safety of the ship and its crew and/or passengers.

In case of deficiencies which are deemed as clearly hazardous to safety, health or the environment, the vessel may be detained by the authority until such hazard is eliminated before permitting the ship to sail. If such clearly hazardous deficiencies cannot be remedied in the port of inspection, the authority may allow the ship to proceed to another port which has the required facility for the repair.

Moreover, it is a requirement that when port State control performs the duties on intervention of any kind, the surveyor who carried out the survey shall inform in writing the flag State administration, of all the circumstances giving rise to intervention. The administration of the flag State will also receive a copy of the deficiency report and where appropriate report of the classification society which had issued a relevant certificate, in addition copies of such deficiency report should be forwarded to IMO\(^60\).

\[2.4\] Conclusion.

This chapter addresses the set up of SOLAS Convention and how the conventions aimed to achieve on safety at sea. As I have shown, the convention has been set with various elements with the aim of reducing sea accidents, enhancing safety of people on board of the vessels and preserving marine environment.

Presentation in this chapter shows that it took a major disaster to focus the world’s attention on the need for internationally recognized standards for safety at sea.

\(^{60}\) Procedure for Port State Control, Op Cit, at p. 38
It was the sinking of the White Star Liner Titanic in 1912 that led to the first international convention for the safety of life at sea (SOLAS) in 1914.

The main aim or goal in which SOLAS try to accomplish then due to Titanic disaster is to make an international safety regulation which provides for the requirement to all ships to have lifeboats on board.

Upon establishment of International Maritime Organization (IMO) in 1948, SOLAS was developed aiming to specify minimum standards for the construction, equipment and operation of the ship.

Through all its life, SOLAS had been developed through time-to-time amendments due to the developments in technology and in response to major shipping casualties.

For example, in response to a spate of tanker accidents in 1976-1977 the International Conference on Tanker Safety and Pollution Prevention was convened in 1978 whereby measures affecting tanker design and operation was adopted. This measure was then incorporated into SOLAS Protocol of 1978.

The 1978 SOLAS Protocol made a number of important changes to Chapter I, Chapter II-1 and Chapter II-2 of SOLAS Convention 1974. Changes made in Chapter I including the introduction of unscheduled inspections and/or mandatory annual surveys and the strengthening of port State control requirements. While changes in Chapter II-1 and Chapter II-2 includes the requirement that new crude oil carriers and product carriers of 20,000 dwt and above to be fitted with an inert gas system. An inert gas system became mandatory for existing crude oil carriers of 70,000 dwt and above by 1 May 1983, and by 1 May 1985 for ships of 20,000-70,000 dwt61.

Furthermore, International Management Code for the Safe operation of ships and for pollution prevention (ISM Code) was adopted and make chapter IX of SOLAS Convention as the result of sinking of Herald of Free Enterprise in 1987.

The increasing acts of terrorism also led to SOLAS amendment as the chapter dealing specifically with maritime security that contained mandatory requirement for ship to comply with the International Ship and Port Facility Security Code (ISPS Code) was also adopted and make chapter XI-2 of SOLAS.

With all the developments, SOLAS Convention contained better provisions on safety standards than it was up to early eighties. However, SOLAS is still facing some challenges such as, the role of the human element in maritime safety, and the lack of serious commitment of IMO’s member States to ensure that standards set by SOLAS are properly executed.

To date, most of the ships casualties are not caused by the standard of the ship, but by either fatigue or tiredness of the master of the ship and crew, or inappropriate communication and other kinds of influence including inadequate utilization of human resources.

On the other side, SOLAS convention does not have sanction device. It is upon IMO’s contracting Member State to make sure that safety convention is adopted at their national laws so that they can have force of law like any other domestic laws. The problem is some of the Member States are very lenient on enforcement of international safety convention which resulted to substandard ships at the sea.

It is the responsibility of the member states therefore to ensure that this convention is clearly implemented and properly enforced.

3.1 Introduction.

Despite the fact that Zanzibar is an island yet it is not a shipping country. At the present days, however, Zanzibar is slowly coming up in the shipping business in the Indian Ocean.

A major development in the Maritime administration in Zanzibar was the enactment of The Maritime Transport Act on 9th June 2006. The Maritime Transport Act was enacted for the purpose of providing for the provisions to regulate all maritime affairs in Zanzibar.

The Maritime Transport Act is divided in to twenty four parts which presents law and procedure to several maritime matters. The Act also contains provisions that adopt International conventions to which the United Republic of Tanzania is a party. These provisions are such as;

i. Registration and licensing of ships in Zanzibar, national character and flag, and maritime security at high seas (Piracy) under the United Convention on the Law of the sea (UNCLOS).


iii. Safety of life at sea, maritime security on ships and port facilities, carriage of bulk cargoes and dangerous cargoes, and pollution prevention and protection of marine environment under SOLAS Convention 1974 as amended with its related instruments.

iv. Load lines, under International convention on Load Lines of 1966, and

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v. Prevention of collision at sea and safety of navigation, under the International Regulations for Preventing Collisions at sea, 1972 as amended (COLREG 1972).

The Maritime Transport Act also specifies the functions of the Minister responsible for shipping and seafarers in Zanzibar. For example, the Minister has been given power to;

1. Make safety regulations for the purpose of securing safety and security of the ships registered in Zanzibar.

2. Appoint the Registrar of ships who shall be responsible for registration of Zanzibar Tanzanian Ships.

In this chapter I will focus on the provisions on the Maritime Transport Act No 5 of 2006 of the Laws of Zanzibar regarding to safety of life at sea and how they incorporate SOLAS Convention 1974 as amended as well as other related International instruments.

3.2 Implementation of SOLAS Convention.


Section 187 of the Maritime Transport Act provides; “…the Safety Convention, including all its related instructions, shall, unless excepted by this Act, apply to all Tanzania Zanzibar ships engaged on international voyages wherever may be and all other foreign ships while they are in Zanzibar.” Which means that the whole of SOLAS Convention 1974 as amended have been made as part and parcel of the Laws of Zanzibar through Section 187.

However, the same Section provides for an exception for the Tanzania Zanzibar ships which will not be subject to SOLAS Convention. The convention is not applicable to the following Tanzania Zanzibar ships;
ii. Ships of war and troop ships.

iii. Cargo ships of less than 500 tons.

iv. Wooden ships of primitive build.

v. Pleasure vessels not engaged in trade, and

vi. Fishing vessels.

Despite the fact that, the Maritime Transport Act in section 187 shows SOLAS Convention and its related instruments shall be applicable to all Tanzania Zanzibar vessels engaged on international voyages, subject to the exceptions which I have mention above, Part IX of the Maritime Transport Act further provides for the substantive and procedural rules on the smooth implementation of the SOLAS Convention in Zanzibar.

The substantive or material rules can be found through safety regulations made by the Minister responsible for shipping and seafarers in Zanzibar. These regulations are;

**Safety Regulation**, which was made by the Minister responsible for shipping and seafarers in Zanzibar vide section 189 of the Maritime Transport Act for the purpose of giving effect to the SOLAS convention and its related instruments.

Safety Regulation prescribes requirements for the passenger vessels as for hull, life savings appliance, equipment and machinery, and survey and inspection.

For a ship which is under construction, the Safety Regulation make a provision that the ship is to be designed, constructed and maintained in compliance with the requirements to be set out by the Zanzibar Maritime Authority.

The Regulation also addresses the requirement for the subdivision and stability of the vessels. It is the requirement that all vessels which are under construction to be divided into watertight compartments.

Furthermore, on the life and savings appliances, the Safety regulation requires all passenger ships to be provided with radio life saving appliances and different kind
of personal life savings appliances such as life buoys, life jackets, life boats, immersion suits etc.

Zanzibar Maritime Authority has a duty to approve all life saving appliance and arrangements before placed on board the vessel. The Safety Regulation direct the Zanzibar Maritime Authority to ensure that all the requirements stated in Chapter III of the SOLAS Convention 1974 as amended are adhered to before granting an approval for the use of any life savings appliance on the vessels.

As for other ship equipments such as Radiocommunication and Navigational equipments, Safety Regulation adopts regulations of Chapter IV of SOLAS as for Radiocommunication and regulations of Chapter V of SOLAS for Navigation equipments.

The safety regulation confer powers on survey and inspection of vessels to Zanzibar Maritime Authority, that is to conduct initial, annual, periodic and intermediate surveys and inspections for purposes of registration, issuing of survey and inspection certificates and ensuring ships are maintained in accordance to Maritime Transport Act and SOLAS Convention 1974 as amended and its related instruments.

**Regulation for Cargo ship safety requirement and survey.** This regulation is also made by the Minister responsible for shipping and seafarers in Zanzibar for the purpose of giving effect SOLAS Convention 1974 as amended.

The regulation for Cargo ship safety prescribes requirements for the hull, equipment and machinery of the ship which are similar to what was presented above on Safety regulation. In addition, the regulation prescribe the requirement for the Tanzania Zanzibar Ship to be surveyed to such extent, and in such manner and at such interval as prescribed by the Zanzibar Maritime Authority which, will not be below the standard set by Regulation 8, Chapter I of SOLAS Convention 1974 as amended.

On the other hand, the Maritime Transport Act provides for the procedural rules as regards safety at sea.
The Maritime Transport Act, apart from mentioning power of the Zanzibar Maritime Authority with regards to survey and inspection, confers the said power to Surveyor to inspect any ship for the purpose of ensuring that it is in compliance with the safety convention and the regulations made under that Act. The surveyor, however, will perform this duty on behalf of the Zanzibar Maritime Authority.

According to section 193 of the Maritime Transport Act, where the surveyor finds that the Safety convention or the regulations have not been complied with, he shall give written notice to the owner or master of the ship stating in what respect there is deficiency and what action, in his opinion, is required to rectify such deficiency.

Furthermore, where the surveyor considers such ship unsafe, or, where a passenger ship, unfit to carry passengers, or the machinery or equipment defective in any way so as to expose persons on board to serious danger, he will be required to detain that ship.

Moreover, a surveyor, if satisfied on inspection, shall forward a report to the Director of the Zanzibar Maritime Authority which shall contain a statement showing among other things that, the hull and machinery are sufficient for the service intended and in good conditions and that the hull and machinery are constructed, arranged and fitted in accordance with SOLAS Convention 1974 and Safety regulations as made under the Maritime Transport Act as well as that the safety equipment and radio installations required under SOLAS Convention and Safety Regulations are on board and in good condition.

At the end when a survey or surveys to meet the requirements set out on the safety regulations which reflect SOLAS Convention are satisfactorily completed the Director of Zanzibar Maritime Authority, or any other person authorized by him shall issue relevant certificates such as;

63 Section 193 of Maritime Transport Act.
i. in the case of a passenger ship engaged on international voyages, a Passenger Ship Safety Certificate.

ii. in the case of a passenger ship which is only engaged on short international voyages, short international voyage Passenger Ship Safety Certificate.

iii. in the case of a cargo ship of 300 tons or over engaged on international voyages, a Cargo Ship Safety Radio Certificate.

iv. in the case of a cargo ship of 500 tons or over engaged on international voyages, a Cargo Ship Safety Equipment Certificate; or

v. in the case of a cargo ship of 500 tons or over engaged on international voyages, a Cargo Ship Safety Construction Certificate.

Duration and validity of certificates is provided under Section 201 of the Maritime Transport Act which is similar to the duration stated in Regulation 14, Chapter I of the SOLAS Convention 1974, that certificates other than the Cargo Ship Safety Construction Certificate, the Cargo Ship Safety Equipment Certificate and any exemption certificate shall be issued for a period not exceeding 12 months. The Cargo Ship Safety Construction Certificate shall be issued for a period not exceeding five years. The Cargo Ship Safety Equipment Certificate shall be issued for a period not exceeding 24 months. Exemption Certificates shall not be valid for longer than the period of the certificates to which they refer.

**Responsibility to comply with ISM Code.** We have seen that Section 187 of the Maritime Transport Act clearly stated that SOLAS Convention is adopted and shall apply to all vessels engaged on International voyages. Yet the Maritime Transport Act in section 196 specify the requirement to master of every ship, owners, or shipping companies, to ensure that all ships registered under TZISR and all companies in relation to those ships are to comply with ISM Code.

Under normal circumstances the provision related to ISM Code in the Maritime Transport Act is superfluous. However since Zanzibar is being developing in shipping, having the ISM Code provision in the Act is important to raise
awareness to ship owners or shipping companies and other ship actors as to see the importance for them to comply with the ISM Code.

3.3. Adoption of other International instruments.

The Maritime Transport Act does not only incorporate the Safety Convention. For the purpose of this presentation, the provisions of the Maritime Transport Act which incorporate other International instruments than the SOLAS Convention 1974 as amended will be discussed.

These provisions deal with Registration and Licencing of ship, prevention of Collision at sea, and pollution prevention and protection of marine environment. The rationale for discussing these provisions is that some of the international instrument, like UNCLOS set up the jurisdical framework for the adoption and implementation of safety rules and standards and other instruments contain safety elements, therefore application of these international instruments with safety provision discussed in 3.2 ensure smooth implementation of safety convention.

**Registration and Licencing of ships in Zanzibar.** In implementing Article 91 of the United Nation Convention on the Law of the Sea (UNCLOS), Maritime Transport Act in Section 8 provides for the requirement of registration for all Tanzania Zanzibar ships.

There are two kinds of ship registry in Zanzibar known as, Tanzania Zanzibar International Register of Shipping for ocean going ships, and Tanzania Zanzibar Register of shipping for coastal ships.

My presentation however, for the purpose of this work will focus on the Tanzania Zanzibar International Register of Shipping for ocean going ships, which in acronyms is known as TZIRS.

TZIRS is an open registry. There are no requirements in the Act concerning local ownership or participation in ownership. All types of conventional and non-
conventional vessels can be registered in the name of legally represented persons, corporate bodies or entities\textsuperscript{64}.

The requirement and procedure of registration of vessels in TZIRS is contained in Part III of the Maritime Transport Act. In order to be registered in TZIRS, the vessels must be owned wholly by persons who, according to the Maritime Transport Act, are qualified to own a Tanzania Zanzibar ship.

The qualified persons shall be; Tanzanians, or individuals or corporations owning ships hired out on bareboat charter to nationals of Tanzania, or individuals or corporations in bona fide joint venture shipping enterprise relationships with nationals of Tanzania as may be prescribed, or bodies corporate incorporated in foreign Countries and foreign individuals\textsuperscript{65}.

The responsibility to register a vessel in TZIRS is rested with the Registrar of ships who is also vested with powers for refusal of registration if he is satisfied that, a vessel is not seaworthy, or is not fit to the safety, health and welfare of persons employed or engaged in any capacity on board the ship.

The Registrar may also recall the registration of the registered vessel at the later stage if he is satisfied that it would be detrimental to the interests of Zanzibar or of international shipping for a registered ship to continue to be registered, or if any penalty imposed on the owner of a registered ship in respect of contravention of the Maritime Transport Act, or of any instrument in force under the said Act, has remained unpaid for a period of more than three months and no appeal against the penalty is pending, or for other reasonable reasons such as, when a registered ship become a total loss or being destroyed by demolition, fire or sinking etc.

The Registrar furthermore may refuse registration of the vessel if he has reasons to believe that there is a possibility that the ship is being used for unlawful purposes and that it would be detrimental to the interest of Zanzibar or of international shipping for the vessel to be registered.

\textsuperscript{64} http://www.tzirs.com/maritimeservices/1
\textsuperscript{65} Section 9 (1) of the Maritime Transport Act.
Prevention of Collision at sea and safety of Navigation is the subject of Part VII of the Act\textsuperscript{66}. In this Part and according to section 160 of the Maritime Transport Act the Minister responsible for shipping and seafarers in Zanzibar has been vested with power to make Collision regulation. The Collision regulation is made for the purpose of implementing International regulation for Preventing Collision at Sea, 1972 as amended (COLREG).

According to section 161 of the Maritime Transport Act, therefore, all owners and Masters of Tanzania Zanzibar ships are required to obey such collision regulations.

Subsection 2 of section 161 is the provision for the enforcement of the Collision regulations. According to this provision, if it can be established that an infringement of the collision regulation was caused by the willful act of the Master or the owner of the ship, the Master or the owner will be liable to a fine of not less than three thousand US dollars or six months imprisonment.

Pollution prevention and protection of marine environment. The Maritime Transport Act section 278 provides for the prohibition for discharging of oil and dumping of garbage\textsuperscript{67} within Zanzibar waters. Prohibited oil discharge includes, oil or oily mixture from cargo tanks, fuel oil residues and chemicals.

To secure pollution prevention and protection of the marine environment, section 288 of Maritime Transport Act establishes an offence to any owner or master of the ship that discharges such oil. According to the said section, if any oil, mixture or harmful chemicals is discharged from a ship into harbour or into the sea within 100 miles from the eastern coasts of Zanzibar and Pemba Island, the owner or the master of the ship shall be liable for a fine of forty five thousand US Dollars or he may be imprisoned for the period of five years.

\textsuperscript{66} The Maritime Transport Act No 5/2006 of the laws of Zanzibar

3.4 Conclusion.

This chapter aims to test how and to which extent the Revolutionary Government of Zanzibar implements IMO Conventions, SOLAS Convention 1974 as amended in general and other International conventions at its local maritime legislation.

Findings in this chapter shows that, generally Zanzibar harmonize its local maritime legislation with SOLAS convention. We have seen specific provisions such as Section 187 of the Maritime Transport Act No 5 of 2006, which provides explicitly that safety convention including all its related instruments are made applicable to all Tanzania Zanzibar ships engage on international voyages.

It is also observed that, in order to comply with SOLAS Convention 1974 as amended, Zanzibar has adopted in its maritime legislation provisions which are directly aimed at ensuring that the convention is complied with.

These provisions have given the Minister responsible for shipping and seafarers in Zanzibar the authority to establish Safety Regulations which provides for the requirements in relation to passenger and cargo vessel hull life saving appliance, equipment and machinery, and survey and inspection that are in compliance with the standard set by SOLAS Convention 1974 as amended.

The findings also shows how other International Instruments such as UNCLOS, COLREG and MARPOL is adopted and implemented under the Zanzibar Maritime Act in addition to the SOLAS convention for the aim of ensuring the proper implementation of the safety provisions.

It is responsibility of the Zanzibar Maritime Authority and other institutions dealing with maritime affairs in Zanzibar such as the Registrar of ships, the Ministry responsible for Maritime affairs, and shipping companies to make sure that all safety conventions are complied with and enforced.

In my presentation I have discussed some of the enforcement measures which are provided under the Maritime Transport Act such as fine and imprisonment for the relevant subjects i.e Master of the ship, owner or shipping company, who have tried to contravene provisions of the said act.
In the next chapter I will present the problems on applicability of safety conventions in Zanzibar. The aim is to see if the safety conventions as adopted in Maritime Transport Act are really put in to practice.
4. Problems on applicability of SOLAS Convention in Zanzibar.

4.1 Introduction.

In Chapter three we have seen how the Zanzibar Maritime Legislation implements SOLAS Convention 1974 as amended. I have also discussed the functions and responsibilities of Zanzibar Maritime Authority.

In this chapter I will present problems the Revolutionary Government Zanzibar is facing on the proper implementation and applicability of SOLAS convention and other International Instrument in Zanzibar.

In discussing the problems I will address how Authorities concerned to the Maritime Administration in Zanzibar perform their daily activities as a Flag state as well as a Port state and what hinder them in performing their duties.

4.2 Problem facing Zanzibar Maritime Authority.

According to the law, maritime administration in Zanzibar is supposed to be administered by the statutory body known as Zanzibar Maritime Authority; its acronym is ZMA.

ZMA is established by section 3(1) of the Zanzibar Maritime Authority Act\(^6\). Zanzibar Maritime Authority is responsible for the administration, implementation and enforcement of the Maritime Transport Act No 5 of 2006 of the laws of Zanzibar.

For the purpose of giving effect to IMO’s conventions, ZMA shall consult the body responsible for maritime safety administration in Tanzania Mainland for the proper enforcing and harmonization of standards of ships registered in Zanzibar ship registry in relation to international conventions to which United Republic of Tanzania is a party.

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\(^6\) Act No 3 of 2009 of the Laws of Zanzibar.
And for the purpose of giving effect to the provision of the Maritime Transport Act, ZMA shall advise the Government of Zanzibar on maritime matters including those related to adoption and implementation of international maritime conventions, provision of marine, port services and facilities and other technical issues.

Among the functions of ZMA in relation to implementation of safety conventions are as follows:\(^69\):

i. To conduct survey, including initial, annual, periodic and intermediate survey and inspection for the purpose of registration, issuance of survey and inspection certificates.

ii. To ensuring ships are maintained in accordance to national and International standards.

iii. To exercise Port State Control of all foreign ships for the purpose of improving safety of life at sea, prevention of pollution from ships and ensuring applicable standards of living and working condition on board the ship.

iv. In collaboration with the relevant Authorities in the United Republic of Tanzania, ZMA will monitor and enforce standards of training, examination and certification of seafarers in accordance with international standards such as, Standards of training certification and Watch keeping (STCW) 1978, as amended. STCW have been ratified and implemented by the United Republic of Tanzania.\(^70\)

v. To inspect and detain unseaworthy or unsafe ships.

vi. To co ordinate work of classification society.

\(^69\) According to Section 5(1) of the Zanzibar Maritime Authority No 3 of 2009 of the Laws of Zanzibar.

\(^70\) Matter relating to International Convention on Standards on Training, Certification and watchkeeping for Seafarers is performed by the Government of the United Republic of Tanzania. See discussion on Chapter 1.4 and Chapter 5.
The administration of ZMA is under a Board of Directors of the Authority. The board of directors has been vested power to administer the business and affairs of the authority by section 7 of Zanzibar Maritime Authority Act, whereas according to Section 4 of the Maritime Transport Act, the Minister responsible for shipping and seafarers is responsible for General Administration of Zanzibar Maritime Authority.

Despite the fact that section 3 of the Zanzibar Maritime Authority Act establishes the body with the authority to administer maritime safety administration in Zanzibar, the office of this body is yet to be established as no any appointment to the office bearer has been done.

For the time being, the Registrar of ships in Zanzibar who is appointed by the Minister responsible for shipping and seafarers\(^1\) performs the function of the ZMA. By virtue of his appointment, the Registrar of ships is responsible for the registration of Tanzania Zanzibar ships.

In the exercise of the power conferred to him under section 4 of the Maritime Transport Act, the Minister responsible for shipping and seafarers appoints Registrar of ships to perform the function of ZMA in addition to his other responsibilities for registration of Tanzania Zanzibar ships.

The appointment of the current Registrar of ships was made prior to the enactment of Zanzibar Maritime Authority Act No 03 of 2009, the law that establishes ZMA.

In performing its function as registrar as well as those function which were supposed to be under ZMA, the Registrar of ships in Zanzibar is therefore a sole authority which has been vested the duty to make sure that the IMO conventions are put in practice in the country.

Some of the problems that the Office of the Registrar of ships is facing are;

\(^{1}\) Section 7(2) Maritime Transport Act No 5 of 2006
The majority of the officers in the ship registry office doesn’t have sufficient qualification, experience and expertise on maritime matters. There is also lack of enough working equipment at the said registry.

Proper enforcement of SOLAS convention 1974 as amended and other IMO Instruments is a difficult task to be achieved by the Registrar. The survey and inspection of the Tanzania Zanzibar vessels is not performed to the International standard, and the Port State Control is not well observed. These deficiencies may result the existence of substandard ships in the Tanzania Zanzibar International Register of Ships.

### 4.3 Surveys and certification of ships in Zanzibar.

Zanzibar Maritime Act contains provisions on the survey and certification of ships\(^\text{72}\).

In practice, like any other IMO member countries, the survey and certification of the Zanzibar ships are not conducted by the Maritime Administration but left to the private agency who performs the work on behalf of the State.

In Zanzibar there is only one company dealing with surveys and certification. This company is known as Zanzibar Ship Survey and Consultancy. The Registrar of ships has assigned the duty to Zanzibar Ship Survey and Consultancy for the survey and certification to coastal ships or ships which are not engaged to International voyages.

For vessels engaged in International voyages, the Zanzibar Ministry of Communication and Transport acting on behalf of TZIRS has delegated authority to the classification societies and other surveying organizations to perform maritime survey and issue relevant certificates required by the international conventions.

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The authority is guided by IMO Resolution A. 739(18), which lists the requirements to be complied by the Flag State Administration and for the organization acting on his behalf.

Before September 2008 TZIRS had granted authorization for surveys and certification for the ocean going ships to the following organization:

- American Bureau of Shipping (ABS)
- Bureau Veritas (BV)
- China Classification Society (CCS)
- Lloyds Register of Shipping (LR)
- Germanisher Lloyd (GL)
- Nippon Kaiji Kyokai (NKK), and
- Det Norske Veritas (DNV)

After September 2008 all of the above organization cease to perform the survey and certification tasks on behalf of Zanzibar Government. Whereby on September 2008 the Zanzibar Ministry of Communication and Transport acting for TZIRS signed the agreement with Maritime Bureau of Shipping of Dubai, United Arab Emirates, whereby the Revolutionary Government of Zanzibar authorized Maritime Bureau of Shipping to perform three types of authorizations on her behalf. These are:

1. Full authorization to perform plan review, carry out surveys and issue and/or revoke necessary interim and full terms certificates.
2. Partial authorization to perform plan review, carry out surveys and possible issue of interim certificates.
3. Limited authorization to account for other special categories not covered by what mentioned above, such as case-by-case authorization or geographical limitations.

The Maritime Transport Act is silent as to the way and the time for the authorization to be performed, hence the Minister responsible for fishing and seafarers depending on the needs and the surrounding circumstances on each
particular case, may choose any of the three authorization to be performed by the Maritime Bureau of Shipping.

Moreover the Maritime Bureau of Shipping is also authorized to issue and endorse initial or renewal certificates, as well as to carry out surveys, audit, measurements, tests or any other verification necessary for issuing or endorsing the certificate.

The vessels flying TZIRS flag are therefore entitled to enter into a private agreement with the Maritime Bureau of Shipping who is authorized to act on behalf of the TZIRS.

Having the surveyor or classification society abroad who performs their duty on behalf of TZIRS gives rise to some problems. Basically, no close supervision is offered by the Government to the surveyors or classification societies due to the lack of enough qualified manpower hence ships registered in Tanzania Zanzibar International Register of Shipping may be registered with non compliance of the law. Furthermore, it can be of the benefit of the relevant subjects in shipping to have this office in Zanzibar so that the work of the office may be under indirect supervision of the public at large.

One of the case which may be set as an example for the problems facing Government of Zanzibar for the lack of proper supervision to the surveyor and/or classification society is the sinking of the Vessel LCT Fatih which sank on 29/05/2009 at the Zanzibar, Malindi harbour soon after her arrival from Dar es Salaam, Tanzania.

Maritime Bureau of Shipping pretending to act on behalf of TZIRS initially granted LCT Fatih Interim registration in Dubai. The investigation after the accident revealed several irregularities on her registration. An Interim Registration certificate had not been issued by the Registrar of ships according to sections 14 to 24 of Zanzibar Maritime Act together with Regulation 28 of the Registration Regulation which grant powers to Registrar of ships to issue Registration certificates.
In fact at the time LCT Fatih was issued with interim registration, Maritime Bureau of Shipping was not legally authorized by the Revolutionary Government of Zanzibar to perform function of survey and certification on behalf of TZIRS.

It was also revealed that the procedure used in issuing interim certificates was not in compliance of section 15(e) of the registration regulation which require the application for the ship registration to be attached with original certificates of the ship including Sea Worthiness Certificate issued by the previous Ship registry.

According to the investigation, it was also found that the Vessel (LCT Fatih) was issued with an invalid Interim Seaworthiness Certificate73.

The above case shows how the office of Registrar of ships Zanzibar did not perform their duty as they should at the International standard level.

4.4 Control of foreign ships while in Zanzibar.

In complying with SOLAS Convention, the Maritime Transport Act has provisions for the control of foreign vessels when they enter a Zanzibar port (Port State Control).

In Zanzibar, port State control is supposed to be conducted by the Port Control Officers who should be appointed by the Minister responsible for shipping and seafarers. According to the Maritime Transport Act the control officer are referred to as Inspectors. The main functions of the Inspectors are

(a) to target and detain substandard ships;

(b) to verify ships and crew documents;

73 Reports on the Investigation of LCT Fatih’s accident (Supra)
(c) to ensure that ships condition or its equipment correspond substantially with the particulars of the certificates;

(d) to ensure ships before going to sea:-

(i) are safe and security secured;

(ii) hold proper certificates and documents;

(iii) does not impose any danger to marine environment.

(e) to keep records of ships inspected, detentions and other related information; and

(f) to prepare and submits inspection report to the Director of ZMA.

Inspectors when verifying ships and crew documents, are supposed to limit themselves to documents related to SOLAS Convention and other IMO conventions or relevant instruments which Tanzania is a party to.

According to section 327 of the Maritime Transport Act, Inspectors are required to conduct indirect control over the foreign vessels by boarding the vessels to assess whether the vessel has valid certificates and relevant documents, and has the crew required in accordance with minimum Safe Manning Document and whether the vessel is safe and security secured to proceed to sea, and without endangering the marine environment.

If it will appear from Inspector’s general impression or observation onboard that there is a clear ground for believing that the vessel, its equipment or its crew do
not substantially meet the requirements of the convention, the Inspector may conduct direct inspections over the said vessel. If it is detected that the vessel is substandard it will be detained, and Inspector will make sure that the defect detected is remedied before the vessel is allowed to proceed on her voyage.

The authority which has been legally vested the authority of controlling foreign vessels while in Port of Zanzibar, is Zanzibar Maritime Authority. Unfortunately, currently it is the office of the Registrar of ships that is assuming the responsibility of controlling foreign vessels while in Zanzibar.

As presented in 4.2 above, the Registrar of ships face a lot of problems in performing Port State Control due to shortage of Port State officers who are well qualified in Zanzibar and lack of enough equipments and tools for the work.

According to the Registrar of ships Zanzibar Mr Abdallah Mohamed Abdallah when interviewed for the purpose of this presentation, the office of Registrar of Ships Zanzibar has never conducted any inspection to the foreign ships since his office was established in 2006.

4.5 Procedure used in registration of ships.

Zanzibar as any other State have laws in relation to the granting of the Nationality to the ships. The requirement for the registration of ships is there to comply with Article 91 (1) of The United Nations Convention on the Law of the Sea (UNCLOS).

Procedure used on registration of ships in Zanzibar is provided under Section 11 of the Maritime Transport Act. However its practicability is the matter that raises much concern for the following reasons;

First, despite the fact that Maritime Laws of Zanzibar establish the said ships registry, the office of this registry is not located in Zanzibar but in Dubai, United Arab Emirates, as a branch of Tanzania Zanzibar Ships Registry.
It has been discovered therefore that the performance of the said registry is not of the good standard as there is a report that some of the ships registered on that office had been detained for being substandard\textsuperscript{74}.

There is no any control or supervision done by the main Zanzibar ships registration office in Zanzibar on the work of the TZIRS Dubai’s branch as to ensure that law and procedure is properly followed in the registration of the ocean going ships at TZIRS.

Moreover, no clear communication is sent to the Registrar of Ships of the United Republic of Tanzania on the ships registered on that registry so it cause some statistical and other problems to the main Tanzania ship registry.\textsuperscript{75}

### 4.6 Law, regulations and maritime administration between Zanzibar and Tanzania Mainland.

Two different laws administer maritime safety affairs in the United Republic of Tanzania. These laws are, the Tanzania Merchant Shipping Act No 21 of 2003 for Tanzania Mainland, and the Maritime Transport Act No 5 of 2006 for Zanzibar.

The provisions of the two laws are similar to a great extent, but still there are some provisions on the laws and its safety regulations that are not similar to the extent of causing problems on the maritime safety administration within the United Republic of Tanzania. Those problems are such as;

a. The Merchant Shipping Act provides for limitation (in relation to the age of the ship) for the registration of ship on Tanzania ships register, while the Zanzibar Maritime Transport Act does not have such limitation on ships registration.

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\textsuperscript{74} Reports on the Investigation of LCT Fathi’s accident of 10th Aug, 2009 at p.25

\textsuperscript{75} Ibid.
b. According to the Merchant Shipping Act, every ship is required to have Seaworthiness Certificate on board. This requirement is well complied within Tanzania Mainland, while in Zanzibar it is not.

c. Each side of the union have their own surveyor and ship inspectors in accordance to the provisions of Maritime Acts from both sides. As the result there is no uniformity of the procedure for the inspection of ships registered in Tanzania.

d. As each side of the Union focus at its maritime legislation and without considering that ships registered in each side of the union are sailing from the same territorial waters, ships registered in one side of the union are regarded as foreign ships on the other side of the union. Therefore, ships registered in TZIRS are not inspected in Tanzania mainland in order to see if they have met requirements for flag state implementation. On the other hand, even though ships registered in one side of the union are regarded as foreign ship no any Port State Control is also conducted to Tanzania Zanzibar ships while in Tanzania mainland. Therefore in general Tanzania Zanzibar ships are not inspected in Tanzania mainland to see if they met requirements of either Flag state of Port state implementation.
5. General Conclusion.

The aim of this paper is to present an overview of the International Convention on Safety of Life at Sea of 1974 as amended. The purpose was to see to what extent Zanzibar maritime Legislations are in conformity with the International conventions and how the Revolutionary Government of Zanzibar implements them and put the into practice.

In analyzing the set up of SOLAS Convention in chapter II, we have seen what SOLAS aim to achieve, and the challenges facing it, which include the role of the human element and the lack of seriousness to the IMO Member States on SOLAS enforcement at national level.

It was observed in chapter I that even though Zanzibar is not IMO Member States, she performs all matters mentioned on the Code for the implementation of the IMO instrument under Specific Flag State obligations. Government of United Republic of Tanzania confirms to be responsible for the implementation of the convention by Zanzibar.

In this paper, therefore, the overview of Zanzibar Maritime Transport Act No 5 of 2006 was presented. It is crystal clear that the Maritime Transport Act has a general provision\(^{76}\) that directly implement the SOLAS Convention with all its related instructions.

The safety convention however as an exception to the General provision, is not applicable to some of the Tanzania Zanzibar ships such as Ships of war and troop ships, cargo ships of less than 500 tons, wooden ships of primitive build, pleasure vessels not engaged in trade, and fishing vessels.

Other exception is that, all matters relating to International Convention on Standards on Training and watchkeeping for Seafarers (STCW 1978), and Chapter XI-2 on special measures to enhance maritime security and ISPS Code are left under the authority of the United Republic of Tanzania.

\(^{76}\) Section 187 of the Maritime Transport Act
This exception however is not contained in any provision of the Act, but has come up as an arrangement between the two Governments of the Union, that is the Government of United Republic of Tanzania and the Revolutionary Government of Zanzibar on the applicability of safety conventions in Zanzibar.

Among the reasons behind this exception is that matters related to higher education and national security in Tanzania are regarded as union matters over which the Government of the United Republic of Tanzania has the authority.

In examining how the safety conventions work in practice in Zanzibar, we have seen a number of problems which the Revolutionary Government of Zanzibar is facing.

The major problem in the safety administration in Zanzibar is the non-existence of the authority responsible for the maritime administration, which is Zanzibar Maritime Authority.

The Government of Zanzibar should therefore, make an arrangement that will ensure that the Zanzibar Maritime Authority is to start working immediately.

The presentation shows that it is the Registrar of Ships who performs the duty of the Zanzibar Maritime Authority. It was also observed that the office of the Registrar of Ships Zanzibar faces problems in performing its duties related to the enforcement of the safety convention. The government of Zanzibar is supposed to make sure that the office of the Registrar of ships is improved in terms of:

a. increasing human resources, as there is a lack of qualified and experienced persons who has the maritime knowledge.

b. Providing modern equipments for performing different works including that of inspection.

c. Salary of the employees of the registrar should be reviewed and increased, so as to get rid of any temptation to the said employees to accept bribe from ship owners when performing their daily activities.

d. To establish the office for the registration of international vessels in Zanzibar instead of having the said office in Dubai.
For the proper enforcement of IMO’s Conventions on the safety of life at sea, the Office of the Registrar of ships should follow the laws and procedure properly when registering International vessels in Zanzibar so that no substandard ships will have a chance to fly the TZIRS flag.

Other problems relate to the conflict of Maritime Laws within the United Republic of Tanzania, as there are two maritime laws within the union, for Zanzibar and for the Tanzania mainland.

To get rid of the problem, the two Union Governments (Government of Zanzibar and that of Tanzania Mainland) should put Maritime Administration on the list of the union matters and to enact single Maritime Legislation that will be applicable to both sides of the union. This will help to take away the complications and difficulties that exist in enforcing Maritime International instruments in Zanzibar.
6. Sources.

6.1 Convention and Resolutions.

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