THE CHALLENGES OF FLAG STATE CONTROL; THE CASE OF GHANA.

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SHIPPING ADMINISTRATION DEGREE.

JUNE, 2013
DECLARATION

I hereby declare that this study is the result of my own research work and it has not been presented to any academic institutions or otherwise. All references to the work have been fully acknowledged.

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Date 28/06/2013
DEDICATION

I dedicate this study to my mother Alice Adowaa and my late father Samuel Kwabena Boye.
ACKNOWLEDGEMENT

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Finally yet importantly, I want to thank the Staff of Ghana Maritime Authority, Ghana Institute of Marine Surveyors, Ship Owners Association and Ministry of Transport (MOD) for their continuous support and for easing out the difficulties, I encountered throughout the study.
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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>A.C.</td>
<td>Appeal Case</td>
</tr>
<tr>
<td>COLREG</td>
<td>Convention on the International Regulations for Preventing Collisions at Sea (1972)</td>
</tr>
<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agriculture Organization</td>
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<tr>
<td>FOC</td>
<td>Flag of Convenience</td>
</tr>
<tr>
<td>FSI</td>
<td>Flag State Implementation</td>
</tr>
<tr>
<td>GIMS</td>
<td>Ghana Institute of Marine Surveyors</td>
</tr>
<tr>
<td>GMA</td>
<td>Ghana Maritime Authority</td>
</tr>
<tr>
<td>HSC</td>
<td>High Seas Convention</td>
</tr>
<tr>
<td>ILC</td>
<td>International Law Commission</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
</tr>
<tr>
<td>IMO</td>
<td>International Maritime Organisation</td>
</tr>
<tr>
<td>ISPS</td>
<td>International Ship and Port Facility Code</td>
</tr>
<tr>
<td>ITF</td>
<td>International Workers' Transport Federation</td>
</tr>
<tr>
<td>IMCO</td>
<td>Inter-Governmental Maritime Consultative Organization</td>
</tr>
<tr>
<td>ISM</td>
<td>International Safety Management Code</td>
</tr>
<tr>
<td>ITLOS</td>
<td>International Tribunal for the Law of the Sea</td>
</tr>
<tr>
<td>IUU</td>
<td>Illegal Unreported and Unregulated</td>
</tr>
<tr>
<td>MARPOL</td>
<td>International Convention for the Prevention of Pollution From Ships (1973) as modified by the Protocol of 1978</td>
</tr>
<tr>
<td>MLC</td>
<td>Maritime Labour Convention</td>
</tr>
<tr>
<td>MOT</td>
<td>Ministry of Transportation</td>
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<tr>
<td>PSC</td>
<td>Port State Control</td>
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OR  Open Registries
RO  Recognised Organisation
SOA Ship Owners Association
SOLAS International Convention for the Safety of Life at Sea (1974)
STCW The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 78/95
UNCLOS III Third United Nations Conference on the Law of the Sea
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ABSTRACT

The purpose of the study is to investigate the challenges facing flag state control in Ghana. Throughout the history of the law of the sea, the question of jurisdiction over ships plying the seas has been the subject of much debate and controversy. The evolution of flag State jurisdiction is undeniably linked to the developments that have been brought to the concepts of nationality, ship registration, safety and also to the efforts of the international community through international organisations to set rules and standards to govern the operation of ships. The discretion of flag States to fix the conditions for ship registration and the abuse that sometimes has been associated to it is constantly being discussed at the international level, with more emphasis on maritime security.

The population of this research embraces staff of Ghana Maritime Authority (GMA) the regulatory body of the Ghana Maritime Industry, some members of Ship Owners Association, Ghana Institute of Marine Surveyors (GIMS) and the Ministry of Transportation (MOT). The essence of having a large population was to enable an extensive study on the subject matter.

Designed questionnaires were used as the main method for gathering of information from the chosen respondents on the study. The major finding of the study shows that Ghana has rectified all international conventions that regulate flag state control. The study again discovers that the GMA, the regulatory body of the Ghana Maritime Industry is facing challenges with respect to logistics for ensuring effective implementation of flag state regulations. However, the study found that there are experts in the industry whose contributions make efficiency in the industry. The study recommends further research on whether or not the ship owners in Ghana obey the regulations of the shipping industry.
CHAPTER ONE

1.0 INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The various international conventions, laws, regulations, codes and treaties in the maritime industry seek to guide the flag states in formulating and implementing rules that will effectively control the activities of the registered vessels. This study is to investigate the various challenges facing Ghana, when exercising her flag state control responsibilities.

The international codification of the principle of flag state jurisdiction took place as part of the development of legally binding global instruments on United Nations Convention on the law of the sea (UNCLOS) in the second half of the 20th century. The concept of flag state came into being through the evolution of the customary use of the flag as a means of identification and symbol of nation states when ships belonging to a particular sovereign state were plying the seas and started moving further on the high seas (Mansell, 2007).

Freedom of navigation and the right of flag states to sail ships on the high seas are enshrined in the 1958 High Seas Convention (HSC) and later under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The principle of flag state jurisdiction is one of the most widely acknowledged in international maritime law, yet it remains one of the most contentious. The rights of flag states have remained largely unchanged since the original evolution of the concept. But the list of their responsibilities has grown exponentially, in areas ranging from ship safety standards and crew training to marine pollution, maritime security, and seafarer welfare.
The flag state responsibilities are exercised with guiding reference to the United Nations Convention on the Law of the Sea (1982). The convention outlined the territorial waters within which the flag state can exercise its control; starting from the internal waters, territorial sea, contiguous sea, and exclusive economic zone. However, the restrictiveness of the flag state control reduces along the territorial waters, starting from the internal waters.

United Nations Convention on the Law of the Sea (1982) stated that the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state. Therefore, the internal waters are determined by the landward waters of the baseline, as stated by Article 8 of the 1982 UN convention. Example of internal waters includes lakes and rivers, where a state has a complete jurisdiction, not even innocent passage shall exist in those waters. Innocent passage is a concept in law of the sea which allows for a vessel to pass through the territorial waters of another state subject to certain restrictions. According to Article 19 of the convention Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.

Article 3 of UN Convention on the Law of the Sea (1982) gives every state the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles. At this point the coastal state is free to set laws, regulate, and use any resource for flag state control.

Contiguous zone is described by article 33 of the convention as a zone contiguous to it territorial waters. Contiguous zone is determined by measuring 24 nautical miles from the territorial sea
baseline limit. In contiguous zone a state can exercise its control or enforce its laws in four specific areas, which are custom, immigration, taxation, and pollution.

The **exclusive economic zone** is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established by Article 55 in Part V of UN Convention of the law of the sea (1982), under which the rights and jurisdiction of the coastal state and the rights and freedoms of other states are governed by the relevant provisions of the Convention. Exclusive economic zone is determined by the extension from the edge of the territorial sea out to 200 nautical miles (370 kilometres; 230 miles) from the baseline.

The above are the four zones within which a sovereignty of a coastal state extends, beyond its land territory and internal waters.
Beyond the exclusive economic zone are the international waters or the high seas. The high seas are free and may not be controlled by any one nation. The freedom of usage of the high seas therefore made the UN and its agencies to set out rules and regulations for the peaceful usage of the high seas. This freedom on the high seas is limited whenever a ship breaks into any territorial waters of any state.
Flag states therefore have responsibility for the implementation and enforcement of rules adopted by other intergovernmental bodies, including the International Maritime Organization (IMO) and International Labour Organization (ILO). The IMO provides the regulatory framework to be adopted by member nations to ensure secure, safe and pollution free marine environment whilst the ILO governs standards of seafarers' employment. These developments among others present a range of challenges, and raise the question whether a system of extensive flag state responsibility is an effective approach.

To manage maritime operations ships must be registered and controlled by the flag state. This is important because vessels are registered by the flag state in order to ensure safety, security, and pollution free environment. By registering the vessel in a certain country, the Owner of the vessel undertakes to follow the maritime law of the country. Generally the safety aspect of the Marine Law of any particular country is captured in the International Convention for the Safety of Life at Sea (SOLAS). There might be a few changes, but the local standards should not be set below the SOLAS standards. The decision of a ship owner to register his/her vessel in a certain country is commercially driven. Taxes, tariffs and crewing play major part in the registration of a vessel under a flag.

Flag states are expected to implement the detailed requirements of the international maritime conventions, and establish effective mechanisms for their enforcement. This should include the regular inspection, surveying, and certification of the ships to ensure their sea worthiness. The crew must be in the possession of certificates of competence issued or recognized by the flag state. The flag state is under the duty to exercise effective jurisdiction and control over
administrative, technical, and social matters on their ships on the high seas or anywhere within the ship. However in the implementation of the responsibility of the flag state there are challenges.

The Maritime Administration of any country ensures that the vessels under their flags are inspected and surveyed as stipulated in International Conventions to verify that the vessels conform to the International Maritime laws and Regulations; and other safety, security and pollution preventions standards of that country. Flag states are expected to implement the detailed requirements of the international maritime conventions, and establish effective mechanisms for their enforcement. This should include the regular inspection, surveying, and certification of the ships to ensure their sea worthiness. The crew must be in the possession of certificates of competence issued or recognized by the flag state.

Article 90 of 1982 UNCLOS which is the same in substance as Article 4 of the 1958 HSC states that every state, whether coastal or land locked, has the right to sail ships flying its flag on the high seas. The flag state is under the duty to exercise effective jurisdiction and control over administrative, technical, and social matters on their ships on the high seas or anywhere within the ship. These responsibilities under UNCLOS are not meant to be exhaustive, but complemented by other international laws and regulations adopted by the relevant international organizations like International Maritime Organization (IMO) and ILO) as well as national legislative instruments. Ghana is a member of the United Nation (UN), IMO and ILO. Ghana’s flag state implementation is the responsibility Ghana Maritime Authority (GMA).
Ghana is a West African country located on the latitude and longitude of 8°00'N and 2°00'W respectively, and span across a land area of 238,540 km² (92,100 sq miles). The country extends from the Gulf of Guinea on the Atlantic Ocean to the inland savanna zone. The Atlantic Ocean together with other oceans of the world is used for maritime trade which is regulated by the UN and its related agencies like IMO and ILO whilst local maritime laws and regulations are implemented and enforced by flag states in accordance with relevant international maritime conventions.

1.2 STATEMENT OF THE PROBLEM

Flag state implementation unfortunately has not been effectively carried out by most flag states especially those which have been termed as open registers or flags of convenience. They adopt a very lax attitude with respect to their international obligations under UNCLOS and other relevant international maritime conventions.

The implications are serious; given that flag states have the exclusive jurisdiction on ships flying their flag on the high seas. In the event of improper or inadequate exercise of its duties by flag states, then safety, security as well as environmental issues are compromised. Measures have been and are still being put in place by the international community in order to make flag states shoulder their responsibilities. However, there are still certain loopholes in the international legal framework, some of which could be counter-productive. For example under UNCLOS a country’s ability to use domestic legislation as a vehicle to exclude contentious
maritime issues from mandatory dispute resolution greatly curtails the treaty’s enforcement powers, and thus its overall effectiveness.

While it is ship Owners that have primary responsibility for the safe operation of their ships and the safety and welfare of their crews, the flag state plays a critical role with regard to the safety of life at sea and the protection of the marine environment. It is the flag state that has overall responsibility for the implementation and enforcement of international maritime regulations for all ships ‘flying her flag’. But the issue goes beyond mere responsibility. Does the State, Ghana, have systems in place to ensure proper monitoring of activities of those vessels flying her flags? Are there challenges of ensuring effective implementations of the regulations? These and many other questions necessitate the need for government to effectively regulate both technical and social aspects of maritime industry to ensure safe, secure and pollution-free ship operations and good employment conditions for seafarers.

There are 421 ships on the Ghanaian Register comprising 340 fishing vessels, 56 small crafts and 25 cargo vessels. But there have been less research findings on the activities of these vessels, and whether they comply with the existing regulations. Again, there is lack of empirical findings establishing and portraying the challenges facing Ghana in controlling activities of the registered vessels. Therefore, there is the need to identify the challenges that hinder the implementation of flag state regulations.

Besides, most of the research works done are more related to European, United States of America (USA) or other regions with little or no emphasis on West Africa. This study is to
investigate the various challenges facing Ghana, when exercising her flag state control responsibilities.

1.3 HYPOTHESES OF THE STUDY
I. When control measures are not reviewed regularly illegal activities of registered vessels increase and impose challenges.
II. Regular enforcement reduces illegal activities of the registered vessels.

1.4 SCOPE OF THE STUDY
The study would be conducted on flag state control in Ghana. It will consider the major activities that are taken in controlling various vessels in Ghana. The scope of the research work would be limited to administrative, technical, and social responsibilities with regards to vessels flying the flag of Ghana in the period 2000 to 2011.

1.5 OBJECTIVES OF THE STUDY
The main objective of the study is to assess the challenges of the flag state regulation in Ghana considering the activities of the various registered vessels.

The specific objectives are:

a) To provide an overview of flag state control.
b) To identify the challenges facing Ghana as a flag state.
c) To identify the known activities of the various vessels flying the flag of Ghana.
d) To examine the regulatory functions of Ghana Maritime Authorities on the vessels registered under the flag of Ghana.

e) To examine whether there is the need to review the ship registration in Ghana

f) To make recommendations for the improvement of flag state control in Ghana

1.6 RESEARCH QUESTIONS

The study addressed the following questions that enabled vital recommendations that are helpful in the implementation of both state and international regulations.

1. What are the activities of registered vessels in Ghana?
2. Does the flag state control in Ghana cover all activities of registered vessels?
3. Is there the need to review the requirement of ship registration in Ghana?
4. What are some of the administrative, financial and technical challenges of controlling shipping activities in Ghana?

1.7 LIMITATIONS OF THE STUDY

During the period of the study, the researcher encountered the following difficulties:

I. There have been few research findings on the study topic, and this made it difficult in accessing secondary data needed for the study.

II. Officers in charge in ensuring the implementation of the necessary regulations were reluctant in giving the needed information for effective analysis due to internal policies in place.
III. Getting respondents to complete design questionnaires was difficult due to their busy schedule of work.

IV. Time involved for the submission of this study was quite short and this mounted pressure on the researcher.

1.8 JUSTIFICATION OF THE STUDY

It is very important and necessary for every nation to establish systems and rules that protect its citizens and properties. In doing that it is equally important in ensuring effective smooth business operations, both on the land and on the sea. It is of this reason that international regulations are formulated through various recognized bodies to guide every nation in establishing clear and unambiguous rules and regulations to protect activities on its navigable waters bodies.

This study will help provide information that will guide and contribute into effective implementation of the state regulations on the activities of the various vessels on the territorial waters of the nation. The challenges will be discovered, and that will help initiate measures to control shipping activities.

The findings of this study will help to prompt the Government of Ghana in taking decision on whether to review the existing requirement on registration of ships in Ghana. It is also important that the activities of these registered vessels on the sea are identified and monitored by Vessel Tracking Systems (VTS) to ensure safety, security, and pollution controlled on the seas.
The study will also be useful to Ghana Maritime Authority (GMA), especially top management and officers directly involved in flag state control. It will also be useful to policy makers, port authority, ship owners, investors, those in academia and other players in the maritime industry, as a source of first hand information on matters pertaining to the challenges of flag state control in Ghana.

1.9 ORGANIZATION OF THE STUDY

This study is presented in five chapters. Chapter One is the introduction of the whole study. Chapter Two presents relevant literature, taking into consideration findings relevant to the study topic. The methodology to achieve the objectives was explained in chapter three. Chapter Four presents the results and the accompanying discussions. The conclusions and recommendations are outlined in chapter five.

1.10 OPERATIONAL DEFINITIONS

Flag State; The flag of a commercial vessel is the state under whose laws the vessel is registered or licensed. The flag state has the authority and responsibility to enforce regulations over vessels registered under its flag, including those relating to inspection, certification, and issuance of safety/security and pollution prevention documents.
Port State Control; It is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules.

Coastal Zone; The coastal zone, broadly defined as near-coast waters and the adjacent land area, forms a dynamic interface of land and water of high ecological diversity and critical economic importance.

Navigation; In light of this study is the process of monitoring and controlling the movement of vessel on the sea. All navigational techniques involve locating the navigator's position compared to known locations or patterns.
CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 INTRODUCTION

This chapter reviews the existing literature on flag state control by looking at the existing theoretical and empirical literature. Thus critical points of current knowledge including substantive findings as well as theoretical and methodological contributions to flag state control will be examined.

2.2 UNDERSTANDING THE CONCEPT OF FLAG STATE JURISDICTION

The concept of flag state came into being through the evolution of the customary use of the flag as a means of identification and symbol of a nation or state, when ships belonging to a particular sovereign state were plying the seas and started moving further on the high seas. Freedom of navigation and the right of flag states to sail ships on the high seas are enshrined under customary law and these customary rules have been codified under the 1958 High Seas Convention and later under the 1982 United Nations Convention on the Law of the Sea—Articles 87 and 90 (Hosanee, 2010).

Flag states have been given the right to sail ships on the high seas and the right to fix conditions for registering ships under their flag and giving their nationality to these ships, vide Articles 90 and 91 of UNCLOS. As a counterpart, as per Article 94 of UNCLOS, the flag state is under the duty to exercise effective jurisdiction and control over administrative, technical and social matters on their ships on the high seas.
Flag state duties, with respect to ships registered under a particular flag, as listed under Article 94 are not meant to be exhaustive. They are complemented by the international laws and regulations adopted by the relevant international organizations (IMO and ILO).

2.3 THE HISTORICAL DEVELOPMENT OF FLAG STATE

The expression “Flag State” is made up of two words, each with a rich history, and having been juxtaposed to denote another yet important concept. The beginning of the use of flag can be traced back to around 1000 BC, when the Egyptians first used versions of the flag for identification purpose. This usage of the flag expanded to the other civilizations and eventually came to be used on ships also with the same motive of identification, and since the Middle Ages it has been used as a symbol of a nation, or a country. It gained importance as vessels began distancing more and more from their homeport. Flying the flag has, out of practice, become part and parcel of customary law (Adam, 1962).

In the Asya Case (1948) A.C. 351, it was ruled that a ship not sailing under the flag of any State had no right to freedom of navigation. The identification of the ship by the flag therefore symbolizes the legal regime of the ship on the high seas and has become a necessity for the maintenance of public order, be it on the high seas or in the territorial waters of coastal maritime States. The flag determines the responsibility and how and where a legal right can be enforced in relation to a ship. Eventually, the flag gained its recognition with the codification of the usage under the 1958 High Seas Convention and ultimately the UNCLOS 1982.
Article 4 of the 1958 High Seas Convention states that: Every State, whether coastal or not, has the right to sail ships under its flag on the high seas. Article 5 of the same Convention further stipulates, inter alia that: Each State shall fix the conditions for the right to fly its flag. The corresponding provisions of the above Articles are laid down respectively under articles 90 and 91 of UNCLOS 1982.

As for the definition of State, or Statehood, it is argued that one of the earliest definitions bearing legal connotation was given by Vitoria in De Indis de lure Belli Recelotions: A perfect State or community is one which is complete in itself, that is, which is not a part of a community, but has its own laws and its own council and its own magistrates.

Ruling the seas had always been a wish cherished by the great maritime nations, and this wish was mainly driven by economic interests. In order to attack the Portuguese monopolistic rule over the Indian Ocean and the very lucrative spice trade, the Dutch came forward with the doctrine of the freedom of the seas through a Dutch lawyer, Grotius, in his well known 1609 publication Mare Liberum. According to Grotius, things that cannot be seized nor be subject to enclosure might not become property, they are common to all, and their usage pertains to the entire human race. Through the Grotian view, therefore, navigation is free to all persons.

This notion of the freedom of the open seas thus gained recognition, despite the counter idea set forward by Selden in his Mare Clausum and propounded by the British in order to protect their exclusive dominion of the seas. The doctrine of Mare Liberum ultimately came to be seen as
inevitable and of prime importance for the progress of seaborne trade and navigation and was included in the customs of nations and principles of international law.

The same British sea power which had at one point of time rejected the notion of the freedom of the seas, in fact, used its maritime superiority to champion the issue and soon was rallied by the other maritime powers to dominate the seas as freedom was equated with laissez faire and this laissez faire played to their advantage. Another important notion that also developed in parallel was the recognition of the coastal State's exclusive jurisdiction and control on its territorial sea for the protection of its security and other interests, although uniformity of views as to the breadth of the territorial sea was yet to be achieved.

The international community gradually recognised the importance of codifying these concepts of State practice customary international law of the sea and from the 19th century there were several attempts made at codifying the law. Such attempts gained momentum with the institution of the International Law Commission (ILC) under the UN Charter from 1947. The ILC held its first session in 1949, having as one of its mandates the codification of the law of the sea. The invaluable work of the ILC on the law of the sea aspect thus set the basis for the First United Nations Conference on the Law of the Sea (UNCLOS I) in 1958.

One of the outcomes of UNCLOS was the adoption of the High Seas Convention 1958 whereby the "rules of the road" with respect to, inter alia nationality and registration of ships, the rights and obligations of the flag states over ships registered under its flag were first laid down.
2.4 THE ROLE OF THE FLAG STATE

The United Nations Convention on the Law of the Sea (UNCLOS) defines a flag state as a state that has the overall responsibility for the implementation and enforcement of international maritime regulations for all ships granted the right to fly its flag. However, the flag state may conduct the larger part of its activities through entities located in other countries.

Hosanee (2010) noted that most of the national maritime administrations have other roles, in their capacity as port and coastal states, which may involve the enforcement of regulations with regard to visiting foreign ships. However, in the context of the regulation of shipping, it is a nation’s role as a flag state that is the first line of defense against potentially unsafe or environmentally damaging ship operations. This is very true because the enforcement of International Maritime Organization (IMO) rules that apply to the operation of ships is, in the first instance, dependent on IMO member governments in their capacity as flag states. According to SOLAS 74, Flag states also have responsibility for the implementation and enforcement of rules adopted by other intergovernmental bodies, including the International Maritime Organization (IMO) and International Labor Organization (ILO). The IMO provides the regulatory framework to be adopted by member nations to ensure secure, safe and pollution free marine environment whilst the ILO governs standards of seafarers’ employment.

2.5 FLAG STATE CONTROL

2.5.1 General Statement of the Duties

Under UNCLOS Article 94(1) the matters on which the flag state is to exercise its duties is made explicit, that is jurisdiction and control over administrative, technical and social matters. This
requirement, also present under the 1958 HSC, was added to strengthen the concept of “genuine link” with regard to the nationality of a ship, by indicating matters over which the flag State should exercise its jurisdiction. The United Nations Convention on Conditions for Registration of Ships 1986 (hereafter the 1986 Convention) amplifies the objective set out under paragraph 1. Article 1 of that convention prescribes that the flag state is to apply the provisions of that convention for the purpose of ensuring or, as the case may be, strengthening the genuine link between a State and ships flying its flag, and in order to exercise effectively its jurisdiction and control over such ships with regard to identification and accountability of ship owners and operators as well as with regard to administrative, technical, economic and social matters pertaining to Ghana’s challenges in ensuring efficient and effective control of the flag of Ghana.

The reference there to “economic” matters has no direct counterpart in Article 94, but given the comprehensive character of the obligations imposed on flag states generally throughout the convention, this slight widening of the purpose served by registration and of the duties of the flag state is compatible with the convention. The 1986 Convention also insists that each flag State should have a competent national maritime administration which ensures its ships comply with all applicable international rules and regulations. Article 94(1) also complements Article 92(1) of UNCLOS 1982, to the effect that, on the high seas or in exceptional cases provided for in international treaties, a ship is subject to the exclusive jurisdiction and control of its flag State.

Some duties with respect to anti pollution measures are also assigned to flag states under UNCLOS. Under Article 217 of UNCLOS the responsibility of the flag state to enforce measures and adopt laws and regulations aiming at prevention, reduction and control of pollution and
ensure compliance of those vessels flying its flag with marine pollution laws. The flag state is also under the obligation to investigate any case where any ship registered under its flag violates any international anti pollution laws (MARPOL 73/78).

Beth, Hader and Kappel (1984) stated that flag state implementation of its duties is unfortunately not effectively carried out; most flag states and especially those which have been termed as open registers or flags of convenience adopt a very lax attitude with respect to their international obligations under UNCLOS and other relevant international maritime conventions.

The implications are serious: given that flag states have the exclusive jurisdiction on ships flying their flag on the high seas, in the event of improper or inadequate exercise of its duties by the flag states, safety and security are compromised. Measures have been and are still being put in place by the international community in order to make flag states shoulder their responsibilities. However, there are still certain loopholes in the legal international framework, some of which can even be said to have been deliberately left out (Hosanee, 2010).

2.5.2 The Duties Laid Down Under Article 94 UNCLOS 1982

As indicated by the Article 94 UNCLOS 1982, the following are the duties:

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:
(a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and

(b) Assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regards, inter alia, to:

(a) The construction, equipment and seaworthiness of ships;

(b) The manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;

(c) The use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

(a) That each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments are appropriate for the safe navigation of the ship;

(b) That each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;

(c) That the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.
5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to the general accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag state. Upon receiving such a report, the flag state shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitable qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag state and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation."

2.6 FLAG STATE RESPONSIBILITIES

2.6.1 Infrastructure

A flag state should clearly have sufficient infrastructure, in terms of qualified and competent staff, offices and equipment, to meet its obligations under international treaties. Different flags have different approaches, e.g. staffing may depend on the extent to which flags delegate certain functions to bodies such as classification societies. But if a flag state does not appear to have separate inspection or crewing departments, for example, it is possible that the flag’s only effective function may be the collection of registration fees.
2.6.2 International Maritime Treaties

All flag states should endeavour to ratify the principal international maritime treaties, including those adopted by IMO and ILO. As a minimum, flag states should be expected to have ratified the following core international maritime conventions:


Safety of Life at Sea as indicated by SOLAS 74 of international conventions is captured by the Ghana shipping act 2003, Act 645 with detail explanations under the various sections under it.

II. International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978, including Annexes I - VI (oil, bulk chemicals, dangerous packaged goods, sewage, garbage and atmospheric pollution) (MARPOL 73/78).


The study found that the Shipping Act, 2003, in part eight of Act 645, ratifies this international convention on Load Lines (LL6). The covering areas include countries to which load line convention applies in section 302, load line regulations in section 303, certifications in section 304 to 3015, etc.

Part four of the Ghana Shipping Act 2003 (Act 645) captures the engagement and welfares of seafarers including functions of registrars of seafarers in section 107, crew arrangement in Section 108, regulations for disciplinary offences in section 110, regulations for conditions of service in section 121, etc. Meanwhile the Shipping Act is silence on Training for workers in the industry.


A responsible flag state should be able to provide a valid explanation for not having ratified any of the above, and in practice should be expected to implement and enforce national regulations that comply with the vast majority of the detailed requirements contained within these international regulations.

In addition to the ‘core’ maritime conventions mentioned above, and the United Nations Convention on the Law of the Sea (UNCLOS), flag states are particularly encouraged to ratify and implement the following additional IMO Conventions: Control and Management of Ships’ Ballast (BWM); Anti-fouling Systems (AFS); Limitation of Liability for Maritime Claims (LLMC) and its 1996 Protocol; Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS); and Civil Liability for Bunker Oil...
Pollution Damage (Bunkers). However, these instruments still lack widespread ratification, even amongst what might be regarded as leading flag states.

2.6.3 Implementation and enforcement

As a minimum, it is reasonable to expect flag states to have implemented the detailed requirements of the international maritime treaties listed above, and to have established effective mechanisms for their enforcement. For example, SOLAS, amongst other conventions, provides for regular ship surveys and the issue of certificates of compliance by the flag state, while STCW requires certification of crew competence.

A simple means of assessing the extent to which international regulations are being properly enforced is through an examination of externally published data concerning the performance of ships registered with particular flags, not least port state control data.

2.6.4 Supervision of surveys

In accordance with IMO Resolution A.739, flag states should establish appropriate controls over organizations, such as classification societies, nominated to conduct statutory surveys of ships on their behalf. Such controls should include determining that the organization has adequate resources for the tasks assigned, and entering into a formal written agreement covering the issues specified in A.739. Flag states should specify instructions detailing actions to be followed in the event that a ship is not found fit to proceed to sea, and provide information concerning national regulations that give effect to international maritime conventions. Verification and monitoring system should also be established to ensure the adequacy of work performed by organizations acting on a flag state’s behalf.
The delegation of statutory survey work should be restricted to ‘Recognized Organizations’ that comply with IMO Resolution A.739. In practice this will usually mean internationally recognized bodies, such as members of the International Association of Classification Societies (IACS).

2.6.5 International Safety Management Code

Flag states should have implemented the requirements of the ISM Code concerning the auditing of safety management systems (SMS), both on ships flying their flag and the shore based companies responsible for their safety operation. Flag states should also have established procedures for the issue and withdrawal of ships’ Safety Management Certificates (SMCs) and companies’ Documents of Compliance (DOCs).

Flag states should also adhere to the Guidance contained in IMO Resolution A.788 concerning the implementation of the ISM Code. Flag states delegating ISM Code auditing and certification to other bodies should only delegate to organizations that comply with IMO Resolution A.739.

2.6.6 Maritime security

Flag states should have implemented the relevant requirements of the SOLAS Convention and the International Ship and Port Facility Security (ISPS) Code concerning the approval of Ship Security Plans, the issue of International Ship Security Certificates and the provision to ships of Continuous Synopsis Records.
Flag states delegating approval of plans and/or the issue of security certificates to other bodies should only delegate to organizations that comply with the requirements for Recognized Security Organizations as specified by the ISPS Code.

Flag states are also encouraged to ratify and implement the ILO Seafarers’ Identity Documents Convention, 2003 (ILO 185).

2.6.7 Seafarers’ competence standards

Flag states should be placed on the IMO STCW ‘white list’ of governments that have demonstrated compliance with the administrative measures needed to implement the 1995 amendments to the STCW Convention concerning the competence and certification of internationally qualified seafarers. As required by STCW, flag states should submit quality standards reports to IMO at five year intervals, outlining any deficiencies in their training and certification systems and measures taken to rectify them, in order to maintain a place on the updated STCW ‘white lists’ periodically issued by the IMO Maritime Safety Committee.

Flag states should issue STCW recognition endorsements to foreign officers serving on ships flying their flag, even when they have been issued with certificates of competence by another country. The flag state should have procedures in place to ensure that the foreign certificate issuing country complies with STCW training and certification standards.

Flag states should maintain databases of the certificates they have issued to national seafarers and of STCW endorsements issued to foreign officers, and respond immediately to requests from companies seeking confirmation of the validity of any certificate or flag state recognition endorsement issued by the flag state.
2.6.8 Employment standards

Flag states should implement the requirements of the ILO Maritime Labour Convention, 2006, including, but not limited to, the inspection and enforcement of ILO standards covering conditions of employment, food and catering, medical care and accommodation; the approval of ships’ Declarations of Maritime Labour Compliance; and the issue of Maritime Labour Certificates.

2.6.9 Safe manning and seafarers’ working hours

Flag states should approve safe manning levels for ships flying their flag and issue safe manning documents, in accordance with the provisions of IMO Resolution A.8902.

Flag states should strictly enforce minimum seafarers’ rest hours that comply with the ILO Maritime Labour Convention (MLC 2006) in addition to the IMO STCW Convention. Flag states should require work/rest hours to be recorded in accordance with joint IMO/ILO Guidance.

2.6.10 Casualty investigations

In accordance with IMO Resolution A.849, and taking into account the provisions of SOLAS and MARPOL, a flag state should carry out investigations of any ‘serious’ and ‘very serious’ casualty occurring to its ships, as soon as practicable after the casualty. Flag states should also co-operate with other nations investigating casualties in which ships flying its flag may be involved. The relevant findings of such investigations should be forwarded promptly to IMO, and should be made available to the industry and other interested parties.
2.6.11 Movement of ships between flags

A flag state accepting a ship transferring from the flag of another state should only accept such a ship when it is satisfied that it is in compliance with international maritime requirements, and has undergone a proper survey routine done by an approved surveyor by the flag state accepting the new ship. Flag states whose ships transfer to other registers have an obligation to provide all necessary information to the new flag state in which the ship is to be registered.

2.6.12 Repatriation of seafarers

In normal circumstances the employer is responsible for the repatriation of seafarers. Nevertheless, as required by the ILO Maritime Labour Convention, a responsible flag state should institute arrangements to ensure that in the rare event of normal procedures failing (e.g. due to bankruptcy of a shipping company) the seafarers working on board any ships flying its flag, including those that are nationals of other states, are repatriated to their country of residence.

2.6.13 IMO Member State Audit Scheme

Flag states should participate in the IMO Member State Audit Scheme in order to identify areas for possible improvement with regard to the implementation of IMO instruments, and which may benefit from IMO technical assistance programmes. In the interests of transparency and continuous improvement, the industry organizations believe that flag states should publish the results of the IMO audits for the benefit of the industry as a whole.
2.6.14 Participation at IMO and ILO meetings

In order to be informed of the latest international maritime regulatory developments (and contribute to the decisions made by IMO), flag states should be expected to attend all meetings of the following IMO committees: Maritime Safety Committee (MSC), Marine Environment Protection Committee (MEPC), Legal Committee (LEG), and the Biennial meetings of the IMO Assembly.

Additionally, flag states may also participate in IMO Diplomatic Conferences and relevant technical sub-committees of IMO, including the Sub-Committee on Flag State Implementation, as well as major maritime meetings of the International Labour Organization. All flag states, particularly those from developing countries which might benefit from technical assistance programmes, should also be encouraged to attend meetings of the IMO Technical Co-operation Committee.

2.6.15 Consultation with ship owners

Flag states should have some form of consultative process to enable ship operators to engage in discussions about maritime regulatory developments and other issues relevant to the safe operation of ships flying their flag, for example, through the mechanism of a national ship owners' association.

2.7 AUTHORITY OF SHIP MASTERS AND FLAG STATE REGULATIONS

In taking into account the Maritime Interception Operations (IMO) developments under 2002 revision to SOLAS Regulation XI-2/8 and the 2004 addition of SOLAS Regulation 34-1, a
strong argument can be made that the ship's master does have the authority to consent to a search of his vessel for safety and security reasons, even in the modern era. Applying this argument in the context of the war on terror, Benford (1985) stated that if a ship's master is informed that a suspected terrorist or weapons of mass destruction (WMD) is on board in his vessel, that master could consent to a boarding and search of the ship by a foreign state for the wanted individual or illegal cargo if the master believed the search to be necessary for safety and security reasons of the ship. To suggest otherwise would undermine the ability of the ship master to ensure the safety and security of his vessel, including in the event of an emergency Benford (1983).

Douglas (1984) asked a simple question that if, instead of a direct threat to the safety of the ship, the master became aware of a terrorist plot against a third country, or perhaps specifically against the country seeking to board and search the vessel, would the master still have the authority to consent? In either situation, foiling a terrorist plot requires swift and decisive action, and a flag state might be unreachable, or unable to decide whether to grant authority to board and search a vessel (Benford, 1985). Douglas again asked that while it is clear that flag-state consent would make the boarding permissible, what effect would a master's consent have on the legitimacy of the boarding and search? According to Brooks (1995) There is, however, no direct authority to support the proposition that a master could consent to a boarding and search of his vessel without the consent of the flag state in order to thwart a terrorist plot, capture a terrorist suspect, or search for weapons that do not directly pose a threat to the safety and security of his ship. Brealey and Myers, (1988) also argued that in the absence of specific authority or a well-recognized custom and practice that would support the proposition that a master's control over his vessel authorizes decisions not tied to the safety or proper management of the vessel, the long-standing principle
of flag-state jurisdiction should prevail." As a result, without the consent of the flag state, a ship harboring a terrorist who means no harm to the ship, but does intend harm to a third country, could not be boarded without additional authority.

2.8 REGISTRATION AND NATIONALITY OF SHIPS

2.8.1 Right of Navigation and Nationality of Ships

According to Article 90 of 1982 UNCLOS which is the same in substance as Article 4 of the 1958 HSC: Every State, whether coastal or land locked, has the right to sail ships flying its flag on the high seas. These corresponding articles codify the customary right of navigation open to all States. Moreover, it can be said that this freedom of navigation is bestowed upon States, as subjects of international law and enjoyed through them by ships to which the right to fly their flag has been accorded and which henceforth bear the nationality of the flag State.

Flowing from this right of flag states to sail ships on the high seas is the prerogative of the flag states to exercise certain rights and duties upon those ships. Indeed, as the high seas are not under the jurisdiction of any State, if public order is to be preserved the right to navigate there must be restricted to those vessels which, through their link with the flag state, are subjected to its jurisdiction and can then be required to comply with the network of customary and conventional rules which make up the public order of the oceans (Nordquist, 1982). As the ILC explained, that the absence of any authority over ships sailing the high seas would lead to chaos. One of the essential adjuncts to the principle of the freedom of the seas is that a ship must fly the flag of a single State and that it is subject to the jurisdiction of that State.
It can be said that vessels which are without nationality do not have the right to sail on the seas. This was put forward by the United States Court of Appeals in US v Marino-Garcia (1982) that vessels without nationality are international pariahs. They have no internationally recognized right to navigate freely on the high seas. Moreover, flagless vessels are frequently not subject to the laws of a flag state. As such they represent “floating sanctuaries from authority” and constitute a potential threat to the order and stability of navigation on the high seas (Molenaar, 1999).

Hence, the flag state is sovereign in its decision to grant its nationality to ships. In Lauritzen v Larsen, as quoted by Crawford (2007), the US Supreme Court offers a comprehensive summary of the law of the flag: Each State under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship’s papers and flag. The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering State.

As concluded by Middleton (1953), that determination of the criteria and establishment of procedures for granting and withdrawing nationality to ships are matters within the exclusive jurisdiction of the flag state. However, this right is not an absolute one. Indeed, this right to permit ships to fly under its flag has been qualified, in order to counter any laissez faire attitude on the part of States as stated under Article 5 of the 1958 HS.
2.8.2 Conditions for Ships to Fly the Flag of a State

Churchill (2000) found that States taking the decision to entitle ships to fly its flag must therefore have preset conditions; more exactly, domestic legislation in place to permit same. Such legal requirements generally relate inter alia to the nationality of owners and/or charterers' of the ship, the age of the ship, the nationality of the crew, manning requirements, and registration fees.

Once all the legal domestic requirements have been duly fulfilled the flag state is under the duty, in accordance with Article 5 of the 1958 HSC and Article 91 of UNCLOS 1982, to issue to the ship such documents attesting of the right of the ship to fly its flag. The main document attesting nationality and registration is generally the ship’s Certificate of Registry and it normally contains details such as, for instance, the name of the ship, its type and tonnage, the official IMO number allocated to it, the name of the port of registry, its trading area, particulars of the registered owner and/or of the bareboat charterer, if any, and any limitation as to the period of registration, that is, whether temporary or permanent. Other documents which the flag State may also issue together with the certificate of registry are the statutory safety certificates.

It is worth noting that every ship is to fly the flag of only one State at a time, in other words it cannot have double nationality, as expressly provided under Article 6 of the 1958 HSC and Article 92(2) of UNCLOS 1982. Thus, ships with double nationalities are, according to these two articles, to be assimilated to ships without nationality. In its commentary on the corresponding article of the 1958 HSC, the ILC noted that double nationality may give rise to serious abuse by a ship using one or another flag during the same voyage according to convenience (Nordquist, 1982).
2.9 VARIOUS TYPES OF SHIPS AND THEIR ACTIVITIES

**Bulk carriers**, are cargo ships used to transport bulk cargo items such as ore or food staples (rice, grain, etc.) and similar cargo. It can be recognized by the large box-like hatches on its deck, designed to slide outboard for loading. A bulk carrier could be either dry or wet. **Container ships** are cargo ships that carry their entire load in truck-size containers, in a technique called containerization. They form a common means of commercial intermodal freight transport. Informally known as "box boats," they carry the majority of the world's dry cargo. **Tankers** are cargo ships for the transport of fluids, such as crude oil, petroleum products, liquefied petroleum gas, liquefied natural gas and chemicals, also vegetable oils, wine and other food - the tanker sector comprises one third of the world tonnage (Office of Data and Economic Analysis, 2006)

**Reefer ships** are cargo ships typically used to transport perishable commodities which require temperature-controlled transportation, mostly fruits, meat, fish, vegetables, dairy products and other foodstuffs.

**Roll-on/roll-off ships** are cargo ships designed to carry wheeled cargo such as automobiles, trailers or railway carriages. RORO (or ro/ro) vessels have built-in ramps which allow the cargo to be efficiently "rolled on" and "rolled off" the vessel when in port.

**Coastal trading vessels**, also known as *coasters*, are shallow-hulled ships used for trade between locations on the same island or continent (Thompson, 1994).
Ferries are forms of transport, usually a boat or ship, but also other forms, carrying (or ferrying) passengers and sometimes their vehicles. Ferries are also used to transport freight (in lorries and sometimes unpowered freight containers) and even railroad cars. Most ferries operate on regular, frequent, return services. Ferries forms part of the public transport systems of many waterside cities and islands, allowing direct transit between points at a capital cost much lower than bridges or tunnels.

Cruise ships are passenger ships used for pleasure voyages, where the voyage itself and the ship's amenities are considered an essential part of the experience. Cruising has become a major part of the tourism industry, with millions of passengers each year as of 2006.

Ocean Liner is a passenger ship designed to transport people from one seaport to another along regular long-distance maritime routes according to a schedule. Ocean liners may also carry cargo or mail, and may sometimes be used for other purposes (UNCTAD, 2005).

Cable layer is a deep-sea vessel designed and used to lay underwater cables for telecommunications, electricity, and such.

A tugboat is a boat used to maneuver, primarily by towing or pushing other vessels (see shipping) in harbours, over the open sea or through rivers and canals. They are also used to tow barges, disabled ships, or other equipment like towboats.
Dredger (sometimes also called a dredge) is a ship used to excavate in shallow seas or fresh water areas with the purpose of gathering up bottom sediments and disposing of them at a different location (UNCTAD, 2006).

A barge is a flat-bottomed boat, built mainly for river and canal transport of heavy goods. Most barges are not self-propelled and need to be moved by tugboats towing or towboats pushing them.

Multi-purpose ship (sometimes called a general cargo ship) is used to transport a variety of goods from bulk commodities to break bulk and heavy cargoes. To provide maximum trading flexibility they are usually geared and modern examples are fitted for the carriage of containers and grains (Wijnolst, Niko, Wergeland, and Tor, 2009)

2.10 EMPIRICAL REVIEW

Compared to the aviation industry, the maritime transportation sector is characterized by a poor safety culture; that is the reporting chain in the maritime transportation sector is vulnerable to breaches (Hole, 2010).

This confirms what Hosance (2010) stated that Flag State implementation of its duties is unfortunately not effectively carried out; most flag States and especially those which have been termed as open registers or flags of convenience adopt a very lax attitude with respect to their international obligations under UNCLOS and other relevant international maritime conventions.
In addressing flag state control problems (Rogers, 2010) added that registers then must strike the right balance between staying competitive and staying safe, incorporating universal crewing minimum standards and security measures as part of the basic registration requirement.
CHAPTER THREE

3.0 METHODOLOGY

3.1 INTRODUCTION
This chapter outlines all the techniques used in designing, administering and obtaining the necessary data for the research work. The chapter explains type of research used, population of the study, sample and sampling techniques. Data collection method and instruments, instrument validity and structure, data collection procedure, and data analytical method are explained in this chapter.

3.2 TYPE OF RESEARCH
This study is a descriptive research. The term descriptive research refers to the type of research question, design, and data analysis that will be applied to a given topic. This study gathers, organizes, tabulates, depicts, and describes data collected. It also uses graphs and charts to aid the reader in understanding the data distribution.

3.3 POPULATION OF THE STUDY
Population means the total number or aggregate concern, which may lead to obtaining relevant data required for the study. The study examined challenges of flag state control in Ghana. The population of this research embraces staff of Ghana Maritime Authority (GMA) the regulatory body of the Ghana Maritime Industry, Ship Owners Association, Ghana Institute of Marine
Surveyors (GIMS) and the Ministry of Transportation. The essence of having a large population was to enable an extensive study on the subject matter.

3.4 SAMPLE AND SAMPLING TECHNIQUE

A sample is a group of items taken from a population in order to obtain the required data for the purpose of analysis (Panin, 2010). In order to facilitate easy administration and collection of questionnaires, a total number of forty (40) respondents were chosen based on the following breakdown:

<table>
<thead>
<tr>
<th>Sample Element</th>
<th>Sample Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff of Ghana Maritime Authority (GMA)</td>
<td>18</td>
</tr>
<tr>
<td>Ghana Institute of Marine Surveyors (GIMS)</td>
<td>10</td>
</tr>
<tr>
<td>Ship Owners Association (SOA)</td>
<td>10</td>
</tr>
<tr>
<td>Ministry of Transport (MOT)</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total sample size</strong></td>
<td><strong>40</strong></td>
</tr>
</tbody>
</table>

Judgmental sampling method used in selecting the members of the sample element. This type of sampling technique is also known as purposive sampling and authoritative sampling.
sampling is a non-probability sampling technique where the researcher selects units to be sampled based on their knowledge and professional judgment. This is chosen to enable the researcher select the appropriate respondents who are eligible to provide the needed information relevant for analysis.

3.5 DATA COLLECTION

This section reveals the type of information acquired and the relevant instrument used for the data collection.

3.5.1 Source of Data

The data for this study is categorized into two major types, which are primary and secondary. The required secondary data were collected from the internet, and other text books and journals. In the case of the primary data, they were strictly obtained from the identified research sample of the study.

3.5.2 Instrument for Data Collection

The research topic induced the decision of choosing questionnaire as the main instrument for data collection. This is because the views of the respondents needed to be expressible in writing, explaining issues regarding challenges facing flag state control. The researcher also considered questionnaire in order to allow the respondents of the study to have flexibility in responding to issues on their own free time.
The questionnaire will be used to gather data from all the respondents. The questionnaire was strategically designed to gather both quantitative and qualitative data to address the issues identified in the research.

3.6 INSTRUMENT VALIDITY

The validity of the instrument (questionnaire) used for this study was tested. The questionnaire was designed based on pre information gathered by the researcher from the target population. This information guided the researcher to design a questionnaire that would help obtain the necessary data needed for analysis. The supervisor of this study examined the content of the questionnaire. To ensure its success few corrections were made to improve upon the questionnaire. A pilot study involving ten prospective respondents was conducted to examine the effectiveness of the questionnaire. Due to few problems on inconsistency, the supervisor of this research made additional changes to the questionnaire. A second pilot study was embarked involving five prospective respondents, and the result was positive. The questionnaire proved to be providing vital data in achieving the study objectives outlined in chapter one.

3.6.1 Instrument Structure

The questionnaire for this study was structured with both close-ended and open-ended questions. The content of the questionnaire was categorized under each group of respondents; respondents from GMA, those from Ship Owners’, and Surveyors’ Associations. Questions to address objectives identified in chapter one of the study were indicated under the body of the data section.
of each questionnaire designed. The research questions are set to address questions stipulated in chapter one of the study.

3.7 METHOD OF DATA ANALYSIS

SPSS (Statistical Package for Social Sciences) was used in analyzing the answered questionnaires, incorporating the answers from the interviews granted and discussion to buttress the views expressed in the answered questionnaires. In explaining the results, graphs and tables were used to present the results. This was adopted to make it easier for readers to understand what had been found.

3.8 STUDY ORGANISATIONS

Below gives the background of the study respondents with regards to the respective organisation of the study.

3.8.1 Ghana Maritime Authority (GMA)

The Ghana Maritime Authority (GMA) was established under Act 630 of 2002 and charged with the responsibility of monitoring, regulating and coordinating activities in the maritime industry. The GMA is headed by a Director-General with thirteen (13) members Governing Board, this board is made up of mainly institutional representative from the key maritime agencies.
3.8.1.1 Objective

The objective of the Authority is to create a harmonious and enabling environment within the maritime industry which will ensure the provision of safe, secure and efficient shipping operations in the country.

3.8.1.2 Mission

The Mission of the Ghana Maritime Authority is stated as; to create a complement and enabling environment within the maritime industry which will ensure the provision of safe, secure and efficient shipping operations in the seas and inland waters of the country. It is also the mission of the Authority to protect the marine environment from vessel and other sources of pollution. It is also to oversee the training, engagement and welfare of Ghanaian Seafarers.

3.8.1.3 Vision

The vision is to ensure that the seas and inland waters of Ghana are safe, clean and secure and to facilitate the contribution of these assets to national, economic and social development.

3.8.2 Ghana Institute of Marine Surveyors

A Marine Surveyor conducts inspections, surveys or examinations of marine vessels and other marine installations and equipment to assess, monitor and report on their condition. Surveyors also inspect equipment intended for new or existing vessels to ensure compliance with various standards or specifications. Marine surveys typically include the structure, machinery and equipment (navigational, safety, radio) and general condition of a vessel.

3.8.3 General Duties of a Marine Surveyor

A Marine Surveyor may perform the following tasks:
Conduct surveys throughout the ship's life (maiden survey, annual /periodic surveys and interim surveys, and special surveys) to ensure standards are maintained;

Perform inspections required by domestic statutes and international conventions by (IMO);

Witness tests and operation of emergency and safety machinery and equipment;

Measure ships for tonnage and survey them for load line assignment;

Attend court as an expert witness and assist in coroner's inquiries;

Investigate maritime casualties and accidents

3.8.4 Types of Marine Surveyor

3.8.4.1 Government Surveyor

A Government surveyor performs ship registration surveys, surveys of foreign-going ships and local craft, and generally enforces ship safety standards to ensure marine industrial safety. Government -surveyors (as Government officials) belong to two groups, which are not mutually exclusive: flag state surveyors report to the government with whom the vessel is registered, and Port State surveyors report to the government into whose territory the vessel has entered. The Port State surveyors usually have the authority to detain vessels considered to have defects that may result in adverse impacts on life and property and or the environment. Based on their government's legal framework, flag state surveyors can impose conditions on the vessel such that failure to comply will result in the registration of the vessel being suspended or withdrawn. In this event, the vessel will find it almost impossible to trade.
3.8.4.2 Classification Surveyor

A Classification surveyor inspects ships to make sure that the ship, its components and machinery are built and maintained according to the standards required for their class. Classification surveyors often have two roles: one is as a representative of the Classification Society; and the other as an inspector on behalf of the country with which the vessel is registered (the Flag State). The Classification role is to ensure that during construction the vessel initially complies with the Classification Society's Rules for construction and outfitting, and thereafter is maintained to a suitable standard of seaworthiness. The flag state role is based on a clear set of guidelines issued by the registering country. On satisfactory completion of any survey, the Classification surveyor makes recommendations to the Classification Society and/or the flag state. These may be that the vessel has a clean bill of health, or that various defects must be corrected within a given time.

Increasingly, both Government and Classification surveyors are becoming involved in confirming compliance with international treaties associated with such things as pollution, international security, and safety management schemes. They may also examine cargo gear to ensure that it meets various requirements or regulations. Government and Classification surveyors are usually marine professionals, such as a qualified ship's master, engineer, naval architect or radio officer.

3.8.4.3 Private Surveyor (Gazetted)

A Private marine surveyor may be asked to carry out a wide range of tasks, including: examining ships' cargoes or onboard conditions such as fuel quality; investigating accidents at sea (e.g., oil
3.8.3 Ship Owners Association in Ghana

This is an association of all the ship owners in Ghana base in Tema. The association is embodied with various stakeholders that work towards the perfection of the shipping industry.

3.8.3.1 Vision

The vision of Ship owners association in Ghana is to create an enabling environment for the shipping lines in the maritime industry.

3.8.3.2 Objectives

The objectives of Ship owners association in Ghana are;

- To provide a central organization for its members who are companies and corporations engaged in shipping business.
- To facilitate the exchange and dissemination of information, views on Customs, Shipping Transport and Cargo Handling procedures and practices.
- Playing advocacy role for its members.

3.8.3.3 Services

- Promoting work ethics within the maritime industry and establishment of best practices.
• Sensitization of all key players on pertinent issues in the maritime industry for the formulation and implementation of appropriate policies and measures.

• Assisting with the promotion of Ghanaian ports as regional hubs.
CHAPTER FOUR

4.0 DATA PRESENTATION, ANALYSIS, AND FINDINGS

4.1 Introduction of the Study

The study seeks to discuss the responsibilities of flag state control and challenges encountered in the shipping industry. A flag state should clearly have sufficient infrastructure, in terms of qualified and competent staff, offices and equipment, to meet its obligations under international treaties. Different flags have different approaches, e.g., staffing may depend on the extent to which flags delegate certain functions to bodies such as classification societies. However, if a flag state does not appear to have separate inspection or crewing departments, for example, it is possible that the flag’s only effective function will be the collection of registration fees. The study is directed towards Ghana as a flag state with critical analysis on the functions of Ghana Maritime Authority, Ship Owners Association, Ministry of Transport (MOT), and Ghana Institute of Marine Surveyors (GIMS).

In gathering the data, three questionnaires were designed distinctively for Ghana Maritime Authority (GMA), Ship owners, and Ghana Institute of Surveyors. Interview, was also used, to acquire information about the Flag State Control.

4.2 Data Presentation and Analysis on GMA

Information gathered on GMA through questionnaire administration are analysed and discussed under this section. The data is analyzed under relevant sub headings, which bring out the issues addressed in the study.
4.2.1 Shipping Registration Records

The GMA is mandated to maintain the Ship Register by registering ships and implementing Ghana's flag state obligations to ensure that ships flying the Ghana flag are seaworthy and operate in accordance with regulations on safety, security and marine environment protection. Flag state obligations are conducted through an effective system of ship surveys and issuance of various ships certificates. During the year 2011 under review, GMA registered twenty-three (23) ships thus bringing the total number of ships on the Ghana Ship Register to 428. The details are provided below:

<table>
<thead>
<tr>
<th>VESSEL TYPE</th>
<th>Registered Vessels as at 2010</th>
<th>Registered Vessels as at 2011</th>
<th>Increment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fishing Vessels</td>
<td>325</td>
<td>343</td>
<td>18</td>
</tr>
<tr>
<td>Cargo Vessels</td>
<td>30</td>
<td>30</td>
<td>-No-</td>
</tr>
<tr>
<td>Small Crafts</td>
<td>47</td>
<td>50</td>
<td>3</td>
</tr>
<tr>
<td>Supply Vessels</td>
<td>2</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Tanker</td>
<td>1</td>
<td>1</td>
<td>-No-</td>
</tr>
<tr>
<td>Total</td>
<td>405</td>
<td>428</td>
<td>23</td>
</tr>
</tbody>
</table>

Source: Research Survey, 2012

The table above shows registration of ships by GMA in 2010 and 2011 calendar years. The fishing vessels increase by 18 representing 5.5% of the total fishing vessels in 2010, Cargo Vessels did not record any increment; Supply Vessels recorded additional 2 ships representing 100% increment, whilst Small Crafts added 3 representing 6% increment. In all 23 ships were registered in 2011 showed an increase of 43% over the 13 ships registered in 2010. The increase according to the respondents was due to the awareness created by the GMA to promote the Ghanaian Ship Register by encouraging prospective indigenous investors through legislation to acquire ships including supply and support vessels as part of Government policy on local
participation in shipping activities. The GMA in its course of ensuring effective flag state has also computerized the system of ship registration and created a ships data base to enhance efficiency.

4.2.2 The Activities of Registered vessels in Ghana

Table 2: Identification of Activities of the Registered Vessels in Ghana

<table>
<thead>
<tr>
<th>Comments</th>
<th>Respondents</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>By Registration</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>By Monitoring</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Both Registration and Monitoring</td>
<td>18</td>
<td>100</td>
</tr>
<tr>
<td>By Request</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>18</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Research Survey, 2012

The study, first tried to address the issue of identification concerning registered vessels activities in Ghana. This was to establish the facts about how registered vessels operate under the entrenched systems, and to assess how these systems control the activities. In response to this issue, all the GMA-respondents indicated that the activities of registered vessels are identified through Registration and Monitoring. Thus, registration and monitoring are the two main ways of identifying the activities of registered vessels in Ghana. None of them indicated that the identification could be made through personal request other than the registration.

The types of vessels we have in Ghana are mainly categorized under their respective activities as registered with the flag state. Some of the activities discovered include;

- Fishing
- Tug services
- Supply services
• Cargo Services
• Pleasure

4.2.3 Flag State Control in Ghana and Activities of Registered Vessels

Table 3: General Description of Flag state Control in Ghana

<table>
<thead>
<tr>
<th>Comments</th>
<th>Respondents</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excellent</td>
<td>6</td>
<td>34</td>
</tr>
<tr>
<td>Very Good</td>
<td>4</td>
<td>22</td>
</tr>
<tr>
<td>Good</td>
<td>8</td>
<td>44</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>18</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Research Survey, 2012

Figure 1: Respondents Views on Flag State Control

In general, the respondents from GMA described the flag state control activities in Ghana as Excellent representing 34% views of the respondents, as Good with 44%, and as Very Good on 22% views. The flag state control, according to GMA takes some form of administrative obligations, which include:
• Processing of required documents for registration of ships, seafarers etc.
• Issuance of permit for importation or building of ships and other crafts.
• Issuance of Statutory Certificates for shipping operations.

According to the respondents, the above activities are taken with some level of effectiveness to ensure that administrative demands on flag state control is met. In executing administrative duties, GMA also have it own technical duties to perform in controlling activities of registered vessels, which include Surveys and inspections to determine seaworthiness.

In ensuring flag state control, it is important that technical duties be taken to control the registered vessels’ activities. According to the information gathered it appears GMA undertakes technical duties such as controlling the activities of registered vessels, which include Surveys and inspections to determine the seaworthiness of the vessels flying the flag of Ghana, but insufficient to ensure effective flag state control. Eleven respondents out of eighteen representing sixty-one percent of the total GMA respondents indicated that the aspect of technical duty is not well taken, whereas seven respondents representing thirty-nine percent stated otherwise.

Similarly, the need to ensure effective undertakings on social duties with respect to flag state control cannot be ignored. The social responsibilities of ship owners or shipping activities are often rejected. The study tried to measure the extent to which social duties are covered by the flag state control. The data shows that GMA respondents are not well pleased with the level of initiatives undertaken to ensure compliance of social responsibilities by the ship owners. Ten respondents out of eighteen representing fifty-five percent of the total GMA respondents stated that social duties of the flag state control are not well taken, whereas eight respondents
representing forty-five percent stated otherwise. Some of the social duties undertaken by flag state control include the following;

- **Seafarers** - to ensure certification and qualification of seafarers.
- **Safety and Security** - to foresee to the standards of safety and security practices in the shipping industry.
- **Health** - to foresee to health related issues in the maritime industry.
- **Welfare** - to ensure proper welfare management of seafarers.

Flag states should implement the requirements of the ILO Maritime Labour Convention, 2006, including, but not limited to, the inspection and enforcement of ILO standards covering conditions of employment, food and catering, medical care and accommodation; the approval of ships’ Declarations of Maritime Labour Compliance; and the issue of Maritime Labour Certificates.

According to the respondents, the above stated are the main social duties undertaken by the flag state control and cover all the registered vessels. As stated by the respondents, the efficiency of flag state control is weak on the above listed social duties. However, the respondents indicated that the above social duties are enough to control the activities of all the registered vessels in Ghana, because the law provides for these duties and CEMA is the mandated body to carry them.

Challenges of Controlling Activities in Ghana were described by the GMA respondents as unbearable, which keep undermining the effectiveness of flag state control. In exercising flag state control there are various challenges associated, which are categorised under Environmental, Technical, Government, and Administrative challenges. Some of the challenges described as
administrative include Equipment and facilities, Lack of resource and Logistics. Lack of Government funding is also one of the challenges facing the flag state control. Other challenges include lack of Patrol boats, Personnel, and Lack of skills.

4.3 Data Presentation and Analysis on Ghana Institute of Marine Surveyors

The Ghana Institute of Marine Surveyors (GIMS) was formed in 1992 as the Ghana Association of Marine Surveyors (GAMS). To ensure that only qualified professionals engage in the practice of marine surveying in the country and in the wake of Ghana’s oil and gas find, the association was registered as a professional body in May 2011. Members are Chief Engineers, Master Mariners, Senior Naval officers or persons of similar suitable qualifications in the marine profession who are registered and gazetted by the Ghana Government to carry out marine survey activities in the country.

The members of Ghana Institute of Marine Surveys consider surveying of ships as effective mechanism of controlling flag state in Ghana. Marine surveyors conduct inspections, surveys or examinations of marine vessels and other marine installations and equipment to assess, monitor and report on their condition. Surveyors also inspect equipment intended for new or existing vessels to ensure compliance with various standards or specifications. Marine surveys typically include the ship structure, machinery and equipment (navigational, safety, radio) and general condition of a vessel.

The ship surveying activities under the flag state control in Ghana are taken under the performance of three different surveyors namely a government surveyor, a classification surveyor, and a private surveyor.
A Government surveyor performs ship registration surveys, surveys of foreign-going ships and local crafts, and generally enforces ship safety standards to ensure marine industrial safety. Government surveyors (as Government officials) belong to two groups, which are not mutually exclusive: flag state surveyors report to the government with whom the vessel is registered, and Port State surveyors report to the government into whose territory the vessel has entered. The Port State surveyors usually have the authority to detain vessels considered to have defects that may result in adverse impacts on life or the environment. Based on their government's legal framework, flag state surveyors can impose conditions on the vessel such that failure to comply will result in the registration of the vessel being suspended or withdrawn. In this event, the vessel will find it almost impossible to trade.

A Classification surveyor inspects ships to make sure that the ship, its components and machinery are built and maintained according to the standards required for their class. Classification surveyors often have two roles: one is as a representative of the Classification Society; and the other as an inspector on behalf of the country with which the vessel is registered (the Flag State). The Classification role is to ensure that during construction the vessel initially complies with the Classification Society's Rules for construction and outfitting, and thereafter is maintained to a suitable standard of seaworthiness. The flag state role is based on a clear set of guidelines issued by the registering country. On satisfactory completion of any survey, the Classification surveyor makes recommendations to the Classification Society and/or the Flag State. These may be that the vessel has a clean bill of health, or that various defects must be corrected within a given time.
A Private marine surveyor may be asked to carry out a wide range of tasks, including: examining ships' cargoes or onboard conditions such as fuel quality; investigating accidents at sea (e.g., oil spillages or failure of machinery or structures which are considered to be critical); and preparing accident reports for insurance purposes.

4.4 Data Presentation and Analysis on Ship Owner Association

This section presents and analyse the information gathered through questionnaire administration on Ship Owners Association. The information presented portrays the views of Ship owners association on flag state control.

The study established the fact that members of the ship owners association are fully aware of the flag state control regulations in Ghana. In determining whether flag state control makes shipping business unfriendly, the following views as portrayed in the table below were expressed by the ship owners' respondents.

<table>
<thead>
<tr>
<th>Comments</th>
<th>Respondents</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>Average</td>
<td>5</td>
<td>50</td>
</tr>
<tr>
<td>Not Effective</td>
<td>3</td>
<td>30</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Research Survey, 2012

As stated in table 3 above, the respondents gave various views with respect to the effectiveness of flag state control in Ghana. Majority of the respondents stated that the flag state control is to promote safety at sea and to protect the marine environment, which is very important for the
nation. However, the respondents stated that excessive flag state control limits the extent to which port state can also fully exercise their jurisdiction. This compels some ship owners to register their vessels under a different flag state. They also added that the implementation of flag state regulations is not well monitored and policies are not reviewed. Flag state controls, according to the respondents, have the following impact on shipping operations in the country.

That;

Flag state control does not allow for certain local laws and practices that are healthy for shipping.

Countries that receive vessels have at the back of their minds that those vessels cannot be treated in a bias manner.

Flag state control impact on shipping operations is mainly on its authority on vessels, which are not easy to override by ports.

Meanwhile, the Shipping Industry Guidelines on Flag State Performance indicate that there is nothing inherently unusual in an international ship registry system in which the owner of a ship may be located in a country other than the state whose flag the ship flies. However, a balance has to be struck between the commercial advantages of selecting a particular flag and the need to discourage the use of flags that do not meet their international obligations. The purpose of these guidelines is in twofold:

• To encourage ship owners and operators to examine whether a flag state has sufficient substance before using it.
• To encourage ship owners and operators to put pressure on their flag administrations to effect any improvements that might be necessary, especially in relation to safety of life at sea, the protection of the marine environment and the provision of decent working and living conditions for seafarers.

4.5 Interview and Discussion on Flag State Control with GMA and MOT

The challenges facing the flag state control operations in Ghana extents to various areas of shipping activities. In determining the challenges, interviews were conducted with GMA and MOT officials, to discover that challenges that the flag state face extends across the process of shipping. Some of the challenges include the understanding of individuals about flag state control, lack of patrol boats to monitor shipping activities, non-full compliance of registration requirements, lack of funds to undertake administrative duties, lack of logistics needed to embark on effective flag state control, etc.

4.5.1 Implementation of Flag State by GMA

The researcher granted interviews to officials from Ministry of Transport and Ghana Maritime Authority on issues of flag state control. The discussion was directed towards flag state control activities and the challenges facing the industry.

In an interview with the GMA officials, it was found that, most of the registered vessels in Ghana are fishing vessels, which operates within the internal waters of Ghana. There are, however, less cargo vessels, which demand the full implementation of the international conventions to ensure effective compliance on flag state control. The Ghana Maritime Authority implements Ghana’s flag state responsibilities, which is to ensure that all vessels including
fishing vessels, which fly the Ghana flag, comply with international safety regulations for operational purposes. This is achieved through effective ship surveys and issuance of various ship certificates to attest seaworthiness and compliance with relevant international maritime instruments that have been incorporated into Ghanaian laws.

The Ghana Maritime Authority’s marine surveyors as well as private marine surveyors from the Ghana Institute of Marine Surveyors (GIMS) conduct the flag state surveys.

To ensure effective supervision of private surveyors the Ghana Maritime Authority has developed a matrix based on international best practice to monitor their activities to ensure that the surveys of ships delegated to them are properly conducted and certified.

The Ghana Maritime Authority provides technical advice on application for the importation of various types of vessels into Ghana. Applications are considered out of which approval is granted for a particular vessel to be imported or refused. The main reason for the refusal of approval for importation is due to the insufficient safety information gathered from assessing the seaworthiness of the vessels.

4.5.2 Legislation that regulates flag state in Ghana

In order to ensure effective flag state control, Ghana became a party to UNCLOS, after the Maritime Zones Delimitation Law, PNDCL 159, was implemented in Ghana. The Ghana Shipping (Protection of Offshore Operations and Assets) Regulations 2011 made under the Ghana Shipping Act provides the follows:
• empower the establishment of safety zones and protected areas around the offshore installations and subsea pipelines;
• prohibit the entry into and remaining in safety zones without prior authorisation;
• prohibit certain activities within cable and pipeline protected areas;
• specify the circumstances under which people may enter these zones (such as to lay, inspect, test, repair, alter, renew or remove a submarine cable or pipeline in or near that safety zone; to provide services for the installation, to transport people or goods to or from the installation, under authorisation from the Ghana Maritime Authority
• Impose penalties for entry into safety zones and protected areas in circumstances contrary to law.

Additionally the draft regulations provide for the regulation of Mobile Offshore Drilling Units (MODUs). MODUs are used in the exploration phase and frequently move internationally and conduct operations independently from any existing production facilities. MODUs are regulated as ships under some IMO instruments such as the Safety of Life at Sea Convention (SOLAS) and the International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL), during their mobile stage and key IMO instruments (such as the International Ship and Port Facility Security Code (ISPS Code)) also apply to them on location. This regulation is required to protect Ghana’s interests from environmental damage and to safeguard the safety of the MODUs as well as other fixed and floating installations associated with offshore production activities.
As a regulatory body, the GMA undertook a number of legislative initiatives in 2011 to support the maritime industry particularly the emerging oil and gas sector. These initiatives resulted in the passage by Parliament of amendments to key legislation below.

**Ghana Maritime Authority (Amendment) Act 2011, (Act 825)**

The objective of this amendment was to make specific provision under the Ghana Maritime Authority Act, 2002 (Act 630) for the Minister to promulgate regulations for the purposes of fixing specific levies, fees and charges, to cover the administrative costs associated with the discharge of the functions and duties specified in the Ghana Maritime Authority Act, 2002.

**Ghana Shipping (Amendment) Act, 2011, (Act 826)**

The main object of this amendment is to extend the definition of Ghanaian waters to include the waters within the 500 meter safety zone generated automatically under the United Nations Convention on the Law of the Sea (UNCLOS) around installations in the exclusive economic zone beyond the territorial sea. This amendment would in effect extend the scope of local trade to include the trade from shore to the any oil and gas installations that will be established beyond the 12 nautical miles territorial sea such as the Jubilee field, which is approximately 63 nautical miles offshore.


These amendments were intended to extend the application of the Ghana Maritime Security Act to offshore installations. The amendments will ensure that the requirements of ISPS Code under the International Convention on the Safety of Life at Sea (SOLAS) Chapter XI-2 dealing with
special measures to enhance maritime security are fully met in Ghanaian law. Ghana has implemented the International Ship and Port Facility Security Code of the IMO through the Ghana Maritime Security Act 2004 (Act 675).

4.5.3 Legislative Instruments

In addition to the above pieces of legislation, the GMA initiated actions culminating into enactment by Parliament of the following legislative instruments.

- Ghana Shipping (Protection of Offshore Operations and Assets) Regulations 2011
- Ghana Maritime Authority (Maritime Safety Fees and Charges) Regulations 2012 (L.I. 2009)

A number of draft legislation was also prepared by the GMA during the year under review. The draft legislation, which have been finalized by the Attorney General’s Department and are expected to be considered by Parliament are listed as follows:

- Marine Pollution Bill
- Marine Pollution Prevention and Control Regulations
- Ghana Shipping (Manning Agents) Licensing Regulations
CHAPTER FIVE

5.0 SUMMARY, CONCLUSIONS AND FINDINGS

5.1 SUMMARY

Shipping is one of the safest and most environmentally benign modes of transport, yet several high profile casualties have prompted questions from politicians and the media about the performance of flag states. There is understandable concern about shipping companies’ use of flags that may not comply fully with international regulations. Moreover, contemporary worries about maritime security have added a new slant to these concerns.

Though it is the shipping companies that have the primary responsibility; for the safe operation of their ships and the safety and welfare of their crews, the flag state by stature is responsible for the safety, security of ships and the protection of the marine environment. The flag state has the overall responsibility to implement and enforce the international maritime regulations on all ships ‘flying its flag’.

The study seeks to examine the challenges facing the flag state, and to determine the regulatory control in place for ensuring effective flag state control. The study found it necessary to consider Ghana Maritime Authority (GMA), Ship Owners Association, and Ghana Institute of Surveyors who are the main systems of ensuring effective implementation of flag state control. In all forty respondents were selected from the three mention institutions. In determining effective ways of gathering data, questionnaire administration and interview were the instruments used to obtain
the relevant information. The study found that Ghana has ratified all the international conventions, which regulate shipping activities in the world. Nevertheless, the challenges facing Ghana, as a flag state, extend across administrative, funding, and technical. The study again discovered that Ghana has few Cargo vessels, these does not require extensive flag state control. Most of the registered vessels are fishing vessels, which run within the internal waters of the land. Meanwhile, GMA has initiated moves of amending regulations to ensure safety on Ghana territorial waters.

5.2 Conclusions

The information gathered from the literature review and the questionnaires administered makes it important to make the following conclusions; that

The flag state, as defined by the United Nations Convention on the Law of the Sea (UNCLOS), has overall responsibility for the implementation and enforcement of international maritime regulations for all ships granted the right to fly its flag. However, the flag state may conduct the larger part of its activities through entities located in other countries.

Most national maritime administrations have other roles, in their capacity as port and coastal states, which may involve the enforcement of regulations with regard to visiting foreign ships. However, in the context of the regulation of shipping, it is a nation’s role as a flag state to defend against potentially unsafe or environmentally damaging ship operations. This is the focus of these guidelines.
In regulating the shipping industry, Ghana has ratified all the international conventions, and has made amendments to the existing regulations to ensure effective flag state control. The enforcement of IMO rules that apply to the operation of ships is, in the first instance, dependent on IMO member governments in their capacity as flag states. In addition, Flag states also have responsibility for the implementation and enforcement of rules adopted by other intergovernmental bodies, including the International Maritime Organization (IMO) and International Labor Organization (ILO). The IMO provides the regulatory framework to be adopted by member nations to ensure secure, safe and pollution free marine environment whilst the ILO governs standards of seafarers' employment.

The flag state control in Ghana, as captured in this study, has gone through transformational periods. However, the responses from the respondent indicate that there are some challenges facing (GMA) the regulatory body, in the area of administration, technical, and financial.

5.3 Recommendations

The recommendations, which the researcher is putting across, consider the various issues raised and analyzed on the study. In order to manage the challenges facing the flag state control, and to ensure positive operations of the shipping industry, the following recommendations are necessary.

Establishment of Educational Unit at GMA

GMA should establish a unit, whose primary task is to educate the general public and potential vessel owners about the processes and procedures of owning and operating a ship under flag
state control in Ghana. This will help give a prior education about flag state operations, the expectations of the regulations, and the responsibilities of ship owners.

Establishment of Consultation Process with ship owners

Flag state of Ghana should have some form of consultative process to enable ship operators to engage in discussions about maritime regulatory developments and other issues relevant to the safe operation of ships flying her flag, for example, through the mechanism of a national ship owners’ association.

Participation in IMO Member State Audit Scheme

Flag state of Ghana should participate in the IMO Member State Audit Scheme in order to identify areas for possible improvement, with regard to the implementation of IMO instruments, and which may benefit from IMO technical assistance programmes.

Enactment of International Conventions

The major factor is Ghana’s inability to enact international conventions into national regulations. Even though quite a number of international conventions are enacted, it is important to ensure that major and important conventions are enacted. For example the Ghana Shipping Act, 2003 (Act 645) and Ghana Maritime Act, 2003 (Act 675) are silence on the International convention on Civil Liability for Oil, 1992.

Effective Implementation of Ideas

Flag state of Ghana attends to all meetings in order to keep appraised of the latest international maritime regulatory developments (and contribute to the decisions made by IMO), of the
committees like Maritime Safety Committee (MSC), Marine Environment Protection Committee (MEPC), Legal Committee (LEG), and Biennial meetings of the IMO Assembly. However, Ghana is slow in implementing ideas gathered in these meetings. Ghana Maritime Authority in collaboration with Ministry of Transport should establish a system where all these ideas could be factored in policy formulation to regulate the shipping industry.
REFERENCES

Adam B. (1962), Flags of Convenience- An international legal study, Harvard University Press


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Major IMO conventions quoted


COLREG: Convention on the International Regulation for Preventing Collisions at Sea, 1972, as amended.

COLREG: Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended.

STCW: International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978, as amended


CSC: International Convention for Safe Containers, 1972 as amended

SALVAGE: International Convention on Salvage, 1988

Source: International Maritime Organization (London)
APPENDIX

Appendix One

Project Questionnaires

DISSERTATION QUESTIONNAIRE FOR GHANA MARITIME AUTHORITY

The purpose of the research is to examine challenges facing flag state control in Ghana. I would be grateful if you would answer the attached questionnaires for the research. I ensure to treat all information gathered with the highest confidentiality and used it only for the purpose for which it is intended, that is, to fulfill my academic.

The Activities of Registered Vessels in Ghana

1. How do you identify the activities of the registered Vessels in Ghana?
   By Registration (.....)       By Request (.....)       By Monitoring (.....)
   Others, please specify.................................................................

2. How have you categorized the activities of the registered vessels in Ghana?
   By Vessel Type (.....)       By Vessel Size (.....)       By Vessel Age (.....)       By Registration Type (.....)

3. Kindly list some of the activities of the registered vessels in Ghana
   a.................................................................
   b.................................................................
   c.................................................................
   d.................................................................
   e.................................................................
Flag State Control in Ghana and Activities of Registered Vessels

4. In general, how would you describe the flag state control activities in Ghana?

Excellent (.....)  Very Good (.....)  Good (.....)  Average (.....)  Not Good (.....)

Administrative duties

5. Do you undertake administrative activities in controlling the flag?

Yes (.....)  No (.....)

What are some of these administrative activities?

...............................................................  ...............................................................

6. How will you describe the effectiveness level of these administrative duties?

Very Effective (.....)  Effective (.....)  Average (.....)  Weak (.....)

7. In your opinion, what do you think is lacking in undertaking effective administrative duties?

...............................................................  ...............................................................

Technical duties

8. Does your office have technical duties to perform in controlling activities of registered vessels?

Yes (.....)  No (.....)

9. What are some of these technical duties, if applicable?

a. ...............................................................  b. ...............................................................  c. ...............................................................
10. Do you think the technical duties undertaken are enough to control the registered vessels?

Yes (.....)     No (.....)

Social matters

11. Does your office exercise social duties on the activities of the registered vessels?

Yes (.....)     No (.....)

12. What are some of these social duties?

a. ..............................................................................................................................

b. ..............................................................................................................................

c. ..............................................................................................................................

13. A. Do you think the duties stated cover all the activities of the registered vessels?

Yes (.....)     No (.....)

14. Are the above duties enough to control the activities of all the registered vessels in Ghana, and why?

........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

Challenges of Controlling Shipping Activities in Ghana

15. Are there challenges in exercising flag state control?

Yes (.....)     No (.....)
16. From what perspectives will you describe these challenges?

Administrative (....) Social (....) Technical (....) Environmental (....) Government (....)

Others please specify, 


17. What are the challenges facing flag state control under below perspectives?

Administrative;

a. 

b. 

c. 

Social;

a. 

b. 

c. 

Environment;

a. 

b. 

c. 

Government;

a. 

b. 

c. 

Others, please specify

a. 

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18. Are there enough personnel to ensure effective implementation and monitoring of the regulation?

Yes (.....) No (.....)

19. Do you have regular training programs to enhance your skills on the job?

Yes (.....) No (.....)
Appendix Two

Project Questionnaires

DISSERTATION QUESTIONNAIRE FOR SHIP SURVEYORS

The purpose of the research is to examine challenges facing flag state control in Ghana. I would be grateful if you would answer the attached questionnaires for the research. I ensure to treat all information gathered with the highest confidentiality and used it only for the purpose for which it is intended, that is, to fulfill my academic.

1. Will you consider surveying of ships as a mechanism of controlling flag state, and why?
   Yes (.....)   No (.....)

   Why..........................................................................................................................

2. Do you think ship registration requirement in Ghana serves as a proper checking mechanism, and why?
   Yes (.....)   No (.....)

   Why..........................................................................................................................

3. What are the key activities undertaking by the surveyors?
   a). ..........................................................................................................................
   b). ..........................................................................................................................
   c). ..........................................................................................................................
   d). ..........................................................................................................................

4. How do the above stated activities help in controlling flag state?
5. Do you support the nation of reviewing the ship registration requirement?

   Yes (.....)       No (.....)

Give three reasons, why you think is necessary to review the registration requirement

a. ........................................................................................................

b. ........................................................................................................

c. ........................................................................................................

6. As expert, do you think the present registration requirements have much gabs?

   Yes (.....)       No (.....)

What are some of these gabs?

a. ........................................................................................................

b. ........................................................................................................

c. ........................................................................................................

7. Do you think these gabs affect the operation of flag state control and why?

   Yes (.....)       No (.....)

why........................................................................................................
Appendix Three  

Project Questionnaires  

THESIS QUESTIONNAIRE FOR GHANA SHIP OWNERS ASSOCIATION  

The purpose of the research is to examine challenges facing flag state control in Ghana. I would be grateful if you would answer the attached questionnaires for the research. I ensure to treat all information gathered with the highest confidentiality and used it only for the purpose for which it is intended, that is, to fulfill my academic.

1. Are you aware of flag state control regulations in Ghana?
   Yes (......)  No (......)

2. To what extent do you know flag state control regulations?
   Very Well (......)  Well (......)  Average (......)  Not at All (......)

3. Do you think flag state control makes shipping business unfriendly, and why?
   Yes (......)  No (......)
   why........................................................................................................
   ...........................................................................................................
   ...........................................................................................................

4. Do you think flag state control has impact on shipping operations, and why?
   ........................................................................................................
   ...........................................................................................................
   ...........................................................................................................

5. In your opinion, how do you rate the effectiveness of flag state control in Ghana?
   Very Effective (......)  Effective (......)  Average (......)  Not Effective (......)
6. What accounts for your answer in question 5?

..........................................................................................................................

..........................................................................................................................
## Appendix Four

### Acronyms of the Study

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.C.</td>
<td>Appeal Case</td>
</tr>
<tr>
<td>COLREG</td>
<td>Convention on the International Regulations for Preventing Collisions at Sea (1972)</td>
</tr>
<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agriculture Organization</td>
</tr>
<tr>
<td>FOC</td>
<td>Flag of Convenience</td>
</tr>
<tr>
<td>FSI</td>
<td>Flag State Implementation</td>
</tr>
<tr>
<td>GIMS</td>
<td>Ghana Institute of Marine Surveyors</td>
</tr>
<tr>
<td>GMA</td>
<td>Ghana Maritime Authority</td>
</tr>
<tr>
<td>HSC</td>
<td>High Seas Convention</td>
</tr>
<tr>
<td>ILC</td>
<td>International Law Commission</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
</tr>
<tr>
<td>IMO</td>
<td>International Maritime Organisation</td>
</tr>
<tr>
<td>ISPS</td>
<td>International Ship and Port Facility Code</td>
</tr>
<tr>
<td>ITF</td>
<td>International Workers’ Transport Federation</td>
</tr>
<tr>
<td>IMCO</td>
<td>Inter-Governmental Maritime Consultative Organization</td>
</tr>
<tr>
<td>ISM</td>
<td>International Safety Management Code</td>
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<tr>
<td>ITLOS</td>
<td>International Tribunal for the Law of the Sea</td>
</tr>
<tr>
<td>IUU</td>
<td>Illegal Unreported and Unregulated</td>
</tr>
<tr>
<td>MARPOL</td>
<td>International Convention for the Prevention of Pollution From Ships (1973) as Modified by the Protocol of 1978</td>
</tr>
<tr>
<td>MLC</td>
<td>Maritime Labour Convention</td>
</tr>
<tr>
<td>MOT</td>
<td>Ministry of Transportation</td>
</tr>
</tbody>
</table>
PSC  Port State Control
OR   Open Registries
RO   Recognised Organisation
SOA  Ship Owners Association
SOLAS  International Convention for the Safety of Life at Sea (1974)
STCW  The International Convention on Standards of Training, Certification and Watch keeping for Seafarers 78/95
UNCLOS III  Third United Nations Conference on the Law of the Sea

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