



## INTERNATIONAL TRANSPORT WORKERS' FEDERATION'S DECISION ON THE TURKISH INTERNATIONAL SHIP REGISTRY IN THE CONTEXT OF THE FLAG OF CONVENIENCE CONCEPT\*

### *ULUSLARARASI TAŞIMACILIK İŞÇİLERİ FEDERASYONU'NUN ELVERİŞLİ BAYRAK KAVRAMI BAĞLAMINDA TÜRK ULUSLARARASI GEMİ SİCİLİ'NE İLİŞKİN KARARI*

Havva Okudan Soytürk\*\*

#### ABSTRACT

Seafarers working on ships operating under the flag of convenience (FOC) worked under very poor conditions, especially in the first years when the FOC concept emerged. The International Transport Workers' Federation, established to protect the rights of transport workers, including seafarers, was not ignorant to this situation and launched the 'FOC campaign'. The aim of this campaign was to ensure that ships operating under the FOC return to the flags of the states to which they originally belonged. The rapid spread of the FOC practice changed the aim of the Federation to the improvement of the living conditions of seafarers working under the FOC.

The Federation is not the only organisation working towards the concept of the FOC; traditional maritime nations have also established second registries in order to compete with this concept. Türkiye has also established a second registry, the Turkish International Ship Registry (TISR), for this purpose. Although second registries were

\* Research Article, Received: 25.10.2023 / Accepted: 21.02.2024.

Copyright: All kinds of publication, printing, reproduction and distribution rights of the article belong to DEHUKAMDER (Ankara University National Center for the Sea and Maritime Law Journal of the Sea and Maritime Law). The scientific, ethical and legal responsibility of the article belongs to the authors.

Ethical Statement: The author(s) declare that the preparation of this article is in accordance with ethical rules.

Conflict of Interest Declaration: The author(s) have no conflict of interest to declare.

Declaration of Support and Acknowledgement: None.

\*\* Doctoral student, Maritime Business Administration Department, Dokuz Eylül University; Project Scholarship Holder at Ankara University National Center for the Sea and Maritime Law (DEHUKAM) (havvaokudan@gmail.com) (ORCID ID: 0000-0002-3012-697X).



established to compete with the FOC concept, some second registries have been qualified as 'FOC' by the Federation and have become the target of the 'FOC campaign' since they include practices similar to the FOC. There is conflicting information in different sources regarding whether TISR is considered as a 'FOC' by the Federation. This study aims to eliminate uncertainty caused by conflicting information by evaluating the Federation's decision to qualify TISR as a 'FOC', the rationale for that decision and its outcomes.

**Keywords:** •Flag of Convenience •International Transport Workers' Federation •Turkish International Ship Registry •Blue Certificate •Second Registry

## ÖZ

Elverişli bayrak altında faaliyet gösteren gemilerde çalışan denizciler, özellikle elverişli bayrak kavramının ortaya çıktığı ilk yıllarda oldukça kötü koşullar altında çalışmışlardır. Denizcilerin de içinde olduğu taşıma işçilerinin haklarını korumak için kurulmuş olan Uluslararası Taşımacılık İşçileri Federasyonu bu duruma kayıtsız kalmayarak 'elverişli bayrak kampanyası'nı başlatmıştır. Bu kampanyanın hedefi elverişli bayrak altında faaliyet gösteren gemilerin ait oldukları devletlerin bayrağına dönmelerini sağlamaktır. Elverişli bayrak uygulamasının hızla yayılması Federasyon'un amacını elverişli bayrak altında çalışan denizcilerin yaşam koşullarının iyileşmesinin sağlanması olarak değiştirmiştir.

Elverişli bayrak kavramına yönelik çalışmalar yapan tek kurum Federasyon değildir, geleneksel denizci uluslar da bu kavramla rekabet edebilmek için ikinci siciller kurmuşlardır. Türkiye de bu amaca yönelik olarak ikinci sicili olan Türk Uluslararası Gemi Sicili'ni (TUGS) kurmuştur. İkinci siciller her ne kadar elverişli bayrak kavramı ile rekabet etmek için kurulmuşsa da bazı ikinci siciller elverişli bayrağa benzer uygulamalara yer verdikleri için Federasyon tarafından 'elverişli bayrak' olarak nitelendirilip 'elverişli bayrak kampanyası'nın hedefi haline gelmiştir. TUGS'un, Federasyon tarafından 'elverişli bayrak' olarak nitelendirilip nitelendirilmediğine ilişkin farklı kaynaklarda birbiri ile çelişen bilgiler mevcuttur. Bu çalışmada çelişen bilgilerin sebep olduğu belirsizliğin giderilebilmesi amaçlanmaktadır. Bu amaca yönelik olarak, TUGS'un Federasyon tarafından 'elverişli bayrak' olarak nitelendirilip nitelendirilmediğine ilişkin kararı, bu kararın gerekçeleri ve sonuçları değerlendirilecektir.

**Anahtar Kelimeler:** •Elverişli Bayrak •Uluslararası Taşımacılık İşçileri Federasyonu •Türk Uluslararası Gemi Sicili •Mavi Sertifika •İkinci Sicil

## INTRODUCTION

The FOC concept can be considered a milestone for the concept of ship registry and international ship registry practice. With the emergence of the concept of FOC, ships have begun to operate under the flags of states with no 'genuine link'. This concept, which is considered as one of the milestones of the maritime sector, can also be considered as a milestone in terms of the working conditions of

seafarers. With the FOC concept, shipowners, who had the opportunity to employ seafarers from different nationalities, started to employ seafarers with low wages, poor working conditions and long working hours. While the lack of inspections in FOC registries has turned into a great advantage for shipowners, it has become worsening living conditions for seafarers.

Founded in 1886 to protect the rights of transport workers, the International Transport Workers' Federation (ITF) was not ignorant to the concept of FOC and took action to protect seafarers's rights. In 1948, with the FOC campaign officially launched in Oslo, the ITF has carried out many activities to improve the living conditions of seafarers. As part of the FOC campaign, the ITF has been publicising the registries that qualify as FOCs on its official website and making them the focus of its campaign. Although it is stated that TISR was declared as a FOC in 2011<sup>1</sup>, it is observed that it is not included in the 'Current FOC List' published by the ITF as of 2023. Clarification of the issue of whether TISR is considered as a FOC by the ITF constitutes the main subject of this article.

For the purpose of the study, firstly, the concept of FOC and its historical background will be examined, and then the ITF's work on this subject and the development of the FOC campaign and the criteria by which registries are qualified as FOC will be analysed. Finally, whether the TISR has been characterised as FOC by the ITF, the developments in this process and the current situation will be evaluated. This study was conducted with library-based research. Related doctrinal resources such as books, articles, and dissertations will be analysed. Also, correspondence with relevant institutions will be included.

## I. THE CONCEPT OF FLAG OF CONVENIENCE

### 1. Overview

Ship registration systems have evolved since their inception. It all started with the establishment of the 'national registry', followed by the emergence of the 'open registry' to meet the needs of the maritime industry. With the establishment of open registry, the concept of FOC also emerged. Later on, the 'bareboat charter register' emerged. In response to the FOCs, traditional

---

<sup>1</sup> Official website of UTIKAD <<https://www.utikad.org.tr/Detay/Sektor-Haberleri/7864/tugs-kolay-bayrak-kabul-edildi>> accessed 25.10.2023.



maritime nations introduced the 'secondary registries'<sup>2</sup>. As can be observed, 'ship registry' is a concept that evolves with diverse practices of states.

The phrase FOC was first used in 1958 at a hearing of the United States (US) Senate Committee on Interstate and Foreign Commerce. A delegate from the United Fruit Company openly admitted that because the Honduran flag was an FOC, the company had registered its fleet in Honduras' ship registry<sup>3</sup>. Although the concept has been used in this manner, there is still no generally accepted definition<sup>4</sup>. Both the Convention on High Seas and the United Nations Convention on the Law of the Sea (UNCLOS)<sup>5</sup> avoid defining the FOC concept<sup>6</sup>. However, in the historical process, several criteria have been determined for the registries to be qualified as FOC. These criteria are still critical today. This study will discuss the criteria set by the ITF.

The term 'open registry' is generally used as a synonym for FOC. Nevertheless, this study argues that these two terms are not synonyms. All open registries could not qualify as an FOC registry, especially according to labour organisations such as the ITF<sup>7</sup>. A FOC is defined as the flag of a country that allows foreign-owned and foreign-controlled ships to be registered under conditions that are convenient and favourable to persons registering the ships, whatever the reasons<sup>8</sup>.

It is important to signify that the FOC is not a type of ship registry, but an attribute of ship registries with certain features. Today, mostly the ITF declares some ship registries to be FOC. For instance, while the German International

---

<sup>2</sup> Ademuni-Odeke, 'Evolution and Development of Ship Registration' (1997) III Il Diritto Marittimo 631, 631.

<sup>3</sup> Rodney P. Carlisle, *Sovereignty For Sale: The Origins and Evolution of the Panamanian and Liberian Flags of Convenience* (1<sup>st</sup> edn, Naval Institute Press 1981) 142.

<sup>4</sup> Richard Coles and Edward Watt, *Ship Registration: Law and Practice* (2<sup>nd</sup> edn, Informa 2009) 23.

<sup>5</sup> United Nations Convention on the Law of the Sea (opened for signature on 10 December 1982, entered into force on 16 November 1994, Türkiye is not a State party to the Convention) UNTS 31363 (UNCLOS)  
<[https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)> accessed 25.10.2023.

<sup>6</sup> Ademuni-Odeke, 'An Examination of Bareboat Charter Registries and Flag of Convenience Registries in International Law' (2005) 36 Ocean Dev & Int'l L 343.

<sup>7</sup> Rodney P. Carlisle, 'Second Registers: Maritime Nations Respond to Flags of Convenience, 1984-1998', (2009) 19 (3) The Northern Mariner 319, 321.

<sup>8</sup> Coles and Watt, (n 4) 23.



Ship Registry (GIS) qualifies as a second registry<sup>9</sup>, at the same time, it is considered to be a FOC by the ITF<sup>10</sup>.

## 2. Historical Background and Features of Flag of Convenience Concept

The origin of FOCs stems from the War of 1812. American merchant ships tried to escape the restrictions of the US and the United Kingdom (UK). American merchant ships flew the flag of Portugal<sup>11</sup>. Panama, Liberia and Honduras are the pioneer states of FOC registries established for economic purposes. Panama has been the leading registration in the context of registered deadweight tons (DWT) for the past decade<sup>12</sup>. According to Carlisle, the original ship registries of Panama and Liberia tended to be the second ship registries of the US. Panama and Liberia have had strict relationships with the US. Over time, relationships between the US, Panama and Liberia could not remain as strict as in the past. Due to this factor, the registries of Panama and Liberia qualified as open registries, not second registries<sup>13</sup>. The current second ship registry of the US is the ship registry of the Republic of Marshall Islands (RMI)<sup>14</sup>. The ship registry of the RMI was established in 1988 by the Government of the RMI<sup>15</sup>. As a result of the joint venture agreement of the Government of the RMI and International Registries Inc. (IRI) has administered the ship registry of the RMI since 1990<sup>16</sup>. IRI is a company that was established in 1948 with the effects of the US Neutrality Acts<sup>17</sup> during World War II by Edward R. Stettinius, Jr. and his

---

<sup>9</sup> Carlisle, 'Second Registers: Maritime Nations Respond to Flags of Convenience, 1984-1998' (n 7) 322.

<sup>10</sup> Current Registries Listed as FOCs, <<https://www.itfseafarers.org/en/focs/current-registries-listed-as-focs>> accessed 25.10.2023.

<sup>11</sup> Carlisle, *Sovereignty For Sale* (n 3) xiii.

<sup>12</sup> This data is based on the United Nations Conference on Trade and Development (UNCTAD) Review of Maritime Transport 2014-2023.

<sup>13</sup> Carlisle, 'Second Registers: Maritime Nations Respond to Flags of Convenience, 1984-1998' (n 7) 324 - 325.

<sup>14</sup> Carlisle, 'Second Registers: Maritime Nations Respond to Flags of Convenience, 1984-1998' (n 7) 322.

<sup>15</sup> Filimon M. Manoni, 'Analysing the International Legal Framework' (LLM thesis, University of Wollongong 2012) 30.

<sup>16</sup> *Ibid* 32.

<sup>17</sup> The US Neutrality Acts refer to a series of acts implemented in the 1930s to prevent American involvement in wars between foreign states. For further information, <<https://history.state.gov/milestones/1921-1936/neutrality-acts#:~:text=On%20August%2031%2C%201935%2C%20Congress,apply%20for%20an%20export%20license.>> accessed 23.09.2023.



colleagues to answer a need for a ship registry administered by a private company<sup>18</sup>. The ancestor of the IRI, which was called Liberian Services Inc., provided registration services to the Liberian Registry until 2000<sup>19</sup>. IRI is a company that renders professional registration service to states. It is important to emphasise that those states have clear connections with the US, such that IRI is based in Virginia (US). Nowadays, the ship registries of Panama and Liberia are considered to be open registries, and the ship registry of the RMI is considered to be an offshore second registry for the US<sup>20</sup>. Nonetheless, it is not deniable that their roots are the same.

Generally, states struggling with economic problems prefer establishing an FOC registry. After World War II, a ship registry was considered to be a source of income for decolonised states<sup>21</sup>. Still, FOC registries remain a source of revenue for states with economic problems. Carlisle called this 'marketing their sovereignty'<sup>22</sup> because ship registries especially qualified as FOCs 'market their sovereignty' to increase their profits from ship registrations. In particular, smaller countries prefer to establish FOC registries. The best example of this situation is the ship registry of Panama. Despite Panama being a small country, it is one of the most popular registries according to the list of 'Leading Flags of Registration by DWT' in recent years<sup>23</sup>. In general, the reasons why FOCs are preferred include fiscal attractiveness, anonymity and lack of control. These considerations attract shipowners for registration. On the other hand, they threaten the public order. In addition to the financial benefits, states with more ships registered in their registries gain an essential place in maritime societies such as the International Maritime Organisation (IMO)<sup>24</sup>.

---

<sup>18</sup> Official website of International Registries Inc. (IRI) <<https://www.register-iri.com/about-iri/>> accessed 23.09.2023.

<sup>19</sup> Ibid.

<sup>20</sup> Carlisle, 'Second Registers: Maritime Nations Respond to Flags of Convenience, 1984-1998' (n 7) 322.

<sup>21</sup> Carlisle, 'Second Registers: Maritime Nations Respond to Flags of Convenience, 1984-1998' (n 7) 320.

<sup>22</sup> Ibid.

<sup>23</sup> The UNCTAD Review of Maritime Transport Reports (2020-2023) <<https://unctad.org/topic/transport-and-trade-logistics/review-of-maritime-transport>> accessed 25.10.2022).

<sup>24</sup> Murat İbrahim Çelebi, 'İkinci Gemi Sicili ve Türkiye ve Avrupa Topluluğunun (Birliğinin) Deniz Ticaret Taşımacılığının Değerlendirilmesi' (LLM thesis, Ankara University 1995) 7.

### **A. Fiscal Attraction**

Taxation policy is the most attractive feature of an FOC for a shipowner. Generally, two main fees are required for the registration of FOCs: the registration fee and annual renewal fee, with certain dues for official certification<sup>25</sup>. The seafarers' wages are problematic for FOC-flag ships. Generally, registries considered to be FOC have no limitation related to seafarers' nationality. This situation causes the increase of options for shipowners to choose seafarers' nationality. In this context, shipowners prefer the least costly employee. This situation impairs the quality of life of seafarers.

### **B. Anonymity**

While anonymity may create dangerous consequences regarding public order, it is an attractive feature for the shipowner. Because of this element of FOCs, the determination of who is responsible cannot be identified<sup>26</sup>. Additionally, anonymity also provides another advantage for shipowners who desire to get rid of lawsuits and execution of judgments.

### **C. Lack of Inspection**

Lack of inspection is relevant in many contexts. One of these contexts is the living and working conditions of seafarers. As inspections decrease, seafarers' quality of life on a ship gets poorer. Another reflection of the lack of inspection is related to marine accidents. Ships involved in marine accidents - such as the Torrey Canyon in 1967, the Amoco Cadiz in 1978, Exxon Valdez in 1989, the Sea Empress in 1996 and the Erika in 1999 - which caused abundant pollution to the seas - were registered in the FOC registries<sup>27</sup>. It is considered that pollution occurred because of marine accidents where there was a lack of inspection of FOC-flag ships.

---

<sup>25</sup> Rhea Rogers, 'Ship Registration: A Critical Analysis' (M.Sc.Dissertation, World Maritime University 2010) 28.

<sup>26</sup> Coles and Watt, (n 4) 25.

<sup>27</sup> Coles and Watt, (n 4) 28.



## II. INTERNATIONAL TRANSPORT WORKERS' FEDERATION AND FLAG OF CONVENIENCE CAMPAIGN

### 1. History of the International Transport Workers' Federation

The International Federation of Ship, Dock and River Workers was established in 1896. Two years later, it broadened its scope to cover transport workers in non-maritime industries and changed its name to the current ITF in 1898<sup>28</sup>. The Federation was structured to represent all transport workers; however, seafarers dominated the congresses with their vocal presence. Additionally, seafarers played a significant role in international relations<sup>29</sup>.

Belen Quezada<sup>30</sup> raised the Panamanian flag, marking the beginning of the systematic practice of FOC. In response, the ITF requested that this issue be discussed by the International Labour Organization (ILO) Joint Maritime Commission in 1933. The ITF declared that the social standards of seafarers working on board ships without a transfer of ownership have become very low and that these fraudulent transfers not only endanger the employment and living conditions of seafarers but also create unfair competitive conditions for other shipowners in the country. With the beginning of the Second World War, the demand for registries of early examples of FOC practice, such as Panama and Honduras, increased. In response, the ITF requested the ILO to conduct an investigation into the registries. During this period, the Panamanian fleet expanded rapidly and became the fourth largest fleet in the world. In 1948, the ITF called for a boycott against open registries of Panama and Honduras as the only way to eliminate the international threat<sup>31</sup>. This boycott call can be seen as the commencement of the ITF's FOC campaign that will continue for years to come<sup>32</sup>.

---

<sup>28</sup> History of the ITF, <https://www.itfglobal.org/en/about-us/history-of-the-itf> (accessed on 25.10.2023).

<sup>29</sup> *The First 100 Years of the International Transport Workers' Federation* (1<sup>st</sup> edn, Pluto Press 1996) 47.

<sup>30</sup> Coles and Watt (n 4) 26.

<sup>31</sup> *The First 100 Years of the International Transport Workers' Federation* (n 29) 136.

<sup>32</sup> The official website of the ITF states that the FOC Campaign officially started in Oslo in 1948. < <https://www.itfseafarers.org/en/focs/about-the-foc-campaign> > accessed 25.10.2023.



## 2. Flag of Convenience Campaign

The ITF can be described as the staunchest opponent of the FOC concept<sup>33</sup>. The two elements of the campaign are expressed as follows<sup>34</sup>:

“A political campaign aimed at eliminating the flag of convenience system by achieving global acceptance of a genuine link between the flag a ship flies and the nationality or residence of its owners, managers and seafarers.

An industrial campaign designed to ensure that seafarers who serve on flag of convenience ships, whatever their nationality, are protected from exploitation by shipowners.”

It was decided that the boycott would take place after the next seafarers’ conference on 1 May 1949. A special committee of seafarers and dockers, later named the Fair Practices Committee, was set up to run the campaign. However, the boycott was postponed due to the Panamanian government’s demand for negotiations. Panama’s demand for negotiations led to draft conventions and ILO interventions, but Panama failed to fulfil many of its promises. Negotiations with Panama were abandoned in 1950.

Work was done to finalise a ‘minimum standard’ collective agreement, and an ‘international welfare fund’ was established. In the meantime, the number of FOC registries and the number of ships registered in these registries were increasing rapidly, although FOC ships were included in the scope of the acceptable agreement. In 1958, seafarers and dockers decided to launch a second international boycott and ‘blue certificates’ were introduced. A blue certificate is a document issued to the master indicating that the ship has an acceptable agreement and will therefore be exempt from action<sup>35</sup>. This boycott received a very adverse reaction from shipowners and gave great impetus to the use of ITF collective agreements. The ITF continued its work without interruption. The Seafarers’ International Assistance, Welfare and Protection Fund (the Welfare Fund) was formally established, financed by contributions paid by shipowners who had signed ITF agreements<sup>36</sup>.

---

<sup>33</sup> Tohomei Chida, ‘On Flags of Convenience Vessels’, (1981) 16 (1-16) Hitotsubashi Journal of Commerce and Management 2.

<sup>34</sup> About the FOC Campaign, <https://www.itfseafarers.org/en/focs/about-the-foc-campaign> (accessed on 25.10.2023).

<sup>35</sup> *The First 100 Years of the International Transport Workers’ Federation* (n 29) 137.

<sup>36</sup> *The First 100 Years of the International Transport Workers’ Federation* (n 29) 138.



Another critical achievement of the ITF in the maritime sector is its agreement with the ILO for the establishment of a convention regulating the minimum conditions of merchant shipping. As a result of this agreement, ILO Convention 147 on Minimum Standards for Merchant Shipping<sup>37</sup> was adopted in 1976. Coastal administrations that have ratified this convention have the right to intervene in favour of certain social and safety conditions for any ship calling at their ports. More importantly, this convention refers to the fundamental trade union and social rights of seafarers<sup>38</sup>. As part of the campaign, the ITF began publishing the 'ITF Seafarers' Bulletin' in the late 1980s. This magazine is aimed at crews working on FOC ships and is published in thirteen languages<sup>39</sup>.

When an FOC-flag ship enters port, ITF-trained and employed ITF inspectors board the ship in port and ask to see the wage and manning schedule and the blue certificate<sup>40</sup>. If there is no blue certificate and the other documents give an unfavourable impression, and if the shipowner refuses to sign an agreement dictated by the ITF<sup>41</sup>, a boycott of the ship is organised by the workers or other attempts are made to prevent the ship from leaving the port. If the shipowner agrees to the ITF's demands and signs the agreement, the blue certificate is secured, and the ship is released from captivity<sup>42</sup>. ITF boycotts may be subject to legal proceedings by shipowners. However, legal proceedings initiated by shipowners may not compensate for the cost of the delay caused by the boycott. Many shipowners consider that accepting ITF terms is less costly than taking legal action. In order to avoid the threat of a boycott, charterers and terminal

---

<sup>37</sup> ILO Convention 147 on Minimum Standards for Merchant Shipping (adopted on 29 October 1976, entered into force on 28 November 1981, Türkiye is not a State party to Convention) <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_COD E:C147](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_COD E:C147)> accessed 25.10.2023.

<sup>38</sup> *The First 100 Years of the International Transport Workers' Federation* (n 29) 141.

<sup>39</sup> *The First 100 Years of the International Transport Workers' Federation* (n 29) 142.

<sup>40</sup> The blue certificate states that: *'It is hereby certified that the [name of ship] is covered by agreements acceptable to the International Transport Workers' Federation. This certificate is valid to [date], provided it is signed by an ITF official [for [the] general secretary.'*' (Herbert R. Northrup and Richard L. Rowan, *The International Transport Workers Federation and Flag of Convenience Shipping* (Philadelphia: Industrial Relations Research Unit, Wharton School, 1983) 376.

<sup>41</sup> *'The terms of the ITF dictated agreement include wage rates unilaterally established by the ITF as equal to wages on the European average standard. Additionally, the ITF demands "back pay", which is sometimes negotiable, but which is unilaterally determined by the ITF representative as the amount "owed" to the crew based upon voyage or voyages present and past; and dues to the ITF welfare fund of US\$230 per crew member per year, plus back dues charged.'* (Northrup and Rowan (n 40) 376.

<sup>42</sup> Northrup and Rowan (n 40) 376.

operators require ships to be blue-certified. Non-FOC-flag ships are not under the threat of boycott, so having a flag that is not on the ITF's FOC list is very attractive for the shipowner. This situation can be considered as a factor affecting the shipowners' choice of flag<sup>43</sup>. The ITF's FOC campaign had an impact on seafarers' labour standards. In particular, it has forced FOCs to raise their standards and deal with seafarers' welfare issues<sup>44</sup>.

During this period, several developments related to FOC were also taking place. The United Nations worked on the United Nations Convention on Conditions for the Registration of Ships (UNCROS), which regulates that there should be a genuine link between the ship and the flag state, and opened the convention for signature in 1986<sup>45</sup>. Although this convention was expected to put an end to the FOC system at that time, this convention has not yet entered into force in 2023<sup>46</sup>. While the UN was continuing its work on the FOC concept, the number of FOC-flag ships increased day by day, and many small states started to establish FOC registries to generate revenue. In this process, traditional maritime states also started to establish registries called second registries in order to prevent the decrease of their fleets by their methods<sup>47</sup>.

---

<sup>43</sup> Northrup and Rowan (n 40) 377-378.

<sup>44</sup> Elizabeth R. DeSombre, 'Globalization, Competition, and Convergence: Shipping and the Race to the Middle' (2008) 14 (2) *Global Governance* 193.

<sup>45</sup> The purpose of the UNCROS is to strengthen the requirement for a 'genuine link' between the state and the ship. The UNCROS regulates the conditions of genuine link by focusing on the nationality of the shipowners and seafarers. As a result of this, most of the states have abstained from signing the Convention.

<sup>46</sup> According to Article 19 of the UNCROS, 'This Convention shall enter into force 12 months after the date on which not less than 40 States, the combined tonnage of which amounts to at least 25 per cent of world tonnage, have become Contracting Parties to it in accordance with article 18.'. Since 1986, 15 countries<sup>46</sup> have become parties to the Convention. The last country to become a party to the Convention was Morocco, which became a party to the Convention on 19 September 2012.

<sup>47</sup> Carlisle, 'Second Registers: Maritime Nations Respond to Flags of Convenience, 1984-1998' (n 7) 319.



### **III. INTERNATIONAL TRANSPORT WORKERS' FEDERATION'S DECISION ON THE TURKISH INTERNATIONAL SHIP REGISTRY IN THE CONTEXT OF THE FLAG OF CONVENIENCE CONCEPT**

#### **1. Turkish International Ship Registry**

Türkiye established a second registry to protect themselves from the adverse consequences of the FOC registries. In a similar vein, the TISR was established with the 4490 numbered Turkish International Ship Registry Act and the Law on Amending the Statutory Degree no. 491 (Law No. 4490)<sup>48</sup> in 1999 to prevent Turkish shipowners from flagging out from the Turkish flag and to attract foreign shipowners to flagging in to the Turkish flag. In the General Preamble of Law No. 4490, it is stated that the TISR will enable the Turkish merchant fleet to operate in international maritime markets on equal terms with competing merchant fleets<sup>49</sup>. Upon analysis of the current data, it is observed that approximately 91.6% of ships operating under the Turkish flag are registered in TISR. Since 2001, TISR has been the preferred registry for ship owners over the National Ship Registry, which is a national registry of Türkiye<sup>50</sup>. This data highlights the significance of TISR for Turkish maritime industry. It is considered that if TISR had not been established, the majority of Turkish shipowners operating in international waters would have preferred other flags.

The aim of the establishment of the TISR are similar to those of other second registries. The primary purpose of the establishment of the TISR was to prevent the decrease of the merchant fleet. Another purpose of the establishment of the TISR was to become a rival to FOCs and attract national and international shipowners. The TISR will ensure that the Turkish merchant fleet could work on equal terms with competing merchant fleets in international maritime markets<sup>51</sup>. The TISR was established in Istanbul under the Undersecretariat of Maritime Affairs in order to accelerate the development of the Turkish maritime

---

<sup>48</sup> 4490 numbered Turkish International Ship Registry Act and the Law on Amending the Statutory Degree no. 491 (entered into force on 21.12.1999, promulgated in 21.12.1999 dated 27846 numbered OG) (Law No. 4490) <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.4490.pdf>> accessed 25.10.2023.

<sup>49</sup> Commission Reports of the Grand National Assembly of Türkiye (Period 21 Legislative Year 2) 2, <<https://www5.tbmm.gov.tr/sirasayi/donem21/yil01/ss217m.htm>> accessed 25.10.2023.

<sup>50</sup> Ministry of Transport and Infrastructure Fleet Statistics (2023) <<https://denizcilikistatistikleri.uab.gov.tr/filo-istatistikleri>> accessed 23.02.2024.

<sup>51</sup> Ibid.

industry and contribute to the Turkish economy<sup>52</sup>. Law No. 4490 states that these objectives can be achieved by facilitating the procurement and operation of TISR registered ships and commercial yachts registered in the inventories of tourism companies<sup>53</sup>. The legislation governing TISR is comprehensive. This study will analyse the provisions of the relevant legislation on seafarers and the registration requirements for shipowners to examine this registry in the context of the open registry concept. Although the TISR is a registry in which both ships and yachts can be registered, for the purpose of the study, only the issues regarding the TISR-registered ships will be analysed.

### A. Regulations Applicable to Seafarers

Regulations governing TISR are primarily outlined in Law No. 4490 and the Regulation on the TISR Regulation. Article 16 of the Regulation on the TISR specifies the legislation that applies to matters not covered by Law No. 4490. It emphasizes that TISR-registered ships are subject to Law No. 4490 and that provisions of the legislation in force apply to matters not regulated in this law. According to Article 17 of the Regulation on the TISR, TISR-registered ships are subject to the international conventions to which Türkiye is a party. In determining the applicable regulations, priority is given to international conventions to which Türkiye is a party, provided that the conditions for their application are met. If there are no relevant international conventions, the regulations in Law No. 4490 are applied, and if there is no specific provision in Law No. 4490, the provisions of the legislation in force are applied<sup>54</sup>.

Law No. 4490 includes regulations concerning seafarers, covering their nationality, employment, social security, working conditions, and the arrival, departure, and accommodation of foreign seafarers<sup>55</sup>. According to this law, seafarers employed on TISR-registered ships are subject to Turkish social security and individual and collective labour law legislation<sup>56</sup>. This provision indicates that seafarers employed on TISR-registered ships are subjected to the

---

<sup>52</sup> Law No. 4490 (n 48) Art. 3.

<sup>53</sup> Law No. 4490 (n 48) Art. 1.

<sup>54</sup> Cüneyt Süzel, 'TUGS'a Kayıtlı Gemilerin Tabi Olduğu Hükümler', İstanbul Gedik University and İMEAK Chamber of Shipping (Org.) 20. Kuruluş Yıldönümünde Türk Uluslararası Gemi Sicili (Tugs) Ve Yabancı Gemi Sicilleri (İstanbul 19.12.2019) <<https://www.youtube.com/watch?v=FTdHtS9o-5o>> accessed 05.01.2024.

<sup>55</sup> Law No. 4490 (n 48) Arts 9, 10 and 11.

<sup>56</sup> Law No. 4490 (n 48) Art. 10.



provisions of the Maritime Labour Code<sup>57</sup>. For those working on TISR-registered ships, the international conventions that Türkiye is a party to will apply. It is important to note that ILO conventions are particularly significant in this regard. In the absence of special provisions in the relevant conventions, Turkish social security and individual and collective labour law legislation, mainly the Maritime Labour Law, will be applied by reference to the law.

## **B. Evaluation of the Registry in the context of the Open Registry Concept**

The TISR allows foreign-owned ships to operate under the Turkish flag. Turkish and foreign individuals residing in Türkiye can register their ships in the TISR<sup>58</sup>. The legislation requires that real persons have residency in Türkiye to register in the TISR<sup>59</sup>. If a ship has more than one real person owner, each of them must be a resident of Türkiye. Ships owned by companies established in Türkiye in accordance with Turkish legislation can be registered in the TISR<sup>60</sup>. There are no restrictions on the types of companies that can register their ships as long as they are established in Türkiye and comply with Turkish legislation. The companies' shareholding structure and management bodies do not have any special conditions for registration. It should be noted that ships owned by ordinary partnerships or commercial partnerships can be registered in the TISR<sup>61</sup>.

The TISR allows foreign-owned ships that meet certain conditions to be operated under the Turkish flag. The term 'open registry' refers to the ability for a shipowner to register a ship with a particular flag state regardless of nationality<sup>62</sup>. Based on this definition, the TISR can be qualified as an open registry. However, the term 'open registry' typically refers to registries established by non-traditional maritime nations, such as Panama, Malta, and the Bahamas<sup>63</sup>. TISR, on the other hand, is considered one of the second registries established by traditional maritime states as an alternative to their closed registries and in order to compete with other registries. Open and second registries are similar in that

---

<sup>57</sup> Maritime Labour Code (entered into force on 29.04.1967, promulgated in 29.04.1967 dated 12586 numbered OG) (Law No. 854) <<https://www.mevzuat.gov.tr/mevzuatmetin/1.5.854.pdf>> accessed 04.01.2024.

<sup>58</sup> Law No. 4490 (n 48) Art. 5.

<sup>59</sup> İsmail Demir, *Deniz Ticareti Hukuku Ders Kitabı* (1<sup>st</sup> edn, Yetkin 2011) 136.

<sup>60</sup> Law No. 4490 (n 48) Art. 5.

<sup>61</sup> Demir, (n 59) 136.

<sup>62</sup> Coles and Watt (n 4) 23.

<sup>63</sup> Carlisle, 'Second Registers: Maritime Nations Respond to Flags of Convenience, 1984-1998' (n 7) 320.

they do not require any conditions regarding the nationality of the ship owner for registration. Registering foreign-owned ships does not cause, by itself, to classify a register as FOC. The ITF has specific criteria for characterising a ship registry as FOC. The ITF may declare a register as a FOC according to its criteria. It should be noted that the ITF may also classify second registries established to rival FOC registries as FOC. For example, although they are secondary registries, the French International Ship Registry and the German International Ship Registry are featured on the ITF's FOC list<sup>64</sup>. The situation is more complicated for Türkiye's second registry, the TISR. The aim of this study is to clarify this confusing situation.

## 2. The International Transport Workers' Federation's Decision of the Turkish International Ship Registry and Decision's Rationale

The ITF announces the registries, characterised by the ITF's Fair Practices Committee as the FOC registry, on its official website. Some criteria are taken into account when determining the FOC list. ITF defines FOC in its simplest terms as '*A FOC ship is one that flies the flag of a country other than the country of ownership.*'. The ITF states that this concept means low wages, poor living conditions and long working hours for seafarers, while for shipowners, it means minimum regulation, cheap registration fees, low taxes and cheap labour<sup>65</sup>. Registries declared FOC by the ITF are becoming the target of the FOC campaign<sup>66</sup>. Today, it is observed that many second registries established to compete with FOC registries are also included in the ITF's FOC list due to the labour conditions on the ships registered in the registry. For TISR, the situation is somewhat more complex. For the purpose of this study, it will be clarified whether the TISR is qualified as a FOC by the ITF.

According to the news text published by the Association of International Forwarding and Logistics Service Providers (UTIKAD)<sup>67</sup>, upon the application of the Seafarers' Union of Türkiye (*Türkiye Denizciler Sendikası*), the TISR has

---

<sup>64</sup> Current Registries Listed as FOCs, <<https://www.itfseafarers.org/en/focs/current-registries-listed-as-focs>> accessed 25.10.2023.

<sup>65</sup> Flags of Convenience, <<https://www.itfglobal.org/en/sector/seafarers/flags-of-convenience>> accessed 25.10.2023.

<sup>66</sup> For instance, Seafarer unpaid for seven years while Tanzanian Flag ducks its obligations <<https://www.itfseafarers.org/en/news/seafarer-unpaid-seven-years-while-tanzanian-flag-ducks-its-obligations>> accessed 25.10.2023.

<sup>67</sup> Official website of UTIKAD <<https://www.utikad.org.tr/Detay/Sektor-Haberleri/7864/tugs-kolay-bayrak-kabul-edildi>> accessed 25.10.2023.



been designated as an FOC registry by the ITF. The Istanbul & Marmara, Aegean, Mediterranean, Black Sea Regions (IMEAK) Chamber of Shipping stated that the TISR is a second registry, and it cannot be qualified as a FOC registry as there are certain conditions required for the ships to be registered and not everyone who desires to register can do so<sup>68</sup>. Although such a news item was published, the TISR is not included in the 'Current registries listed as FOCs' list published on the website of ITF.

The ITF representative in Türkiye, the Seafarers' Union of Türkiye, was contacted<sup>69</sup> to clarify whether the TISR had been designated as a FOC registry by the ITF. The Union's response is as follows:

"The TISR was declared as a flag of convenience (FOC) on 23 March 2011 by the Fair Practices Steering Group, the competent body of the ITF, upon the application of the Seafarers' Union of Türkiye, due to the unfavourable working conditions of seafarers and the lack of freedom of association and low level of organisation in the sector. However, the implementation of the decision was postponed to allow time for the union to work on the development of social dialogue with both the Administration and the shipowners in order to ensure organisation. In the intervening period, with the support of the ITF in foreign ports, campaigns were carried out, seminars were held and dialogue was developed through meetings with the Administration<sup>70</sup> and the Chamber of Shipping. In 2013, with the entry into force of the Maritime Labour Convention (MLC, 2006)<sup>71</sup>, working conditions on board the ships started to improve, union membership started to increase and shipowners applied to our union and stated that they wanted to make a contract in accordance with MLC, 2006. The FOC decision on TISR is currently pending. In this respect, it is not included in ITF's FOC-flag ship list."<sup>72</sup>

<sup>68</sup> Official website of UTIKAD <<https://www.utikad.org.tr/Detay/Sektor-Haberleri/7864/tugs-kolay-bayrak-kabul-edildi>> accessed 25.10.2023.

<sup>69</sup> An e-mail was sent on 21.10.2022, and on 07.11.2022, Seafarers' Union of Türkiye replied.

<sup>70</sup> According to Article 4/1-1 of the TISR Regulation, "Administration: Undersecretariat of Maritime Affairs..." It is considered that the Administration referred to here is the Undersecretariat of Maritime Affairs.

<sup>71</sup> Maritime Labour Convention 2006 (adopted on 7 February 2006, entered into force on 20 August 2013, Türkiye is not a State party to Convention) (MLC 2006) <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/normativeinstrument/wcms\\_763684.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_763684.pdf)> accessed 25.10.2023.

<sup>72</sup> Response in the original language (Turkish): '*Türk Uluslararası Gemi Sicili gemiadamlarının çalışma şartlarının olumsuzluğu ve sektörde örgütlenme özgürlüğünün bulunmaması ve örgütlenme düzeyinin yok denecek kadar düşük olması nedeniyle Türkiye Denizciler Sendikasının müracaatı üzerine ITF'in yetkili kurulu Fair Practices Steering Group tarafından 23 Mart 2011 tarihinde Elverişli Bayrak (FOC) ilan edilmiştir. Ancak, kararın uygulamaya*



The response clarifies that TISR is not qualified a FOC registry, which is a positive development as it could have led to boycotts in ports. Additionally, the response suggests that the working conditions of seafarers on TISR-registered ships are improving, which is also positive. At this point, essential issue to be examined legally in the Union's response is the impact of the Maritime Labour Convention 2006 (MLC 2006) on this decision.

### A. Legal Framework of Maritime Labour Convention 2006

The MLC 2006 was adopted at the 94th Session of the International Labour Organization (ILO) Conference in Geneva on 24 February 2006<sup>73</sup>. The Convention was established by the ILO to provide a comprehensive framework that incorporates all regulations prepared in the maritime sector<sup>74</sup>. The convention is often referred to as the Magna Carta of seafarers because it regulates the minimum labour standards of seafarers. It covers fundamental issues such as employment conditions, working hours, accommodation and nutrition rights, and health and social security rights of seafarers<sup>75</sup>.

The global nature of the maritime sector is considered to be the driving force behind the establishment of this convention. While the convention primarily regulates the rights of maritime workers, it also provides various benefits to states and employers. Considering the fact that ILO is an international organisation in which the representatives of workers, employers and states are equally involved, it can be considered that this convention has been designed to provide benefits for all stakeholders. Indeed, the idea of the ILO unifying the maritime labour conventions was put forward by shipowners to ensure

---

*konulması, örgütlenmenin sağlanması amacıyla gerek İdare gerekse gemisahipleriyle sosyal diyalogun geliştirilmesi için sendikal çalışmalara zaman tanınması açısından ertelenmiştir. Arada geçen süre zarfında ITF'in yabancı limanlarda sağladığı destekle kampanyalar yapılmış, seminerler düzenlenmiş İdare ve Deniz Ticaret Odasıyla yapılan toplantılarla diyalog geliştirilmiştir. 2013 yılında Denizcilik Çalışma Sözleşmesinin (MLC, 2006) yürürlüğe girmesiyle gemilerdeki çalışma şartları düzelmeye başlamış, sendika üyeliği artmaya başlamış ve gemisahipleri sendikamıza müracaat ederek MLC, 2006'ya uygun sözleşme yapmak istediklerini belirtmişlerdir. TUGS ile ilgili FOC kararı halihazırda askıdadır. Bu itibarla ITF'in FOC bayraklı gemi listesinde bulunmamaktadır.'*

<sup>73</sup> ILO, Maritime Labour Convention, 2006, as amended (MLC, 2006) <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::NO::P91\\_ILO\\_CODE:C186](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::NO::P91_ILO_CODE:C186)> accessed 05.01.2024.

<sup>74</sup> Didem Algantürk Light, "“Deniz İş Sözleşmesi 2006” Hakkında İnceleme ve Değerlendirme" (2007) XI (1-2) EÜHFD 269, 270.

<sup>75</sup> Mehmet Nusret Bedük, *Deniz İş Sözleşmesi* (1<sup>st</sup> edn, Ekin Basım 2012) 66.



uniformity<sup>76</sup>. The Convention provides benefits such as standardisation for shipowners, a more responsible maritime sector, better quality ship operations, and reduced delays caused by fewer problems in ports. It also provides benefits for states, including ease of reporting, increased service quality in the sector, more protection of the marine environment, and protection against unfair competition. Seafarers, who are the main subject of the Convention, provide the following benefits<sup>77</sup>:

“A comprehensive set of basic maritime labour principles and rights as well as ILO fundamental rights,  
Convention spells out in one place and clear language seafarers’ basic employment rights,  
Seafarers better informed of their rights and of remedies available,  
Improved enforcement of minimum working and living conditions,  
Right to make complaints both on board and ashore,  
Clear identification of who is the shipowner with overall responsibility, for the purposes of this Convention.”

MLC 2006 is intended to be the fourth pillar of the international maritime regulatory regime, complementing the three<sup>78</sup> fundamental IMO Conventions<sup>79</sup>. Although the Convention was adopted in 2006, it met the requirements for entry into force only in 2013, after the Philippines ratified it on 20 August 2012<sup>80</sup>. The Convention came into force twelve months after the ratification, on 20 August 2013<sup>81</sup>.

---

<sup>76</sup> John Isaac Blanck Jr., ‘Reflections on the Negotiation of the Maritime Labor Convention 2006 at the International Labor Organization’ (2006) 31 (1) *Tul Mar LJ* 35, 39.

<sup>77</sup> ILO, Advantages of the Maritime Labour Convention, 2006 <[https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS\\_153450/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_153450/lang--en/index.htm)> accessed 05.01.2024.

<sup>78</sup> These three conventions mentioned here are the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). (Algantürk (n 74) 270,271).

<sup>79</sup> Cleopatra Doumbia Henry, Dominick Devlin and Moira L. McConnell, ‘The Maritime Labour Convention, 2006 Consolidates Seafarers’ Labour Instruments’, (2006) 23 (10) *ASIL Insights* <<https://www.asil.org/insights/volume/10/issue/23/maritime-labour-convention-2006-consolidates-seafarers-labour>> accessed 04.01.2024.

<sup>80</sup> ILO, Philippines ratification marks global milestone for decent work for seafarers <[https://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_187712/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_187712/lang--en/index.htm)> accessed 04.01.2024.

<sup>81</sup> MLC 2006, Art. VII.

The Convention's entry into force has a significant impact on ships calling at ports of States Parties. These ships can be subject to port state inspection to ensure compliance with the Convention's requirements, regardless of their operating State's nationality<sup>82</sup>. If a deficiency is detected concerning the requirements of the Convention, the ship can be detained<sup>83</sup>. Detention of ships is a significant sanction for ship owners and the flag state. Detention not only results in financial loss for the ship owner but also damages the reputation of the flag state<sup>84</sup>. Deficiencies identified during port state inspections related to MLC 2006 regulations are reported. These reports impact the registration preferences of ship owners, as flag state performance lists are compiled based on this data<sup>85</sup>. For instance, the Paris Memorandum of Understanding (MOU) on Port State Control publishes 'white-gray-black' lists periodically, using port state inspection data. In 2022, Türkiye is ranked twelfth on the Paris MOU's White List for Port State Control<sup>86</sup>. To maintain or improve its position in the Paris MOU on Port State Control, Turkish-flagged ships must improve their compliance with the MLC 2006 and meet other requirements.

The Convention also includes regulations on certification, which indirectly benefit seafarers, employers, and governments. Two important documents stipulated in the Convention are the Maritime Labour Certificate and the Certificate of Conformity. The 'Maritime Labour Certificate' is issued by the flag state or an authorised organisation to certify that the working conditions on board the ship comply with national legislation<sup>87</sup>. The certificate is valid for five years, during which the ship's compliance with the conditions is evaluated<sup>88</sup>. A 'certificate of conformity' is issued when the flag State or an organisation fully authorised for this purpose approves the shipowner's plans to comply with the standards. This certificate confirms that the employer committed to fulfil the prescribed standards. This commitment is referred to as the 'declaration of

---

<sup>82</sup> This point is also emphasised in the preamble of the Law No. 6898 on the Approval of the Ratification of the Maritime Labour Convention. (Preamble of this Law, 23.)

<sup>83</sup> MLC 2006 Standart A5.2.1.

<sup>84</sup> Poor performance in port state inspections can lead to a bad reputation for the flag state.

<sup>85</sup> Erdem Kan, 'Türk Bayraklı Gemilerin Denizcilik Çalışma Sözleşmesi (MLC) Kapsamında Eksikliklerinin Belirlenmesi Paris Mou Denetim Raporlarının İncelenmesi' (2023) 3 (78) Çalışma ve Toplum 2287, 2296.

<sup>86</sup> The latest version of the White, Grey and Black lists of Paris MoU, <https://parismou.org/Statistics%26Current-Lists/white-grey-and-black-list> (accessed on 05.01.2024).

<sup>87</sup> MLC 2006 Regulation 5.1.3.

<sup>88</sup> MLC 2006 Standard A5.1.3.



fitness to work at sea'. To fulfil this commitment, seafarers must comply with prescribed standards in various areas, including minimum age requirements, possession of a seafarer's driving licence, health status, regulation of working and resting hours, and adherence to hygiene conditions<sup>89</sup>.

The regulations of the Convention on certification, inspections, and detention of ships have ensured its effective implementation. According to the Paris MOU report on the first year of the Convention, 113 ships were detained due to deficiencies related to the MLC 2006<sup>90</sup>. Ship detention in port is a highly undesirable for both ship owners and flag states. The implementation of MLC 2006 has created satisfaction for organizations such as ITF, which defends the rights of seafarers.

## **B. Impact of Maritime Labour Convention 2006 on International Transport Workers' Federation's Turkish International Ship Registry Decision**

Before evaluating the impact of MLC 2006 on TISR, it is necessary to explain Türkiye's process of becoming a party to the Convention and its current situation. Türkiye deemed it appropriate to become a party to the MLC 2006 on 25.03.2017<sup>91</sup>. However, since Türkiye has not yet completed the ratification process, it has not become a party to the Convention. Nevertheless, despite not being a party to it, Türkiye is still affected by the convention's provisions. As previously noted, ships under the Turkish flag can be detained during port inspections in States party to the Convention, and this situation affects both shipowners operating under the Turkish flag and the TISR, which was established to compete with other registries in terms of competition. Although Türkiye has not yet completed the process of becoming a party to the Convention, Türk Loydu issued the MLC certificate and certified Lucent Maritime, a seafarer recruitment and placement organisation, in 2015 to prevent Turkish ships from being detained due to MLC 2006<sup>92</sup>. The Union suspended the

---

<sup>89</sup> Algantürk, (n 74) 27.

<sup>90</sup> Paris MoU, Results first year Maritime Labour Convention < <https://parismou.org/results-first-year-maritime-labour-convention> > accessed 05.01.2024.

<sup>91</sup> Ratification of the Maritime Labour Convention on the Approval of the Law, 30018 numbered 25.03.2017 dated Official Gazette <<https://www.resmigazete.gov.tr/eskiler/2017/03/20170325-18.htm>> accessed 06.01.2023.

<sup>92</sup> Ülkü Halatçı Ulusoy, 'MLC 2006 (Denizcilik Çalışma Sözleşmesi) ile Değişikliklerinin Önemine ve Türk Hukuku'nda Onay Sürecine İlişkin Bir Değerlendirme' (2020) 5 (2) Çankaya Üniversitesi Hukuk Fakültesi Dergisi 4191, 4211.

FOC decision of TISR due to shipowners' requests to make a contract in accordance with MLC 2006. These developments indicate that although Türkiye has not yet completed the process of acceding to the MLC 2006, it has been observed that the Convention is actually being implemented. This situation can be considered a result of the globalization of the maritime sector.

In its response, the Union stated that working conditions on TISR-registered ships began to improve as of 2013, the effective date of the agreement. It is evident that the possibility of detaining the ship due to convention-related deficiencies has contributed to this positive development. Compliance with the convention standards is mandatory for TISR-registered ships operating on international seas and calling at ports of States Parties to the convention. Failure to comply may result in frequent ship detentions, causing financial losses for ship owners. The response of the Union stated that another development resulting from this effect is the ship owners' request to make contracts in accordance with MLC 2006 by applying to the Union. The conclusion of contracts with seafarers working on TISR-registered ships in accordance with the conditions stipulated in MLC 2006 is a positive development regarding the working conditions of seafarers on board.

At this point, it is important to evaluate the impact of MLC 2006 on the classification of the German International Ship Registry as FOC by the ITF. Although Germany became a party to MLC 2006 on 16 August 2013<sup>93</sup> and had fewer deficiencies in Paris MOU on Port State controls compared to Türkiye<sup>94</sup>, the German International Ship Registry is still considered as FOC by ITF. The decision regarding TISR is pending. It can be argued that issues such as developing dialogue between institutions and increasing Union membership are as important as MLC 2006. However, being a party to and effectively implementing the Convention does not necessarily prevent a flag from being classified as a flag of convenience by the ITF.

## CONCLUSION

The FOC concept, which is considered as one of the milestones of the maritime sector, can also be considered as a milestone in terms of the working conditions

---

<sup>93</sup> ILO, Ratifications of MLC, 2006 - Maritime Labour Convention, 2006 <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312331](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312331)> accessed 05.01.2024.

<sup>94</sup> Kan, (n 85) 2303.



of seafarers. It can be said that with the establishment of FOC registries and the operation of ships under these registries, ships have been freed from various inspections. This situation caused seafarers, who worked under challenging conditions due to the nature of seafaring, to work under even more severe conditions. Worsening living conditions and low wages on board prompted the ITF to take action. Founded in 1986 to protect the rights of transport workers, the ITF has not remained ignorant to this concept, which affects the living conditions of seafarers to such an extent and has been increasing its sphere of influence. Starting in 1948, it continues to work to protect the rights of seafarers through the FOC campaign, which is continuing today. The ITF is now more organised, with more than 150 ITF inspectors and liaison persons in ports around the world ensuring compliance with the agreements<sup>95</sup>.

In this campaign, which started against Panama and Honduras, as of today, the ship registries of 42 countries have been declared as FOC and have become the focus of the campaign. Among these 42 countries, there are traditional maritime states such as France and Germany (their second registries are characterised as FOC), as well as countries with the world's largest merchant fleets, such as Panama, Liberia and the RMI. The situation of TISR, which is the subject of this article, is more complicated. TISR, considered one of the most important developments of the Turkish maritime sector, was established to increase the competitiveness of the Turkish flag against FOC registries similar to other second registries. Although TISR was declared as FOC by the Fair Practices Steering Group on 23 March 2011, the decision has not yet been enforced. The implementation of the decision has been postponed for various reasons, and during this period, dialogue has been developed in meetings with the Administration and the Chamber of Shipping. Again, in this process, with the entry into force of the MLC 2006, the effect of the reasons, such as the adverse working conditions and the lack of freedom of association in the sector, which caused TISR to be declared as FOC, decreased and caused the decision to be postponed. The MLC 2006 is an extensive international convention that regulates the living conditions and fundamental rights of seafarers on board ships. It came into force in 2013 and affects all shipowners and seafarers on international voyages. The Convention's issues are inspected during port state controls by the states parties to the Convention, ensuring its effective implementation. Although Türkiye has not yet completed the enforcement

---

<sup>95</sup> Flags of Convenience, <<https://www.itfglobal.org/en/sector/seafarers/flags-of-convenience>> accessed 25.10.2023.

process, ship owners carrying out international voyages strive to comply with the Convention. Therefore, as stated in the relevant institution's response, with the Convention's entry into force, the living conditions of seafarers working on TISR-registered ships have started to improve. Moreover, ship owners have become willing to enter into contracts in accordance with MLC 2006 for the same reason.

The inspection of MLC 2006 matters during port state controls is the main driving force for the effective implementation of the Convention. Delays caused by these controls result in loss of time and financial loss for shipowners. Additionally, deficiencies that cause these delays may harm the reputation of the ship registry due to poor performance in port state controls, potentially leading to a decrease in the number of registered ships. Although it is stated that the ship owners are willing to comply with the Convention although the enforcement process has not been completed, it is essential for Türkiye to complete the process of becoming a party to the Convention both for the seafarers working on Turkish-flagged ships, the owners of these ships and for Türkiye in terms of the formation of an effective mechanism. The Convention, although not yet a party but has been harmonised, has had a positive impact on the ITF decision. However, the ITF still considers German International Ship Registry as a FOC, despite being compliant with MLC 2006. This demonstrates that MLC 2006 is not sufficient on its own for a registry not to be considered a FOC by the ITF. Other factors, such as communication between sector authorities, also appear to have a significant influence on this decision.

In conclusion, it can be stated that the postponement of the decision on TISR is an essential development in terms of the working conditions of seafarers on ships operating under the Turkish flag and the reputation of TISR. It is hoped that the pending decision will be finalised so that the TISR will not be considered as FOC and seafarers working under the Turkish flag will always work under better conditions.

## **BIBLIOGRAPHY**

### **I. PRIMARY SOURCES**

#### **1. International Conventions**

ILO Convention 147 on Minimum Standards for Merchant Shipping (adopted on 29 October 1976, entered into force on 28 November 1981, Türkiye is not



a State party to Convention) <  
[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C147](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C147)> accessed 25.10.2023

Maritime Labour Convention 2006 (adopted on 7 February 2006, entered into force on 20 August 2013, Türkiye is not a State party to Convention) (MLC, 2006) <  
[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/normativeinstrument/wcms\\_763684.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_763684.pdf)> accessed 25.10.2023

United Nations Convention on Conditions for the Registration of Ships (adopted on 07.02.1986, not yet into force, Türkiye is not a State party to the Convention) (UNCROS) <  
[https://treaties.un.org/doc/Treaties/1986/02/19860207%2008-58%20AM/Ch\\_XII\\_07p.pdf](https://treaties.un.org/doc/Treaties/1986/02/19860207%2008-58%20AM/Ch_XII_07p.pdf)> accessed 25.10.2023

United Nations Convention on the Law of the Sea (opened for signature on 10.12.1982, entered into force on 16.11.1994, Türkiye is not a State party to the Convention) UNTS 31363 (UNCLOS) <  
[https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)> accessed 10.05.2023

## 2. Statutory Rules

4490 numbered Turkish International Ship Registry Act and the Law on Amending the Statutory Degree no. 491 (entered into force on 21.12.1999, promulgated in 21.12.1999 dated 27846 numbered OG) (Law No. 4490) <  
<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.4490.pdf>> accessed 25.10.2023

Maritime Labour Code (entered into force on 29.04.1967, promulgated in 29.04.1967 dated 12586 numbered OG) (Law No. 854) <  
<https://www.mevzuat.gov.tr/mevzuatmetin/1.5.854.pdf>> accessed 04.01.2024

Ratification of the Maritime Labour Convention On The Approval of the Law, 30018 numbered 25.03.2017 dated Official Gazette <  
<https://www.resmigazete.gov.tr/eskiler/2017/03/20170325-18.htm>> accessed 06.01.2023

Regulation on the TISR (entered into force on 23.06.2000, promulgated in 23.06.2000 dated 24088 numbered OG <



<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5692&MevzuatTur=7&MevzuatTertip=5> accessed 16.05.2023

## II. SECONDARY SOURCES

### 1. Doctrine

- Ademuni-Odeke, ‘Evolution and Development of Ship Registration’ (1997) III Il Diritto Marittimo 631
- Ademun-Odeke, ‘An Examination of Bareboat Charter Registries and Flag of Convenience Registries in International Law’ (2005) 36 Ocean Dev & Int’l L 339
- Didem Algantürk Light, “‘Deniz İş Sözleşmesi 2006’ Hakkında İnceleme ve Değerlendirme’, (2007) XI (1-2) EÜHFD, 269
- Elizabeth R. DeSombre, ‘Globalization, Competition, and Convergence: Shipping and the Race to the Middle’ (2008) 14 (2) Global Governance 179
- Erdem Kan, ‘Türk Bayraklı Gemilerin Denizcilik Çalışma Sözleşmesi (MLC) Kapsamında Eksikliklerinin Belirlenmesi Paris Mou Denetim Raporlarının İncelenmesi’, (2023) 3 (78) Çalışma ve Toplum, 2287
- Filimon M. Manoni, ‘Analysing the International Legal Framework’ (LLM thesis, University of Wollongong 2012)
- Herbert R. Northrup and Richard L. Rowan, *The International Transport Workers Federation and Flag of Convenience Shipping* (Philadelphia: Industrial Relations Research Unit, Wharton School, 1983)
- İsmail Demir, *Deniz Ticareti Hukuku Ders Kitabı* (1st edn, Yetkin 2011)
- John Isaac Blanck Jr., ‘Reflections on the Negotiation of the Maritime Labor Convention 2006 at the International Labor Organization’, (2006) 31 (1) Tul Mar LJ, 35
- Mehmet Nusret Bedük, *Deniz İş Sözleşmesi* (1st edn, Ekin Basım 2012)
- Murat İbrahim Çelebi, ‘İkinci Gemi Sicili ve Türkiye ve Avrupa Topluluğunun (Birliğinin) Deniz Ticaret Taşımacılığının Değerlendirilmesi’ (LLM thesis, Ankara University 1995)
- Rhea Rogers, ‘Ship Registration: A Critical Analysis’ (M.Sc.Dissertation, World Maritime University 2010)



Richard Coles and Edward Watt, *Ship Registration: Law and Practice* (2nd edn, Informa 2009)

Rodney P. Carlisle, 'Second Registers: Maritime Nations Respond to Flags of Convenience, 1984-1998', (2009) 19 (3) *The Northern Mariner* 319

—, *Sovereignty For Sale: The Origins and Evolution of the Panamanian and Liberian Flags of Convenience* (1st edn, Naval Institute Press 1981)

*The First 100 Years of the International Transport Workers' Federation* (1st edn, Pluto Press 1996)

Tohomei Chida, 'On Flags of Convenience Vessels', (1981) 16 (1-16) *Hitotsubashi Journal of Commerce and Management* 1

Ülkü Halatçı Ulusoy, 'MLC 2006 (Denizcilik Çalışma Sözleşmesi) ile Değişikliklerinin Önemine ve Türk Hukuku'nda Onay Sürecine İlişkin Bir Değerlendirme', (2020) 5 (2) *Çankaya Üniversitesi Hukuk Fakültesi Dergisi*, 4191

## 2. Reports and Others

About the FOC Campaign <<https://www.itfseafarers.org/en/focs/about-the-foc-campaign>> accessed 25.10.2022

Cleopatra Doumbia Henry, Dominick Devlin and Moira L. McConnell, 'The Maritime Labour Convention, 2006 Consolidates Seafarers' Labour Instruments', (2006) 23 (10) *ASIL Insights* <<https://www.asil.org/insights/volume/10/issue/23/maritime-labour-convention-2006-consolidates-seafarers-labour>> accessed 04.01.2024

Commission Reports of the Grand National Assembly of Türkiye (Period 21 Legislative Year 2) 2, <<https://www5.tbmm.gov.tr/sirasayi/donem21/yil01/ss217m.htm>> accessed 25.10.2023

Cüneyt Süzal, 'TUGS'a Kayıtlı Gemilerin Tabi Olduğu Hükümler', İstanbul Gedik University and İMEAK Chamber of Shipping (Org.) 20. Kuruluş Yıldönümünde Türk Uluslararası Gemi Sicili (Tugs) Ve Yabancı Gemi Sicilleri (İstanbul 19.12.2019) <<https://www.youtube.com/watch?v=FTdHtS9o-5o>> accessed 05.01.2024

- Current Registries Listed as FOCs, <https://www.itfseafarers.org/en/focs/current-registries-listed-as-focs> accessed 25.10.2023)
- Flags of Convenience, <https://www.itfglobal.org/en/sector/seafarers/flags-of-convenience> accessed 25.10.2023
- History of the ITF, <https://www.itfglobal.org/en/about-us/history-of-the-itf> accessed 25.10.2023
- ILO, Advantages of the Maritime Labour Convention, 2006 [https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS\\_153450/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_153450/lang--en/index.htm) accessed 05.01.2024
- ILO, Philippines ratification marks global milestone for decent work for seafarers [https://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_187712/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_187712/lang--en/index.htm) accessed 04.01.2024
- ILO, Ratifications of MLC, 2006 - Maritime Labour Convention, 2006 [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312331](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312331) accessed 05.01.2024
- ITF News, <https://www.itfseafarers.org/en/news/seafarer-unpaid-seven-years-while-tanzanian-flag-ducks-its-obligations> accessed on 25.10.2023
- Ministry of Transport and Infrastructure Fleet Statistics (2023) <https://denizcilikistatistikleri.uab.gov.tr/filo-istatistikleri> accessed 23.02.2024
- Official website of Department of State US, Office of the Historian, <https://history.state.gov/milestones/1921-1936/neutrality-acts#:~:text=On%20August%2031%2C%201935%2C%20Congress,apply%20for%20an%20export%20license.>> accessed 25.10.2023
- Official website of IRI, <https://www.register-iri.com/about-iri/> accessed 25.10.2023
- Paris MoU, Results first year Maritime Labour Convention <https://parismou.org/results-first-year-maritime-labour-convention> accessed 05.01.2024
- The UNCTAD Review of Maritime Transport Reports <https://unctad.org/topic/transport-and-trade-logistics/review-of-maritime-transport> accessed 25.10.2023



Website of UTIKAD <<https://www.utikad.org.tr/Detay/Sektor-Haberleri/7864/tugs-kolay-bayrak-kabul-edildi>> accessed 25.10.2023