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A balance of Business and Human Relations and the contract between a ship owner and the Flag State

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I. Introduction

The shipping industry is one of the most powerful areas of transport which enables the carriage of goods from one country to another. Many countries base their economic grounds and accord their financial growth to this rapidly flourishing – if well functioned – industry. In this respect, globalisation is enhanced and it also plays a vital role, as the industry acts as a “facilitator¹” for economic development. This is proven from the case which dates back to 1966, on April the 23rd when *Fairland*, “the first converted container ship, sailed from Port Elizabeth in the USA to Rotterdam, carrying with it 236 containers. This created a trend, for instance during the Vietnam War², when the US government supplied its troops through container shipping, which proved to be the most efficient option.”

Nevertheless, it is important to state here, that there is a need for states to embrace social values and enhance the proper functioning of the shipping companies, on issues related to employment contracts. The main reason for arguing this emanates from the fact that the industry would have never functioned properly without the human presence. Machines do not constitute the source of profit but rather the crew in each company. Therefore, by keeping

¹ W. R. GREGORY , B.A., *Flags of Convenience: The Development of open registries in the global maritime business and implications from modern seafarers*. A thesis submitted to the faculty of the School of Continuing Studies and of The Graduate School of Arts and Sciences in partial fulfilment of the requirements for the degree of Master of Arts in Liberal Studies, Georgetown University, Washington, D.C. November 1, 2012.

² <http://www.worldshipping.org/about-the-industry/history-of-containerization/industry-globalization>

satisfied the human resources and the conditions for employees within the companies, in that way the advantages for owners are much higher, than neglecting the employees.

A vital aspect within this globalised industry is to ensure that there is sufficient protection for the employees. This originates from the situation that the industry is rapidly flourishing and therefore companies instead of placing emphasis to their employees; they regulate their financial goals and in many situations, undermine their ethical responsibilities. Equity and fairness and essentially economic growth, implies a compliance system through various means such as due diligence and pro – bono work, which would strive to produce a balance of financial growth and respect of the society.

For such an international and somehow low profile industry which even though the successes it accomplishes through its various means, a disregard of business and human relations, is easy and achievable, since the industry can be well *hidden* on the high seas. An example of the industry's accomplishment of low profile is well founded in arbitration, which is, an alternative way where parties can resolve their legal differences quickly without the need of attending the court. In this respect the industry can be left freely without any need for *checks*, therefore the need of compliance does not constitute the primary need for the businesses within the industry. This argument can be examined and supported in light of the Flag of Convenience states, which can adversely been challenged on the arguments of whether there are any regulations followed or any trade unions to impliedly pressurise businesses and enforce compliance with human conditions.

Taking into account the difficulty of accessing information from the industry which is dominated by confidentiality, this argument can contradict the developing nature of the industry, which in principle, is one of the most powerful industries in the world trade, and provides approximately “90 percent of the world's 5.1 billion tons of international trade³,” needed for an everyday consumption. In this respect, the industry by its essential nature, places itself into the centre of global market, encompassing an irrevocable strong role to everyone, to achieve the basic human needs, i.e. their trade of goods or services. Needless to state again that the industry's driving power is the labour which allow the industry to run effectively, therefore there is a great need for business and human relations in order to allow the industry to function in a *healthy manner*.

This paper emphasises at the situation where ship owners register their ships in the flag of convenient countries. The paper is a reflection of a set of proposed implied standards, in the employment contract between a ship owner and the crew, regulating the crew conditions. It is articulated in the paper that in some Flag of Convenience states, there is a need for some values within the industry that will regulate the conditions, for a balance between the two opposing limbs; namely ship owner and the crew.

II. Globalisation

Globalization is a frequently used term, which dates back in the 1990⁴s and endorses the improvement of universal assimilation via the exchange of ideas, goods, services in the light of fused market design on the strength of competition and the diversification of ideas. Thus,

³ http://www.who.edu/mpcweb/meetings/Luce_presentations/shipping%20and%20ports.pdf

⁴ http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr08-2b_e.pdf

globalisation is viewed as an agent towards economic enhancement, which empowers the industry to function. Hence assisting financial integration within the international market, which discourages fears from the industry that stakeholder interests, i.e human relations will be diminished and business ethics will be neglected.

Globalisation places a huge impact on the role, rights and obligations of the employees. The employees within the industry hold an important role, due to the fact that they are the ones who coordinate the work done. Since globalisation has *conquered* the world market, the economic incentive has dominated and driven the transport industry, especially the shipping industry. A good illustrative example is the open registers, as so called by the International Transport of Worker's Federation, *Flag of Conveniences*. Ship owners select to register their vessels under these registers, "without considering the ethics behind the decision⁶." This impacts on the employees, namely the seafarers, since compliance with many regulations under some Flag of Convenience states is not been followed. Therefore, rather been driven by business ethics, the shareholders choose to subcontract registration which "places profit over labour relations⁷." These adverse labour conditions for the crew in shipping companies are due to the fact that the flag states are either limiting, or are exempted from obeying regulations, since some of them have no trade unions in order to enforce regulations.

Therefore in these Flag of Convenience states, there is a need for some employee protection, which will essentially be reinforced if there has been a mandatory part within the contract of employment that would emphasise the business and human relations between ship owners and the labour crew, namely the employees that will regulate their conditions.

III. Confrontational Labour Conditions

One can fairly argue that, had the seafarers' been not in existence, this whole industry could have never monitored and flourish. Therefore, despite the fact that the shipping industry holds the most vital link within the international trade, this success relies greatly on the work done by the seafarers as they are the ones responsible for the industry to work free from any deficiencies, rather than the shareholders (i.e. ship owners) acts. Hence, ship owners' economic advantages rely on the performance of their seafarers, namely their employees.

IV. Flag of Convenience – Absence of the “Genuine Link” Requirement

A ship once it becomes under the fleet of a ship owner or once acquired by a ship management company, it needs to be flagged so as to acquire nationality and become a valuable device used for the reasons bought, frequently in order to proliferate fiscal assets of its owner and eliminate any shortages. A ship owner has a choice either to register the vessel

⁵ <https://www.itfglobal.org/flags-convenience/sub-page.cfm>

⁶ W. R. GREGORY, B.A., Georgetown University, Washington, D.C , *Flags of Convenience: The Development of open registries in the global maritime business and implications from modern seafarers*. A thesis submitted to the faculty of the School of Continuing Studies and of The Graduate School of Arts and Sciences in partial fulfilment of the requirements for the degree of Master of Arts in Liberal Studies, November 1, 2012, "61".

⁷ W. R. GREGORY, *op. cit.* "61".

into a country with which he has a “genuine connection by way of national or economic ties⁸” or register the ship into an open registry, where the beneficial interest is an absent requirement, where the owner acquires numerous advantages.

Per Coles & Watt, various factors are relevant for ship owner when it comes to choosing a flag for his vessel, which for most of the times it is a stand - alone company. These factors have come to equate open registers, and especially Flag of Convenience (as usually referred by the International Transport of Worker’s Federation), states as the “evils of rampant capitalism and the disregard of labour rights, safety standards and environmental protection in the pursuit of profit⁹.” This “wide currency and emotive force” has been created after the environmental destruction created by the oil pollution due to the sinking of the tankers *Exxon Valdez*, *Braer*, *Erika*, *Prestige*, etc.

Boczek defines a Flag of Convenience (FoC) as “flag of any country allowing the registration of foreign owned and foreign controlled vessels under conditions which are convenient and opportune for the persons who are registering the vessels¹⁰”. The International Transport Workers’ Federation (ITF) defines it as “where beneficial ownership and control of a vessel is found to lie elsewhere than in the country of the flag the vessel is flying¹¹.” Therefore, the term that defines these states as Flag of Convenience, is not “neutral” and unified, but rather is a term that is “politically loaded¹²”. A ship owner has a choice either to register the vessel into a country with which he has a “genuine connection by way of national or economic ties” or register the ship into an open registry”. We have on the one part of the scale an approach which stresses the convenience aspect and the moderation of the rules – “namely it is convenient for ship owners not to comply with all the regulations that are put into place but rather ask for more economic growth with minimal obligations towards seafarers¹³.” On the opposite part of the scale a different definition is been provided by the International Transport of Worker’s Federation, which focusses on the fact that the absence of beneficial ownership (sometimes accompanied by substandard shipping), equals to Flags of Convenience.

V. Registration

Registration holds a crucial role not just in providing identity to a ship but also as it places some form of protection to the crew when dealing with other states, or even managing the relationship between the crew (employees) and the ship owner (employer). However, this is not the case, as with the creation of open registries and the loose non-mandatory regulatory treaties, the existence of such protection seems to be limited or even inexistent. This emanates from the fact that ship owners seek for cheap labour which some open registries provide in

⁸ R. COLES, E. WATT, *Ship Registration: Law and Practice*, Chapter 5: *Factors Influencing choice of flag*, in *INFORMA second edition*, 2009, “55”.

⁹ R. COLES, E. WATT, *op cit.* “23”.

¹⁰ BOCZEK, *Flags of Convenience: An International Legal Study* 1962.

¹¹ <http://www.itfglobal.org/flags-convenience/>

¹² A. ROGERS, City University London, *Maritime Lecture* 2012.

¹³ A. ALEXANDROU, *Balancing the Economic Arguments for ship owners and the Labour Crew Conditions for Seafarers*, Queen Mary University of London, 2014.

avoiding imposing any laws on ship owners in terms of crew-labour. Due to the lack of such regulations, trade unions are ignorant of those employees, and the fact that the crew sails in high seas, without a proper base (which would have been the laws/regulations which would define their rights), enhances the possibility of having their rights been neglected, and not equally weighted as the economic advantages accrued.

Ship owners need to consider both economic benefits in choosing a flag state to register their ships but also they should consider the advantages to society, namely to their employees. The countries which operate as open registries, levy minimum or no taxes “on profits arising from the operation of vessels under their flags¹⁴.” For example, health and safety of employees is of great importance to the shipping companies, as these are the people who carry out the activities of these companies and but for them the industry would have paralysed. This creates a moral obligation on companies to provide a set of mandatory regulations within their employment contracts or their memo in order to ensure that compliance with rules beneficial to the employees are being adopted and followed.

VI. “Genuine Link” requirement

In order for the ship to enter international ports and lawfully trade, it needs to have a legal status. Hence, it needs to be registered, as illustrated above. This is an essential tool which provides rights and responsibilities, by managing the relationship between the labour crew, namely the employees and the ship owner, i.e. the employer. This is rather vague with the registration on open registers, since compliance with regulations is not mandatory in every single open register, which is the reason for having the various flags within the Paris MOU, but also in various other Memorandums of Understanding.

There have been various attempts by conventions to create a mandatory international “genuine link” requirement when registration takes place, namely “ships have the nationality of the State whose flag they are entitled to fly. There must exist a *genuine link* between the State and the ship¹⁵”. That is to say, steps should be taken by ship owners in ensuring that that the ship provides all the information to the state on which it ensigns fly, “in order to enable it to identify/contact the personal responsible regarding matters relating to maritime safety¹⁶”. The strongest attempt has been made by the International Labour Organisation (ILO), which had unsuccessfully created the concept of the “genuine link”, as a compulsory requirement to be in existence at the time of registering a ship owner the ship either at his home country or another registry.

The Report of an Intergovernmental Working Group suggested by UNCTAD (United Nations Conference on Trade and Development), argues that it is not a FoC if there is a “genuine link” between the ship and its country of registry, however it was the 1958 Geneva Convention on

¹⁴ <http://www.worldshipping.org/about-the-industry/history-of-containerization/industry-globalization>

¹⁵ Article 91(1) of the United Nations Convention on the Law of the Sea, 1982.

¹⁶ IMO resolution, A.441(xi).

the High Seas, which introduced the idea into law in Article 5, namely, “each state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag.”

Global acceptance has been achieved in 1982, through Article 91 of the UN Convention of the Law of the Sea, which reflects article 5 of the 1958 Convention, with a slight modification. However in 1986, the UN Convention on Conditions for Registration of Ships¹⁷ attempted to clarify and outline the term from an economic viewpoint, instead of highlighting on the “jurisdiction and control”, as illustrated in the previous Convention. They defined it as the “participation by nationals of the flag State in the ownership, manning and management of ships”. It is worth stating that due to its complex procedural requirements which need to be satisfied in order to come into force, the Convention has not been yet ratified¹⁸. This is due to the fact that it needs 40 signatory countries and up until now only 14 countries have signed it, including Algeria/Bolivie, Cameroon, Cote d’Ivoire, Czech Republic, Egypt, Indonesia, Libya, Mexico, Morocco, Poland, Russian Federation, Senegal and Slovakia.

The implications of flexibility are questioned. Running a company ethically, respecting human rights, can provide a useful tool in the flourishing of that company. Rights for the employees will not be neglected and will equally be weighted as the economic prosperity of the country. This is because of the fact that the crew will be more motivated to work, even work harder and be enthusiastic about their work instead of keeping them unhappy, since these people constitute the *first* of a company, one of the most important assets. But for them, and especially the crew, the industry would have found it really hard to function effectively. Therefore, through the introduction of some standards within their employment contract, each party will be aware of where to stand, in terms of rights and obligations.

VII. Pluralism – Stakeholder Theory

Business and Human Relations, via the mean of Corporate Social Responsibility, are the core rules promoting the production of the balanced values between shareholders’ and stakeholders’ interests. There is an inconsistency with the efficiency argument, since there will be a great imposition of burden to directors for protecting both parties. This however, will go well in hand with the new Companies Act 2006 in the UK, s.172 which aimed towards pluralism but hence created this enlightened shareholder value. This term is the middle – ground of the two notions which exist in company law, namely *a compromise* between shareholder value and pluralist approach. The former places emphasis on the shareholder, and stresses the fact that directors should only act for the shareholder’s maximization of profit, while the latter is leaning towards the stakeholders, which perhaps argues that the company is an entity where stakeholders play a huge role in the running of it. Therefore, this enlightened shareholder value that has been created; it represents the consensus of the two, placing emphasis on both the shareholder’s maximisation of profit but also the stakeholder’s interests.

¹⁷ UN Doc. No. TD/RS/CONF/23 adopted by the United Nations Conference on Conditions for Registration of Ships on 7 February 1986; on the background and effects of the Convention, see McCONNELL, “*Business as Usual: An Evaluation of the 1986 United Nations Convention on Conditions for Registration of Ships*”, in 18 *J.Nar, L. & Comm.* 435, 1987 and W. BETTINK, “*Open Registry, the Genuine Link and the 1986 Convention on Registration Conditions for Ships*”, in *Netherlands Yearbook of International Law* 1987, “70-119”.

¹⁸ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-7&chapter=12&lang=en

As argued above, business ethics and human relations, have no single definition and can hardly been accurately explained. These are rather vague terms which are so controversial that many cannot grasp the core themes that encompass. It is believed that these terms if in existence, will advance trade unionism boycotting companies' profitable schemes. However, this is not the case as these rules are more of a balanced approach for the protection of the economic arguments, in this paper for the ship-owners, against other considerations, including the protection for the environment and the labour crew conditions (which are seen as stakeholders). As argued in a case study of Maersk Line, "if we start reasoning ethics, we will draw the conclusion that is something personal, is something that depends on one's own views, something that is influence by cultural/ political/ socioeconomic/ historical and even age factors. There is a need for ethical behaviour (the paper says that the need is to measure ethical behaviour¹⁹", I would say not to measure but rather to provide guidelines, since measuring would be hard to prove as each and every individual has its own mind-set).

VIII. Principles of European Contract Law (PECL) – International Sales of Goods (CISG)

The principles and the concept of a uniform EU contract law system, was created in the EU domestic trade and it is designed to produce uniformity and flexibility, thus accommodating the development in legal thinking in the field of contract law, within the EU. PECL, as CSR, is soft law, inspired by the CISG, which is a "private codification" prepared to accommodate the needs for the promotion of a unified market, by having the common set of rules, in order to overcome the traditional barriers. The PECL, is globally recognised as a unified system of EU contract law, which takes into consideration the European *domestic trade*. It has been defined as a "set of general rules which are designed to provide maximum flexibility and thus accommodate future development in legal thinking in the field of contract law²⁰." The PECL, prepared to *accommodate the divergence of* the various market systems in existence within the EU. This aimed to make it easier for businesses to act effectively, therefore, enabling the courts to draw well-adjusted decisions in case of disagreements.

Contract law and liability of parties within the contract, is based on the concept of privity of contract, which harvests economic security to the parties as the only people available to sue under the contract are the parties to the contract, and in rare situations the beneficiaries (in an equitable concept), with the right to sue if they intend to enforce a contract, as specified by Judge Horace Gray in *Lawrence v. Fox* that "he for whose benefit [a promise] is made may bring an action for its breach²¹."

These values lack the notion of privity of contract, therefore courts are unwilling to enforce duties to parties within the contract (if wished by a third party), or confer benefits to third

¹⁹ Research Paper Measuring Sustainability: An industry case study of Maersk Line; <http://theworldsproblems.wordpress.com/category/csr/csr-in-container-shipping/> , 7/11/2013

²⁰ Principles of European Contract Law, Parts I and II, prepared by the Commission on the European Contract Law, 2000, p. XXVII, As cited in Lando Ole/Beale Hugh" .

²¹ *Lawrence v. Fox*, 20 N. Y. 268, 275 (1859).

parties which are not expressly stated within the contract. Therefore, courts are only limited to the values of human rights, in order to interfere and *govern* the contract. This might cause fairness in economic transactions, especially in the shipping industry which is one of the biggest industries in the world, as most countries are economically grounded on the benefits conferred to them from the various limbs of shipping activities, such as registration to trade. Sustainability values, such as Business Ethics and Human Relation values are usually in absence to the contract, due to the lack of knowledge of parties with low bargaining power during the negotiation or once signed the contract. Therefore, there is a need to embark on these sustainability rules, which will impliedly govern the seafarers' contracts within their employment contract in the FoCs states.

IX. Business and Human Relations

As a global industry, the maritime transport industry, in layman's term; seaborne shipping, is specifically required to deal with a wide variety of issues, such as human rights/relation issues since it impacts greatly various stakeholders, such as the environment through environmental pollution, but also personnel via corruption, few times discrimination of human rights, through an insertion of poor labour standards. "Participants in the industry are for example required to maintain the highest standards in order to provide a safe and comfortable workplace²²." Thus, compliance with standards encompassing human and business relations in the industry has sometimes been held to be an essential requirement, in order for the industry to maintain good reputational picture by preserving business ethics and human relations. Therefore, by complying with business ethics rules, there will be improvements of all the standards within the sector and will be a better management of the ecosystem which will ensure a more "prosperous future for all peoples²³."

Turning to seafarers' protection, which is one of the most important factors within the industry, the new MLC 2006 which came into force since August 2013; which is the most recent tool for the promotion of these standards illustrated in the paper, is the driving force that the ILO envisages that Business Ethics values will be followed from²⁴. The demand for having standards to regulate the business in order to ensure ethics and human relations exist, and have been set out in a standardised manner has been however, criticised as promoting a move from a "trust me world" to a "show me world²⁵", since businesses need to be accountable and demonstrate their determinations to manage the "impact business processes have on people and the environment²⁶".

²² As cited, RC Beckman 'Successful Cases of Corporate Social Responsibility Relating to Seafarers' Paper presented at the seminar on the 'Global Shortage of Seafarers and the Role of the Shipping Industry & CSR', London, 11 May 2010.

²³ *A Concept of a Sustainable Maritime Transportation System*, IMO, Sustainable Development: IMO's contribution beyond RIO+20, p.4; As cited, World Maritime Day.

²⁴ <http://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm> http://en.wikipedia.org/wiki/Maritime_Labour_Convention

²⁵ Report No. 2004-1535, Revision No.1, Det Norske Veritas, p.4; As cited, Technical Report, *Corporate Social Responsibility and the Shipping Industry*.

²⁶ World Business Council for Sustainable Development; As cited, Watts, R. H. (2000) Corporate social responsibility: making good business sense. WBCSD.

IMO, is and has been working to ensure safety and environmental standards within the shipping industry globally and has developed international conventions such as SOLAS and MARPOL. IMO has focused more on developing standards aiming at influencing human behaviour. STCW came into force, and sets global requirements to seafarers' training and competencies and empowers IMO to check governmental follow-up actions. ISM code is expected to raise standards of management and shipboard personnel leading to improved safety and pollution prevention globally. However, one can challenged whether these conventions are followed, especially in few open registers, since registers are distinguished from each other, and this is illustrated from the Paris MOU, Tokyo MOU, etc. These memorandums of understanding are in existence in order to *calculate, to act as checks* on how open registers function and according to the number of their substandard ships, they are been accorded in special categories. There are three flags, the white (compliance), grey and black (non/limited compliance), which illustrates the deficiencies of these registers.

The previous Secretary- General of the International Maritime Organization (IMO), Efthimios E. Mitropoulos stated "environmental credentials" of the shipping industry (International Maritime Organisation News, Issue 4, 2006) as: "And shipping is no different from any other industry in that, both collectively and individually, ship-owners and operators need to protect their brand image²⁷."

As illustrated above, various attempts by organisations, such as the IMO, have been made in order to impose all these values through mandatory procedures. IMO, as also stated by Coles and Watt, is one of the developments which will led to the "raising of the standards at all levels" so that there will be a balance created between ship owners and flag states for the accomplishment of the "minimum prescribed safety, security and environmental practices". As specified in this Professor T.Lane's article²⁸, from its very beginning, "regulation" is defined in political terms, as "networks of institutions and organisations which, through a common interest in some particular area of human activity, seek to negotiate in appropriate forums and in voluntary association with the state, a consensual system of law, rule, convention and customary practice". Namely, it encompasses the body of rules created by a focussed and knowledgeable body on a specific area, associated with the state in order to be passed as a law/convention or even common practice. This suggests a good working environment of a democratic state/society, per Lane, however it is right to be argued here that sometimes as illustrated in this article, even though regulations provide order into a state or an area of business, it can also be created so as to be advantageous on a specific group or a state as whole, driven by economic incentives (as explained in the article²⁹- "seafarers and ship owners were citizens of same political entities).

²⁷ *International Journal of Business and Society*, Vol. 13 No. 2, 2012, 197 – 208, csr form shipping companies in the straties of Malacca and Singapore, Wan Siti Adibah Wan Dahalan, *Universiti Kebangsaan Malaysia*-Zinatul Ashiqin Zainol, *Universiti Kebangsaan Malaysia*-Noor Inayah Yaa'kub, *Universiti Kebangsaan Malaysia*- Noridayu Md Kassim.

²⁸ *The Global Seafarers' Labour Market: Problems & Solutions*, Professor TONY LANE, Director/ The Seafarers' International Research Centre/ University of Wales, Cardiff/ October 2000.

²⁹ *The Global Seafarers' Labour Market: Problems & Solutions*, Professor TONY LANE, Director/ The Seafarers' International Research Centre/ University of Wales, Cardiff/ October 2000, "7".

Profitability of a company can only be conferred through the business host to community as a “stakeholder in the socio-economic structure³⁰.” Per Jide James- Eluyode, “pursuit of profit and respect for human rights of host communities, are two mutually opposing objectives³¹.” This has also been stated by John Kamm, who states that “while it might not always be the case that trade and businesses are good for human rights, it most certainly is the case that a good human rights environment is always good for business. Businesses are acting in their own self-interest when they actively promote respect for human rights in countries where they operate³².” However, as fairly argued in Jide James – Eluyode paper, there has been made various successful attempts from various devices through international human rights institutions to improve the responsibilities of businesses. An example of such mechanism has been made in 2001, where the UN Commission on Human Rights (currently called Human Rights Council), “appointed a Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples as part of its Special Procedures³³.” Therefore, it can be argued in this respect that there are attempts to make companies more accountable and therefore construct them towards protecting human relations and business ethics. This body promotes these so called *indigenous rights*, which are in essence “a collection of distinctive normative prescriptions codified for the purpose of protecting and promoting human rights of peoples or groups³⁴.”

This has begun, per Jide James – Eluyode, with the accreditation of the UN Working Group on Indigenous Populations (“WGIP”) in 1982. The work of the UN Working Group on Indigenous Populations, has been accompanied by the adoption of the ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries by the General Conference of the International Labour Organization in June 1989, which as a result of “these

³⁰ Shell Petroleum Development Co (a Nigerian affiliate of Royal Dutch Shell) once acknowledged diminishments in its net profits due to growing resentments from the local communities in the Niger Delta region of Nigeria arising from long battle with company over violations of the people’s environmental and human rights. The company’s production in the country was during that period severely impaired; it was reduced by up to 455,000 barrels a day. “Niger Delta Unrest Dampens Shell”, BBC News, May 4, 2006; As cited in Jide James-Eluyode, *The Notion of Collective Human Rights and Corporate Social Responsibility: Issues and Trends in International Law*, [2013] I.C.C.L.R., Issue , Thomson Reuters UK Limited and Contributions, “211”.

³¹ As cited in Jide James-Eluyode, *The Notion of Collective Human Rights and Corporate Social Responsibility: Issues and Trends in International Law*, [2013] I.C.C.L.R., Issue , Thomson Reuters UK Limited and Contributions, “211”.

³² KAMM, “The role of Businesses in Promoting Respect for Human Rights (1995), cited in Stephen Bottomley and David Kinely (eds), *Commercial Law and Human Rights* (Ashgate, 2002), “26”; As cited in Jide James-Eluyode, *The Notion of Collective Human Rights and Corporate Social Responsibility: Issues and Trends in International Law*, [2013] I.C.C.L.R., Issue , Thomson Reuters UK Limited and Contributions, “211”.

³³ The first Special Rapporteur was appointed in 2001 pursuant to the UN Commission on Human Rights’ resolution 2001/57 (of April 24, 2001); As cited in Jide James-Eluyode, *The Notion of Collective Human Rights and Corporate Social Responsibility: Issues and Trends in International Law*, [2013] I.C.C.L.R., Issue , Thomson Reuters UK Limited and Contributions, “211”.

³⁴ As cited in Jide James-Eluyode, *The Notion of Collective Human Rights and Corporate Social Responsibility: Issues and Trends in International Law*, [2013] I.C.C.L.R., Issue , Thomson Reuters UK Limited and Contributions, “211”.

developments, many of the pre-existing human rights frameworks have had to incorporate the idea of indigenous rights into their implantation processes³⁵.”

X. Conclusion

An implication could be for all these mandates and guidelines, to be followed in order for the industry to create the so called umbrella of business ethics and human relations. In this respect the industry will advance, as people actually running the industry will feel more protected and therefore will be more willing to engage. These guidelines can be implemented if are followed by some incentives or through inserting them into the contract. In that respect the industry will follow and each party will be aware of their rights and responsibilities. Since 2008, Business Ethics and Human Rights (based on Relations), have been adhered with the UN “Protect, Respect and Remedy” Framework for Business and Human Rights³⁶. These principle acts as a check on businesses and the state to follow and respect the human rights rules and “share the responsibility to remediate any infraction or abuse³⁷.” Therefore, it can be stated that businesses do start to comply with these regulations but is a question of fact whether there is sufficient compliance, even though it is obvious that universal attempts have been made for the creation of a mandatory system of compliance. Per Anita Roddick, “large companies around the world are beginning to recognize that legitimacy in society is an active responsibility not a passive one³⁸.”

³⁵ As cited in Jide James-Eluyode, *The Notion of Collective Human Rights and Corporate Social Responsibility: Issues and Trends in International Law*, [2013] I.C.C.L.R., Issue , Thomson Reuters UK Limited and Contributions, “211”; “for illustrations, art.27 of the Internatinal Covenant on Civil and Political Rights has been notoriously applied to indigenous issues, see General Comment 23, UN Human Rights Committee, U.N. Doc. CCPR/C/21/Rev.1/Add.5. Similarly, the UN Committee on the Eliminationof Radical Discrimination (CERD) has also on occasion considered indigenous rights issues within the general framework of the rights to non-discrimination normative standards of the Convention on the Eliminitaion of All Forms of Radical Discrimination; see CERD, *General Recommendation 23: Indigenous Peoples*, U.N. Doc. A/52/18, Annex V.

³⁶ “The draft framework was presented by Prof. John Ruggie, the Special Representative on the Issue of Human Rights and Transnational Corporations and other Business Enterprise, to the UN Human Rights Council in June 2008 for adoption. Subsequently, in June 2011, The Human Rights Council also endorsed the Guiding Principles on Business and Human Rights designed to implement the “Protect, Respect and Remedy” Framework. The foundation for the outcome of the Framework appears to have that are committed to aligning their operations and strategies with some prescribed principles of human rights, labour, environment and anti-corruption; its Principles 1 and 2 proclaim that businesses should support and respect the protection of internaitally proclaimed human rights and should ensure that they are not complicit in human rights abuses. In addition to the Global Compact is the unsuccessful UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, which in 2004 failed to movepass the UN Commission on Human Rights during its 56th meeting.”; As cited in Jide James-Eluyode, *The Notion of Collective Human Rights and Corporate Social Responsibility: Issues and Trends in International Law*, [2013] I.C.C.L.R., Issue , Thomson Reuters UK Limited and Contributions, “214”.

³⁷ JOHN RUGGIE, “Protect, Respect and Remedy: a Framework for Business and Human Rights – Report of the Special Representative of the Secretary – General on the issue of human rights and transnational corporations and other business enterprises”, A/HRC/8/5, April 7, 2008; As cited in Jide James-Eluyode, *The Notion of Collective Human Rights and Corporate Social Responsibility: Issues and Trends in International Law*, [2013] I.C.C.L.R., Issue , Thomson Reuters UK Limited and Contributions, “214”.

³⁸ ANITA RODDICK, founder of the The Body Shop International Plc, in Wheeler and Maria Sillanpaa, *The Stakeholder Corporation* (1997), p.vii; As cited in Jide James-Eluyode, *The Notion of Collective Human Rights and Corporate Social Responsibility: Issues and Trends in International Law*, [2013] I.C.C.L.R., Issue , Thomson Reuters UK Limited and Contributions, “214”.

Moreover, conclusion drawn is the fact that the PECL, as illustrated in the paper, is prepared to accommodate the needs for the promotion of a unified market, by having the common set of rules, in order to overcome the traditional barriers for accommodating the legal thinking within the EU. Common law places emphasis on the freedom of contract. It allows for the interests of employees as well as the benefits of stakeholders to be incorporated into contractual arrangements. Therefore, there is a need to fall back on universal concepts such as human rights, which will produce a balance and will be beneficial to both parties. In terms of producing this balance, it can be stated that the major driver for this can be through education and business concepts that will stress the advantages of benefiting good human relations than avoiding them.

There is a demand for reform for implementing an enhanced balance. If such a balance is avoided, there may be a growth of stakeholder activism. This undertaking is having a major influence on transnational boards in USA, Canada and Australia. Seafarers could ultimately do the same (have the same effect) if they strike or make it difficult for ship owners to achieve profit without first improving seafarers' conditions.

Employment conditions for seafarers are also linked to safety, and these obligations are imposed upon flag states with regard to employment conditions on board, which is increased through port state control- this has also been enhanced through EU Regulation, namely via directives³⁹ i.e. Council Regulation EC No 859/2003, which entitles workers for social security benefits when moving from one member state to another. This can be the case in an international level.

³⁹ How to comply with MARPOL Annex V, *New amendments governing cargo classification and the discharge of cargo hold wash water*, UK P&I Club, managed by Thomas Miller, SKEMA, "22".

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