Working conditions on board Faroese fishing vessels

The Anita case

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Abstract

On February 2014 an Indonesian fisherman was caught in the net and dragged to the sea while working on board a Faroese fishing vessel. Subsequently the Faroese national broadcasting company revealed the Indonesians’ insufficient working conditions on board the vessel.

Through a case study design this thesis has analyzed how labor standards affect the enforcement mechanisms available to Faroese public authorities in combatting insufficient working conditions on Faroese fishing vessels. First of all, the Faroese Maritime Authority did not act and bring the vessel to port immediately for investigation and psychological relief for the crew, even though according to the Law concerning Safety at Sea, it had the jurisdiction to do so. Second of all the foreigners’ wages were 7 times lower than their Faroese counterparts, but according to the Aliens Act this is not illegal. And at last, inspections by the authorities was and still is not effective enough, but by pulling together resources and jurisdictions an electronic system could assist in overcoming ineffective inspections of working conditions.
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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ASI</td>
<td>Icelandic Confederation of Labour</td>
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<td>C188</td>
<td>Work in Fishing Convention, 2007</td>
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<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<td>EFZ</td>
<td>Exclusive Fishing Zone</td>
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<td>EPZ</td>
<td>Export Processing Zone</td>
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<td>EU</td>
<td>European Union</td>
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<td>FAO</td>
<td>Food and Agriculture Organization of the United Nations</td>
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<td>Faroes</td>
<td>Faroe Islands</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>FMA</td>
<td>Faroese Maritime Authority</td>
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<td>FFI</td>
<td>Faroe Fisheries Inspectorate</td>
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<td>ILC</td>
<td>International Labour Conventions</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IMO</td>
<td>International Maritime Organization</td>
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<td>MLC</td>
<td>Maritime Labor Convention</td>
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<tr>
<td>MNE</td>
<td>Multinational Enterprise</td>
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<td>nm</td>
<td>Nautical miles</td>
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<tr>
<td>R199</td>
<td>Work in Fishing Recommendations, 2007</td>
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<tr>
<td>SA</td>
<td>Confederation of Icelandic Employers</td>
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<td>STCW-F</td>
<td>International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel</td>
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1. Introduction

The Faroe Islands lie in the middle of the North Atlantic Ocean. A land of peaceful tranquility comprising of barren and secluded islands in all shades of green one can think of. This is where the crime rate is almost non-existent and the people laidback and unusually hospitable. This is a country with less than 50,000 inhabitant and not many outside of Scandinavia have ever heard of it. Tourism is blossoming and as the Faroes gain more and more international acknowledgement as headlines appear in travel magazines naming it a fairytale land and a modern western country with strong ties to tradition. (WorldTopTop, 2011)

But as in any fairytale land a shadow lures. The Faroes have for most of its existence with human inhabitants been dependent on the ocean and its treasures – whales and fish. But the ocean not only gives, it also takes. The people of the Faroes have therefore, no matter which century or decade, always felt the deep and unsettling emotions that run through them each time they have had to say goodbye to a loved one leaving for a fisheries expedition to bring food on the table. And although the vessels have grown larger, technology has enhanced and safety measures have become stricter, the unsettling emotions come back every time a loved one leaves on a vessel.

But even though the work on fishing vessels has become safer, work in fisheries is very dangerous and has a relatively high rate of injury and death. The worldwide fishing sector alone suffers around 24,000 human losses annually. An ILO Tripartite Meeting on Safety and Health in the fishing industry concluded that “Fishing is a hazardous occupation when compared to other occupations. Sustained efforts are needed at all levels and by all parties to improve the safety and health of fishermen. The issue of safety and health must be considered broadly in order to identify and mitigate – if not eliminate – the underlying causes of accidents and diseases in this sector. Consideration also needs to be given to the great diversity within the industry based on the size of the vessel, type of fishing gear, area of operation, etc.” (ILO, 2004a)

The people of Faroes have always known of this threat, but today deaths at sea are not as common as they used to be. Another element that is also not as it has
been is the amount of foreigners on board Faroese fishing vessels. According to both the Fisherman's Association and the FFI there has been a large increase of foreigners working on board Faroese fishing vessels, and while most that employ foreigners have around 25-35% foreigners some vessels have as much as 85% foreign crew. Some labor unions on the Faroes have tried to make the people and the government aware of the existence of social dumping on board several Faroese fishing vessels. (E. Højgaard, 2015; J. Højgaard, 2014) But politically nothing has been done and there has been little mention of foreigners’ working conditions on board the Faroese fishing vessel. Until February 2014 when the Faroese radio told of an Indonesian worker on board a Faroes vessel that had been dragged into the sea by the net he had been caught in. The weather had been terrible with strong winds and high waves. The vessel immediately began searching for the man and continued its search for two days, but eventually began fishing again and did not come to shore until 12 days after the accident. (Faroese Fisheries Inspectorate, 2014)

When the national Faroese National Broadcasting Company asked why the vessel continued fishing and why it took so long for them to come to shore, the ship-owner said that he believed it would be good therapy for the fishermen on board the vessel to continue fishing. This enraged many Faroe islanders, as many have argued that were it a Faroe islanders who had gone overboard and drowned, then the vessel had come to port immediately. (Hvidtfeldt, 2014)

A month later the Faroese National Broadcasting Company presented a documentary about the accident on board Anita and the working conditions on the boat. In this documentary, many grueling discoveries were made that the majority of the Faroese population was unaware of. One of these discoveries was that the Indonesian fishermen on board Anita worked between 12-18 months on board the vessel and extensive hours every day. But the point that was most grueling for the Faroe islanders to hear was that the fishermen on board Anita were only paid around 4000-5000 DKK per month. (Lamhauge, 2014b)
Working conditions on board Faroese fishing vessels

The points made in the documentary named “Anita” were shocking to the people of the Faroe Islands. The industry, which Faroe islanders and generations before them have prided themselves for being a part of, was suddenly the image of inhumane working conditions that none could stand for.

This has led me to the problem that will be researched and analyzed in this thesis, which is:

**How do labor standards affect the enforcement mechanisms available to the Faroese public authorities in combating insufficient working conditions on Faroese fishing vessels?**

The reason behind this are the central questions concerning the working conditions on board Anita. What labor standards are prevalent on the Faroes that allow for such working conditions as those discovered after the documentary about Anita? What are the roles of the different Faroese public authorities with regards to inspections of fisheries, working conditions and immigration? E.g. why was Anita allowed to continue fishing for 12 days before coming to shore for investigation, maritime inquiries and possibly psychological relief for the remaining crewmembers?

Other points that will be analyzed are the details with regards to social dumping. What laws allow for social dumping on board Faroese fishing vessels? And how do the relevant Faroese public authorities investigate unlawful social dumping?

The last point of the analysis will be how globalization and international trade influences labor standards. This is done based on economist Robert J. Flanagan’s theorizations that countries with open trade policies generally have superior working conditions and labor rights; and globalization skeptics counter argument that countries degrade labor conditions to improve export performance.

The structure of the research will begin by giving an account of the methodology including the structure of the research, research philosophy and research methods. I will then move to describe the theoretical background of the thesis, which builds on international trade theory and globalization scepticism. From there I will move on to the legal regime surrounding the subject. I will first give an account of the somewhat
complicated relationship between the Faroes and Denmark. Then I will give an account of the international agreements relating to the working condition on fishing vessels that are implemented into Faroese legislation.

From there I move to the analysis where I will first explain the diverse roles of Faroese public authorities in fisheries. I will then move into more specifics that have to do with the Anita case, both with regards to the affect labor standards have had on the public authorities handling of the accident and also regarding the social dumping. Through the arguments made in the theoretical background, the last part of the analysis will discuss globalization’s and international trade’s influence on the labor standards.

At last I will introduce a potential solution, which could allow for more effective inspections on the area of foreigners and fisheries, which is the introduction of an electronic fisheries system. And before the conclusion of my findings I will shortly present some interesting possibilities for future research.
2. Research design and methodology

2.1 Structure of the research

The main topic of this thesis is the working conditions of foreigners on Faroese fishing vessels. The first step is to decide on a research design and thereafter identify the research problem, which I have done by collecting data and information. I have chosen to do a case study design, which is an in-depth study of a particular problem rather than a statistical survey or comprehensive comparisons. Therefore, while focusing on one case, I simultaneously take account of the context surrounding the case and through this include numerous variables and qualities. (Anastas, Stake, & Yin, 2003; Johansson, 2003)

The case focuses on the incident when a foreigner working on board a Faroese fishing vessel went overboard and drowned and the subsequent findings that were made concerning the working conditions for foreigners working on Faroese fishing vessels. The choice of case and the collection of data that was used on the research will be explained in more depth in a later section. (Johansson, 2003)

2.2 Research philosophy

In undertaking research within political science, a philosophical position must be taken. Having a philosophical position will allow me to comprehend the relationships of key actors and uphold my own position. It can be difficult to see the science in the social sciences, especially when comparing to the natural sciences such as physics, chemistry and biology. But the answer to where science is in social sciences is found in the methods used by researchers. In other words, the research methodology is what makes social science scientific. But there are multiple answers, which means that social researchers choose from alternative approaches to science and each approach has its own set of philosophical assumptions and principles as well as its own stance on how to do research. (Neumann, 2000)

First of all there is a need to define which ontology (concerning the nature of reality) and epistemology (concerning the nature of knowledge about this reality) my project lies in. How I know my truth, my ontology, is important for my research
but so is being clear about how I know it is true, my epistemology. By doing this I can work towards finding out more about the world I live in. The clearer I am about my epistemology, the better my position to think about how I might go about making discoveries. And the way I make discoveries, my methods, is my methodology. (Bevir, 2002)

The root of my project lies in political science, which has its origins in the disciplines of history, law and philosophy. Historians have focused mainly on chronologically unfolded events, where they have sought to unpack the beliefs and motives of those involved in their story. Lawyers have looked at the formal nature of institutions, where they have pursued to uncover the intentions of lawmakers to decide how to apply the law. Philosophers have explored the normative side of life, which is to discover the ideals by which others have lived as a guide to how we should do so. (Bevir, 2002)

The naturalist commitment of both ontological and methodological kinds can be significant in areas such as the social sciences, as social sciences can be seen as hinging on the acceptance or rejection of naturalist ontological principles and methodological rules. (Papineau, 2007)

Naturalist’s ontological joist is that there is a clear notion that the real world consists of independent particulars – there is a real world, which exists independently of our senses. The epistemological joist is that knowledge of the regularities of nature is acquired through systematic observations of associated phenomena and thus knowledge of the laws of nature is acquired through the identification of associations. Therefore the ultimate purpose of science is to uncover these regularities and to restate them as laws. Also the empirical epistemology means that human knowledge grows over time through the accumulation of true correlations, which is reflected in the growth of more and more accurate theories. (Moses & Knutsen, 2007)

2.3 Research methods
My choice of method has been case study. A case study relies on the historical method, but is more seeing as a case study is a case of something and therefore points beyond
the object immediately at hand. A case study seeks to move from a purely empirical level to of exposition to a level of general statements. According to Moses and Knutsen, when employing a mis-fitting type of case study, which is to seek to show how a case does not easily fit a general proposition or universal claim, it is possible to anchor the case study approach firmly in the naturalist tradition. One of the naturalist tradition’s central philosophical contributors Carl Gustav Hempel, explicitly embraced historical explanations, as log as they followed his simple definition of science. (Moses & Knutsen, 2007)

The case study research design is useful for testing how a specific theory applies to phenomena in the real world. The theories that I have chosen are based on Robert J. Flanagan’s theorization on international trade theories, and include theories from both trade liberalization supporters and skeptics. Through deductive reasoning, where I have compared the expected findings, which are deduced from the theory and the case, with empirical findings, which are the legal regime findings and the findings on the functions of Faroese public authorities, I have the possibility of verifying or falsifying the theory. (Johansson, 2003)

2.3.1 Case methodology and case choice
The methodology of naturalist social sciences is to identify regularities in the real world.

Since the beginning of 21st century the Faroe Islands have seen more and more workers from eastern European and developing countries on fishing boats on the Faroe Islands. Some of them are paid much less than Faroese workers are paid for the same job.

February 11th 2014, a Tuesday evening around 7 pm an Indonesian worker on board a Faroes vessel was been dragged into the sea by the net he had been caught in. The weather had been terrible with 20-25 m/s wind and 6 meter high waves. The vessel immediately began searching for the man, but no other vessels were nearby to help with the search. And because the distance to shore was so large – 180 nm from the airport in Vágar – the search and rescue helicopter could not join the search. The vessel continued its search for two days, but eventually began fishing
again and did not come to shore until 12 days after the accident. (Faroese Fisheries Inspectorate, 2014)
When the national Faroese National Broadcasting Company asked why the vessel continued fishing and why it took so long for them to come to shore, the ship-owner said that he believed it would be good therapy for the fishermen on board the ship to continue fishing. This enraged many Faroe islanders, as many have argued that were it a Faroe islanders who had gone overboard and drowned, then the vessel had come to port immediately. (Hvidtfeldt, 2014)

A month later in March 20th, 2014 the Faroese National Broadcasting Company presented a documentary about the accident on board Anita and the working conditions on the boat. In this documentary, many grueling discoveries were made that the majority of the Faroese population was unaware of. One of these discoveries was the working conditions on board the vessel. The Indonesian fishermen on board Anita, worked between 12-18 months on board the vessel. At the time of the accident the fisherman who died had worked for 15 hours. But the point that was grueling for the Faroe islanders to hear was that the fishermen on board Anita were only paid 4000-5000 DKK per month. A Faroese national working on a similar size netting ship is paid somewhere around 33.000 DKK a month, if the person is on board the vessel for all fishing expeditions for one year. (Lamhauge, 2014b)

2.3.2 Data collection and sources
A wide range of both primary and secondary data on the working conditions for foreigners on board Faroese fishing vessels has been used in this thesis. The advantages of using primary data include, the researcher can collect data specific to the problem; the researcher has no doubt about the quality of the data collected; and if required, it may be possible to obtain additional data during the study period. The disadvantages of using primary data are that it can be time-consuming for the researcher to collect the data and to ensure that all desired data is obtained accurately. The advantages of using secondary data include that the data is already there and therefore is less time-consuming as primary data collection and the
researcher is not personally responsible for the quality of the data. (Community Medicine, 2013)

2.3.2.1 Primary data
The primary data used for the research was acquired though qualitative, in-depth interviews. Qualitative, in-depth interviews are usually more similar to conversations than formal events. The researcher explores a few general topics to help uncover the participant’s views but otherwise respects how the participant frames and structures the responses. The participant’s perspective on the phenomenon of interest should therefore unfold as the participant views it and not how the researcher views it. When the researcher is testing findings in more focused and structured questioning at the analysis and interpretation stage, there is a need for systemization in questioning. Studies making more objectivist assumptions, such as this one, would triangulate interview data with data gathered through other methods. (Marshall & Rossman, 2006)

During my research I found that there are gaps in easily accessible public information and therefore conducting interviews was necessary. And by doing interviews through open conversation with different experts, the thesis has benefitted as the experts have shared their knowledge, assessments as well as ideas that could be beneficial in the future.

In total 7 interviews were made. The interviews were conducted in Faroese through either Skype, phone and e-mail and documented through written notes taken by the researcher. Transcripts of the interviews are found in bullet points in the appendix.

The interviewees were:
- Foldbo, H.M. Interview concerning the psychological effects of working on board a fishing vessel after a death has occurred.
- Hentze, H. Interview about police investigations on fishing vessels
- Højgaard, E. Interview regarding the Faroese Fisheries Inspectorate (FFI)
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- Højgaard, J. Interview about the Faroese Fisherman’s Union
- Joensen, H. Interview about the Ship-owner’s Association
- Olsen, Ó. H. Interview about the Faroe Marine Authority
- Petersen, K. Interview about the fishing vessel Oknin
- X. Interview with the managing director of ship-owning company X

2.3.2.2 Secondary data
A wide range of secondary data has supported both the theory and the case. The theoretical section has relied on Robert J. Flanagan’s theorization on international trade theories, theories related to classical and neoclassical trade theories and globalization skeptics theories. The theoretical section thus drew almost exclusively on insights from academic publications. (Flanagan, 2006)

The analytical section has data from a more wide variety of sources. Some of the data comes from Faroese public news portals. Some come from private news portals such as in.fo, but most of the news-based data comes from the Faroese national broadcasting company, Kringvarp Føroya. Laws and regulations originate from the webpages of the organizations and authorities in question, such as the IMO, the ILO and the Faroese Parliament’s webpage. Data from public authorities such as the FMA and the FFI also come from their own webpages.

2.3.3. Data quality
The primary data has been collected when there has been a necessity to do so through interviews, seeing as some of the information has not been available as secondary data. The disadvantages to my project with regards to primary sources is that the information might be relatively narrow, but is however detailed and accurate as well as qualitative. Reliance on primary sources does however not guarantee objectivity.

In addition to that interviewing has limitations and weaknesses, seeing as interviewees may be unwilling or uncomfortable sharing all that the interviewer hopes to explore. Some actors have for example been reluctant to share information, for example no ship-owners with foreigners that do not have work and residence permits on the Faroes would reveal the foreigners wages. Nonetheless, seeing as the
The problem with secondary sources can be that secondary sources have vested interests. This can be in an effort to present a more optimistic or pessimistic set of results for their organization. An example of this is the questions and answers in the Faroese parliament where the ministers have answered questions from the opposition. Here it is for example possible that the ministers paint a more optimistic picture than the reality, seeing as it is not in their political career's interest to be blamed for inefficient and non-transparent systems.
3. Theoretical background: International trade theory vs. globalization skepticism

The case on board the Faroese vessel Anita, where a Filipino man went overboard never to be seen again and where subsequent investigations pointed toward extremely low wages and long stays on board the vessel, begs for answers to many questions. The Faroes, a western and industrialized country, are generally seen as being up to date on all laws concerning security in fisheries. The Faroes are even seen by many as pioneers in fisheries, especially with regards to the movement from fisheries quotas to fisheries days, which reduces the amount of fish being thrown back out. And the Faroese pride themselves in their centuries old relationship with the sea and its resources. The Faroese people have therefore also been used to hearing of men drowning at sea, but the atrocities on board Anita were not of the likes of anything seen before. Hence, a central question considering how recently foreigners began working on Faroese fishing vessel, is to what degree do labor standards adjust to include this new and relatively cheaper labor force?

Aiding me in looking at how the search for being competitive, through the use of cheaper labor, affects labor standards, I have looked towards an interesting theorization based on International trade theories by Robert J. Flanagan, an economist and professor in international labor economics and policy analysis. (Stanford Business, 2015)

Most theoretical work linking international trade with labor standards revolves largely around models whose foundations lie in the classical and neoclassical trade theories. These include assumptions of perfect competition in goods and factor markets and identical technologies across countries.

With regards to labor standards there are conflicting theories on what happens to labor standards as international trade expands. Samy and Dehejie for example point out that labor groups in high-standard countries think that low-standard countries have an unfair source of competitive advantage and fear that there will be a ‘race to the bottom’ of standards as trade flows represented by imports from
low-standard countries intensify. But they also argue against the ‘race to the bottom’ possibility at a theoretical level by pointing out that although labor standards may be distortionary, they can also enhance efficiency. And therefore, there exist incentives for countries to increase rather than reduce the level of their standards. (Samy & Dehejia, 2007)

Flanagan’s point of departure relates to the second hypothesis: that there are more incentives for countries to increase their labor standards rather than lowering them. The root of this lies in international trade theories, which predict that free trade raises a country’s per capita income. And therefore trade has an *indirect* influence on labor conditions, because according to trade theory higher per capita income is associated with superior working conditions and labor rights. (Flanagan, 2006)

### 3.1 Globalization skeptics

In relation to this Flanagan theorizes on whether free trade also has a *direct* effect on labor conditions. In doing so Flanagan evaluates the arguments made by globalization skeptics. These arguments include that superior labor conditions are costly and thus countries with superior labor conditions are at a competitive disadvantage in international markets and thus they make two arguments: 1. Companies degrade working conditions in order to increase their exports, and 2. National governments deny labor rights and provide little political support for superior labor standards both to expand exports and to attract foreign direct investment. (Flanagan, 2006)

One globalization critic is Olney, who argues that that globalization can lead to a ‘race to the bottom’, where countries lower their environmental standards, tax rates or labor standards in order to attract foreign capital. This is based on two hypotheses:

The first hypothesis is that multinational enterprises (MNEs) choose to invest in countries with less restrictive standards, because a reduction in labor market standards will increase foreign direct investment (FDI). Because in countries where for example employment protection is less, operating costs are also less and therefore
MNEs will shift production activities to that country. However, the responsiveness of FDI to employment protection legislation will depend crucially on the type of FDI. The relatively more mobile types of FDI, which can be equally effective in a variety of different countries, are more likely to respond to changes in labor market standards. Therefore the impact of employment protection legislation is different depending on the type of FDI.

For instance, horizontal FDI, which occurs when an MNE invests in a country in order to sell to that foreign market and avoid transport costs associated with exporting, is not very sensitive to employment protection legislation. This is because the MNE shifts the entire production process to the foreign country and then sells the output to local consumers and since the goal is to access a foreign market, there is no reason to shift production activities from one foreign country to another, because the MNE has limited outside options. (Flanagan, 2006)

Vertical FDI, on the other hand, is especially sensitive to changes in employment protection legislation. With vertical FDI an MNE invests in a country in order to take advantage of low foreign factor prices and minimize costs. The MNE shifts parts of the production process to the foreign affiliate and then ships the output back to the home country for further processing or for final sales. Unlike horizontal FDI, which needs to be close to a specific market, vertical FDI can be located in any country and thus the MNE simply chooses to invest in the country that generates the greatest cost savings. (Olney, 2013)

The second hypothesis is that foreign countries competitively undercut each other’s standards in order to attract FDI. FDI is often associated with increases in infrastructure, capital stock, production and knowledge spillovers and therefore attracting FDI is especially appealing for many countries. According to hypothesis one, MNEs are attracted to countries with less restrictive labor standards and therefore, according to hypothesis two, each country has an incentive to lower their employment protection rules below that of their competitors.
Countries will therefore lower their labor standards in order to undercut their competitors and attract FDI. Average labor standards among the competitors will decrease and the foreign host country will lower its labor standards in response, hence the ‘race to the bottom’. (Olney, 2013)

3.2 International trade theories
In his dismissal of globalization skeptics' theorizations, Flanagan begins by pointing out that according to trade theories, opening a country to international trade leads to reallocating resources to their most efficient use. (Flanagan, 2006)

In emphasizing the importance of voluntary interplay in the international division of labor, 18th century economist Adam Smith based his doctrine on the principle of ‘absolute advantage’. Smith points out that countries should specialize in what they are best or most efficient at and then exchange those products, because then the people of both countries will be better off. (Rothbard, 2012)

3.2.1 Comparative advantage
Based on Smith’s ‘absolute advantage’, David Ricardo contributed with his argument for free trade by formulating the idea of comparative advantage. It builds on the idea that a country that trades for products it can get at a lower cost from another country is better off than if it had made the products at home. Say, for example, country X can produce one bottle of wine with five hours of labor and a loaf of bread with 10 hours of labor. Country Y, on the other hand, is more productive. It produces one bottle of wine with three hours of labor and a loaf of bread with one hour. At first one thinks that because country Y has fewer labor hours to produce either good, it has nothing to gain from trade. But seeing as country X's cost of producing wine, although higher than Y’s in terms of hours of labor, is lower in terms of loafs of bread. For every bottle of wine produced, X gives up half loaf of bread, while Y has to give up three loafs of bread to make a bottle of wine. Therefore, X has a comparative advantage in producing bottles of wine. Similarly, for every loaf of bread X produces, it gives up two bottles of wine, while Y only gives up a third of a bottle of wine, which is why Y has a comparative advantage in producing loafs of bread. (Library of Economics and Liberty, 2008)
The Heckscher-Ohlin model (HO model) incorporates a number of realistic characteristics of production that are left out of the Ricardian model of competitive advantage. This is done by predicting commerce and production patterns based on the factor endowments of a trading region. While the Ricardian model only has one factor of production, labor, to produce goods and services, the HO model expands the number of factors in production to two – labor and capital. The HO model is based on the assumption that countries have identical production technologies and the premises of the model are: 2 countries, 2 commodities and 2 factors. The HO model defines the ratio of the quantity of capital to the quantity of labor used in a production process as the capital-labor ratio. It is therefore assumed that different industries, producing different goods, have different capital-labor ratios, which is what gives the model its generic name: the Factor Proportions Model. The HO model assumes that the only difference between countries is that the variations in the relative endowments of factors of production. When the countries differ in their relative factor endowments and when different industries use factors in different proportions it also assumes that trade will occur and be nationally advantageous and have effect upon prices, wages and rents. (Iowa State University, 2015; Suranovic, 2006)

The HO model therefore points out that countries will export products that use their abundant and cheap factors of production and import products that use the countries’ scarce factors. Therefore capital-abundant countries will export the capital-intensive good while the labor-abundant country will export the labor-intensive good. (Iowa State University, 2015; Suranovic, 2006)

Nonetheless, what these trade theories all point towards is that countries will gain if each country specializes in producing the good for which its comparative cost is lower.

Flanagan argues that national wealth increases when countries export products made from inputs that are relatively abundant (therefore relatively cheap) domestically and import products made from inputs that are relatively scarce (therefore relatively expensive) domestically. (Flanagan, 2006) In relation to the Faroes the relatively abundant export is fish and fish products, because these are not
only relatively abundant, but those ship-owners, that are allocated fisheries days and quotas, receive them for free. Fisheries, being the main export on the Faroes, is therefore also the business that the Faroes need to be competitive in, and seeing as fisheries is a business practiced globally, competition can be fierce. Therefore in an effort to become more competitive, other inputs, which are expensive domestically, can be imported. With regards to fisheries the most expensive input is the labor, and if labor is imported cheaply from for example the Philippines, then the output will become cheaper and therefore presumably more competitive.

3.2.2 Outsourcing
This example of the Faroes is however somewhat more related to outsourcing, where you use the inputs produced in other countries in combination with domestic inputs to produce a finished good. Three of the primary reasons given for outsourcing are profitability through lowering costs, finding expertise and finding people willing to do jobs that are not wanted at home. Outsourcing therefore, for example, happens as companies in industrialized countries face a higher relative wage for unskilled labor at home than they do abroad and therefore they outsource activities that use considerable unskilled labor to less-industrialized foreign countries, while keeping high-skill activities at home. (Flanagan, 2006) While outsourcing usually occurs by moving the production of the outsourced product to the outsourcing country, the Faroese example is somewhat different, seeing as the low-skilled labor is coming on board Faroese vessels, both around the Faroes and globally, to work. And the high-skilled labor being retained at home is in the Faroese case the captain of the vessel, which was the only Faroese national on board the vessel Anita. (Haynes, 2009)

Some have pointed at there being a need for companies to outsource in order to maintain their competitive edge. Margaret Haynes, Senior Vice President of the Financial Services Product Group, for example points out that a smaller scale company either has to try to keep up by investing scarce cash or operate at a competitive disadvantage. She further points out that labor-intensive activities can often be performed faster, better and more cost-effectively when outsourced to providers who can share economies of scale with their costumers. (Haynes, 2009)
Working conditions on board Faroese fishing vessels

A critique of outsourcing is however, that it is used to lower pay, benefits and conditions for workers and environmental protections. One report by the Scandinavian research institute finds for example that following outsourcing, in the majority of cases, given the nature of fragmented contractual work, the working conditions are market by reductions in employee control over their situation. (Skarholt & Antonsen, 2012)

According to Flanagan, in industrialized countries where capital and skilled labor are plentiful relative to unskilled labor, free trade should increase exports of capital- and skill-intensive products and raise imports of products made by unskilled labor. Developments such as this raise the return to capital and relative wage of skilled labor but reduce the relative wage for unskilled labor. Therefore his analysis suggests that in the short run, globalization threatens the working conditions of some unskilled workers in the richer countries rather than the employment conditions of workers in the world's poorest countries. (Flanagan, 2006)

3.2.3. Free trade and labor rights
Adding to his arguments for free trade, Flanagan concludes that the additional output and productivity associated with free trade provide the basis for improving wages and nonmonetary working conditions. He then moves towards looking at how free trade is likely to affect the four labor rights stressed by international and nongovernmental organizations: elimination of the worst forms of child labor, nondiscrimination, freedom of association and abolition of forced labor. Seeing as there are no indications of child labor and forced labor on the Faroes, these will not be included.

With regards to discrimination, according to Flanagan, the main economic theory of discrimination does not consider globalization per se, but it predicts that increased competition to hire labor should erode discrimination mostly by providing labor force minorities additional employment opportunities with employers who have less discriminatory tastes. (Flanagan, 2006)

Freedom of association permits workers to form and join collective employee organizations and to engage in collective bargaining with employers.
Flanagan points out several effects that trade has on this: If there is an expansion in the number of export firms or an increased presence of multinational companies, the employer’s power is reduced and workers’ relative bargaining power is increased. However, if there is an increase in competing imports then this reduces domestic union bargaining power by offering consumers products and services produced abroad and through providing employers with the opportunity to outsource certain tasks when domestic labor costs per unit of output exceeds the costs of producing elsewhere, or as in the example of the Faroes: by importing cheaper labor and thus a less costly per unit output. However, when high union wages are supported by high productivity, the motive for outsourcing disappears. Flanagan further points out that foreign competition reduces the willingness of employers to remain in industry-wide bargaining arrangements that may be unresponsive to the competitive needs of individual companies. (Flanagan, 2006)

3.2.4. Economies with substantial unemployment vs. fully employed
Flanagan maintains that a country with economic growth can buy more of everything, including superior labor conditions. And determining whether free trade stimulates or impedes a country’s economic growth requires analytical care. Correlations between growth and measures of a country’s openness to international competition indicate that open countries grow more rapidly. These correlations encourage the interpretation that openness to international competition raises a country’s output and income and improve labor conditions. (Flanagan, 2006)

Flanagan disagrees with globalization skeptics, who claim that free trade degrades labor conditions, because he maintains that this is hard to understand when open trade policies increase foreign demand for a country’s exports and for the services of workers to produce those exports. What then happens to wages and other working conditions depends entirely on labor supply conditions, which are determined by the labor market alternatives available to workers. He further points out that in economies with substantial unemployment, the availability of new jobs in the export sector will be enough to attract additional workers. And improvements in working conditions are not seen as necessary, because such “perfectly elastic” supply
Working conditions on board Faroese fishing vessels

conditions where companies can hire as many workers as they wish at the existing wage are likely to be the norm in countries with huge reserves of underemployed rural agricultural labor or very high urban unemployment rates. He maintains that increased export demand is unlikely to improve working conditions in such countries until the reserves of labor are employed, but the total wage income is raised as increased exports have provided additional jobs. (Flanagan, 2006)

With regards to economies that are approximately fully employed, Flanagan argues that firms that produce exports will have to meet increased export demand by attracting workers away from other jobs. To do so, export firms will have to offer wages and working conditions that are superior to what workers already earn in agriculture, the informal sector or other companies in the formal sector. Therefore, according to Flanagan, employers in the latter sectors may raise wages and other working conditions in order to retain workers in their sectors, and thus either way, working conditions will improve.

An example of this is China and its migrant labor. Flanagan mentions that China is experiencing shortages of about two million workers in the heart of China’s export driven economy. By 2004, the two decades of strict family planning policies limiting families to one child was showing up as reduced labor flows from rural to urban manufacturing areas. Nonetheless, the export demand for Chinese products continued to grow. As a result migrant workers coveted by factories gained bargaining power and many chose to leave the low paid and often miserable conditions. Working conditions therefore improved, because the workers now had more job vacancies to choose from and therefore leave employers offering inferior conditions. (Flanagan, 2006)

Flanagan also adds that there are two ways for export producers to force wages down. The first is seemingly special and unlikely: increased export production would force pay down if it increased monopsony power, which is if it reduced workers choice of employers by increasing employer concentration. But Flanagan points out that this is that it is hard to see how increased export production would increase
employer concentration, because the internet enables most workers even in the poorest countries to stay informed about employment activities. (Flanagan, 2006)

The second way is, according to Flanagan, more plausible: some governments may suspend labor regulations and union organizing rights for export producers or in export processing zones (EPZs) and some countries may not enforce labor regulations that apply to exporters. (Flanagan, 2006) An EPZ is a type of free trade zone, which is set up generally in developing countries by their governments to promote exports. In addition to that they also offer incentives such as exemptions from certain taxes and business regulations. (Business Dictionary, 2015) EPZ's typically account for a small fraction of national employment, and the ability of exporters to profit from lax rules depends on working conditions available outside EPZs. (Flanagan, 2006) With regards to the Faroese example, while the Faroes do not have an EPZ, the fact that workers on board vessels that come to shore less than 10-15 times per a year are not subject to have work and residence permits means that their employers are exempt from giving wages according to Faroese labor union contracts. Therefore, while not being an EPZ, this is an “area” that has many of the same functions as an EPZ, such as less union organization rights.

To this Flanagan points out that globalization skeptics assume that would-be exporters respond to competitive pressures by cutting labor costs, which in turn degrades labor conditions. But labor supply limits what exporters can do, and supply is determined by the alternatives available to workers. Therefore, according to Flanagan, conditions in export firms may not be attractive from the perspective of industrialized countries, but are unlikely worse than conditions elsewhere in the country. (Flanagan, 2006) In addition to this Flanagan goes further to discuss how exporters pay higher wages than non-exporters, but seeing as my thesis does not include the wage difference between different sectors, but rather within one specific sector, I will not include this part, as it is not relevant.

Table 1 displays an overview of the arguments of both the globalization skeptics and Flanagan and the main points to both of their arguments.
### Table 1 - Theoretical overview

<table>
<thead>
<tr>
<th>Argument</th>
<th>Globalization skeptics</th>
<th>Flanagan</th>
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<tbody>
<tr>
<td><strong>Point 1</strong></td>
<td>Superior labor conditions are costly and thus countries with superior labor conditions are at a competitive disadvantage in international markets.</td>
<td>Opening a country to international trade leads to reallocation of resources to their most efficient use (comparative advantage). This leads to economic growth, which can buy more of everything including superior labor conditions.</td>
</tr>
<tr>
<td><strong>Point 2</strong></td>
<td>Companies degrade working conditions in order to increase their exports.</td>
<td>High unemployment: New jobs in the export sector will attract unemployed workers. Improvements in working conditions are not seen as necessary, because companies can hire as many as they want for the existing wage. Working conditions do not improve until the reserves of labor are employed, but total wage income is raised as increased exports have provided additional jobs.</td>
</tr>
<tr>
<td></td>
<td>National governments deny labor rights and provide little political support for superior labor standards both to expand exports and to attract foreign direct investment.</td>
<td>Low unemployment: in order to meet increased export demand firms must attract new workers from other jobs by offering wages and working conditions that are superior to what workers already earn in other sectors. Latter sectors must then raise wages and other working conditions in order to retain workers in their sectors.</td>
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In conclusion, as is pointed out in Table 1, Flanagan argues that countries with open trade policies generally have superior working conditions and labor rights and therefore opposes the hypothesis that countries degrade labor conditions to improve
export performance. This is because of the theories that maintain that reallocation of resources to industries in which a nation has a comparative advantage or captures significant economies of scale raises productivity and therefore increases the scope for improved monetary and/or non-monetary working conditions.
4. The Legal Regime

4.1 The Faroes and Denmark

The Faroes are, according to the Home Rule Act of 1948, a self-governing territory of the Kingdom of Denmark. This implies that internal matters will be legislated and administered by Faroese authorities, while external matters are legislated and administered by Danish authorities. Trade related matters, which have been transferred to Faroese authorities are among others taxes, supplies, production, distribution, price controls and the import and export controls. Besides having its own government on the Faroes, the Faroes have two seats in the Danish Parliament. (Mission of the Faroe Islands to the European Union, the,)

The Faroese Government may, on behalf of the Realm, negotiate and conclude international agreements with foreign states and international organizations, including administrative agreements, which entirely relate to fields of responsibility taken over by the Faroes. With regards to laws and regulations concerning the working conditions of foreigners on the Faroes, according to the Danish Constitution, treaties ratified by the Danish government are usually automatically extended to the Faroes unless a declaration or other statement saying that the treaty does not extend to the Faroes accompanies the ratification. The Faroes are for example listed in the ILO member list as “other countries and territories” and around 30 ILO agreements are in force on the Faroes because Denmark has not taken territorial caution.(Samtak, 2014)

When Denmark in 1973 joined the European Community, now the EU, the Faroes had the option to remain outside. As many other communities dependent of fisheries, the Faroese were not interested in becoming subject to the Common Fisheries Policy, which was the overriding reason to remain outside. The Faroes are therefore considered as a third country in EU context and the formal relationship between the Faroes and the EU is regulated by two bilateral agreements, the Free Trade Agreement and the Bilateral Fisheries Agreement. It is explicitly asserted by both Rome treaties, that the Faroes are not a part of the EU. (Mission of the Faroe Islands to the European Union, the,)
Since the Home Rule Act’s introduction in 1948, Faroese authorities have assumed legislative and administrative responsibilities in a number of fields. These possibilities expanded significantly with the Act on the Assumption of Matters and Fields of Responsibility of 2005. Faroese authorities decide the time at which fields of responsibility are taken over. A field of responsibility relevant to this thesis, which has been taken over is Safety at Sea. (Prime Minister’s Office, 2014; Statsministeriet, 2014)

Certain fields that are listed in Schedule I to the Act such as the police, administration of justice, the establishment of courts of law and the area concerning aliens require a high degree of preparation, for which reason the time for taking over these fields is decided by Faroese authorities after negotiations with Danish authorities. Aliens and border control is one of the responsibilities that have not been taken over by the Faroese authorities and is also a key part of the difficulty regarding the working conditions of foreigners on the Faroes. Therefore, as is with all fields of responsibility not taken over by the Faroese authorities, the area of aliens and border control falls within the jurisdiction of the central authorities of the Realm, which are the Danish Government and Folketing. (Statsministeriet, 2014)

Therefore, with regards to the working conditions of foreigners on the Faroes, international conventions, such as ILO conventions apply to the Faroes, because treaties ratified by Denmark are usually automatically extended to the Faroes. Affairs having to do with aliens are one of the affairs, which are under Danish authority that would require a high degree of preparation. The time for taking over will be decided by Faroese authorities, but until then all affairs having to do with aliens are under Danish jurisdiction.

4.2. International agreements implemented in national legislation
In fisheries there are various labor standards that govern the working conditions on fishing vessels. The international agreements are agreements entered into through the ratification by states. The states are then obliged to comply with the obligations contained in them through passing their own legislation on the agreed areas and providing effective enforcement.
I will begin by giving an account of the legal sources, both international and national, that are prevalent with regards to working conditions on fishing vessels and examine those that are relevant and apply in the Anita case.

4.2.1. IMO
On an international basis there is an ongoing and long-standing cooperation between the International Maritime Organization (IMO), the International Labour Organization (ILO) and the Food and Agriculture Organization of the United Nations (FAO) on fishermen’s safety. But despite attempts by the FAO, ILO and the IMO in improving the safety of fishermen, little progress has been made. The only internationally binding conventions on the safety of fishing vessels and fishers are the IMO’s International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995, and the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of fishing vessels, 1977, (Torremolinos). But neither the Torremolinos Convention nor the Protocol have entered into force. (Food and Agriculture Organization of United Nations, 2012)

None of the IMO conventions are of specific relevance to the Anita case, because Torremolinos concerns safety requirements for the construction and equipment of seagoing fishing vessels and the STCW-F sets the standards for certification of fishing vessel personnel. (Food and Agriculture Organization of United Nations, 2015a; IMO, 2015a; IMO, 2015c) These are therefore not that much concerning working conditions on board fishing vessels, but rather about the more technical provisions of certifications, equipment and construction. (Food and Agriculture Organization of United Nations, 2015b; IMO, 2015b; IMO, 2015d)

4.2.2. ILO
Other international conventions that deal with fishermen's conditions on board vessels such as housing conditions, safety at work, health protection and social rights are prepared in the ILO. The ILO has the task of improving working conditions of workers worldwide and its objectives are: to promote and realize standards and fundamental principles and rights at work; create better opportunities for women and
men to decent employment and income; enhance the coverage and effectiveness of social protection for all; and strengthen tripartism and social dialogue. (ILO, 2014) Furthermore, the ILO is the only international organization whose members are countries, labor unions and employers. (Samtak, 2014) Provisions from ILO Conventions, which the Faroes have ratified, are included in different Faroese legislations. (Faroese Maritime Authority, 2014)

The fundamental conventions of the ILO are binding upon every member country of the ILO. These are the Conventions covering: forced labor, freedom of association and protection of the right to organize, the right to organize and collective bargaining, equal remuneration, abolition of forced labor, discrimination (employment and occupation), minimum age and elimination of the worst forms of child labor. (ITF Seafarers, ) Other conventions are binding upon member countries whose legislatures have chosen to ratify them.

The ILO also has standards for seafarers in general, but these are mostly aimed at those working in cargo and passenger ships and their application to the fishing sector has been left to the discretion of the member states. Furthermore, because of the special nature of fishing operations, certain ILO standards, which are applicable to all workers, such as those concerning occupational safety and health, have often provided the possibility of excluding the fishing sector from their application. (ILO, 2004b)

ILO instruments from 1920, 1959 and 1966 currently cover labor conditions in the fishing sector. Countries, that have ratified these conventions, will continue to be bound by their terms until they ratify the new Convention, the Work in Fishing Convention from 2007. However, currently there are seven ILO instruments covering working conditions in the fisheries sector – five Conventions and two Recommendations: (ILO, 2004b)

- The Minimum Age (Fishermen) Convention, 1959 (No.112). (ILO, 1961)
- The Medical Examination (Fishermen) Convention, 1959 (No. 113). (ILO, 1959a)
- The Fishermen's Articles of Agreement Convention, 1959 (No.114). (ILO, 1959b)
Working conditions on board Faroese fishing vessels

*The Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)* (ILO, 1966a)
*The Fishermen’s Competency Certificate Convention, 1966 (no.125).* (ILO, 1969)
*The Vocational training (Fishermen) Recommendation, 1966 (No. 126)* (ILO, 1966b)
*The Hours of Work (Fishing) Recommendation, 1920 (No. 7)* (ILO, 1920)

Most of these are in some form implemented in Faroese legislation, but the only one with relevance to the working conditions on board the Anita case is the *The Hours of Work (Fishing) Recommendation, 1920 (No. 7)*, which aims at so far as circumstances allow it that all industrial communities should adopt an 8 hours a day or 48 hours a week as a standard. (ILO, 1920) The Faroese Law Concerning Seafarers Conditions of Employment does not specifically point at a maximum hours of work, but instead points out in §55 that seafarers must have regular time to rest. On fishing vessels, the crew has, when circumstances do not make it impossible, the right to 8 hours of rest per 24 hours, where 6 of these hours are uninterrupted. On trawlers the crew has the right to 6 hours of changing of the watch. Exceptions can be made in individual instances when the majority of the crew comes to an agreement with the captain. (Ministry of Trade and Industry, 2011)

In 2013 a new ILO convention began entering into force, which applied to merchant ships and other commercial shipping. It is named the Maritime Labor Convention (MLC) and includes many of the abovementioned conventions and recommendations and more such as minimum wage, seafarer’s employment agreements, hours of work and rest, payment of wages, paid annual leave, repatriation at the end of contract, on board medical care, the use of licensed private recruitment and placement services, accommodation, food and catering, health and safety protection and accident prevention and seafarer’ complaint handling. But seeing as the MLC in general merely applies to merchant ships and other commercial shipping and does not include fishing vessels the abovementioned fisheries conventions are still applicable. (ILO, 2006; ILO, 2013)
Nonetheless, at the International Labour Conference in 2004 a report had been made that examined existing legislation and practice concerning labor conditions in the fishing sector in ILO member states and the result was that there was a need for a new ILO instrument. In its reasoning for why a new ILO instrument is needed for the fishing sector, it looks at the current status of instruments concerning fishermen and includes a list of instruments which are no longer fully up to date but nonetheless remain relevant in certain aspects as well as those that need to be revised. These are the same instruments pointed out earlier that were adopted between 1920 an 1966. (ILO, 2004a)

The result was that in 2007 the International Labor Conference adopted the C188 Work in Fishing Convention, 2007 (C188) and R199 Work in Fishing Recommendations, 2007 (R199). The Convention and Recommendations revise five of the seven existing ILO Conventions that specifically concern the fishing sector. According to the ILO, C188 and R199 are a response to the need for global labor standards, which are relevant to all fishers, whether on large vessels on international voyages or small boats operating in domestic waters close to shore. This new Convention, the C188, is said to be the MLC equivalent for fishing vessels. C188 aspires to guarantee decent working conditions with regards to minimum requirements for work on board vessels, medical care, conditions of service, accommodation and food, occupational safety and health protection and social security. (ILO, 2007)

Of specific relevance to the Anita case, Article 8 in C188 stipulates:

2. The skipper has the responsibility for the safety of the fishers on board and the safe operation of the vessel, including but not limited to the following areas:

   - (a) providing such supervision as will ensure that, as far as possible, fishers perform their work in the best conditions of safety and health;
   - (b) managing the fishers in a manner which respects safety and health, including prevention of fatigue;
Article 14

1. In addition to the requirements set out in Article 13, the competent authority shall:

- (a) for vessels of 24 metres in length and over, establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishers required;
- (b) for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than:
  - (i) ten hours in any 24-hour period; and
  - (ii) 77 hours in any seven-day period.

2. The competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established in paragraph 1(b) of this Article. However, in such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable.

3. The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers.

Article 23

Each Member, after consultation, shall adopt laws, regulations or other measures providing that fishers who are paid a wage are ensured a monthly or other regular payment. (ILO, 2008)
Table 2 - Hours of work and rest

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<tr>
<td>8 hours of work per day or 48 hour work week</td>
<td>8 hours of rest per 24 hours, 6 of which are uninterrupted</td>
<td>10 hours of rest per 24 hours and 77 hours in any seven-day period</td>
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Therefore, with regards to the Anita case, where the foreigners worked around 16 hours a day, which is not in accordance to 8 hours a day aimed at in the *The Hours of Work (Fishing) Recommendation, 1920 (No. 7)*, it is not in contradiction to §55 in the Faroese Law Concerning Seafarers Conditions of Employment, which points out that the crew has, when circumstances do not make it impossible, the right to 8 hours of rest per 24 hours, where 6 of these hours are uninterrupted. (Ministry of Trade and Industry, 2011)

If and when C188 is implemented, the minimum hours of rest shall not be less than 10 hours in any 24-hour period and 77 hours in any seven-day period. (ILO, 2008) Therefore the 8 hours of rest per day, as is prescribed in Faroese legislation is not in accordance with what the upcoming C188 stipulates.

The C188 has been set to come into force 12 months after the date on which 10 member states, 8 of which are coastal states, have been registered with the Director General. As of now only 5 states have ratified the convention, Argentina, Bosnia and Herzegovina, Congo, Morocco and South Africa. (ICS Class, 2013) And therefore the
next step for the C188 is for it to be ratified and translated by governments into national laws, regulations and other measures. (ILO, 2007)

As mentioned before, it has been difficult for international organizations to have its members ratify safety conventions in fisheries. Nonetheless, countries implement their own legislations as they see a need to do so, which can both be of their own making, copied from Danish legislation and/or EU legislation. By doing so the Faroes are sure to be up-to-date with regards to all legal requirements that can be required from their closest partners e.g. the EU. In addition to the Law Concerning Seafarers Conditions of Employment, the Faroese laws with relevance to the Anita case and will be studied next are: the Law concerning Mustering, the Law concerning Safety at Sea, the Maritime Law and the Law concerning Commercial Fishing. (Faroese Maritime Authority, 2014)

4.3 Faroese legislation

The Faroese laws more relevant to the Anita case, and which will be touched upon in the analysis are the following:

- The Law concerning Commercial Fishing, which stipulates on the inspections by public authorities
- The Law concerning Mustering of Vessels, which stipulates on the supervising authority of mustering, collection of mustering lists and mustering responsibility.
- The Law concerning Safety at Sea, which stipulates on inspections by the FMA, detention and denial of access to ports, and sailing bans if life and health of crew are jeopardized.
- The Maritime Law, which stipulates on maritime inquiries and investigations of accidents.
- The Law concerning Seafarers Conditions of Employment

I have now listed the prevailing labor standards in the Anita case and will move on to write out how each of these laws is significant and will subsequently be used in
analyzing how they affect enforcement mechanisms available to Faroese public authorities in combatting insufficient working conditions on fishing vessels.

4.3.1 The Law Concerning Safety at Sea and the Maritime Law
One of the discussions in the Anita case was that after the Indonesian man went overboard never to be seen again and therefore presumably drowned, the vessel started fishing again. First they searched for the man for 2 days, but then continued fishing for 12 days before coming to port. This has lead to questions on the safety of the men on board and how the law values the life and health of fishermen. In this regard the Law concerning Safety at Sea and the Maritime law were basis for the decisions made to not come to port immediately after the accident.

Law no. 165 from December 21st 2001 concerning Safety at Sea, which was last amended by law no. 122 from December 15th 2014 stipulates the manners of construction, equipment and operation of vessels that will provide for the best possible safety of life at sea. It also includes the inspection of ships, such as inspection by the FMA, which has the right without finding to board vessels.

§33 states that the FMA can ban a vessel from sailing if it has malfunctions or if other conditions apply that put the lives or health of those on board in danger. With regard to detention and denial of access to ports §33 states that the FMA may ban a vessel from sailing if the vessel has deficiencies or if other circumstances that may jeopardize the life and health of those on board exist. In addition to these, the FMA can also ban a vessel from sailing if serious or reoccurring breaches of affairs, which are covered in the MLC or other legislation. (Kallsberg, 2001)

Law no. 141 from April 1st 1985, on Maritime Law, as last amended by law no. 165 from December 21st, 2001 is more specific than §33 in the Law on Safety at Sea. With regards to maritime inquiries §301 stipulates that a maritime inquiry shall be given when the master or a member of the crew outside the Danish port has died on board or have suffered significant damage to the person. §303 stipulates that a maritime inquiry aims as far as possible to provide complete information about the actual
circumstances and cause of the occurred event, including information on factors, which are important for assessing the seaworthiness of the ship or maritime safety. (Ministry of Trade and Industry, 2001)

With regards to where and when the maritime inquiry is to take place §304 stipulates that if the event giving rise to the delivery of a maritime inquiry occurs or is discovered during the ship's stay in port, the maritime inquiry must be made in this port. If the event occurred at sea, a maritime inquiry is delivered in the first port the ship or crew arrives at after the incident. Submission of a maritime inquiry may be postponed until the ship or crew arrive to another port if this reduces the ship's loss of time or costs or other substantial benefits and if the event's nature or extent or other circumstances do not speak against doing so. And in § 306 that if the incident occurred or is discovered during the ship's stay in port, it must be reported before the end of the second working day after the incident occurred or was discovered. If the event occurred at sea, the deadline is calculated from the time of the vessels arrival to port. (Ministry of Trade and Industry, 2001)

4.3.2 The Law concerning Commercial fishing and the Order concerning Mustering
The accident on board Anita also led to many questions regarding inspection of fisheries. But the Faroese fisheries laws have not been perceived as flawed and therefore it is interesting to look at the supervision and enforcement that is set up to uphold these laws. The Faroes have two main institutions dealing with fisheries supervision: the Faroese Maritime Authority (FMA) and the Faroese Fisheries Inspectorate (FFI).

The FFI is part of Vørn and Vørn is a department under the Ministry of Fisheries of the Faroes. The FFI administers inspections at sea and on land and the FFI’s vessels and the Arctic Command carry out these inspections. Their assignments include inspection and registration of fishing days, inspection and registration of quotas and secondary catch, inspection and registration of quotas on distant fishing grounds, and observation and inspections of vessels by satellite. The FFI is also responsible for search and rescue at sea in coordination with the Maritime Rescue and Co-ordination
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Center in Tórshavn. With regards to observation, Vørn has the responsibility of organizing the observation of fishing vessels both in Faroese waters, international waters and other places where Faroese vessels, according to the convention on fishing rights, are allowed to fish. (Faroese Fisheries Inspectorate, 2015a; Faroese Fisheries Inspectorate, 2015b) In addition to that the ship-owning companies inform the FFI when their vessels come to port on the Faroes to land a catch. (Olsen, 2015)

The FMA is a department under the Ministry of Trade and Industry of the Faroe Islands. The FMA’s main objective is improving safety at sea, protecting the marine environment and safeguarding the rights of its consumers. The FMA administers and has the responsibility of those Faroese legislations, which appoint requirements for vessels registered in the Faroese boat and ship registry. The Faroese legislations include international demands for vessels including special Faroese demands. (Faroese Maritime Authority, 2015)

According to law no. 28 from March 10th 1994 concerning Commercial Fishing, which was last amended through law no. 89 from August 18th 2014, fishing vessels under Faroese flag must have fishing licenses in order to fish in international waters. The flag state must only allow fisheries in international waters if it can be sure that the vessel complies with international rules that the country has committed itself to. (Ministry of Fisheries, 2007)

§33 provides that the FFI administers fisheries at sea and on land according to the law. The Minister of Fisheries appoints the more specific rules concerning the inspection of fisheries and on the organization of FFI, including a monitoring system. §34 provides that FFI can stop fishing vessels and vessels transporting fish, it can board vessels in order to make inspect services such as inspect vessel documents, manning documents, log books, quota books, cargo- and production books, tools and catch. (Ministry of Fisheries, 2007)

According to §36 the Minister can order fishing vessels to have monitors from FFI on board to investigate in connection with fishing operations under Faroese flag in territorial waters as well as outside the territorial waters and on fishing vessels...
with foreign flags in Faroese territorial waters. The vessel bears the expenses for board and lodging. Furthermore the Minister is entitled to put forth demands that fishing vessels under Faroese flag and foreign vessels in Faroese waters be supervised via satellite or similar communication system, which can at any time provide information on the vessel’s position. (M. Petersen, 1994)

Order number 2 from January 4th, 1994, concerning the mustering on vessels, stipulates that the FMA is the chief supervising authority of the mustering. The sheriffs and the FFI have the responsibility of helping the captain with the mustering if the captain wishes it. The Sheriffs and the FFI have in addition to that an obligation to collect mustering lists and bring them to the FMA. (Ministry of Trade and Industry, 1994)

4.3.3. The Law concerning Seafarers’ Conditions of Employment
After the Anita accident discussions concerning the working conditions on board Anita were heated and concerned both the low wages, the uncertainty of acquiring wages after the foreigners’ return to their home countries as well as the amount of hours they worked and the length of their stay on board the vessel.

Law no. 4 from January 15th 1988 concerning Seafarers’ Conditions of Employment, etc., which was last amended through law no. 71 on May 30th 2011 stipulates in §21-26 with regards to payment and calculation of wages that wages run from the day the seafarer commences services on board. Wages are calculated as the higher amount of part of the catch calculated in the usual manner for the period during which the seafarer has been serving on board, or from the entire catch during the voyage, a relative share calculated for the period during which the seafarer has actually served on board. In the case of fishing vessels, the ship-owner gives the crew settlements and profits no later than 2 weeks after the catch has been landed and sold. If the catch has not been sold within 4 weeks, the crew must be settled provisionally and the trip must be made up as precise as possible. (Ministry of Trade and Industry, 2011)
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And as pointed out earlier, §55 states that seafarers must have regular time to rest. On fishing vessels, the crew has, when circumstances do not make it impossible, the right to 8 hours of rest per 24 hours, where 6 of these hours are uninterrupted. On trawlers the crew has the right to 6 hours of changing of the watch. Exceptions can be made in individual instances when the majority of the crew comes to an agreement with the captain. (Ministry of Trade and Industry, 2011)

4.3.4. The Aliens Act and territorial jurisdiction
As pointed above one of the most discussed points have been the foreigners’ extremely low wages compared to their Faroese counterparts. This leads to the question of what labor standards are prevalent with regards to foreigners coming to the Faroes to work.

First of all, as mentioned in the beginning, affairs having to do with aliens are still under Danish authority and therefore the Danish Aliens Act of 2001 concerning the Faroes is prevalent with regards to work and residence permits on the Faroes.

With regards to aliens/foreigners coming to the Faroes to work § 13 of the Aliens Act concerns vessels. It stipulates:

“§13 Foreigners need a work permit in the Faroe Islands to take paid or unpaid employment, to be self-employed or for payment or non-payment to perform services in the Faroe Islands. A work permit is also required for employment in Faroese registered ships as part of the regular service or that otherwise regularly arrive in Faroese ports.”
(Ministry of Trade and Industry, 2013)

The only nationalities, that are exempt from applying for work and residence permits on the Faroes, are Northerners, and all nationalities, which apply for work, and residence permits in connection with work on board Faroese vessels must be paid according to Faroese wages. (Ministry of Trade and Industry, 2013)

The Danish Immigration Service interpret “regularly arrive in Faroese ports” in §13 as being in Faroese port 10 to 15 times a year. In those cases foreigners on board Faroese vessels must have work- and residence permits. (Nónklett, November 6th, 2014)
In executive order number 636 from June 7th 2010 on foreigners access to the Faroe Islands, which was changed with order number 252 from March 2014 §33 it is stated: “§33. Foreigners shall in addition to the cases mentioned in the Aliens Act §13 paragraph. 1, have a work permit on the Faroe Islands to work in the territorial waters and the continental shelf.” (Hornbech, 2014)

The territorial waters and continental shelf are part of the United Nations Convention on the Law of the Sea (UNCLOS), whose rules were laid out in 1982. As of 2013 the convention has been ratified by 165 countries and the European Union and defines the rights and responsibilities of nations with respect to their use of the world’s oceans, establishing guidelines for the environment, management of marine natural resources and businesses.

The relevance of UNCLOS with regards to the working conditions of foreigners on Faroese fishing vessels is its importance that through international law it is providing a basic legal framework for maritime security and cooperation that defines the extent of states’ jurisdiction with regards to e.g. immigration. (Office of General Council, 2011)

More specifically, according to UNCLOS, out to 12 nautical miles (nm) from the baseline is named territorial waters. Here the coastal state is free to set laws, regulate and use any resources. Beyond the 12 nm limit there are another 12 nm called the
contiguous zone, which is where a state can continue to enforce laws in customs, taxation, immigration and pollution (The Faroes do not have this zone). If an infringement started in territorial waters or is about to occur with territorial waters, the contiguous zone is a hot pursuit area. (Hollis, 2013)

200 nm from the baseline is the exclusive economic zone (EEZ). Within this area, the coastal nation has two basic rights, one economic and one jurisdictional. Economically the coastal states have sovereign rights for the purpose of exploring, exploiting, conserving and managing the living and non-living resources of the water column, sea-bed and subsea strata and other activities for economic exploitations. Jurisdictionally, the coastal nation has jurisdiction over artificial structures, marine research and marine environmental protection. (LeGresley, 1993)

Another term used instead of the EEZ, which UNCLOS does not use, is the term exclusive fishing zone (EFZ). The terms EEZ and EFZ are loosely used interchangeably, but the EFZ originates from before UNCLOS and now many nations have claimed an EFZ as wide as the permissible EEZ – 200 nm. (Index mundi, 2014; LeGresley, 1993)

Thereafter comes the continental shelf, which comprises of the seabed and subsoil of the submarine areas that extend beyond its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin. Every coastal state has the right to a continental shelf up to 200 nm, which is the limits for the exclusive economic zone. Wherever the continental margin extends beyond 200 nm from the baseline, coastal states may extend their claim up to 350 nm from the baseline. (Ministry of Foreign Affairs of Denmark, the, 2015)

The Faroe Islands’ territorial waters are out to 12 nm. The EFZ is 200 nm and so is the continental shelf. The before mentioned §33 stipulates that foreigners shall have work permits on the Faroes to work in the territorial waters and the continental shelf and therefore one could assume that this means work permits are needed for work within 200 nm, but according to Ken Nónklett in the Faroe Immigration Office, foreign fishermen only need work permits within 12 nm and the
need for work permits on the continental shelf (out to 200 nm) is reserved for those working on for example on oil rigs in the oil industry. Therefore with regards to foreigners working on Faroese fishing vessels, work permits are needed when work is conducted within the 12 nm territorial waters limit. (Nónklett, November 6th, 2014) 

4.3.4.1 Immigration

On the more practical side, when a foreigner wishes to come to the Faroes for work, the application is not sent to the Faroes, but to Denmark. The application is first sent to a Danish Embassy in their home country and from there to the Danish Immigration Service in Copenhagen. The Danish Immigration service then sends the application to the Faroese Immigration Office in Tórshavn for review, which then sends its review of the application back to the Danish Immigration Service with a mention of weather they recommend or not recommend these foreigners be given work and residence permits. Thereafter the Danish Immigration Service makes its decision, which may or may not include a hearing of the applicant. The processing time is 3-6 months, of which 1-2 weeks are the review on the Faroes. (Nónklett, November 6th, 2014)

The decision made by the Danish Immigration Service is not shared with the Faroese Immigration Office and therefore the Faroese Immigration Office does not know how many foreigners have gained work and residence permits to the Faroes. Nonetheless, according to Ken Nónklett at the Faroese Immigration Office, he is under the impression that the Danish Immigration Service follows the Faroese recommendations. (Nónklett, November 6th, 2014)

In the Anita case, none of the foreigners had work and residence permits. After the accident on board Anita, they were therefore deported, because the Danish Immigration Service determined that Anita had come to port more than 10-15 times per year for the time they had been on board. (Tróndarson, 2014)
Working conditions on board Faroese fishing vessels

Table 3 - Work permits

<table>
<thead>
<tr>
<th>Work permit needed</th>
<th>No permit needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work within the 12 nautical miles limit</td>
<td>Work outside the 12 nautical miles limit</td>
</tr>
<tr>
<td>Come to port 10-15 times or more per year</td>
<td>Come to port less than 10-15 times per year</td>
</tr>
<tr>
<td>The Danish Immigration Service processes applications</td>
<td>Are not registered by the Danish Immigration Service</td>
</tr>
</tbody>
</table>

In conclusion, according to the Aliens Act, the Faroes have jurisdiction of their territorial sea and continental shelf and thus foreigners working within these limits or come to port 10-15 times per year must have work permits. According to Nónklett the Faroese Immigration Office checks the wages of foreigner’s with work and residence permits on the Faroes if the asked to by the Danish Immigration Service, but with regard to the wages of the foreign workers not needing work and residence permits they nor the Danish Immigration Service have information about. (Nónklett, November 6th, 2014) Therefore, Faroese authorities had no jurisdictional means for collecting any information regarding the wages of the foreigners on board Anita. (Nónklett, November 6th, 2014; United Nations, 1982a; United Nations, 1982b)
5. Analysis

5.1 The diverse roles of Faroese public authorities’ concerning fishing vessels

5.1.1 The Faroese Marine Authority
The accident on board Anita has led to many discussions in the Faroese Parliament. The ministers have maintained that there were no faults with regards to legislation and therefore some of the members of Parliament have pointed out that there must be something wrong with supervision and enforcement. (Bertholdsen, 2014) In response to the allegations of inspection authorities not having done their jobs, Minister Dahl pointed out that just like all other Faroese public institutions, the FMA’s work area is wide and encompassing and therefore it is necessary to prioritize the assignments according to the manpower. There are altogether 645 vessels registered under Faroese flag. (Dahl, 2014b)

As mentioned before, there are two main authorities operating affairs having to do with fishing vessels on the Faroes, the FMA and the FFI. According to Óli Hans Hammer Olsen, former Managing Director of the FMA, the FMA prioritizes work having to do with vessels under 24 meters in length. This is a comprehensive area that includes passenger boats, fishing vessels and farming vessels and the prioritizations include inspections of accidents, flag state inspections etc.

Inspections of vessels that are 24 meter or longer are outsourced to classification societies, which regularly inspect these. The classification societies that operate actively on the Faroes are Det Norske Veritas, Bureau Veritas and Lloyds. They are technical experts that manage risk and ensure that ships comply with regulations that are based on international conventions as enforced by the Faroes. (Olsen, 2015)

Although some of the inspection is outsourced to classification societies, the FMA is, nonetheless, the authority responsible for ensuring that surveys and approval of ships are done in accordance with all applicable regulations. (Olsen,
2015) When asked to what degree the FMA looks into foreigners and their working conditions, Hammer Olsen maintained that neither the FMA nor the classification societies are responsible for inspecting foreigners’ papers, which according to him is the captain’s and the ship-owner’s responsibility. (Olsen, 2015) Thus the FMA does not inspect whether the foreigners should have work permits or not.

As pointed out in the Order concerning Mustering, the FMA is the chief supervising authority of the mustering and therefore has all information concerning the crews including the different domiciles of the crewmembers. (Faroese Maritime Authority, 2013) This therefore means that although the Faroese Immigration Office does not have information on how many foreigners are on Faroese vessels or how many of these have work permits, the FMA collects the mustering lists with information such as the crews domiciles and therefore knows which vessels have foreigners on board even though this information does not state whether they have work and residence permits or not.

5.1.2 The Police
March 6th 2013, the Faroese Fishermen's Association reported on illegal labors on board Anita and asked the Faroese Immigration Office for information on this. The Faroese Immigration Office replied that the Immigration Office is only a consulting authority to the Danish Immigration Service and therefore merely reviews applications for work and residence permits while the succeeding supervision of foreign labor is under police jurisdiction. (Dahl, 2014a)

According to Hildur Hentze, Head of Section at the Police Investigation Division, the Police on the Faroes do not have an account of how many foreigners work on board Faroese fishing vessels either, but can access this information. The Police know of some vessels that have foreigners and do spot checks on these, but also rely on citizens to make them aware of cases that citizens find suspicious and then the Police goes out to investigate. The Police do not receive mustering lists, but can acquire them from the FMA if they ask for them and through these see if a vessel has foreigners on board. Hentze points out that the regularity of spot checks depends on what is happening on the political stage. If there is extensive media coverage then they
go out and investigate, but according to Hentze the Police have other affairs to attend to on a daily basis. The investigation division for example only has 10 employees and their section attends to all investigations on the Faroes, including crimes, murders, violence etc. and this therefore results in their need for prioritization. (Hentze, 2015)

Hentze also states that the punishments for violations of the Aliens Act are harsh, because the foreigners can end up being deporting and not allowed back into the country. The ship-owners are also fined, but not as harshly as in Denmark, because the law has not been updated on the Faroes, while it has been updated in Denmark. In Denmark the ship-owner is given a fine of 10.000 DKK per month per foreigner, while on the Faroes this is 3000 DKK per month per foreigner. (Hentze, 2015)

5.1.3. The FFI
The FFI, which is the authority that observes fishing vessels both in Faroese, international and other waters where Faroese vessels, according to the convention on fishing rights, are allowed to fish, has argued that the Police do not investigate vessels enough. According to Elmar Højgaard, Manager of the FFI, the captains on board the FFI’s vessels have seen a surge in foreigners on board Faroese fishing vessels. On the vessels that seldom come to port around 25% to 35% are foreigners and one of them has approximately 85% of foreign crew. The FFI does not have access to information regarding work and residence permits either and therefore do not know what contracts these are bound by. (E. Højgaard, 2015)

When asked about the FFI’s thoughts of the current level of inspection of foreigners on board Faroese fishing vessels, Højgaard reasons that the FFI does not believe there to be any effective inspection with foreign crews. He points at the necessity for making a system where all vessels muster electronically. This system should also register if legislation is being followed, when a vessel musters and the police should have access to such a system so that the inspection of foreigners can be as effective as possible. (E. Højgaard, 2015)
To conclude on the inspection responsibilities of foreigners on board Faroese fishing vessels it is evident that none of the two authorities having to do with fisheries are responsible for inspecting the work permits for foreigners on board the vessels they inspect even though they have the most direct access to information concerning foreigners. The FFI is made aware every time a vessel comes to port to land its fish and can therefore count how often in one year a vessel has been to port, and the FMA collects vessel's mustering lists with information on the crew's domiciles. But the authority in charge of inspecting work and residence permits is the Police. With the Police’s lack of resources their inspections seem to be done mostly based on information from citizens. Nonetheless, while interviewing Hentze it was evident that the Faroese Immigration Office, the FFI and the FMA also report to the Police if they believe there to be irregularities. (Hentze, 2015) The FFI has pointed out that the Police do not investigate fishing vessels enough and therefore seeing as the FFI has the most contact with vessels, one can only assume that they have more hands on experience of what the situation with foreigners is on the vessels. In the end it is the Police’s responsibility to inspect work and residence permits, but according to the FFI such inspection could be done more effectively if mustering was done electronically through a system.

5.2 The Anita case – the affect of labor standards

Having stated the different authorities having to do with fishing vessels and foreigners’ work and residence permits, I will now dive into the Anita case. In this section I will look into the labor standards on the Faroes and how the undertakings after the accident on board Anita were affected by the labor standards. This will include how the Law concerning Safety at Sea affected the decision not to bring the vessel to port immediately and the how the Maritime Law’s section on maritime inquiries allows vessels to determine their arrival at port depending on the ship’s loss of time and costs.
5.2.1. The Law concerning Safety at Sea

Law no. 165 from December 21st 2001 concerning Safety at Sea, which was last amended by law no. 122 from December 15th 2014 stipulates on providing the best possible safety of life at sea. With regards to detention and denial of access to ports §33 states that the FMA may ban a vessel from sailing if the vessel has deficiencies or if other circumstances that may jeopardize the life and health of those on board exist. (Kallsberg, 2001)

One of the points that were made early on in the debate in the Anita case is that the vessel continued fishing for 12 days after the accident had happened. Bluntly put, a man died and the ship-owner decided that the vessel should continue fishing. Faroese authorities did nothing to stop this.

According to Johan Dahl, Minister of Trade and Industry on the Faroes, the FMA, which is the authority in charge of affairs having to do with safety conditions, is not responsible for calling a vessel to port for maritime inquiries. According to Minister Dahl it is the ship-owner and the captain of the vessel's responsibility to determine when to take the vessel to port. (Dahl, 2014a) But neither the ship-owner nor the captain did this. The ship-owner has pointed out that this was because he believed it would be good therapy for the fishermen on board the vessel to continue fishing. (Hvidtfeldt, 2014) If looked at purely from a profit maximizing point of view, it is evident that it is not in the ship-owners interest to bring the vessel to shore, because this would mean that they would have to stop fishing and sail to shore, having less fish to sell and using additional oil and valuable time to bring the vessel to shore. Therefore it is not unreasonable to assume that the ship-owner would not bring the vessel to shore unless requested to do so by the authorities.

Furthermore, according to Minister Dahl, the FMA can through §33 in the Law concerning Safety at Sea only impose a ban on sailing if the vessel has defects or if there are other circumstances that can endanger the life or health of those on board the vessel. According to Minister Dahl, the information received immediately after the accident pointed towards it being a work-related accident and that there were no indications on defects or a danger to the lives and health of the crew. (Dahl, 2014a)
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But not all agree with the minister's view. February 20th 2014, Henrik Weihe Joensen, adviser of safety, emergency and rescue and former managing director of the emergency and rescue office in the Faroes, wrote to the FMA. Joensen requested that the FMA immediately inform the captain of Anita that the vessel must sail to the Faroes for investigation purposes and also because maritime inquiries must be made as soon as possible. According to Joensen, and as mentioned before, Chapter 7 of §33 in the Law concerning Safety at Sea states that the FMA may ban a vessel from sailing if the vessel has deficiencies or if other circumstances that may jeopardize the life and health of those on board exist. This entitles the FMA to ban Anita from sailing. Joensen reasoned this by pointing out that the procedure is that all activities where the accident has happened must stop immediately so that all circumstances on and around the ground can be investigated. Joensen says that in this case where Anita was fishing far from the coast, the nets should have been taken in and the vessel made ready to sail to the coast. (Lamhauge, 2014c)

Joensen also pointed out that what happened with Anita brings forth the responsibility of Faroese authorities in an international context, because Faroese ship-owning companies have increasingly become a part of the international maritime industry the last couple of years. According to Joensen, this case also has a human aspect, because a man has lost his life and in addition to the loss of life in itself, this is also a terrible event for the other fishermen on board Anita, who most likely are in need of some kind of psychological emergency relief. (Lamhauge, 2014c)

With regards to psychological emergency relief, Hans Mourits Foldbo, Psychologist on the Faroes, maintains that an accident such as this is horrible for anyone to witness. He points out that it would be best to have a debriefing immediately after the accident, because with an accident such as this the remaining crewmembers afterwards start thinking of what they were doing when the event occurred and what they should have done. In such a traumatizing event people often get binocular vision and therefore only experience the event in parts and do not experience a coherent story. Therefore those experiencing this will often have a lot of questions and then it is very important
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to have a debriefing where everyone explains what they did and what others were doing so that they get a coherent story. In such a case it is best to have someone from the outside leading the debriefing and being able to tell those involved that the feelings they have are completely normal, so that they relax. (Foldbo, 2015)

With regards to the fact that the vessel continued fishing and thus the fishermen continued working for 12 days after accident had happened, Foldbo questions how attentive a person is at doing the same work after such an event has occurred. In addition to that he points out that people often lose sleep or want to sleep all the time after such an event, and therefore Foldbo also questions how secure it is to continue working. This is a difficult situation, because according to Foldbo it is quite common that in the beginning what has happened is unreal to them as if nothing has happened and they may not quite accept what has happened. Then after a couple of days, they will take it in slowly.

Foldbo also points out that there is a risk of the crewmembers developing Post Traumatic Stress Disorder (PTSD), which can include stress in situations that are similar to the accident, sleeping problems, flashbacks and other problems. (Foldbo, 2015) The best way to prevent PTSD is to get counseling and the earlier counseling begins after the traumatic event, the better the chances are of lessening or eliminating PTSD symptoms. (Gharbia, 2015) Foldbo maintains that it would be best if the vessel had sailed to shore immediately afterwards, because continuing as if nothing has happened is not optimal, although it is difficult to say how harmful it will be for them in the future. (Foldbo, 2015)

It is not specified in the Law concerning Safety at Sea, what “health” includes, but according to the World Health Organization “Health is a state of completely physical, mental and social well-being and not merely the absence of disease or infirmity.” (World Health Organization, 1948) If we therefore assume that the law includes mental well-being in health, the arguments that Foldbo has made point towards the accident being such a traumatizing event, that the FMA should have the mandate to call the vessel to shore based on the remaining crewmembers’ health being in danger.
5.2.2. The Maritime Law

Law no. 141 from April 1st 1985, on Maritime Law, as last amended by law no. 165 from December 21st 2001 includes more specifics on maritime inquiries than §33 in the Law concerning Safety at Sea. With regards to maritime inquiries §301 stipulates that a maritime inquiry shall be given when the master or a member of the crew outside the Danish port has died on board or has suffered significant damage to the person. §303 stipulates that a maritime inquiry aims as far as possible to provide complete information about the actual circumstances and cause of the occurred event, including information on factors that are important for assessing the seaworthiness of the ship or maritime safety. (Ministry of Trade and Industry, 2001)

With regards to where and when the maritime inquiry is to take place §304 stipulates that if the event occurred at sea, a maritime inquiry is delivered in the first port the ship or crew arrives at after the incident. Submission of a maritime inquiry may be postponed until the ship or crew arrive to another port if this reduces the ship’s loss of time or costs or other substantial benefits and if the event’s nature or extent or other circumstances do not speak against doing so. (Ministry of Trade and Industry, 2001)

With regards to Joensen’s point to bring the vessel in for investigation purposes it is interesting to look at the Law concerning Safety at Sea because it does not provide that accidents must be investigated immediately. With regards to maritime inquiries, the Maritime Law is more specific than the Law concerning Safety at Sea. For example §304 stipulates that: “Submission of a maritime inquiry may be postponed until the ship or crew arrive to another port if this reduces the ship's loss of time or costs or other substantial benefits and if the event's nature or extent or other circumstances do not speak against doing so”. (Ministry of Trade and Industry, 2001) It is interesting that the submission of a maritime inquiry may be postponed until the vessel is at a port where the ship's loss of time or costs are less and if the event’s nature or extent does not speak against doing so. This can not be assumed optimal with regards to labor standards, because depending on the situation, a ship-owner can choose to wait to
have the vessel submit a maritime inquire and bring traumatized crewmembers to shore if it reduces the ship’s loss of time or costs.

In conclusion, although the adviser of safety, emergency and rescue and a psychologist argue that it would have been best for Anita and its crew to come to shore immediately with regards to the investigation and the mental health of the crew, both the Law concerning Safety at sea and the Maritime Law leave so much to interpretation that the authorities can more or less choose what they would like to do and to some degree so can the ship-owner if there is a choice where they can reduce the ship’s loss of time or costs.

5.2.3. Social dumping through lower wages
I will now move to the Anita case’s social dumping accusations regarding the considerably lower pay the foreigners on board Anita were given compared to their Faroese counterparts. I begin with giving an account of the uncertainties with Anita’s ownership. Thereafter I will move into the Law concerning Seafarers Conditions of Employment and how it relates to payment of wages and at last the Fisherman’s Union.

One of the focuses in the Anita case is that Anita had part foreign ownership. The formal ownership is only 1/3 foreign and the rest Faroese, which is because of the Law concerning Commercial Fishing, which states that maximum 1/3 of the ownership can be foreign and the rest must be Faroese ownership, but it has been pointed out that although the formal ownership is majority Faroese, the control of Anita and its ship-owning company was mostly foreign. (M. Petersen, 1994)

Seta is the ship-owning company that runs Anita. Seta’s committee chairman is the Spanish national Ramon Garcia Gallardo, and the managing director is the ship-owner Søren Christensen. Christensen bought 2/3 of Seta through his company sp/f 88 for 4,7 million DKK in 2012. The remaining 1/3 was bought by the Spanish company Gallega de Pesca Sostenible for 2,2 million DKK. It has been pointed out that the partnership between Christensen and Gallardo is suspicious, seeing as
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Gallardo’s company has a huge network of Spanish ship-owning companies all over the world. (Lamhauge, 2014b)

Christensen’s Sp/f 88 is, on the other hand, a small company with a share capital of 80,000 DKK. Nonetheless, Seta managed to make a 4,7 million investment, of which none of the money came from its own funds. According to public records sp/f 88 was given a loan to complete the deal, but there are no records of who yielded the loan, but it has been presumed that the loan was acquired from the financially strong Spanish part-owner, Gallega de Pesca Sostenible. Although the vessel is registered as Faroese, there were indications especially in the maritime inquiries after the accident that the vessel was not run by Faroese even though the ship-owner is Faroese and 2/3 of the company are Faroese. This was witnessed during the maritime inquiries when the Indonesians, which were questioned, continuously mentioned the ship-owning company Seta as “the Spanish ship-owning company”. (Lamhauge, 2014b)

An interesting question is, why a multinational Spanish company is interested in investing in a small Faroese company. Before the acquisition by Sp/f 88 and Gallega de Pesca Sostenible Seta had another owner and had values for around 17 million DKK, but debts amounting to 19 million DKK. The company’s worth was negative and the shares were worth 0 DKK in 2011. But by selling Seta, the previous owners acquired 6,9 million DKK for their shares. This does not sound like a good bargain for Sp/f 88 and Gallega de Pesca Sostenible, because in reality they are paying 6,9 million DKK for a company with values minus debts that were -2 million DKK. However, what is not seen is that SETA through its ownership of the vessel Anita has a fishing license, which gives the company preferential treatment with regards to fisheries. This is because the Ministry of Fisheries writes out fishing licenses for free to private individuals or companies and these licenses follow the vessel if it is sold. This allows private individuals, such as the previous owners of Anita to make a bargain selling fishing licenses that they were given free of charge from the state. (Lamhauge, 2014b)
5.2.4. Wages
Anita’s ship-owner has not wished to comment on the crew’s wages, but the annual accounts for 2012 state that just under 1,5 million DKK were paid in employee wages. According to the accounts, around 20 people worked for the company, one Faroese ship-owner, one Faroese captain, two Spanish officers and Indonesian unskilled laborers, enginemen and deckhands. (Lamhauge, 2014b)

According to documents that the Faroese National Broadcasting Company acquired, the Indonesians signed contracts, which bound them to be on board Anita for 12 to 18 months for €550 per month plus €1 for each extra ton fished. This means that they were paid 4-5000 DKK before taxes per month, where they work around 16 hours per day and have no time off for 12 to 18 months. (Lamhauge, 2014b) Oknin, a netting vessel similar to Anita, pays its workers, who are all Faroese, around 400.000 DKK per year\(^1\) which is roughly 33.000 DKK per month. (K. Petersen, 2015)

In 2012 although paying out much less in wages than its counterpart Oknin, Anita did not pay any taxes. In 2012 Oknin sold fish for approximately 10,9 million DKK and paid around 5,5 million DKK for wages and their profits were 643.625 DKK, which resulted in them paying corporation taxes to the national treasury. The same year Anita sold fish for 9,7 million DKK and paid 1,5 million DKK in wages, but had a deficit of almost 3 million DKK. Therefore according to the balance sheet Anita had nothing to pay taxes from and therefore evaded paying taxes. (Lamhauge, 2014b)

Working around 16 hours per day is not uncommon for work on board fishing vessels and this is also legal as §55 in the Law concerning Seafarers’ Conditions of Employment states that the crew has, when circumstances do not make it impossible, the right to 8 hours of rest per 24 hours, where 6 of these hours are uninterrupted. (Ministry of Trade and Industry, 2011) However, it is not common on the Faroes to work 12 to 18 months with no vacations and it is questionable how beneficial it is for ones health to work for so long uninterrupted. A research article

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\(^1\)This is based what one worker who is on all fishing trips for one year of which approximately 9 months are spent fishing. The number may also vary depending on the catches.
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made in 2014 on occupational health hazards among fishermen pointed out that fishermen with long working periods – more than 10 hours per day – had the most significant predictors of severe stress and the risk significantly increased in fishermen who worked in fishing trips for more than 10 days. (El-Saadawy, Soliman, El-Tayeb, & Hammouda, 2014)

5.2.5. Fisherman’s Union

During the maritime inquiries the Indonesians that were interviewed stated that the whole crew was afraid that they would not receive their pay when they went back to Indonesia. (Lamhauge, 2014a) Jan Højgaard, chairperson of the Faroese Fishermen’s Union says that the problem with social dumping did not become a problem until around 2008. In fact he himself had several times reported Anita to the authorities for conducting social dumping without any results. He also points out that today people are being exploited not only on board Anita, but there are also people on board vessels that are at port and live in old shacks where they do all kinds of work. In order to do this they need work permits, which many of them do not have and according to Højgaard this is merely ignored by the police and the government. (J. Højgaard, 2014)

The Faroese Fisherman’s Union has many foreigners who have been members for many years. Højgaard points out that there is no problem for foreigners to be a part of the Fisherman’s Unions, but some ship-owners do not want their foreign workers to be part of the Fisherman’s Union, because they do not want to pay them according to the contracts that are on the Faroese labor market. When asked if he thinks most foreigners become part of the Fisherman’s Union Højgaard answers a definite no, because according to him there is especially one ship-owning company that has been prevalent in not getting its foreign workers into the Fisherman’s union and this is the ship-owning company X. According to Højgaard Anita is merely a small part compared to the workings of X, because the ship-owning company that owns Anita only has one vessel, while X has more than 10 vessels. According to Højgaard none of X’s foreign workers are part of the Fishermen’s Union. (J. Højgaard, 2014)

Højgaard tells of a Filipino, which once contacted the Fisherman’s Union. This man worked on one of X’s vessels and said he had been told by X that he would
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not get paid until he returned to the Faroes again. If they for example left the Faroes when they had time off then they had 2-3 months pay outstanding and would not get paid until they were back on the Faroes. Højgaard mentions that this is probably the reason for why X claims that they are so good at keeping their employees despite the lower pay. (J. Højgaard, 2014)

This is not in accordance to the Law concerning Seafarers’ Conditions of Employment, which stipulates that in the case of fishing vessels, the ship-owner gives the crew settlement and profits not later than 2 weeks after the catch has been landed and sold. If the catch has not been sold within 4 weeks, the crew must be settled provisionally and the trip must be made up as precise as possible. The law provides that this includes all fishermen that are paid or work on board a Faroese vessel. Thus one can assume that this also includes foreigners on board Faroese fishing vessels. (Ministry of Trade and Industry, 2011) Nonetheless, when questioned about it in the parliament, Minister Dahl affirmed that there is no public authority that guarantees that crews on board fishing vessels acquire their wages for a fishing expedition after they have returned home. (Dahl, 2014a)

According to the managing director of ship-owning company X roughly half of their employees are foreigners and the reason for why they began employing foreigners was because they are a cheaper labor force. X does not see it as a problem that for example Asians are paid less than Faroese, because according to X money is worth a lot more in for instance the Philippines than on the Faroes. In addition to that he points out that it is double standards for us in the western world to be against cheaper labor force, but tolerate that our clothes, computers etc. are made by cheap labor. X never specifies what their foreign workers make and does not acknowledge being part of any international trade union. (X, 2014)

When asked to what degree it is possible for the labor unions to get access to contracts other than those they are a part of themselves Højgaard said that the Fisherman's Union has no more right to see them than regular citizens. In addition to this Højgaard mentions that in Iceland trade unions have a lot of power and are
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actually allowed to inspect contracts, because the authorities have granted them permission to do so. (J. Højgaard, 2014)

This is an agreement between the Icelandic Confederation of Labour (ASI) and the Confederation of Icelandic Employers (SA). The organizations agreed in 2004 that it is the joint task of the parties to see to it that the companies using foreign workers in their production of services pay wages and have terms of employment that are according to collective agreements and the laws of Iceland. The agreement states that if collective agreements are not honored, this undermines the operations of other companies and compromises the premises of normal competition, and diminishes the benefits of the entire society from a stable and healthy labor market. (Icelandic Confederation of Labour, 2013)

The agreement states that union representatives safeguard that the collective agreements are enforced. If there is a suspicion of a violation of the relevant collective agreement the union representative has the right to study information on the wages and other terms of employment for the foreign workers. If the employers do not agree to the union representative's request for access to the information needed then the disagreement can be sent to the special Consultation Committee of ASI and SA. (Icelandic Confederation of Labour, 2013)

The foreigners who do not need work and residence permits on the Faroes are not subject to Faroese labor union contracts and thus their contracts are based on what they agree with the company they work for. Working conditions on the Faroes are as is also the case in other Nordic countries not regulated by law. The two sides of the industry organize the conditions. Nonetheless Faroese law concerning Seafarers' Conditions of Employment appoints minimum standards for employment agreements, discharge of wage, wage payments, nursing, rest etc.

With regards to inspection, the Police have the jurisdiction to monitor according to the Aliens Act whether wage and working conditions are according to current contracts on the Faroese labor market. But as mentioned before the Faroese Immigration Office has no knowledge of how many foreigners are on board Faroese
vessels or how many of these do not have work permits. (Dahl, 2014b) This leads to
the presumptions that those who work on vessels without work permits are therefore
bound by contracts that are negotiated between the fisherman and the company
outside of union influence and can therefore be very low wages.

5.3 Globalization and international trade’s influence on labor standards
In relation to Flanagan’s theorizations, trade liberalists maintain that seeing as labor
standards can enhance efficiency then countries have incentives to increase rather
than reduce the level of their standards. (Samy & Dehejia, 2007) However, it is
difficult to say whether or not there are incentives for increased labor standards and
what these incentives are.

The current ILO fishing conventions and recommendations are old and for
the most part do not seem to have much affect on national legislation today. With
regard to the Faroes and the Anita case, the only recommendation that was relevant to
the Anita case and relatable to a specific Faroese legislation was The Hours of Work
(Fishing) Recommendation, 1920 (No. 7). (ILO, 1920) Nonetheless, the other fisheries
conventions and recommendations were in some form implemented in Faroese
legislation, and it is possible they have paved the path for current Faroese legislation
on work in fisheries when it was first introduced. But to argue that countries will
increase their labor standards to become more efficient is difficult to assess, because
increased labor standards often mean increased costs for countries’ companies and
thus also their diminishing competitiveness.

Globalization skeptics have pointed out that superior labor conditions are
costly. (Flanagan, 2006) The Faroes for example have a number of laws in need of
revision in order to increase labor standards to such a degree that insufficient working
conditions would not continue. And with regards to the globalization skeptics point on
superior labor conditions being costly, the example of the Maritime Law’s stipulations
are interesting to examine. (Ministry of Trade and Industry, 2001) The Maritime Law
and the possibility of postponing maritime inquiries depending on the ship’s loss of
time or costs, if the event’s nature or extent do not speak against doing so, are much
related to the points made by globalization skeptics. The Maritime Law’s possibility of postponing cannot be assumed optimal with regards to labor standards, because depending on the situation, a ship-owner can choose to wait to have the vessel submit a maritime inquire and bring traumatized crewmembers to shore if it reduces the ship’s loss of time or costs.

Furthermore, the globalization skeptics maintain that companies degrade working conditions in order to increase their exports. (Flanagan, 2006) By increasing exports, profits are also increased and what a ship-owner naturally wants is to maximize profits. Because the more valuable the fish is and the more of it is sold, the more profit the company makes. Therefore, seeing as the Maritime Law specifically points out that a vessel can go to another port if the ships losses are reduced, there are indications of the points made by the globalizations skeptics: seeing as countries with superior labor conditions are at a competitive disadvantage, national governments may deny labor right and provide little political support for superior labor standards in order to expand exports.(Flanagan, 2006)

With regards to the social dumping and lower wages, globalization skeptic Olney’s remarks with regards to FDI are noteworthy in the Anita case. As specified in the theoretical section, Olney pointed out with regards to labor conditions that MNEs, which we can regard the Spanish company Gallega de Pesca Sostenibile as, invest in countries with less restrictive standards. This is done because, according to Olney, a reduction in labor market standards will increase FDI. In countries where employment protection is less, costs are less and thus MNEs will shift employment activities to that country. In addition to that Olney points out that foreign countries competitively undercut each other’s standards to attract FDI, as FDI is often associated with increases in production and knowledge spillovers, which is appealing to many countries. (Flanagan, 2006; Lamhauge, 2014b)

A company such as Gallega de Pesca Sostenibile is always trying to be profit maximizing and seeing as according to the Aliens Act foreigners do not need work and residence permits if they are fishing outside Faroese territorial sea nor come
to port regularly this can therefore be assumed as the “less restrictive standards” which Olney points out in his theorization. The costs are therefore also less if the company decided to use foreign cheap labor instead of the more expensive Faroese labor. And although there is no indication of a shift in Gallega de Pesca Sostenible’s employment activities from another country to the Faroes, the easy access to free Faroese fishing licenses and the lax rules in the Aliens Act are most likely attractive for any company to engage in and profit from.

According to Flanagan, national wealth increases when countries export products made from inputs that are relatively abundant (thus relatively cheap) domestically and import products that are relatively scarce (thus relatively expensive). (Flanagan, 2006) Fisheries, being the main export on the Faroes, is therefore also the business that the Faroes need to be competitive in, and seeing as fisheries is a business practiced globally, competition can be fierce. Therefore in an effort to become more competitive, other inputs, which are expensive domestically, can be imported. With regards to fisheries the most expensive input is the labor, and if labor is imported cheaply from for example Indonesia, then the output will become cheaper and therefore presumably more competitive. Substituting a Faroese worker, who makes roughly 33.000 DKK per month for an Indonesian worker that is paid around 4000-5000 DKK per month leads to a relatively cheaper output seeing as wages are cut dramatically, and thus a larger profit.

Flanagan points out that national wealth will increase, but in the Anita case nothing points towards the Faroes profiting much from this. Because for example in 2012 although paying out much less in wages than its counterpart Oknin, Anita did not pay any taxes. In 2012 Oknin sold fish for approximately 10,9 million DKK and paid around 5,5 million DKK for wages and their profits were 643.625 DKK, which resulted in them paying corporation taxes to the national treasury. The same year Anita sold fish for 9,7 million DKK and paid 1,5 million DKK in wages, but had a deficit of almost 3 million DKK. Therefore according to the balance sheet Anita had nothing to
pay taxes from and therefore evaded paying to the national treasury. (Lamhauge, 2014b)

It is curious that while Oknin sells for 1,2 million DKK more than Anita and Anita pays 4 million DKK less than Oknin in wages, that Anita’s final result is more than 3,5 million DKK less than Oknin. What exactly has happened with Anita to lead to the vessel having such a large deficit in 2012 is unsure. With regards to this point Flanagan’s theorization of cheaper input leading to increased national wealth is not applicable when looking merely at Anita, because even though the cheaper input should lead to a cheaper output and thus higher profits, Anita had no profits and therefore did not pay any company taxes to the national treasury, which otherwise could have increased the national wealth. Nonetheless, all things equal, if Oknin paid as low wages as Anita, their profits would presumably be higher and thus a larger inflow to the national treasury. (Flanagan, 2006; Lamhauge, 2014b)

With regards to union bargaining power Flanagan argues that foreign competition reduces the willingness of employers to remain in industry-wide bargaining arrangements that may be unresponsive to the competitive need of individual companies. (Flanagan, 2006) This is seen in the Anita case, because even though unionization on the Faroes is high, Anita is not a part of the Ship-owner’s association. And in addition to that as Højgaard mentioned none of X’s foreign workers are part of the Faroese Fisherman’s Union. (J. Højgaard, 2014) This can be assumed to be because if industry wide bargaining arrangements are not responsive to the competitive needs of companies to for example acquire cheaper labor instead of the more expensive Faroese labor, then some companies will choose to increase their competitiveness instead of bowing to the contracts made between the two parts of industry, in this case the Ship-owner’s Association and the Faroese Fisherman’s Union.

The fishermen who work where they do not need work and residence permits are therefore not bound by contracts on the Faroese labor market and can therefore be said to be part of a free wage area, where wages can range from 4500 DKK to lower or higher, depending on the contract made between the company and
the employees. This is an area that is not based on shares of the catch, which is the norm on the Faroes. These fishermen are also not part of any labor union contracts between the Ship-owner’s Association and the Fishermen’s Association. And therefore, as in the Anita case, wages can range widely from one fishing vessel to another. This is relatable to Flanagan’s theorizations, where Flanagan points at the possibilities for exporters to force wages down through the EPZs of countries, which are similar to the free wage area in the Faroes and allows companies to profit from lax rules comparative to the rules outside EPZs, which in the Faroese case would be the Faroese labor market. (Flanagan, 2006) This therefore means, that a company working within a free wage area has very high profits compared to the profits of those on the Faroese labor market. An example of this is the difference between Anita and Oknin, where wages for fishermen on board Oknin are more than 7 times the wages on Anita.

To conclude on the applicability of Flanagan’s estimation of international trade’s influence on labor standards it is evident that not all of his theorizations apply to the Anita case and working conditions of Faroese fishing vessels. It is apparent, as Flanagan points out, that countries want to enhance their efficiency, but whether countries see increased labor standards as a means of enhancing efficiency is much more difficult to assert, because increased labor standards often mean increased costs for countries’ companies and thus also their diminishing competitiveness. There are several examples of this both in the Anita case and with regards to Faroese labor standards.

One example is the Faroese Maritime law, which to some extent allows for postponement of maritime inquiries if a ship’s loss of time and cost can be reduced. (Ministry of Trade and Industry, 2001) Another example is the low wages resulting in social dumping, because companies will always try to be profit maximizing. Therefore, as Flanagan himself points out, companies will in an effort to become more competitive substitute expensive domestic inputs with cheaper imported inputs. Therefore, at least with regards to the Faroes and the specific example of the Maritime
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Law, there is more evidence that enhancement of a country’s efficiency is determined by reducing costs for companies rather than increased labor standards.

According to Flanagan substituting expensive inputs with cheaper inputs would lead to a cheaper and thus more competitive product, which in turn would result in national wealth to increase. (Flanagan, 2006) But as mentioned before, this was not the case with Anita, seeing as Anita evaded paying taxes. (Lamhauge, 2014b) Nonetheless, Flanagan has a point, seeing as when looking at Oknin’s financial transcripts, if Oknin paid as low wages as Anita, they would end up with higher profits and thus paying more in corporation taxes to the national treasury.

Flanagan is also correct with regards to his point that foreign competition reduces the willingness of employers to remain in industry-wide bargaining arrangements, because Anita is not part of the Ship-owners association and X’s foreigners are for example not part of the fisherman’s union. Flanagan’s theorization of EPZ’s is also very similar to the Faroese free wage area where companies can profit from the law rules comparative to the rules outside the EPZ’s/free wage area.

5.4. The need for more effective inspections and enforcement

The analysis has shown that labor standards affect Faroese public authorities in combating insufficient working conditions on board Faroese fishing vessels and have done so in the Anita case.

There is sufficient evidence that proves that the FMA could and should have reacted and called Anita to port so the accident could be investigated immediately; maritime inquiries made; and most importantly the remaining fishermen should have been given psychological relief immediately. Instead nothing was done and the vessel was allowed to continue fishing, because the FMA chose to let the captain and ship-owner of the vessel decide whether to bring the vessel to port or not. The FMA therefore also chose to rely on the ship-owners assessment that it would be good therapy for the fishermen on board the vessel to continue fishing. Therefore the Faroese authorities failed to act where they could act – through the Law concerning Safety at Sea - and not only did they fail in their obligation as an active member in the international maritime industry, but also in the human aspect where
they should have given psychological relief to the remaining crewmembers who had just witnessed their co-worker taken into the ocean with a net never to be seen again.

The foreigners on board Anita did not have work and residence permits, which is not needed on board vessels that come to port less than 10-15 times per year and work outside the 12 nm limit. This allows for social dumping and in the Anita case the Indonesians on board were paid around 4-5000 DKK per month, while their Faroese counterparts on the vessel Oknin make as much as 33,000 DKK per month. The problem for Faroese public authorities with regards to social dumping is that the authorities must inspect which foreigners can work without work permits and which foreigners should have work permits. But this is difficult for them, seeing as the two fisheries authorities with most encounters with fishing vessels, the FFI and the FMA do not have access to nor the authority to inspect foreigners’ papers relating to their immigration status. And the authority with this information and authority does not have the resources to inspect foreigners on board fishing vessels.

Therefore one is not startled when experts such as the manager of the FFI maintain that enforcement and supervision of working conditions on board fishing vessels is close to non-existent. The police are in charge of supervision of foreign labor but do not see them as having the appropriate resources to investigate sufficiently and therefore the manager of the FFI has pointed out the need for an electronic mustering system that can register if legislation is being followed and therefore also inspect on foreigners and their working conditions.

The Faroese authorities, mainly the legislators, must in the near future decide what to do in order to make sure working conditions such as those on board Anita do not occur again. As of now, there is no law against social dumping through extremely low wages on board Faroese vessels, as long as the foreigners do not come to port more than 10-15 times per year or work within the 12 nm territorial limit. But seeing as inspection is as lax as it is one cannot be sure if even the equally lax rules of the Aliens Act are upheld. If the Faroes would like to be considered a maritime nation where insufficient working conditions are not tolerated, then changes must be made in
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legislation. Nevertheless, even though legislation was to change, there is still a need for better inspections so as to ensure that sufficient working conditions are upheld.

As pointed out by Elmar Højgaard, the Manager of FFI, an electronic system would make inspections easier and more efficient. (E. Højgaard, 2015) Therefore, there is a need for a system where all the relevant authorities bring in their areas of jurisdiction to make a system that can be used to among other things inspect foreigners and their working conditions.

As it is now all vessels must fill in information on mustering lists and send it to the FFI or one of the Sheriffs, which then sends it to the FMA, which is the chief supervising authority of mustering. In a new system the captain's of the vessels could use this electronic system to upload their crew lists, which the FMA and other relevant authorities, such as the police, have access to.

The FFI already uses satellites to determine vessels' whereabouts and therefore the FFI could register vessels' whereabouts and see whether these come to port more than the regularly determined 10-15 times per year or fished within the 12 nm limit. In addition to this, if the area of Aliens were to be taken under Faroese jurisdiction then a process should be implemented where all foreigners with and without work and residence permits were registered in this same system. The police or the relevant immigration authority could then easily cross reference the amount of times a vessel has come to port with the mustering lists and therefore determine how often a foreigner has come to port and then also cross reference this in the database with which foreigners have been granted work and residence permits (see Figure 2).
To make sure that contracts with foreigners are upheld the Faroes can look to Iceland and implement an agreement such as the one agreed between the ASI and the SA, where union representatives safeguard that the collective agreements are enforced. (Icelandic Confederation of Labour, 2013) By including union representatives in the same way as has been done in Iceland would therefore allow for more transparency.

Therefore, in coordination with the FFI, the FMA and immigration authorities, the Faroese labor unions could ensure a more effective way of guaranteeing sufficient working conditions. In addition to this, such a system could be used for a variety of activities with regards to e.g. safety, which could include tests, health cards, certificates and other documents that provide information on the seaworthiness of each fisherman, both foreign and Faroese.
6. Conclusion and recommendations

While the deep and unsettling emotions people feel when their loved ones go on a fishing expedition will never completely disappear, improvements in technology and safety measures surely make the worrying less. On an international basis both the FAO, the IMO and the ILO have contributed to safety and better working conditions on board fishing vessel, but the member states have had a hard time ratifying these and thus implementing them into their own legislation. Nonetheless, some countries implement their own legislation. For the Faroes, on the other hand, not all legislation applicable in their country is legislated on the Faroes, because the Danish government and Folketing govern the areas that are still under Danish jurisdiction.

The research done on the Anita case revealed several points with regards to the working conditions on Faroese fishing vessels and also challenges some of the notions put forth by international trade theories. While it is apparent, as Flanagan points out, that countries want to enhance their efficiency, it is more difficult to assert whether countries see increased labor standards as a means of enhancing this efficiency. This is based on the notion that increased labor standards often mean increased costs for countries’ companies and thus also their diminishing competitiveness. There are several examples of this both in the Anita case and with regards to Faroese labor standards.

First of all, several arguments have indicated that both for the investigation purposes and the health of the remaining crewmembers that it would have been best for Anita and its crew to come to shore immediately. But both the Law concerning Safety at Sea and the Maritime Law leave so much to interpretation that the authorities can more or less choose what they would like to do and to some degree so can the ship-owner if there is a choice where they can reduce the ship’s loss of time or costs. There is sufficient evidence that proves that the FMA could and should have reacted and called Anita to port so the accident could be investigated immediately; maritime inquiries made; and most importantly the remaining fishermen should have been given psychological relief immediately.
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Second of all, the foreigners who do not need work and residence permits on the Faroes are not subject to Faroese labor union contracts and thus their contracts are based on what they agree with the company they work for. The foreigners on board Anita did not have work and residence permits, which is not needed on board vessels that come to port less than 10-15 times per year and work outside the 12 nm limit. They were subsequently deported from the Faroes because of violations of the Aliens Act, but up until the accident the Indonesians on board were paid around 7 times less than their Faroese counterparts on the vessel Oknin.

But the problems on the Faroes are not just caused by deficient labor standards. A large part of the problem is caused by the jumbled and ineffective inspections by Faroese public authorities of foreigners’ working conditions. The two authorities having to do with fisheries, the FFI and the FMA, are not responsible for inspecting the work permits of the foreigners on board the vessels they inspect even though they have the most direct access to information concerning foreigners. This is the Police’s responsibility, but the Police have pointed out that they do not have many resources and according to the FFI the Police do not investigate fishing vessels enough.

6.1 Recommendations: The need for more effective inspections

With regards to the Law concerning Safety at Sea there is a need for a specific clarification on what “health” includes, seeing as this was subject to interpretation in the Anita case, as the FMA interpreted this as being physical health, which resulted in the remaining fishermen on board Anita putting their mental health at risk.

The Maritime Law is also not sufficient as it allows postponing of the maritime inquiry until the vessel is at a port where the ship’s loss of time or costs are less and if the event’s nature or extent does not speak against doing so. With regards to investigations of accidents on board vessels this is a somewhat unsettling stipulation, seeing as the “event’s nature or extent” is subject to interpretation. In the Anita case the vessel continued fishing presumably because the event’s nature or extent did not speak against doing so, which can be related to the point made in the Law concerning Safety at Sea where the crews health was not seen to be in danger.
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Therefore it is my understanding that to ensure that safety is upheld this law should be changed so that it would be more specific and include that prevention and investigation of serious accidents must always be prioritized ahead of prevention of a vessel’s loss of time or costs.

As pointed out by Elmar Højgaard, the Manager of the FFI, an electronic system would make inspections easier and more efficient. (E. Højgaard, 2015) The Police is the authority in charge of inspecting foreigners, but the police have pointed out that they do not have the resources for much investigation of these. The FMA is the authority in charge of working conditions and safety on board all vessels, but are not in charge of inspecting foreigners’ papers. The FFI is also not in charge of inspecting foreigners’ papers, but because of its inspection of fisheries is the authority that has the most encounters with fishing vessels. Therefore, I believe there is a need for a system where all the authorities bring in some of their resources to make a system that can be used to among other things inspect foreigners and their working conditions. And through inspection and enforcement the way can be paved for better working conditions.

The captain’s of the vessels can together with the FMA upload mustering lists to this system. The FFI could register vessels’ whereabouts and see whether these come to port more than the regularly determined 10-15 times per year or fished within the 12 nautical miles limit, which both require work and residence permits. A process should be implemented where all foreigners with and without work and residence permits were registered in this same system. The police or the relevant immigration authority could then easily cross reference the amount of times a vessel has come to port with the mustering lists, therefore determine how often a foreigner has come to port and then also cross reference this in the database with which foreigners have been granted work and residence permits.

To make sure that contracts with foreigners are upheld the Faroes can look to Iceland and implement an agreement such as the one agreed between the Icelandic Confederation of Labour (ASI) and the Confederation of Icelandic Employers (SA), where union representatives safeguard that the collective agreements are
enforced. (Icelandic Confederation of Labour, 2013) Therefore, in coordination with the FFI, the FMA and immigration authorities, the Faroese labor unions could ensure a more effective way of guaranteeing sufficient working conditions.

6.2 Limitations and future research

This thesis has focused on how labor standards affect the enforcement mechanisms available to Faroese public authorities in combatting insufficient working conditions on fishing vessels. During the research and especially the analysis there has been especially one area relating to this thesis that would be very interesting for future research. That is the area of foreign ownership of Faroese fishing vessels.

Many Faroese ship-owning companies have part foreign ownership, which is legal as long as the ownership does not exceed 1/3. However, in the Anita case it has been pointed out that although the formal ownership is majority Faroese, the control of Anita and its ship-owning company was mostly foreign. (M. Petersen, 1994) Seta is the ship-owning company that runs Anita. Christensen bought 2/3 of Seta through his company sp/f 88 for 4.7 million DKK in 2012. The remaining 1/3 was bought by the Spanish company Gallega de Pesca Sostenible for 2.2 million DKK. It has been pointed out that the partnership between Christensen and Gallardo is suspicious, seeing as Gallardo’s company has a huge network of Spanish ship-owning companies all over the world, while the Faroese Sp/f 88 is a small company with a share capital of 80,000 DKK. Nonetheless, Seta managed to make a 4.7 million investment, of which none of the money came from its own funds. Public records have shown that sp/f 88 was given a loan to complete the deal, but there are no records of who yielded the loan, although it has been presumed that the loan was acquired from the financially strong Spanish part-owner, Gallega de Pesca Sostenible.

An interesting question is, why a multinational Spanish company is interested in investing in a small Faroese company. But this can be reasoned by the fact that SETA by its ownership of the vessel Anita has a fishing license, which gives the company preferential treatment with regards to fisheries. This is because the Ministry of Fisheries writes out fishing licenses for free to private individuals or companies and these licenses follow the vessel if it is sold. This allows private
individuals, such as the previous owners of Anita to make a bargain selling fishing licenses that they were given free of charge from the state. (Lamhauge, 2014b) In addition to that in 2012 although paying out much less in wages than its counterpart Oknin, Anita did not pay any taxes. In 2012 Oknin sold fish for approximately 10,9 million DKK and paid around 5,5 million DKK for wages and their profits were 643,625 DKK, which resulted in them paying corporation taxes to the national treasury. The same year Anita sold fish for 9,7 million DKK and paid 1,5 million DKK in wages, but had a deficit of almost 3 million DKK. Therefore according to the balance sheet Anita had nothing to pay taxes from and therefore evaded paying taxes. (Lamhauge, 2014b)

Therefore it would be interesting to research what kind of profits a foreign company can make from partially acquiring a Faroese ship-owning company and thus also fishing licenses, which are given free from the Faroese government. It would also be interesting to make a comparative analysis of several Faroese companies to see if and how they change when their ownership changes from being Faroese to part-foreign. Is Anita the only example on the Faroese where foreigners are employed for much lower wages than their Faroese counterparts or is there a pattern that has become more and more prevalent on the Faroes as more foreigners have acquired parts of Faroese ship-owning companies? But most importantly, is there a possibility that the Faroes will see an even larger surge in cheap foreign labor on their fishing vessel in the future.
Appendix

Translated Interview Transcripts

- Foldbo, H.M. Interview concerning the psychological effects of working on board a fishing vessel after a death has occurred.
- Hentze, H. Interview about police investigations on fishing vessels
- Højgaard, E. Interview regarding the Faroese Fisheries Inspectorate (FFI)
- Højgaard, J. Interview about the Faroese Fisherman’s Union
- Olsen, Ó. H. H. Interview about the Faroe Marine Authority
- Petersen, K. Interview about the fishing vessel Oknin
- X. Interview with the managing director of ship-owning company X

Foldbo, Hans Mourits

Psychologist

March 13th, 2015

Phone conversation

*From a psychological perspective, what would be best for the remaining crew-members after the Anita accident?*

An accident such as this is horrible for anyone to witness. What often happens when one is a part of a traumatizing event is that often people are ok for a couple of days. But it is important to treat it. Sometimes it disappears all by itself, but if it has not disappeared within one month then it's important to use some techniques to accept it for what it was. It would be best to have a debriefing immediately after the accident, because an accident such as this, where the remaining crewmembers afterwards start thinking of what they were doing and what they should have done. In such a traumatizing event people often get binocular vision and therefore only experience the event in parts and do not experience a coherent story. Therefore those experiencing this will often have a lot of questions and therefore it is very important to have a debriefing where everyone explains what they did and what others were doing so that they get a coherent story. It is good best to have...
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someone from the outside leading the debriefing and being able to tell them that the feelings they have are completely normal, so that they relax.

In order to not get PTSD it is important that one gets help. Some can become afraid to die and everytime they go out onto the deck they are afraid of something going to happen, and if this is not treated it will get harder to get rid of. But here we are talking about 1 month after and it is ok to wait until after a couple of days to get treatment for PTSD. It is unsure how attentive a person is at doing the same work after such an event has occurred. In addition to that people often loose sleep or want to sleep all the time after such an event, and this therefore points towards the question of how secure it is to continue working. This is a difficult situation, but it would be better if the vessel sailed to shore immediately afterwards, because continuing as if nothing has happened is not ideal. Continuing to sail is not optimal, but it is difficult to say how harmful it will be.

Hentze, Hildur

Head of Section at the Police Investigation Division

March 19th, 2015

Phone conversation

*The Faroese Immigrations Office is mere a consulting authority and therefore has no information on how many foreigners are on the Faroes. Does the Police have any such information?*

No, we do not, because although they can reapply for extended work and residence permits at the Police stations on the Faroes, which then sends the application to the Danish Immigrations Service, they can also send their applications directly to the Danish Immigrations Service.

*And how about those foreigners that do not have work and residence permits on the Faroes? Does the Police keep an eye on what boats these foreigners are on and if they come to port more than 10-15 times, which is the limit for needing a residence permit?*

We do spot checks. This was done in the example of Anita and when we counted the number of times they had been to port they had been more than 10 times to port in one
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year, but less than 15 times, which according to the Danish Immigrations Service not is a breach of the law.

How do you determine which vessels have foreigners on board their vessels?
Anita was because of the accident, but otherwise we know because citizens inform us of something they know and then we go out and look into the case. We do not receive mustering lists, but are able to acquire them if we ask for them. When we do spot checks we ask for mustering lists and then do the checks.

How often do you do these spot checks?
It depends on what is happening on the political stage. If there is extensive media coverage then we go out to investigate. The FFI believes that we do not do this enough, but we have other affairs to take care of. We are only 10 employees in this section that has to do with investigations, which include all investigations on the Faroese, including crimes, murders, violence etc. and this result in our need for prioritization.

Is this not an increasing problem?
No, because if the vessels are registered on the Faroes and fish within Faroese limits then the foreigners must have work and residence permits and the ship-owners know this. And the punishment is quite harsh, because the foreigners can end up being deporting and not allowed back into the country. The ship-owners are also fined, but not as harshly as in Denmark, because the law has not been updated on the Faroes, while it has been updated in Denmark. In Denmark the ship-owner is given a fine of 10.000 DKK per month per foreigner, while on the Faroes this is 3000 DKK per month per foreigner.

Does it often happen that you come across vessels when the foreigners need work and residence permits?
The only examples I can remember are Anita and once with the passenger vessel Norrøna, which had some Polish people on board where there was some misunderstanding with regards to when they should apply for the permits. These were misunderstandings because Poles are allowed to work in Denmark without work and residence permits, but are not allowed to do so on the Faroes because the Faroes are not part of Schengen.
Højgaard, Elmar  
March 27th, 2015  
Phone conversation and e-mail communication

To what degree do you see foreigners on board Faroese fishing vessels and do you see more foreigners on board these vessels now than for 10-20 years ago?
The captains on board our vessels say that there is an increase in foreigners on board Faroese fishing vessels. Of those fishing vessels that do not come to the Faroes regularly 25 to 35% are foreigners. On some fishing vessels 85% of the crew is foreigners. We do however not know if these have work permits.

Does the Police request you to observe vessels that have foreigners on board?  
To my knowledge the Police has never requested us to observe specific vessels. And we do not think there is any inspection of foreign crews on board Faroese fishing vessels. A system is needed, where all vessels can muster electronically. The system should then check that all laws are being followed and the police should have access to the database and thus be able to conduct more effective investigation of foreigners.

Højgaard, Jan  
Chairpermon of the Faroese Fisherman’s Union  
October, 2014  
Personal Communication

What is your impression of the working conditions of foreigners on board Faroese fishing vessels?  
Difficult to get information on issues concerning foreigners on board Faroese fishing vessel, because it is kept secret. The fact is that today people are being exploited not only on board that Vessel (Anita), but there are also people on shore on vessel that at shore, in old shacks where they do all kinds of work. In order to do this they need work permits and many of them do not have work permits and largely this is merely ignored by the
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Police and the government. Police is under Danish authority, but the Faroese government is also able to do something about this. We wonder what is happening, why are people allowed to come here to work without work permits and when they get work permits why can’t they follow the contracts that are on the Faroese labor market and why can’t they be insured just as other citizens?

We (the Fisherman’s union) do not believe it is right to exploit people in any kind of way and we have therefore contacted other unions around the world in order to get help with this, because to us it doesn’t seem like Faroese authorities are interested in changing the situation. There can be others things that affect whether the authorities have a lot to do, but I’m extremely disappointed in how little human life is valued. When talking about this with the other unions they have often speculated on what the reason is for this, do people just not care or is there corruption involved? But one thing is for sure, IF the authorities wanted to make a change then they would.

_How long has this been a problem?_

Didn’t become a problem until 2008, when a ship-owner got a large fine in 2008. Several parliamentarians went to the Minister in charge of this to try to make him change his mind and not give the fine. The former Ministry of Internal Affairs was a ministry that did not work very well, just like today’s Ministry of Fisheries, which lacks a lot of transparency because whenever we ask about anything, we never really get any answers. But this isn’t the same for all the ministries. The Ministry of Trade and Industry works very well and therefore one cannot say that public officials on the Faroes are not useful.

_Do you have foreigners in the Faroese Fishermans union?_

Yes, from several vessel we have foreigners that have been members for many years and we’re glad to have them and they are glad to be here. There is no problem for them to be a part of the Fisherman’s union. The only reason other ship-owners do not want their foreign workers to be members of the Fisherman’s union is merely with one purpose and that is to make sure these men do not get the right pay.

Do you think most of the foreigners become part of the Fisherman’s union or not? No, because there is especially one ship-owning company, which has been prevalent in not
getting its foreign workers into the Fisherman’s union and this is X. Anita is merely a small part compared to the workings of X.

Højgaard also tells about one Filipino who contacted the Fishermans union. This man used to work on board one of Thor’s vessels and told the Fishermans union that he was told by Thor that he would not get paid by Thor until he returned to Faroes again. If they for example left the Faroes when they had time off they had 2-3 months pay outstanding and would not get the pay until they were back on the Faroes. Højgaard mentions that this is probably the reason for why Thor can claim that they are so good at keeping their employees.

When asked about the difficulty of getting into contact with their foreigners, especially Asian, Højgaard mentions that the foreigners are often afraid of saying anything, because this can hurt them in their home countries.

When asked about to what degree it is possible for the labor unions to get access to contracts Højgaard said that they have no more right to see them than regular citizens. In addition to this Højgaard mentions that in Iceland trade unions have a lot of power and are actually allowed to inspect contracts, because the authorities have granted them permission to do so. In Iceland, even though one is not a member of a trade union you are still charged a fee, because your trade union administers various things for you.

With regards to Anita, Højgaard says that the vessel was reported to the Police several times. Højgaard reported the vessel to both the Ministry of Fisheries, the Ministry of Trade, the bailiff, the FFI and others but nothing happened. According to Højgaard other ship owning companies have also reported Anita, because the vessel has disturbed their vessels because the crew on board Anita has not had any regard for other vessels, and when you are out fishing in the same area as other vessels there are certain rules you must uphold. But nothing happened and another ship-owner has said that the reason for why nothing was done to stop Anita was because the captain of Anita was the brother of the Permanent Secretary in the Ministry of Fisheries in the Faroes. Højgaard says that he
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has spoken to his colleagues in Denmark, who also have many things to sort out in Denmark, but they have never heard of such a “Wild West” as on the Faroes.

Olsen, Óli Hans Hammer
March 15th, 2015
Former managing director of the FMA
E-mail communication

What is a classification society and what work do they do for the FMA?
A classification society is an organisation that manages risk. The Classification societies that operate actively on the Faroes Islands are DNV-GL (Dot Norske Veritas), Bureau Veritas and Lloyds. There are many other classification societies e.g. Polski Rejestr Statkow, RINA, American Bureau of Shipping and others but these are not represented on the Faroes because there are no Faroese registered ships that are classed by them. The classification societies are technical experts that ensure that ships comply with regulations. Regulations are based on international conventions as enforced by the home-government on the Faroe Islands. The classification societies do also have their own regulations that often come in addition to the government regulations. The Classification societies organise major research projects within construction and risk management together with universities. Assessments and certification of Quality Management Systems (e.g. ISO standards) are also between of the core services the classification societies offer. On the Faroe Islands the work to survey safety, health and environment is delegated to the class societies for all ships that are 24 metres in length or more. The Faroese Maritime Authority (FMA) is, however, the main responsible for that the surveys and approval of ships is done in accordance with all applicable regulations.

The classification societies originate from the days, when the shipping industry was not regulated and many ships and cargoes were lost because the ships were not seaworthy. In 1769 the first classification society Lloyds was established in Edward Lloyd’s Café in London. Lloyd’s insurance wanted an organisation of technical experts to assess the condition of the ships in order to determine, if they should insure the ship and the cargo. The ships classed as class A (could sail over all oceans), class B (could sail along the coast
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of Britain and cross the North Sea) and class C (could sail on rivers and on protected waters). The technical experts who made the assessments were in captains. Later other classification societies were established. Bureau Veritas was established in 1828 and Det Norske Veritas in 1864.

The shipping industry was not regulated at all, when the classification societies were established the shipping industry was not regulated at all so all safety- and condition assessments were based on the surveys the class surveyors made. In 1872 the first legal requirement ever was put on ships. That was when Lord Plimsoll managed to get the majority of the English Parliament to enforce load lines on ships. Around 1900 some countries established Maritime authorities as government agencies. The purpose was to ensure safety of life at sea. When the maritime authorities were established

The classification societies have an organisation that is called International Association of Classification Societies (IACS)there are many classification societies around the world.

The FMA outsources inspections of health, safety and the environment of all vessels that are 24 meters of longer to classification societies. The FMA prioritizes the work that is not outsourced to the classification societies, which is worl having to do with all vessels under 24 meters.

**Are these classification societies in charge of inspecting foreigners’ papers?**

No, they are not. This is the captain and the ship-owner’s responsibility.

**Is the FMA responsible of checking how often a vessel comes to port of the Faroes in one year?**

No, this is registered by the ship-owning company and the FFI is informed whenever vessels land fish.

**Petersen, Ketty**

March 14th, 2015

Fisherman on Oknin

E-mail correspondance

What is you pay per month?
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If one is mustered on for all the fishing trips then it is ca. 400,000 DKK per year. We are out approximately 9 months per year.

X
managing director of a ship-owning company
October, 2014
Personal communication

When did you begin employing cheaper foreign labor on board your vessels?
In 1996, we were under Faroese flag but had acquired foreign quotas. Having cheap foreign labor on board is not seen as appropriate by Faroese people, but they are ok that the clothes, computers etc. that they use are made by the Chinese. It's all about what you see and what you do not see.

What was the reason for employing foreigners on board your vessels?
They are a cheaper labor force

How many foreigners do you currently employ?
Altogether we have around 420 employees of which half is foreign. We began by employing south Africans, Russians and Lithuanians.

Do the foreigners employed on your vessels have work and residence permits on the Faroes?
Work and residence permits are only required if you work inside 12 nm and come to port 10-15 times per year or more. There are no rules if you stay outside the 12 nm limit. Some of the ones who work on shore as well have work permits, men where work permits are not necessary they simply are not necessary.

Do you pay your employees different depending on which country they come from e.g. a Faroe Islander, a worker from the European Union or the Philippines?
We try to have the same people do the same work for the same pay.

It has been mentioned that the Law concerning Commercial Fishing should be changed so it
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will not be allowed to give a lower pay to a foreigner for the same work. What do you think about this change?

This would become a law making barriers, instead we should have more laws that allow for more possibilities.
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