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TRADE AND DEVELOPMENT BOARD  
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consider Means of Combating all Aspects  
of Maritime Fraud, including Piracy  
Geneva, 28 November 1983  
Items 3 and 4 of the provisional agenda

REVIEW AND ANALYSIS OF POSSIBLE MEASURES TO MINIMIZE  
THE OCCURRENCE OF MARITIME FRAUD AND PIRACY

Report by the UNCTAD secretariat

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## I. GENERAL INTRODUCTION

1. The Committee on Shipping at its tenth session, adopted resolution 49 (X) which decided:

"(a) to establish an ad hoc intergovernmental group to consider means of combating all aspects of maritime fraud, including piracy. This group is to meet not later than 1983 and to submit its recommendations to the Trade and Development Board; [and]

(b) to request the UNCTAD secretariat to prepare a comprehensive in-depth report on this subject, prior to the meeting of this group, with a view to facilitating its work."

This action by the Committee was the result of its decision 39 (IX) to consider and take appropriate action at its tenth session in regard to amending the programme of the Working Group on International Shipping Legislation, taking into account the views expressed at the ninth session. During the discussions at that session, it was proposed that, inter alia, "maritime fraud connected with bills of lading, charter-parties, marine insurance and general average should be the subject of further study.

2. Pursuant to a request in decision 39 (IX) to the Secretary-General of UNCTAD to enquire of the International Maritime Organization and other international organizations as appropriate, what actions such organizations were taking, and to report thereon with recommendations to the Committee at its tenth session, the secretariat prepared a report entitled "Future Work" (TD/B/C.4/244) wherein it briefly reviewed the substantive issues involved in, inter alia, maritime fraud, described the action being taken at the time by other international organizations, and set forth recommendations for future action.

3. In addition to several recommendations for reform concerning specific maritime fraud problems experienced in international shipping, and on the basis of a review of the activities of the other relevant international organizations in the field, the report contained an overall recommendation:

"... that, in the light of the existing international programmes to suppress maritime fraud, there is a need for a fundamental in-depth analysis of possible structural reforms, which should be made in an international forum such as UNCTAD where maritime matters in the context of trade and development fall within its primary jurisdiction, and where various forms of commercial documentation involved in maritime fraud are already under study as part of the existing programme of work."

4. On the basis of the Committee's consideration of the secretariat's report on maritime fraud (TD/B/C.4/244), the Committee adopted the relevant text of resolution 49 (X) cited above. Subsequently, resolution 144 (VI), unanimously adopted at UNCTAD VI, urged the ad hoc Intergovernmental Group on Maritime Fraud and Piracy to expedite its work.

5. The present report has been prepared in response to the request in resolution 49 (X) for preparation of a "comprehensive in-depth report on maritime fraud, with a view to facilitating the work" of the ad hoc Group. The report takes the preliminary analysis of document TD/B/C.4/244 one step further by providing:

(a) A more complete analysis of the different types of fraud currently being experienced in international shipping;

(b) An up-dated review of the activities of other international organizations in combating maritime fraud; and

(c) An in-depth analysis of the possible courses of action open to the international community to combat maritime fraud, involving actions that can be taken at both the governmental and private levels, including an analysis of the tentative recommendations in document TD/B/C.4/244.

6. In reviewing the recommendations made in this report, it should be borne in mind that it is not intended to be a guide to fraud prevention at the level of individual private parties. Such advice concerning the amount and nature of adequate investigation of trading partners, carriers, charterers, etc., the types of documents needed for international sale payments, as well as other relevant factors, is already available in various publications and seminars and thus, although discussed in connection with various possible reforms, such matters will not be repeated in full in the report. Rather, in view of the nature of the meeting of concerned governments, the report has placed emphasis on potential reforms which could be effected to the system and manner in which international trade and shipping is currently conducted. That is not to say, however, that all the suggestions made in the report require governmental action. On the contrary, many could be instituted purely by the action of private parties. However, in view of the primary interest of governments to ensure that their national economies function smoothly, without the widespread commission of fraudulent, violent or otherwise illegal acts, it is most appropriate that representatives at the Intergovernmental Group (IGG) be informed of the various types of reforms that can be effected to combat maritime fraud and piracy. Governments will thereby be in a better position to decide not only what reform actions are necessary at the governmental and intergovernmental levels but also whether there are steps that can be taken to encourage private parties within their jurisdiction to implement reforms at the private level.

7. As a combined result of the variety of the topics covered by the terms maritime fraud and piracy and the fact that the Committee on Shipping resolution 49 (X) specifically requested the preparation of "a comprehensive in-depth report on this subject", the report is necessarily rather lengthy. Also, the diversity of the types of maritime fraud, in addition to piracy, has as a result that most of the possible reforms - particularly those that are designed directly to prevent the occurrence of fraud and piracy - can usually only solve a limited range of different types of fraudulent acts or piracy. Consequently, Part IV of the report containing an analysis of possible actions to minimize the occurrence of such acts, is relatively compartmentalized in nature. In this respect, Part IV is for the most part a compendium of separate possible reforms available for implementation, the sum total to be recommended for implementation by the IGG being dependent on an assessment by the IGG of the relative desirability and feasibility of each reform in conjunction with an assessment of the overall range of reforms deemed necessary to implement.

8. Consequently, the task of the IGG is to review the reforms, decide which reforms are desirable and, depending on whether they are already being or can be implemented privately or require governmental or intergovernmental action, to decide what measures are necessary to ensure that the desired reforms are implemented. In this respect, the report suggests in respect of each reform a possible action open to the IGG.

9. Finally, it must be acknowledged that in preparing this report the UNCTAD secretariat received the valuable assistance and co-operation of several international and national organizations, at both the governmental and private levels, for which it expresses sincere appreciation. In particular, the secretariat has received close support and co-operation from the International Maritime Bureau, which has kept it informed of the Bureau's own activities in combating fraud, and has assisted it in understanding various technical aspects of maritime fraud.

## II. SCHEMATIC ANALYSIS OF MARITIME FRAUDS AND PIRACY

A. Introduction

10. Maritime fraud can occur in many forms. It exists whenever someone intentionally deceives another as to some fact or circumstance in connection with maritime activities which enables him to obtain money or goods unjustly. It frequently involves the misuse of commercial contracts and documents, such as bills of lading, charter parties and marine insurance policies.

11. Although lacking any generally accepted definition, the term is usually used to include any dishonest act in connection with maritime affairs even though such acts may not necessarily involve acts of concealment, deceit or misrepresentation typically thought to constitute elements of fraud in a legal context. Thus, acts of simple theft, piracy and barratry <sup>1/</sup> are generally included within the term. <sup>2/</sup> The International Chamber of Commerce (ICC), in a booklet entitled Guide to the Prevention of Maritime Fraud, describes maritime fraud as occurring when any one of the various parties involved in an international trade transaction - whether as buyer, seller, shipowner, charterer, ship's master or crew, insurer, banker, broker or agent - "succeeds, unjustly and illegally, in obtaining money or goods from another party to whom, on the face of it, he has undertaken specific trade, transport and financial obligations. In some cases, several of the parties act in collusion to defraud another." <sup>3/</sup>

12. Given the variety of dishonest acts generally included within the term "maritime fraud", it is difficult not only to analyse them in any systematic manner, but also to consider in detail every different variation of dishonest act that can occur. For the purposes of this report and for the consideration of the subject by the IGG, the general area has been divided into six major categories: (1) documentary frauds; (2) charter party frauds; (3) marine insurance frauds; (4) deviation frauds; (5) miscellaneous frauds; and, (6) piracy.

B. Documentary frauds

13. Although various documents can be used in connection with the commission of maritime fraud, the most important is the bill of lading with its well recognized functions of being a receipt for the goods by the carrier, evidence of the contract of carriage for the goods and, most importantly, a document of title to the goods. As with many types of commercial activities, there are

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<sup>1/</sup> Barratry refers to wrongful acts wilfully committed by the master or crew to the prejudice of the shipowner or the charterer.

<sup>2/</sup> E.g. resolution 49 (X) of the Committee on Shipping, in deciding upon the establishment of the IGG, determined that it should consider means of combating "maritime fraud, including piracy". When the matter was considered within IMO, an ad hoc Working Group was established on "Barratry, the Unlawful Seizure of Ships and their Cargoes and other forms of Maritime Fraud".

<sup>3/</sup> Publication 370, 1980, p. 3. See also, Kapoor, P. "Definition and classification of maritime fraud", Lloyd's Maritime and Commercial Law Quarterly, February 1983, pp. 38-39.

"grey areas" in the international sale of goods between clearly identifiable fraud, such as would occur in the forgery of a bill of lading for non-existent goods or the shipment of rubbish in place of the goods specified in the bill of lading, and breaches of contract which border on fraud, such as would be the case in the shipment of lower quality goods than that specified in the contract of sale.

14. Consequently, at one extreme bills of lading on the standard form of well-known shipping companies, or completely fictitious companies, are forged by dishonest sellers for completely non-existent goods. The vessel on which the goods are reputedly loaded may actually be in the port or it may be on the other side of the world undergoing repairs in drydock. Alternatively, the vessel could be completely fictitious. Additional documents which normally accompany the bill of lading in any commercial transactions, such as an invoice for the sale price, a marine insurance policy for the transport, as well as certificates of origin and inspection, are also forged. Since most such documents are relatively simple pieces of paper without elaborate design <sup>4/</sup> they are easy to forge and it is common knowledge that bills of lading forms are readily available for sale "on the street".

15. In any event, once all the documents have been forged by the seller, the bill of lading - as a document of title for the "goods" - is sold along with the false accompanying documents to an innocent buyer who will then expect to take delivery at the intended port of destination. When the vessel fails to arrive, or does so without the goods, and the buyer discovers the fraud, the seller will have disappeared.

16. An alternative to the above scenario is for the seller to ship goods of a quality or quantity lower than that specified in the contract of sale with the buyer. If the difference in quality or quantity is such as to be noted by the shipping company on the bill of lading, then the bill is subsequently altered to conceal the fact. Usually the difference in quality or quantity is of such a nature as not to be detected by the carrier. This can frequently be the case with goods pre-packed in containers. A "valid" bill of lading can thereby be presented to the buyer together with either perfectly "authentic" documents, such as the insurance policy and invoice, or forged ones, such as would be the case with an inspection certificate. It is not uncommon for rubbish to be shipped in this manner to represent the goods.

17. Such frauds are successful because of the development of a trading system which relies on a shipped bill of lading (together with accompanying documents) to represent the goods and which enables the sale of those goods to be effected by the transfer of the documents. As it is impracticable for the buyer personally to inspect the goods before paying for them, whether at the port of loading - which is usually complicated by the long distance involved - or at the port of destination - which is often resisted by sellers who wish to receive payment before that time, payment for the goods is effected by presenting the documents. On the strength of the carrier's affirmation on the bill of lading that the goods are loaded on board his vessel and relying on the relatively

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<sup>4/</sup> Some inspection agencies have recently developed difficult-to-forge certificates.



superficial control of the goods effected by the carrier at the time of loading, the buyer is prepared to pay the purchase price for the goods in exchange for the documents representing the consignment. At most, the buyer might insist on presentation of an inspection certificate, indicating that an independent inspection agency has surveyed the goods to determine the quality, quantity and, perhaps, their loading on board the named vessel.

18. As a generalization concerning this type of documentary fraud involving the seller as perpetrator of the fraud, it has been said:

"The common features of documentary frauds, subject to rare exceptions, are as follows:

- (i) c.i.f. or c & f contract of sale,
- (ii) payment by means of documentary credit,
- (iii) new or untried trading partners,
- (iv) shipowner and crew are usually innocent,
- (v) victims tend to be from developing countries,
- (vi) victims have no recourse against the underwriters or carriers," 5/

19. As indicated above, such documentary sales of goods are frequently effected through the international banking system via the opening of a letter of credit by the buyer with a bank in his own country which in turn arranges with a bank in the seller's country to pay the purchase price of the goods to the seller upon presentation of the required documents. The exact arrangement will depend on the agreement between the buyer and seller at the time of entering into the contract of sale - the name of the bank in which a letter of credit is to be opened and to which specified documents are to be presented all being agreed upon. The documents which the buyer will require will vary according to the circumstances, but they will invariably include the bill of lading. The buyer, when requesting his local bank to open a letter of credit, will specify the exact documents required and the specifications of the sale. Pursuant to the letter of credit instructions, the bank paying on the credit in the seller's country will inspect the documents presented by the seller to ensure that they meet precisely the requirements stipulated by the buyer in the credit. The paying bank will usually be effecting this inspection pursuant to the Uniform Customs and Practice for Documentary Credits (UCPDC), issued under the auspices of the International Chamber of Commerce (ICC), under which it undertakes only to inspect the documents on their face and not to determine whether the goods actually exist or have been shipped. 6/

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5/ "A Profile on Maritime Fraud", presentation by the IMB, to the IUMI Cargo Workshop on "Crime in International Trade", 13 September 1982, p. 2.

6/ See para. 113, infra.

20. Another form of documentary fraud involves the misuse or forgery of the shipping documents by the buyer. Not infrequently, vessels arrive at their destination before the bills of lading reach the consignees. Strictly speaking, the carrier under these circumstances should warehouse the cargo until the bills of lading can be produced. However, for commercial reasons many carriers release the goods against letters of indemnity. The frauds occur when an unscrupulous buyer, having cleared his cargo against a letter of indemnity, subsequently sells the bill of lading to an innocent buyer. When the new holder of the bill of lading produces the same and demands delivery, the carrier is caught in an unenviable position. He usually finds that the alleged consignee is untraceable. Subsequently, the carrier is obliged to compensate the person presenting the bill of lading.

21. Another variant of the buyer documentary frauds can occur in payment-against-documents arrangements, whereby the seller ships the goods and transmits the documents to the negotiating bank in the buyer's country for presentation against payment. In such circumstances, it is intended that after obtaining the documents, the buyer will present them to the carrier's agents and clear the cargo. However, in order to assist with the customs formalities, sellers usually forward non-negotiable copies of the bills of lading and copies of the invoices directly to buyers and some unscrupulous buyers simply forge originals of the bills (including forged bank stamps), present these to the carrier's agents, and clear the cargo. At a later stage, the seller realizes that the original documents are still with the bank and the goods have been cleared. He promptly brings an action against the carrier for wrong delivery of cargo.

22. Another - albeit less frequent - type of documentary fraud involves forged letters of credit. This type of relatively sophisticated fraud consists of the seller and the buyer acting in collusion as part of a syndicate which sends forged letters of credit appearing to come from a bank in one country to a corresponding bank in another country. It is understood that most syndicates do not bother producing their own letter of credit forms, rather they usually obtain genuine blank forms from a bank from one of its employees. With the form would also come details of the bank's numbering system, which is an essential requirement if the corresponding bank is to accept the forgery.

23. The syndicate then obtains the required shipping documents mentioned in the letter of credit - either by forgery or by shipping rubbish, presents the documents to the paying bank on the letter of credit, collects the purchase price and disappears. In the meantime the paying bank forwards the documents to the issuing bank to obtain reimbursement, only to find that there had been no valid credit. An essential element in this type of fraud is to avoid having the paying bank recheck with the issuing bank to confirm the existence of the credit. This confirmation is usually done only when the credit exceeds a certain high amount and thus this type of fraud frequently occurs for an amount slightly less than \$1,000,000. It is understood that with the increased incidence of this type of fraud, banks are altering their procedures in this respect.

24. Another type of fraud involving false letters of credit has been known to occur where potential buyers commence normal negotiations to buy goods and then suddenly send a forged letter of credit direct to the seller. Apparently a few sellers have been caught by this practice and shipped the goods before confirming the existence of the credit with the named corresponding bank. Once the fraud has been discovered by the bank's refusal to pay on the credit, the goods are on the high seas and on reaching the port of destination the goods have frequently disappeared from the docks in spite of recovery efforts by the shipper.

C. Charter party frauds

25. Charter party fraud is either a fraud committed by the charterer against the shipowner, through non-payment of hire, or a fraud committed by the shipowner against the charterer or cargo interests by charging extortionate additional freight. The variations to this theme include a sub-charterer defrauding the time charterer, shipowner and cargo interests.

26. In the charterer perpetrated frauds, a charterer time (or even bareboat) chartered a vessel, where the hire is to be paid at stated intervals, and then the charterer either sub-charters the vessel out on a voyage basis as the disponent owner or opens a liner service. In either event, the charterer holds himself out as ready and willing to carry the goods of others. As a usual operating procedure a particularly advantageous freight rate is offered to potential shippers. As soon as the cargo is loaded, the charterer issues bills of lading, collects freight and defaults on further hire payments. The usual pattern is for the charterer to disappear or to go into liquidation. By this time the vessel is loaded with cargo and the shipowner is faced with a difficult position. If the bills of lading have been signed by or on behalf of the master without any qualifications or reference to a charter party, the shipowner is obliged to deliver the cargo to its destination. Some owners manage to obtain extra freight payments from the cargo interests whilst others are forced to absorb the loss. Further problems may occur as the fraudulent charterers usually leave a string of creditors at loading ports, whose main remedy lies in arresting the bunkers supplied by the charterers.

27. Some cautious owners insist on a clause in the charter party that the bills of lading will only be issued on freight collect terms in order to have the possibility of a lien on the cargo for unpaid freight. The dishonest charterers simply substitute these bills for a fresh set market "freight prepaid", collect the freight and disappear. This substitution is done after the vessel sails and without the knowledge of the shipowner. Only when the vessel reaches the discharge port does the master discover the switching of the bills.

28. It should be noted in connection with a consideration of such frauds that most shippers are usually unaware of the existence of charter parties whilst shipping goods. The bills of lading seldom make reference to a charter party.

29. Frauds committed by shipowners against charterers or cargo interests are predominant in recessionary times. In a typical scenario, a chartered vessel puts into a convenient way port for alleged repairs and is subsequently arrested by an "accommodating creditor" for unpaid bills. The vessel is sold by a court order. Since generally under such circumstances the purchaser takes the vessel free of all encumbrances, including contract of affreightment obligations of the previous owner - even as to the cargo on board, he is thus in a position to demand additional freight from cargo interests. At a later stage it transpires that the previous owner, the accommodating creditor and the new owner are all part of a parent company.

D. Deviation frauds

30. In essence this category of fraud consists of theft of the cargo. This is effected by the shipowner deceiving the cargo owner into chartering the vessel to carry the latter's goods to an agreed destination. However, the vessel deviates en route to another destination where the goods are sold for the benefit of the shipowner. Subsequently, the vessel either is intentionally sunk (which then overlaps with the category of frauds described in the next section, paragraphs 32-34) or "disappears" by changing its name,

nominal ownership and country of registration. This type of fraud thrives near areas where, either because of war, civil disorders or other factors, there are port areas not under close supervision and control, thereby permitting such illegal sales to occur without great risk of intervention. The establishment of free trade zones in port areas of some countries can sometimes facilitate this process to the extent that government supervision or customs control is minimized for transactions involving goods having been landed which are subsequently re-exported. In addition, it is also understood that court proceedings in some countries permit disposal of cargo upon application of only the shipowner terminating the voyage there, or after only inadequate notice being given to cargo owners. 7/

31. Not all deviation frauds are acts premeditated from the time of soliciting the cargo. The accidental cases arise out of charter party disputes where the owner is not paid the charter hire, or where the port waiting period is excessive. The port congestion of the mid-1970s in West Africa was a major cause of deviations. Many charterers voyage chartered vessels without realizing the possibility of congestions. Vessels were delayed awaiting berths for several months and a number of charterers could not keep up with demurrage payments. Many shipowners resorted to warehousing the cargo and abandoning the voyages, whilst some owners seized this opportunity to sell the cargo to recoup their losses.

#### E. Marine insurance frauds

32. The types of fraud involving marine insurance are quite diverse. Many frauds of this type involve a fraudulent misrepresentation or non-disclosure to the insurer of a material fact - usually concerning the value of the object insured but also including its very existence. This type of fraud can occur in both hull insurance and cargo insurance. Such frauds may thus take the form of the scuttling (intentional sinking) of an over-insured vessel, which benefits the shipowner in his claim for the loss from the hull insurer for more than the vessel is worth, or the scuttling of a vessel with over-insured or non-existent cargo which, in addition to the hull claim, enables the cargo owner similarly to gain in his claim from the cargo insurer for the excess over the real value - or for the entire claim in the case of non-existent cargo. Variations from the above scenarios are numerous. For example, instead of involving the connivance of the assured as in the latter case, the shipowner can use the scuttling as a means of hiding the fact that he has stolen the cargo and sold it clandestinely before the sinking, 8/ which can also be classified as a deviation fraud discussed in the previous section of this report. In such cases the shipowner profits from the overvaluation of the hull on the insurance policy as well as from the proceeds of the theft. In order for the insurer to avoid paying such claims (assuming a prima facie case has been made by the assured for loss from an insured peril), he must prove that the vessel was intentionally sunk as well as the complicity of the assured in the act, which is often

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7/ Cf. Ellen and Campbell, International Maritime Fraud, (London, Sweet and Maxwell, 1981), p.118.

8/ E.g. As was attempted in the case giving rise to Shell International Petroleum Co. Ltd. v. Gibbs (The "Salem") [1982] 1 Lloyd's Rep. 369; Lloyd's Law Reports Part 4 [1983] Vol. 1, page 342.

factually a difficult task, in that evidence is frequently unavailable and, in some national legal systems, legally difficult as well. <sup>9/</sup> Yet another variation of the scuttling scenario is to arrange an entirely bogus disappearance, whereby the vessel later "reappears" under the guise of a new name and nationality.

33. In addition to the scuttling related frauds, there are numerous and frequently cited frauds involving cargo insurance claims. One type can occur where there has been an intentional overstatement as to the size of an insured consignment. As a result of the overstatement, a claim can be made by the consignee against insurers for alleged non-delivery of what was, in fact, the non-existent part of the consignment. Such frauds have often occurred in connection with an arranged over-invoicing by an accommodating seller at the behest of a buyer wishing to obtain excess foreign currency from the central bank of his home country which has imposed currency exchange controls.

34. Other types of cargo insurance frauds frequently involve claims for loss and damage of cargo based upon survey certificates which have either been fraudulently made by the claimant or a co-operating surveyor, or result from surveyors generally overstating the extent of losses. In addition to being to the prejudice of insurers, this type of loss has repercussions on the shipowner, to the extent that successful recourse actions have been brought against him by the subrogated insurer, as well as on other cargo interests, to the extent that such exaggerated or false claims result in increased premiums.

#### F. Miscellaneous frauds

35. Within this category of frauds can be included various types of agency-related frauds, mortgage frauds and diverse frauds committed in connection with port activities.

36. Agency frauds arise from the activities of shipping agents generally, whether acting as shipbrokers, freight brokers, ship's agents, etc. Among other activities, as intermediaries between two parties (the shipowner on the one hand and the charterer or other type of cargo owner on the other), they are in a position to enable known perpetrators of frauds to continue operating by failing to undertake adequate investigations, if not deliberately hiding their proper identities, before fixing a charter or accepting cargoes for shipment and/or prepaid freight. In this respect, they can frequently be either accomplices or unwitting pawns in the charter party frauds described in section C above (paragraph 26) where a charterer, either as disponent owner or liner operator, offers the chartered vessel to carry the goods of others, obtains prepaid freight and disappears while failing to pay charter hire to the shipowner. In addition, they will frequently be the conduit for large sums of money or will be in a position to direct their disposal, whether as part of charter hire payments or, in the case of agents for a liner service, as prepaid freight. In such cases, reports have been received of shipbrokers diverting funds and simply disappearing. In addition, frauds have occurred where persons have successfully posed as reputable and well-known shipbrokers in order to direct charter hire payments to their controlled accounts. Also ship's agents are in a position to issue false bills of lading as well as back-dated or post-dated bills of lading.

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<sup>9/</sup> Pursuant to British jurisprudence, it would appear the insurer not only bears the burden of proof as to the assured's privity to the scuttling but is also faced with the need to meet a high standard of proof in establishing his defence to the claim. See Hazelwood, S.J., "Barratry - the scuttler's easy route to the 'golden prize'" Lloyd's Maritime and Commercial Law Quarterly, Vol. 3, 1982, p. 383.

37. Mortgage frauds arise from the shipowner, as the mortgagor, failing to meet the mortgage payments and deliberately avoiding jurisdictions where the vessel might be subject to arrest by the mortgagee. As part of such frauds, the vessel may be reregistered in a new country, particularly one that does not require a deletion certificate from the previous country of registration (which usually would require notice to the mortgagee before being granted). Such reregistration in a new country without being subject to any recorded mortgages could permit the sale of the vessel to an unsuspecting buyer for the entire benefit of the shipowner or, for that matter, the obtaining of additional funds by taking out of a new mortgage.

38. Maritime frauds committed in connection with port activities are usually not a separate category of fraud but are part of other maritime frauds, particularly documentary and marine insurance frauds. Thus, reports have been received of letters of credit being opened with the requirement to present a "bill of lading" without a notation for it to be an "on board" bill of lading. Through corruption at the port level, received for shipment receipts have been obtained from local port authorities for either non-existent or lower quality (or quantity) goods. These receipts have then been presented to the shipowner's agents who issued received for shipment bills of lading, which were successfully presented for payment under the letters of credit.

39. Similarly, fraudulent supporting documents, such as health or sanitation certificates, are often, as a result of corruption in the port are, easily obtainable for otherwise non-conforming goods, which are in turn submitted with the other documents for payment on a letter of credit. Intentionally inaccurate tallying can also occur in connection with marine insurance frauds. In particular, false short landing certificates can be obtained to document fraudulent insurance claims for non-delivery.

40. Theft and, in particular, pilferage are major problems in many port areas. Inadequate packing, bad storage arrangements, handling delays and security controls all lead to theft problems in ports. Lax shipboard security can also be responsible for pilferage losses during transport of the cargo. Theft losses can, if left uncontrolled, lead to a significant negative impact on the national economy of developing countries. Besides being accountable for increases in freight costs and insurance premiums, theft losses can cause production delays and loss of market resulting from missing goods.

41. Lax controls by masters in many countries in properly checking goods received for shipment and clausuring bills of lading concerning the quantity and apparent order and condition of goods shipped, either leads to otherwise avoidable claims against the shipowner for loss or damage or facilitates the commission of frauds when the buyer purchases the goods on the basis of a clean bill of lading. On the other hand, attempts by masters to clause bills of lading results in pressures by shippers to refrain from doing so. The usual result of the shipper giving the shipowner a letter of guarantee in order to cover the shipowner's potential losses, can be the commission of fraud against the buyer. Also, the shipowner may well find the shipper untraceable or bankrupt when it comes to enforcing the terms of the letter of guarantee.

G. Piracy

42. The term "piracy" is frequently used in a liberal sense to refer to a broad range of violent acts at sea which do not all correspond to the term as defined in international law. <sup>10/</sup> Piracy is defined in article 101 of the 1982 United Nations Convention on the Law of the Sea, which reiterates the wording of article 15 of the 1958 Geneva Convention on the High Seas, which in turn codified customary international law on the point, as follows:

"Piracy consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

43. In actuality, the increasing number of reported thefts, robberies with violence, assault and even murder, which have been perpetrated by bands of anything from three or four up to about 30 men operating from a variety of craft, including canoes, outboard-powered boats and high-speed launches, are as likely to occur within a port area or territorial sea, where ships are waiting to enter a port or traverse a strait, as they are to occur on the high seas. In this sense, reported incidents against merchant shipping appear to involve land-based gangs.

44. It also appears that the reported incidents are centred in specific regions where there is a relatively high concentration of shipping traffic in combination with insufficient police enforcement, arising either from local economic and social conditions or because of the presence of extensive coastal areas not fully under central government control.

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<sup>10/</sup> E.N. Brown, "Maritime malpractices and piracy under international law" Maritime Policy and Management, 1981, Vol. 8, No. 2, pp. 99-107.

## III. REVIEW OF ACTIVITIES OF OTHER INTERNATIONAL ORGANIZATIONS

45. Set forth below is a brief review of various organizations that have either a direct or indirect involvement in combating maritime fraud and piracy. Although not necessarily comprehensive of all possible organizations, (particularly at the national level) that have dealt with the problem of maritime fraud, or that provide a service useful to fraud prevention, the list is intended to provide an over-all view of the type and variety of organizations concerned.

A. International Maritime Organization

46. The eleventh and twelfth sessions of the International Maritime Organization (IMO) considered the subject of "barratry, unlawful seizure of ships and their cargoes and other forms of maritime fraud". This was first raised by a note verbale of 20 October 1979 from the Government of Lebanon requesting that the subject be placed on the agenda of the eleventh session of the Assembly. Citing the increased occurrence of such acts and their prejudicial effect on international shipping and the interests of shippers, consignees, insurers, etc., the Government of Lebanon suggested that IMO should consider: (i) taking the requisite effective measure to prevent and suppress such actions; and (ii) referring this matter to the Legal Committee of IMO for the preparation of an international convention for the suppression of criminal barratry and the unlawful seizure of ships and their cargoes. 11/

47. After considering this subject at its eleventh session, the IMO Assembly, in resolution A.461(XI), requested the IMO Council to provide for a study of the subject in order to determine the steps IMO should take and to report back to the twelfth session of the Assembly. The Council decided at its forty-fourth session (June 1980) to establish an Ad hoc Working Group on Barratry, the Unlawful Seizure of Ships and their Cargoes and Other Forms of Maritime Fraud to study the nature and prevalence of such acts, and the legal administrative and other actions being taken by States, international organizations and other interests concerned, and to make recommendations to the Council as to the action IMO should take. 12/

48. The Ad hoc Working Group met in Paris, on 24 and 25 November 1980, in co-operation with the International Chamber of Commerce (ICC). The Group recommended a set of draft provisions designed to form the operative paragraphs of a draft resolution which the Council might propose to the Assembly. The Council, at its forty-sixth session in June 1981, endorsed the Group's proposals and recommended them to the Assembly in the form of a draft resolution, which the Assembly considered at its twelfth session (November 1981) and adopted with minor amendments as resolution A.504(XII) on 20 November 1981.

49. In summary, the resolution recognized that self-regulation by commercial and industrial interests can play a beneficial role in combating maritime fraud and noted that these interests were aware of the problem and the need to co-operate among themselves as well as with Governments and intergovernmental organizations, and that positive results had been achieved through the promotion of studies,

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11/ IMO document A X1/36.

12/ See IMO document C XLIV/D.



training schemes, seminars and publications. It also welcomed the work of the ICC, in particular in establishing the International Maritime Bureau (see paragraphs 52-55) and it urged other interests and organizations to co-operate with the ICC and the International Maritime Bureau (IMB).

50. In addition, the resolution recognized that implementation of IMO's conventions and other appropriate international instruments relating to maritime safety can contribute to the prevention of maritime safety, and thus it invited Governments to ratify the relevant conventions and instruments. It also invited Governments to revise as necessary their national laws relating to the prevention and suppression of maritime fraud, having particular regard to (a) the administration of national registers, including the transfer of ownership or nationality or change of names of ships, (b) documentary requirements, bearing in mind that measures relating to documentation must not prejudice the facilitation of international maritime traffic and trade, and (c) appropriate legal penalties for acts of maritime fraud. It further invited Governments to examine the adequacy of their national law enforcement procedures and resources with a view of the need for effective prevention, investigation and prosecution of maritime frauds. The resolution also urged Governments to co-operate together and with intergovernmental organizations and other interests in order to co-ordinate actions, including the exchange of information and appropriate co-operation with the IMB. Lastly, it invited Governments and appropriate international organizations to inform the IMO Secretary-General of legal, administrative and other action taken to implement the aims of the resolution. The full text of the resolution has been presented in the report by the UNCTAD secretariat entitled "Future Work" (TD/B/C.4/244), annex I.

51. Also, pursuant to a request by Sweden, the IMO Maritime Safety Committee developed at its 48th session in June 1983 a draft resolution on piracy and armed robberies against merchant ships. In considering this topic, which was brought to the attention of IMO (by Sweden) as a result of recent increases in the number of violent attacks against merchant shipping in coastal areas <sup>13/</sup> of certain regions of the world, the Committee had before it various submissions by non-governmental organizations, in particular a report by the International Maritime Bureau (see paragraphs 52-55, *infra*.) reviewing, *inter alia*, the nature of the attacks and measures implemented by private parties and providing some conclusions as to possible governmental action. The operative paragraphs of the draft resolution, which will be submitted to the 13th regular IMO Assembly for adoption, read as follows:

"1. URGES Governments to take, as a matter of the highest priority, all measures necessary to prevent and suppress acts of piracy and armed robbery from ships in or adjacent to their waters, including strengthening of security measures;

2. INVITES Governments and interested organizations to advise shipowners, ship operators, shipmasters and crews on measures to be taken to prevent acts of piracy and armed robbery and minimize the effect of such acts;

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<sup>13/</sup> However, attacks have been reported on ships up to 20 miles out to sea.

3. FURTHER INVITES Governments and organizations concerned to inform the Organization of action taken to implement the aims of the present resolution;

4. RECOMMENDS Governments and organizations concerned to inform the Organization of any act of piracy or armed robbery committed against a ship flying the flag of their country, indicating the location and circumstances of the incident;

5. REQUESTS the Secretary-General to circulate to Governments and organizations concerned the information referred to in paragraphs 3 and 4 above;

6. FURTHER REQUESTS the Council to keep this matter under review and take 14/ such further action as it may consider necessary in the light of developments."

B. International Chamber of Commerce/International Maritime Bureau

52. The International Chamber of Commerce (ICC), which co-operated with IMO in convening the Ad hoc Working Group on Barratry, has also undertaken certain activities in relation to maritime fraud. In connection with its activities in this field, the ICC holds the conviction "... that self-regulation in international trade is in the best interest of the world trading community". 15/ It has published a pamphlet entitled Guide to the prevention of maritime fraud, 16/ which briefly explains the nature, types and characteristics of maritime fraud and offers advice on precautionary measures to be taken by interests involved in international trade. Furthermore, in 1981, the ICC established the International Maritime Bureau (IMB), which is a non-governmental non-profit-making organization designed as a focal point and a central clearing house for information concerning maritime fraud activities to enable individuals, corporations and governments involved in international trade and maritime affairs to avoid being victimized by such activities.

53. Membership in the IMB, which is situated in London, is by annual subscription, although ad hoc assistance can be obtained. It is understood that approximately 40 per cent of the members are from developing countries, 50 per cent from developed-market-economy countries, 7 per cent from socialist countries of Eastern Europe and 3 per cent non-governmental international organizations.

54. The IMB's stated objectives are: (1) To prevent fraud and other suspect practices in international maritime transport; (2) To receive information provided by commercial and other interests, including governmental and international agencies, relating to fraudulent or other suspect practices in international maritime transport, and to collate this information as a basis on which to advise members and the industry generally; (3) To suggest avenues of procedure to those involved in a transaction which they believe may be

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14/ IMO document MSC 48/WP.24/Rev.2.

15/ "International maritime fraud" (321/243 Rev.1) statement adopted by the 137th session of the Council (10 June 1980).

16/ ICC Publication 370, 1980.

fraudulent or otherwise suspect; (4) To advise organizations in setting up or improving operational and commercial systems so as to reduce their vulnerability to fraud or malpractice; (5) To design and provide educational services relating to international maritime transport fraud and suspect practices as an essential crime prevention service, and (6) To conduct investigations into fraud or commercial malpractice and assist injured parties in effecting financial recoveries. 17/

55. Of the various activities undertaken by the IMB in the realization of the above objectives, the roles of investigation and dissemination of information appear to be the most noteworthy. Apparently as a result of the world-wide contacts established by the personnel of the IMB, it has been highly effective in locating "missing" vessels or cargoes, authenticating documents and generally exposing fraudulent activities. As part of its dissemination of information role, it circulates fortnightly a confidential bulletin to its members concerning reported frauds and their modus operandi, activities of companies and persons associated with fraud and suspect practices, reports of stolen or forged survey certificates and letters of credit, etc. In addition, its computerized data bank is open to members wishing to investigate individuals or companies with whom they are about to do business. One of the notable aspects of the IMB information role is its willingness to disseminate information about suspect individuals or activities which is believed to be true but which has not been completely confirmed to be true. It is felt that the quick dissemination of such information in advance of confirmation is essential to assist its members to avoid being victimized by such activities. Although such a procedure runs the risk of slander or libel actions being instituted against it, nevertheless, the IMB in one court case brought to date has successfully avoided the imposition of an interlocutory injunction against its information activities in the absence of proof that it had acted maliciously or did not honestly believe what it said to be true. 18/

### C. Other organizations

#### 1. Arab Federation of Shipping

56. The secretariat of this non-governmental organization, which is situated in Baghdad (Iraq), has analysed problems arising from the occurrence of maritime fraud and piracy. It has, inter alia, recommended that there should be greater co-ordination of activities of Arab organizations in combating the problem of fraud in the region. Furthermore, it expressed its support of the UNCTAD secretariat's suggestion for the establishment of an international convention on maritime fraud and piracy, 19/ and UNCTAD's work on combating the negative

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17/ IMB publicity publication.

18/ Harakas and Others v Baltic Mercantile and Shipping Exchange and Another, (U.K.) 1982.

19/ See document TD/B/C.4/244.

aspects of flags of convenience. It also expressed its intention to continue its co-operation with the IMB, IMO and ICC and suggested the creation of an Arab investigation shipping office. 20/

2. Baltic and International Maritime Conference

57. The Baltic and International Maritime Conference (BIMCO) circulates a confidential weekly circular to its members which from time to time contains some information concerning maritime fraud acts or other relevant circumstances. General meetings of BIMCO have also provided a forum for discussions of maritime fraud problems. In addition, it is understood that BIMCO keeps a data bank of known incidents of fraud and it has a confidential register of persons or entities who do not fulfil contracts properly or who fail to act ethically; however, apart from releasing details to investigation teams, the information is essentially for members.

3. Baltic Mercantile and Shipping Exchange

58. The Baltic Exchange, which is situated in London, is the world's largest single chartering market. It informs its members, by posting relevant details, concerning individuals or corporations who have not honoured their contracts.

4. Commonwealth Secretariat

59. Pursuant to a report prepared under the auspices of the Commonwealth Secretariat, a Fraud Liaison Officer has been appointed to develop and co-ordinate such matters as criminal financial intelligence and target operations, liaison with other international organizations on fraud matters, the dissemination of relevant information, the provision of technical advice and training in the conduct of international investigations. 21/

5. Federation of Chambers of Commerce, Industry and Agriculture for Arab Gulf Countries

60. This non-governmental organization of Chambers of Commerce in the Gulf region has held various seminars on the problem of maritime fraud and piracy to help educate traders to the risks involved and the protective measures to be taken. At its fourth session (11 March 1981), it recommended to its members, also members of UNCTAD, to support the work of the Committee on Shipping on piracy as well as to raise the problem in the United Nations regional commissions. In this connection, it recognized as the ultimate objective the establishment of international co-operation to combat maritime fraud and piracy and the formulation of an appropriate international convention for that purpose.

6. General Union of Chambers of Commerce, Industry and Agriculture for Arab countries

61. This non-governmental organization situated in Beirut (Lebanon), consists of all the Arab Chambers of Commerce of member States of the Arab League and it has been the focus of an exchange of relevant information concerning recommended measures by their members.

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20/ Study of the Conference on Maritime Fraud and Piracy by AFS secretariat, presented at a Seminar on Maritime Fraud and Piracy in Kuwait, 18-20 April 1983.

21/ See "The Promotion and Development of International Co-operation to Combat Commercial and Economic Crime". Memorandum by the Commonwealth Secretariat and paper by Dr. B.A.K. Rider, Commonwealth Secretariat, document LMM (80)2.

#### 7. Gulf Co-operation Council

62. This intergovernmental organization, situated in Riyadh (Saudi Arabia), has considered at various levels the problem of maritime fraud and piracy, in particular deviation frauds. At the first Council of Transport Ministers, 1-2 May 1982, a resolution was adopted concerning, inter alia, the establishment of an Information Centre on Piracy and Maritime Fraud, situated in Riyadh, for co-ordinating and exchanging information concerning the occurrence of maritime fraud. Additional matters dealt with by the resolution included the need for regional co-operation among commercial trade ministries of member States concerning action against the sale of goods resulting from piracy, the desirability of the member States to co-operate with the IMB and the convening of a Group of Experts to draft model regional legislation dealing with problems involving maritime fraud and piracy.

#### 8. International Association of Airport and Seaport Police

63. The International Association of Airport and Seaport Police (IAASP) which is a non-governmental international association of law enforcement officers and other individuals involved in port and cargo security activity, serves as a forum for discussion of maritime fraud problems.

#### 9. The International Cargo Handling Co-ordination Association (ICHCA)

64. This is a non-governmental organization of port and cargo handling organizations which has issued several booklets and studies on cargo loss prevention, including security, packaging, handling and storage measures to be taken, inter alia, to minimize losses by theft and pilferage in port areas.

#### 10. International Criminal Police Organization

65. The International Criminal Police Organization (Interpol), which is composed of national police organizations sponsored by their Governments, acts as a liaison centre for the exchange of information and promotion of co-operation between several national police forces. Maritime fraud, to the extent that it forms one type of criminal activity, is naturally included within the scope of activities of Interpol. However, Interpol is only a liaison centre without any direct international investigative or jurisdictional capabilities.

#### 11. International Union of Marine Insurers

66. The International Union of Marine Insurers (IUMI) at its 1982 annual meeting held a Cargo Workshop on "Crime in International Trade" wherein the problem of maritime fraud was discussed. Pursuant to that workshop a resolution was unanimously adopted at the Open Council Meeting of IUMI inviting the international associations of bankers, shippers, shipowners and specialized trade associations to join in asking the ICC to convene an interorganizational meeting for the purpose of exploring practical forms of such direct co-operation. However, it is understood that such a meeting has never materialized.

#### 12. The League of Arab States

67. This intergovernmental organization of Arab States has, through its secretariat, studied the problem of maritime fraud and piracy in the region and has, in the Economic and Social Arab Council at its 31st session (2-6 June 1982) adopted several recommendations for regional action. In addition to recommending the

adoption of specified conventions on technical and safety measures, it recommended improved measures for regional co-operation and exchange of information and requested its members in the UNCTAD Committee on Shipping to accelerate the establishment of international legislation to resolve the problem of maritime fraud and piracy.

### 13. Protection and Indemnity Clubs

68. There are some 27 medium to large P & I Clubs in existence which are intimately concerned with combating a wide range of fraudulent activities affecting liability claims against entered vessels, in particular claims for loss of or damage to cargo. The arrangements made for investigating fraudulent acts or related claims vary from club to club, but include at least in one case the establishment of a separate investigation service. Members are advised of the risk of specific recurrent fraudulent activity via club circulars.

### 14. Salvage Association (U.K.)

69. This body, which is funded by underwriters and from fees received from surveyors carried out by its team of surveyors, investigates casualties in which marine underwriters are interested. As part of its activities, it has gathered extensive experience and information on maritime fraud activities, but it is understood that the information is not made available to the public at large.

### D. Information agencies

70. There are a number of agencies whose primary purpose is to provide information. Included within this category are credit investigation agencies which can be used for varying costs to investigate and collate available information on the financial standing of individuals and entities. In addition, there are agencies which collect and disseminate certain ship-related information. Included in this category are, among others:

#### 1. Lloyd's Shipping Information Services (U.K.)

71. Lloyd's Shipping Information Services (LSIS) is a commercial organization offering a variety of services relating to ships based upon the information files and data gathering capabilities of Lloyd's of London Press and Lloyd's Register of Shipping. Its files contain details concerning all known ships above 100 gross tons on order or under construction; all known ships above 100 gross tons (approximately 74,000), their registered owners, managers, current and former names, technical details, classification, flag, etc.; casualties of ships over 100 gross tons since January 1976; and ship movements of over 30,000 vessels. In connection with this, a special Watch Service is available whereby information concerning a particular vessel movement can be communicated to a client as soon as it is received by LSIS. LSIS has recently inaugurated a new service which attempts to trace the controlling interest of ships over 1,000 gross tons. This service provides listings of the shipowning and managing companies of such ships grouped together under the parent company. It shows the current fleet of the Group, directors of the shipowning company, general agents, former company names (if known), date when the parent company first became an owner of ships, as well as other related details.

72. LSIS is generally acknowledged to be the largest and most authoritative centralized source for this type of shipping information. As a private organization operating in a field where there are few if any international reporting requirements as to such information, it relies on Lloyd's 1,800 agents and numerous other sources ranging from port authorities to press agencies for the communication of relevant data. Criticisms of its service range from lateness of information, in accuracies and absence of any on-line computer access to its data bank. In this latter respect, it claims information will normally be despatched within seven days, depending on the complexity of the inquiry, though somewhat faster replies may be made if circumstances permit. Such a time lag could be unsuitable for many types of fraud related enquiries. It is understood, however, that an on-line computer capability is being developed which should lessen this problem.

2. Maritime Data Network Ltd.

73. This private organization (MARDATA) is an international joint venture specializing in the collection and dissemination of ship related information, utilizing among other sources LSIS. In addition to offering basically the same type of information as is available from LSIS directly, it also provides on-line computer access and it includes a reporting service on charter fixtures. In the absence of any international reporting system for charter fixtures, this additional service has been criticized for being incomplete. 22/

E. Conclusion

74. The above list is not **exhaustive** of all the organizations in some way connected with the prevention of maritime fraud. Nevertheless, it provides an idea of the diversity of the types of organizations which are either directly concerned with the problem of maritime fraud and piracy or provide information which can be of use in preventing its occurrence.

75. In connection with the organizations which provide information which could be of use in preventing maritime fraud and piracy, it should be pointed out that some of the organizations, such as BIMCO, the Baltic and the P & I Clubs, provide information on the subject more as a service to their members which is incidental to the main purpose of their existence. Other organizations, however, specialize in the collection and dissemination of either maritime fraud information or ship-related information which can be of use in anti-fraud investigations. In connection with this latter group of organizations, the introduction of computerization has had a profound impact on the efficacy in presenting the information in understandable form within a relatively short time. Those that have not already become fully computerized have nevertheless recognized the need to do so. In this respect, computerization has vastly expanded existing capabilities in handling, collating and presenting information in readily usable form and the shipping community has begun to take advantage of this capability, not only for this general conduct of its business, but also, as is being done particularly by the IMB, to collate and utilize information for fraud prevention purposes.

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22/ E.g. "Data base User Survey", Data World, No. 13, 1982, p.39.

#### IV. ANALYSIS OF POSSIBLE ACTIONS TO MINIMIZE THE OCCURRENCE OF MARITIME FRAUD

##### A. Introduction

76. Various suggestions have been made for combating maritime fraud in innumerable seminars and in various organizations. The creation of the IMB is itself a fruition of one such suggestion. Most of the others, particularly those involving international action, have not been developed in any degree of detail and still less ever been implemented. Some of the suggestions merit further consideration, whereas others, after analysis, are either unrealistic or ineffective in achieving their intended goals.

77. Set forth in this section is an analysis of these suggestions, together with an appraisal of whether they warrant further development as likely efficient and effective measures to minimize the occurrence of maritime fraud. Inherent in this analysis is the need to recognize and discard at an early stage those suggestions frequently raised in international fora which on closer inspection are ineffective. This "weeding-out" process serves in itself a useful role by permitting the international community to focus its attention on those suggestions which harbour some realistic chance of having an appreciable impact on the occurrence of maritime fraud.

78. The analysis of the various suggestions is divided into those generally applicable as preventive measures to avoid the occurrence of fraud and remedial measures to be taken after a fraud has occurred. Obviously, there is a not insignificant overlap between the two aspects, particularly to the extent that remedial measures form a deterrent to the future commission of fraud; nevertheless, the division of the topics has been made to facilitate an orderly analysis of the various types of suggestions presented.

##### B. Preventive measures

###### 1. Documentary Frauds

###### (a) Precautions by buyers of goods

79. It has been repeatedly pointed out in various fora that buyers of goods do not take sufficient precautions in international sales transactions to avoid being the victims of fraud. <sup>23/</sup> Various suggestions have been made to develop educational programmes for traders to highlight the dangers involved in international sales transactions and to instruct them in the necessary

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<sup>23/</sup> E.g., see reports by J. Thomas and J. Schults, CMI Colloquium on Bills of Lading, (Venice, 30 May-1 June 1983); "Documentary Fraud - A Banker's Views", by Bernard S. Wheble, report submitted to the IUMI Cargo Workshop on "Crime in International Trade", 13 September 1982; paper presented by Jacques Jones to the International Maritime Risk Conference organized by Oyez-IBC, April 1982.



precautions to be taken. In addition, it has been urged that banks involved in opening up letters of credit should play a more active role in advising their clients on necessary precautions. 24/

80. Given the accounts of fraudulent transactions in which the victimized buyers of goods failed to make reasonable checks on the reliability of the seller, failed either to ascertain whether the vessel on which the goods were to be loaded was anywhere near the loading port or whether it was capable of carrying the intended cargo, 25/ and failed to insist in the letter of credit for adequate documentation, 26/ it is clearly necessary to encourage a greater awareness on the part of potential buyers of the precautions which need to be taken when dealing with sellers or intermediaries with whom they are not familiar.

81. Various entities such as the IMB are making efforts to improve this awareness through seminars, and certain publications exist providing general advice on what sort of precautionary measures should be taken by buyers, including attempting to ascertain the reliability of sellers via local chambers of commerce of the country concerned. 27/ However, as has been admitted by the ICC,

"... [N]ot all parties, particularly the smaller traders, have the necessary degree of sophistication to fully protect their own interests. It is not easy to discover the reliability of all commercial parties and transporters." 28/

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24/ E.g., CMI Colloquium on Bills of Lading (see para. 84 infra), Wheble, op. cit.

25/ "There are many instances on record where the most elementary precautions could have prevented the loss of a great deal of money. There have been cases where cargo has been offered on the commodity markets as being on board and at sea though a check of the vessel's name against the port of loading would have shown that the vessel has been thousands of miles away from that port on the date in question. It is astonishing that neither the forger nor the victim checks these basic facts. With this lack of attention to detail there is no wonder that sometimes a forged bill offers a quantity of cargo which exceeds the displacement tonnage of the vessel supposedly carrying it". Presentation by E. Ellen, "International Policing and the Concept of an International Maritime Bureau" at a seminar on "Prevention of Shipping Fraud" in New York, 26-27 June 1980, organized by The Shipbroker magazine and sponsored by the Institute of Chartered Shipowners, London, and the Association of Shipbrokers and Agents Inc., (United States of America) (hereinafter referred to as the "Shipbroker Seminar, 1980").

26/ E.g., "... buyers are often very naive about the conditions they set." In one case the buyer authorized the bank to pay on the production of 10 different documents. This would seem prudent - but closer examination showed that every one of the 10 documents originated from the seller or the seller's agents, so that not one was of independent origin. Ibid.

27/ E.g., see the ICC Guide to Prevention of Maritime Fraud.

28/ Ibid. p. 8.

Consequently, it is particularly important not only to maximize the possible safeguards in letter of credit transactions by requiring the appropriate type of documents (in view of the frequent difficulty in ascertaining the reliability of trading partners), but also to develop a readily available advisory service to small traders to ensure that they have undertaken the appropriate steps to protect their interests.

82. In view of the central role banks play in international trade, in particular in the payment of goods by letters of credit, it would appear that banks are the most suitable entities to provide such an advisory service. As the focal point for the passage of numerous letter of credit transactions, whether as issuing bank acting at the request of a client to open the credit or as the bank paying on the credit against presentation of documents, banks have the best awareness of the limitations on the safety of letters of credit as a means of payment. Furthermore, as the entity which the buyer must inevitably contact in order to open up a letter of credit, banks are best situated to advise the applicant for the credit on necessary safeguards - whether involving necessary documents to be required in the credit or concerning appropriate independent enquiries to be made on the reliability of the trading partner.

83. Although it may be argued that it is not strictly speaking necessary for banks to perform such a function it can equally be argued that, as providers of the letter of credit system, banks have a certain moral obligation to ensure that proper documents are required by the buyer to provide a reasonable likelihood that the payment on the credit will in fact be payment for the goods specified. Furthermore, as beneficiaries of the letter of credit system - beneficiaries in that sense that a commission is received for services rendered - it is in the best interests of the banks wishing to continue this particular business to foster an environment of commercial confidence in the procedure. To the extent that frauds can be avoided through a more judicious requirement for documents and prior investigation of trading partners it is certainly in the interests of banks to encourage such policies.

84. The development of such an advisory role for banks would be consistent with Recommendation No. 7 of the CMI Colloquium on bills of lading in Venice, 30 May-1 June 1983, subsequently approved by the CMI Assembly, which stated that:

Banks should be encouraged to warn their customers of the risk of fraud under documentary letters of credit and advise them on suitable precautions.

85. Although representatives from banks situated in developed countries have asserted in various fora <sup>29/</sup> that they already provide advice on anti-fraud measures on an ad hoc basis, it is anticipated that similar services may not be as readily available in developing countries where expertise in international shipping and trade matters is not yet well developed. Such a lack of expertise appears to be confirmed by the large number of reported frauds committed against interests in developing countries on the basis of letters of credit opened with

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<sup>29/</sup> E.g., see report of the CMI Colloquium on Bills of Lading, Lloyd's List, "Banks urged to advise on fraud", 2 June 1983.

local banks with inadequate documentary safeguards and where the buyer appears not to have undertaken reasonable investigations into the reliability of the seller.

86. Consequently, it is suggested that it may be desirable for the IGG to formulate a set of guidelines for banks to refer to when accepting applications to open letters of credit. Such guidelines could assist those banks having insufficient experience or expertise in this type of transaction to advise their clients on necessary safeguards.

(b) Central registry for bills of lading

87. In connection with the problem of late presentation of bills of lading in the tanker trade, proposals are being developed by the Chase Manhattan Bank and the International Association of Independent Tanker Owners (INTERTANKO) to establish a central registry in which bills of lading would be deposited upon their issuance and held in lieu of physical transfer from buyer to seller. Transactions involving the bill of lading would be centrally registered and delivery would take place to the last recorded holder of the bill of lading in the Registry. The operation of the proposed registry has been described as follows:

"The main difference between the present system and the proposed Registry is that the physical exchange of the paper bill of lading would be replaced by electronic transmission of information relating to the bill of lading. Endorsement, delivery and receipt of the bill of lading would still occur but would be done by the Registry as agent for the seller and buyer in turn. Physical movement of the bill of lading would be avoided.

To accomplish this, the bill of lading would be produced in the normal manner but would be taken out of circulation immediately after its completion at the loading port and would be delivered into the Registry vault for safekeeping. Any changes in ownership requiring endorsement of the bill of lading would be performed by the Registry acting as agent for the seller and buyer in turn. When the ship reaches the discharge port, the Registry would transmit to the ship's master (probably through the shipowner or charterer's agent) the identifying code number of the last owner of record. A similar message would be sent to the last owner of record for him to use to identify himself to the master as the bill of lading once would have." 30/

88. The proposed establishment of such a Central Registry is primarily intended to solve a problem of late presentation of bills of lading which necessitates delivery of the goods without handing over the bill of lading, perhaps subject

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30/ Bill of lading Registry System, Issue Paper No. 1, "Processing/ Communications Systems", submitted to the International Forum on Seaborne Trade Documentation, 11 April 1983, p. 1.

to the consignee providing a bank guarantee or letter of indemnity - a problem which occurs particularly frequently in the tanker trade, where cargoes are frequently and repeatedly sold in transit and where sales are financed through the international banking system. However, various aspects of the proposed Central Registry incidentally result in preventing major types of documentary fraud and it could perhaps be extended for use not just in the tanker trade, but in other trade as well. Although it is not possible to explain in detail in this report all aspects of the proposals for the Central Registry, nevertheless, in order to understand fully the fraud prevention mechanism of the proposed Registry, it is necessary to review certain key characteristics of the system.

89. Firstly, it is proposed that carriers, whether as charterers or shipowners, would subscribe on an annual basis, whereupon master files of participants, their agents, and ships (including their names, flags and Lloyd's registration numbers) would be created. 31/ At such time, arrangements would be made concerning electronic or telex message transmissions and "test keys" or call back procedures to confirm the validity of all communications with the Registry.

90. Presumably, it will be during the negotiations for the initial sale of cargo that it will be agreed to use the Central Registry System, at which point the buyer communicates certain preliminary information relating to the Bill of Lading to the Registry. The Registry opens a new transaction file and holds the data in suspense. The name of the ship nominated is also communicated to the Registry. When the seller and the ship's master both send messages to the Registry which match the buyer's message exactly as to terms and as to their identities, and when the test keys are validated, the transaction file is activated for an owner of record. The bill of lading itself is picked up at the loading port and transported to the Registry for safekeeping and as a final check on the message. 32/ At this point presumably the "owner of record" is still the original seller until the Registry is notified that the goods have been sold. The process for transfers of title is described as follows:

The seller (owner of record) notifies the Registry of the name of the new buyer when the underlying cargo has been sold. The seller also provides the buyer with a portion of his test key. The seller's message is tested first. If it passes, the Registry will then accept the message from the named buyer. This is tested as well and it will pass only if it contains a portion provided by the seller. If it then compares on content, a new owner of record will be noted. The Registry, as agent for the seller, would then physically endorse the bill of lading which is retained in the vault. 33/

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31/ Ibid., p. 2. To provide a cross-check of data, it is envisaged that arrangements could be made with, e.g. Lloyd's Register to obtain shipping and cargo information.

32/ Ibid., p. 2.

33/ Ibid., p. 3.

The process of effecting delivery by the participating carrier to the person entitled to receive the goods has been described as follows:

"Delivery would occur as follows:

When the ship nears the discharge port the shipowner or agent will notify the Registry and request the name of the owner(s) of record. The Registry will then query the owner of record as to whether he wants to take delivery. In some cases he may not wish to arrange delivery through the Registry because of:

1. A dispute over the cargo, or
2. For reasons known to himself he requests that the documents be removed from the Registry and sent to him directly.

Assuming delivery is acceptable to the owner of record, messages will be sent to the carrier and to the owner of record which would include a test number to be used as validation between the two. After delivery the Registry, as agent for the carrier, upon carrier's instructions, will sign the B/L as accomplished and in any event dispose of it as directed by the carrier." 34/

91. Assuming - as is proposed - that adequate "testing codes" and "call back" procedures are developed to ensure that the Registry acts only on messages and information from "proper" parties, then the Registry will be in a unique position of being the central repository for virtually all information concerning the shipment - whether originating from the seller, carrier or buyer, and thereby capable of discovering when overlapping information flows from independent sources do not match - the first sign of fraud.

92. If the Registry is established as proposed and described above, the necessity for the ship's master to send independent confirmation of the details of the shipment to the Registry provides an automatic check on the accuracy and even the validity of the bill of lading submitted by the seller. Thus, maritime fraud involving alteration of an otherwise valid bill of lading and issuance of a bill of lading for completely non-existent goods would both be automatically revealed in the Registry system by non-matching data received from the carrier in the first case and non-receipt of any data from the carrier in the second.

93. The Registry system would also prevent fraudulent multiple sales of the goods, based on false duplicate "originals" of the bill of lading and accompanying documents, to the extent that there were attempts to process all such "sales" through the Registry system. Clearly in such cases, the "second" sale could never be completed since the Registry's databank would reveal that the "seller" had in fact already passed his interest and was no longer owner of record.

94. Also, the Registry would prevent many buyer documentary frauds, previously described in paragraphs 20-22. In such cases, false bills of lading produced by the buyer (before actual purchase), on the basis of a notice copy forwarded by the seller, could never be the basis of a delivery of the goods as long as the carrier is on notice that the true original(s) is (are) in the Registry. Similarly, those frauds where the buyer obtains the goods from the carrier against presentation of a letter of guarantee (because the bill of lading is late in arriving) and then sells the bill of lading to an innocent buyer would be eliminated, because the first step of this fraud, i.e. the claim that the bills are lost and the demand for delivery of the goods against a letter of indemnity, would never be possible under the Registry system (assuming it is used for the entire period of the transport).

95. Although instances where the proposed Registry system would prevent certain types of fraud have been indicated, it must be emphasized that it cannot prevent all types. For example, although fraudulent double sales may be prevented to the extent they are attempted within the Registry system, there is nothing to prevent the fraudulent second sale being effected outside the Registry. <sup>35/</sup> However, it is important to note in this context that the buyer within the Registry system is still protected to the extent that he uses the Registry system for the entire period of the transport. In this situation, the carrier participating in the system could not legally deliver the cargo against presentation of a bill of lading purported to be the valid original from the second buyer when the carrier is on notice that the true original(s) is (are) in the Registry. <sup>36/</sup> The second

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<sup>35/</sup> Such second sales outside the system could equally occur by buyers collecting the goods through the Registry system while simultaneously duplicating a second set of original documents.

<sup>36/</sup> It is believed that the first buyer using the Registry will still be protected even when the bill deposited in the Registry is the false one. As long as the buyer, when first contacting the Registry, indicates that he will be the named consignee on the bill of lading, then any variance in the actual bill will be picked up by the Registry. Thus, by ensuring the real bill of lading is made out to the consignee (such information being independently confirmed by the carrier directly to the Registry), the seller would not be able to pass title by negotiating the real bill to an innocent buyer outside the Registry by forging the consignee's signature. Thus, when the carrier refuses to hand over the goods to the second consignee, such refusal should be considered justifiable even though it is later proved that the bill in the Registry is the false one. On balance, it is believed in such a situation the buyer as owner of record under the Registry bill will be considered to be the real titleholder to the goods.

The only instance where a buyer under the Registry might not be protected is when the seller opened up the transaction file himself and submitted a false bill of lading made out to himself as consignee. Since this would tally with the information supplied by the carrier and would be in conformity with the information given in opening up the transaction file, the seller would be able to process the false bill in the Registry without hindrance and sell it to an innocent buyer while at the same time validly passing title with the real bill outside the Registry since he would be the valid named consignee. However, this instance is fairly specialized in nature. Firstly, the fraudulent seller has no impetus to ensure that the false bill is submitted to the Registry since regardless of which way he operates he will still receive payment twice. Secondly, it does not apply to a buyer of goods who opens up the transaction file himself before shipment. In this case, as described above the buyer is protected from a double sale regardless of how the seller operates.

buyer - having taken the false bill of lading outside the Registry system - lacks such protection. On the other hand, it can be argued that the second buyer assumed the risk by not insisting on using the Registry and, furthermore, that such cases would not arise to the extent that use of the Registry becomes universal. 37/

96. More serious loopholes in the fraud prevention impact of the proposed Registry system, if it is extended to general cargo moving under a bill of lading, would be its inability to detect fraudulent shipment of non-conforming goods, rubbish shipped in pre-stuffed containers, and any other type of misdescription of the consignment which would not be detected by the carrier's check before shipment for purposes of notation on the bill of lading. Also, the Registry system would not detect frauds perpetrated with the collusion of the carrier. Although possible in all cases - except, perhaps, shipments on well established carriers - the risk would appear relatively greater in the case of bareboat or time charterers, in the latter case particularly when the charter party authorizes the charterer to sign bills of lading on behalf of the master.

97. In conclusion, although at the time of preparing this report certain aspects of the Registry system remain to be clarified, the IGG may wish to assess the merits of the proposal and communicate its views to the organizers for their consideration. Furthermore, in view of its potential application to other types of trade besides just the tanker trade, it may wish to be kept informed of the progress of the project and the experience with its initial implementation. 38/ Although the proposed system will be unable to prevent certain types of fraud, it is submitted that when used in conjunction with other proposed safeguards - particularly the proposed bank "super-service" suggested in subsection (d) of this Section on documentary frauds, (paras. 112-140) - the total package of fraud prevention devices could become a virtually foolproof protective system against documentary maritime fraud, if the proposed central registry system functions as envisaged.

(c) A "secure" bill of lading

98. Although bills of lading are documents of title for the goods - enabling not only the consignee to obtain possession of the goods from the carrier but also the seller to obtain payment on letters of credit opened up by the buyer - they are nevertheless considered to be relatively easy to forge - being usually printed on blank paper - and in fact they are readily purchasable in blank form "on the street". This situation has been the basis for certain suggestions for reducing the possibilities for forging bills of lading 39/ which merit consideration.

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37/ It may well be that the cost of the system - estimated at \$300 to \$400 per consignment - might preclude its use for relatively small, low-valued shipments; however, it is unlikely that such shipments would be the target of this type of fraud anyway.

38/ It is understood that a pilot project is envisaged in the North Sea trades with the expected commencement of operations in approximately 1½ to 2 years.

39/ E.g. "Shipping companies ... should tighten up their bill of lading department and consider the use of an embossed coded number on each bill of lading at least for high-valued or large parcels of cargo". Ellen and Campbell, International Maritime Fraud, pp. 117-8.

(i) "IMB bill of lading"

99. It is understood that the IMB is considering proposals to develop a difficult-to-forge bill of lading which is subject to controlled circulation. Although it has not been finally decided whether to proceed with the project, the IMB has previously advocated that increased security measures should be incorporated into bill of lading forms. <sup>40/</sup> If instituted, it is understood that the format of the proposed IMB "secure" bill of lading would consist of (a) Watermarked paper with motif; (b) Synthetic coloured fibres distributed over the whole sheet; (c) A sensitizing treatment, equivalent to a typical cheque standard, to prevent alterations, and also serving as an authentication device; and (d) a unique serial number. It is envisaged that the exact specification of the document could be altered to suit requirements of a particular trade. Printing and circulation of the bills would be controlled by one single body, such as local chambers of commerce. The bills would be issued to shippers, upon application and against receipt. Upon distribution, the serial numbers would be recorded. Banks would be advised of the system and they would receive a sample format. As a consequence, it is felt that the banks would be in a position to verify the authenticity of the form and, by enabling the identity of the purchaser to be traced in the event of a fraud occurring, the system would offer a reasonable deterrent against forgery of bills of lading.

100. Based on information available to the secretariat concerning the IMB proposals, and bearing in mind that there is nothing in the proposed system to prevent the initial entry of false data on the bill of lading, <sup>41/</sup> it would appear that the key to the success or failure of the system will depend on the degree of control of the distribution of the document to ensure the identifiability of the purchaser. To the extent that the document may be issued to individuals or firms who are not fully known or otherwise identifiable, the risk exists that its circulation becomes "uncontrolled". Also, it is not clear what would prevent the onward, and thus uncontrolled, transfer of a blank form of the bill of lading to another person before being used for a shipment. In this respect, certain practical problems in the control of the distribution will need still to be determined, such as whether it is actually feasible in the distribution of such a document to undertake sufficient checks to ensure a reasonable likelihood of proper identification in each case, and what sort of responsibility would exist for negligence in failing to make adequate checks on the identity of the receivers of the document. Further difficulties may exist in obtaining shipowners' acceptance of such bills of lading.

101. If the practical problems inherent in the proposal can be solved, then the IMB bill of lading form could provide at least some sort of deterrent to the commission of maritime fraud by requiring potential perpetrators of frauds to expose their identities in order to obtain the necessary document. The IMB bill of lading is intended to act as an optional document for use when the buyer is not well acquainted with the seller and wishes to protect himself against the risk of fraud by presenting such a deterrent. In such cases, he would require from the seller as part of the sale that the goods are shipped on the

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<sup>40/</sup> "Forged Documents and the Shipping Industry", Parts I and II; Report of the IMB; see Fairplay, 12 August 1982, p. 31: "IMB says shippers and banks must tighten up on documentary fraud".

<sup>41/</sup> Even assuming the development of an absolutely unforgeable bill of lading, thereby eliminating the risk of fraudulent production, and assuming the impossibility of altering data once inserted on the form.



IMB bill of lading form and it would be a required part of the sale and required as one of the documents for presentation by the seller in order to obtain payment under the letter of credit. 42/

102. The IGG may wish to assess the practicability of this proposal and communicate its views to the IMB.

(ii) Improved stamping procedures

103. In light of the fact that the master's or agent's signature is of limited use as an authorization device for bills of lading, some suggestions have been made to improve the sophistication of stamping procedures as an alternative means of authorization. 43/ In this respect, it is understood it is possible to develop multicoloured stamps which are particularly difficult to forge.

104. Certainly such a suggestion would be useful in facilitating the task of the various agencies of each shipping line in verifying the authenticity of that line's own bills presented for delivery of cargo. It might thus be effective against buyer frauds described previously (para. 21).

105. Whether such improved stamping procedures could be used to facilitate verification of the authenticity of bills of lading to prevent seller frauds is more doubtful. In such cases, either the buyer or his agent (e.g. the paying bank in a letter of credit arrangement) would need to have in advance a true copy of the stamps for comparison with the stamp on the bill of lading presented for payment. Unless subject to general distribution world-wide, which is a fairly unlikely prospect (unless as part of a general scheme for all shipping lines), buyers or their banks would need to know in advance the shipping line and to obtain directly from that line a true copy of its stamp. 44/ Such a procedure may not always be practicable.

106. An additional difficulty with such a system would be that, unless it were universally applied on a mandatory basis, the seller could always utilize a non-participating shipping line. Of course, this difficulty might be overcome by the buyer specifying in advance that only a "participating" line could be used. Yet unless some sort of definition or minimum standards are set to determine when a stamp is a "difficult to forge" stamp, then such advance specification is of little value.

107. Furthermore, the apparatus used to make the special stamps would need to be treated virtually as currency and kept in a safe place during non-working hours. Even then, the great likelihood of theft would render the entire stamp system useless. In such cases a particular stamp design would have to be altered, only to be rendered useless again by the next theft.

108. Lastly, it is not clear how such a system would be handled when the shipping line's vessels are chartered under a charter party giving the charterer's agents the right to sign bills of lading on behalf of the master.

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42/ See also "Forged Documents and the Shipping Industry", Part II.

43/ See, e.g., "Suggestions by the Security and Investigation Services", Fairplay, 7 April 1983, p. 3.

44/ If it came via the seller there would of course be no guarantee of its authenticity.

Either a stamping apparatus would have to be loaned to such charterer - an invitation to fraud via the creation of "brass-plate" charterers - or each bill of lading would have to be delivered afterwards to the shipping line for stamping.

(iii) Advance knowledge of the master's signature on the bill of lading

109. It has been recommended by the IMB that buyers of cargo should if possible, obtain in advance a specimen signature of the person signing the bill of lading and, if applicable, have the specimen included in the letter of credit. <sup>45/</sup> Firstly, it is not clear how buyers are to obtain such signatures. If it is done via the seller, then clearly the seller can continue to commit the usual type of documentary fraud unhindered, merely by providing a forged signature. To obtain it directly from the shipping line assumes advance knowledge of the line to be used. Furthermore, if the signature is incorporated as a requirement into the letter of credit, there is no flexibility in substituting another vessel (from another line) due to unavailability of the first vessel (a not uncommon occurrence) without amending the letter of credit. Such an amendment would require communication by the seller to the buyer, direct contact by the buyer with the new shipping line to obtain the new specimen signature, subsequent communication of the specimen to the bank opening the credit and finally transmittal of the new specimen to the paying bank. By such time the consignment may well have reached its port of destination. In any case, as a result of such delays, the seller will have been unable to obtain payment on the letter of credit within anywhere near the time normally envisaged for such types of commercial transactions.

110. It has also occasionally been suggested that an international register of the signatures of all persons in all shipping lines and agencies entitled to sign bills of lading should be developed. Such a register of signatures would then be circulated to each bank involved in paying on letters of credit. Inherent in this suggestion is the need to restrict the number of persons entitled to sign bills of lading to perhaps two or three in each firm.

111. It is claimed that, with the technological advance in data processing and photofascimile systems, the concept would be possible to implement. However, this suggestion is generally dismissed on the basis that masters as well as agents are so frequently changed that it would be extremely difficult to keep such a register anywhere near up to date. <sup>46/</sup> In this respect, to the extent such a register is out of date by as much time as it takes for a new master, whose signature has not yet been distributed to banks, to sign a bill and have that bill presented to a paying bank, then the system impedes commerce.

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<sup>45/</sup> "A Profile on Maritime Fraud", submitted by the IMB to the IUMI Cargo Workshop on "Crime in International Trade", 13 September 1982, p. 10.

<sup>46/</sup> Wilson, W.A., "Documentary credits and Uniform Customs", paper delivered at a seminar on "Prevention of Shipping Fraud", 10 May 1979, London, organized by The Shipbroker magazine and sponsored by the Institute of Chartered Shipbrokers (hereinafter referred to as "The Shipbroker Seminar, 1979"), p. 44.

(5) Bank "super service" in letter of credit arrangements

112. It has repeatedly been asserted that the current rules and practices used by banks in processing letters of credit is a significant aid to the commission of documentary frauds and should consequently be revised or supplemented to offer a better protection to bank customers, i.e. buyers of goods who use this form of transaction. 47/ Similarly, the secretariat in its previous report to the Committee on Shipping stated:

"...[T]here is a need for an in-depth review of the international rules used by banks for documentary credits, as they relate to shipping transactions, in order to determine their adequacy in counteracting maritime fraud. In this respect, consideration may be given to whether such rules allocate responsibilities between the parties (i.e. bank/buyer) in an equitable manner, bearing in mind their respective functions, duties and opportunities to act to prevent the occurrence of maritime fraud." 48/

Such calls for reform focus on the absence of any obligation on the part of the paying bank under a letter of credit to undertake any sort of investigation into the validity or the accuracy of the documents representing the goods before paying out on the credit.

113. The ICC Uniform Customs and Practice for Documentary Credits (UCPDC), which are used by banks in most countries as a basis for such transactions, have been specifically criticized, in particular, article 8.a. which states:

"In document credit operations all parties deal in documents and not in goods"

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47/ "The 'Uniform Customs and Practice for Documentary Credits' in my view clearly require re-examination in this context". Opening address by the Hon. Mr. Justice Kerr, Shipbroker Seminar, 1979, p.41.

"If the millions of dollars which are being lost each year belonged directly to the banks, rather than to their customers, would they be satisfied with the system as it stands at present?" "A Senior Police Officer's Review and Analysis of some recent Shipping Frauds", presentation by Eric Ellen, ibid.

"The rules of law relevant to the banks' duties should be examined". "Documentary Credits and Uniform Customs", presentation by W.A. Watson, ibid. and

"The present system of international trade under documentary credits must be made more secure against fraud and forgery - otherwise the system runs the risk of collapse", "Crime pays too well", by Niklas Kohlböm, Chairman of Atlantica Insurance Co. Ltd., Sweden, in its Annual Report 1981, p.13.

48/ TD/B/C.4/244, para.22.

and article 9, which states:

"Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents". 49/

114. It has been argued that these rules are necessary because the large number of documentary transactions effected by banks precludes a more thorough investigation than that of the face of the documents themselves. Furthermore, the vast number of shipping companies and agents throughout the world makes it impracticable to check on the genuineness of any documents, including the bill of lading, or of the signatures on such documents. In general support of these assertions, it has been cited that in one particular (unnamed) bank office on a random day, 352 sets of documents were presented for payment under letters of credit, involving 79 different shipping lines featured on the bills of lading, covering 47 different types of merchandise between 51 different countries. 50/

115. Doubts have been expressed whether, even if the paying bank spent more time in investigation, this would really provide much of a safeguard. Although it is admitted that the bank might be able to check the existence of the ship and the seller, it would not be able to determine whether the goods were loaded on that ship, let alone vouch for the nature or the quality of the cargo. 51/ It is argued that instead of relying on the banks to do more checking, the buyer should undertake the checking himself since he has had the most contacts with the seller and, in fact, concluded the sales contract. As has been said in this respect:

"In the final analysis the best protection for buyers and sellers against fraud is to make adequate enquiries to be able to satisfy themselves as to the integrity of the parties they deal with before entering into any binding commitment. The main burden of preventing fraud should, and does, lie with the buyer." 52/

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49/ The UCPDC are currently being revised by the ICC to take into account the increased use of non-negotiable way-bills; however, the principle of the limitation of the bank's obligation to check the documents only "on their face" remains unaltered. At the time of writing, the revised text had been adopted by the Commission on Banking Technique and Practice and was submitted to the ICC Council for approval with an expected entry into force date of 1 October 1984. The quoted articles 8.a. and 9 in the text are reproduced as articles 4 and 17 respectively. Article 17 effects only one minor drafting change to the existing text. Article 4, although having basically the same substantive effect, now reads:

"In credit operations all parties concerned deal in documents and not in goods, services and/or other performances to which the documents may relate."

50/ "A Banker's View", by F.R. Botham, paper presented to the Shipbroker Seminar, 1979, p.67.

51/ "Documentary Fraud - A Banker's View", by B.S. Wheble, paper submitted at the IUMI Cargo Workshop, 13 September 1982, p.5.

52/ Ibid., p.4.

In the same vein, the ICC "Guide to Prevention of Maritime Fraud" advises buyers to make better use of local chambers of commerce for information on potential sellers, as well as the use of an independent survey of the goods and their loading on the named vessel. 53/

116. Nevertheless, dissatisfaction continues to be expressed concerning the present system on the grounds that investigations by buyers - usually involving a seller situated in a different continent - are imprecise (in that they do not always give an accurate picture of the financial standing and reliability of the seller) and they are difficult to undertake. In this context, even the ICC has admitted that:

"... not all parties, particularly the smaller traders, have the necessary degree of sophistication to fully protect their interests [and] it is not easy to discover the reliability of all commercial parties ..." 54/

Furthermore, instances have been cited where corporations are set up and function respectably for a period of time before committing a large, highly profitable fraud and disappearing. 55/ Thus, it would appear that more reliable safeguards on the particular shipment concerned are necessary.

117. One safeguard is the use of independent inspection agencies to survey the quality and quantity of the goods and even their loading on board the named vessel. However, the utility of inspection certificates by independent agencies has been questioned in that perpetrators of frauds can, and regularly do, forge such certificates for presentation to paying banks. 56/ One suggestion that has been made to try to avoid this risk is that the buyers should ask the inspection company to send the certificate directly to the paying bank. 57/ Such a suggestion has a certain merit, assuming the buyer has sufficient staff and trading sophistication to contact a reputable surveyor and engage him to undertake the survey directly on his behalf and then arrange to have the certificate sent directly to the bank. In the absence of this direct engagement, the survey will be arranged by the seller. Needless to say, in such circumstances the seller would be in a position never to contact the inspection agency and instead to issue a false certificate himself.

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53/ Ibid., p.8.

54/ Ibid., p.8.

55/ E.g., as reported in "One Shipowner's Experience of Maritime Fraud" by I.R. Dutton concerning a charterparty fraud, paper presented to the Shipbroker Seminar, 1979, p.23.

56/ The use of difficult-to-forge certificates, which is now being instituted by some inspection agencies, of course complicates this process for the fraudster - assuming that paying banks possess a reference copy for purposes of comparison.

57/ "A Banker's View", by F.R. Botham, Shipbroker Seminar, 1979, p.67.

118. Furthermore, even in the case of direct contact by the buyer of the inspection agency, the buyer could still be vulnerable to documentary frauds committed with totally false documents for non-existent goods. In such cases, the false documents could be presented and payment collected before the inspection agency has been able to determine that no goods were in fact ever going to be presented to the port area for shipment. In this respect, there would presumably need to be some sort of contact between the inspection agency and the seller for the purposes of locating the goods for the inspection, in terms of both time of arrival and location in the port area. It is not difficult to imagine a seller's perfectly plausible explanations for slight delays in the arrival of the goods at the port area during which time - and before the inspection agency has grounds for suspicion and has notified the buyer - the presentation of the false documents can be made, the payment can be collected and the seller can disappear.

119. Equally, advance knowledge on behalf of the bank that the inspection certificate is to be submitted directly by the inspection agency would not be a deterrent to the above-cited fraud. In such cases, the seller would also be aware of such a requirement (because it would be apparent from the notification of the letter of credit) and he would ensure that it appeared that the certificate came directly from the inspection agency.

120. Consequently, although a requirement for an independent survey to be made, and even to be forwarded directly to the paying bank, would provide some increased safeguards, it would not pose a serious obstacle to a sophisticated criminal prepared to organize the timing of his operation with a little more precision.

121. It would appear from the above that the critical missing link is a more active involvement by the entity which is ultimately responsible for assessing the situation and determining whether to pay, i.e. the paying bank. By restricting themselves to viewing only documents on their face, banks provide the weak link in the payment system which is difficult to overcome through reasonable increased precautions by the buyer. In this respect, it should be borne in mind that the paying bank will be the only party representing the buyer to see the documents before paying the purchase price for the goods and it may see information, or be aware of circumstances, that were either not available or not apparent earlier which the buyer could investigate.

122. Defenders of the current system have asserted that banks do undertake investigations beyond the face of the document on an ad hoc basis. This approach would not appear to be satisfactory given the number of frauds which are so easily committed under the current system and the fact that cases have been cited where banks have paid on the presentation of crude forgeries. 58/

123. However, it is generally admitted, even by advocates of reform of the existing system of payments, that it would be inadvisable to alter the UCPDC

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58/ See ICC Guide to the Prevention of Maritime Fraud, p.6.

themselves. These rules offer a low cost means of financing and effecting payment for the international sales of goods - which functions quite satisfactorily in the vast majority of cases. In this sense, it would be counter-productive to require increased checking on all letter of credit transactions, which would mean increased costs, merely to remedy a problem experienced in only a minority of cases. This would be the case particularly in the large number of transactions between known trading partners who would not feel it necessary to devote the time and money to such additional checking.

124. Consequently, calls for reform have generally been restricted to advocating the creation of an optional "super-service", involving investigation into the validity and accuracy of the documents, to be undertaken by paying banks when requested by the buyer and subject to an additional fee. <sup>59/</sup> To date, such suggestions have not been favourably received by the banking community, nor have they been developed into more detailed proposals by their supporters. This current state of affairs appears partly to result from the reality of the arguments put forward by the banking community that such additional checks would be difficult to effectuate by banks (these arguments having already been summarized in paragraph 114), that such investigations would not necessarily preclude the occurrence of fraud (see paragraph 115) and that, finally, it would be very expensive. In this last respect, it was noted at the 1982 annual meeting of the International Union of Marine Insurers, <sup>60/</sup> that

"This super class of credit would be likely to be called for in cases where the amount involved was large and the degree of suspicion of fraud was greater. As insurers you will appreciate that what, in effect, the bank would be doing would be to underwrite a risk - and in the circumstances of a possibly high risk and a limited spread of 'market', the premium, the extra fee, could well be quite high. Ordinary commercial precautions could be equally effective and almost certainly much less costly".

125. However, despite what has been stated above, it is submitted that the failure to date to formulate an acceptable "super-service" is in fact not due to any fundamental impracticality of the suggestion, rather there has merely been a failure to identify those easily-performed mechanical checks which offer a high degree of reliability without involving banks in extensive investigations or representations. In this latter respect, if based on properly drafted conditions for the performance of the service, the observations made in paragraph 124 above about the high cost of the fee (because in effect the bank would be underwriting a relatively high risk), are not applicable. In short, it is submitted that it

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<sup>59/</sup> See Opening Address by the Hon. Mr. Justice Kerr, Shipbroker Seminar, 1979; Ellen and Campbell, International Maritime Fraud (London: Sweet and Maxwell, 1981, p.111; and "Crime Pays too Well" by Niklas Kohlböm, Chairman, Atlantica Insurance Co. Ltd., Annual Report 1981, p.13.

<sup>60/</sup> Wheble, op.cit., p.5.

is possible to develop a low-cost, high-efficacy super-service which can be performed with a minimum of delay to the processing of letters of credit. In fact, it is believed that contrary to what is asserted in the passage quoted in paragraph 124 above, a super-service would not be more expensive than ordinary commercial precautions in equivalent circumstances and yet would be more effective.

126. For the proposed "super service" to be both practical and effective, certain items are essential. Firstly, it must be an optional "extra" dependent on a request by the buyer opening up the letter of credit and the agreement of the banks concerned, particularly the bank paying on the credit. The request by the buyer is necessary to avoid its application in instances where the buyer is sufficiently confident of his trading partner so as not to need the extra checks of the super-service. In this manner, unnecessary extra costs to the current system are avoided by permitting the majority of letters of credit to be processed normally. The prior agreement of the banks concerned is necessary because such a super-service will depend on the performance of certain acts by the paying bank. That bank must thus be in a position actually to perform those additional acts. If it lacks the capacity to do so, then it is obviously impossible for the super-service to function.

127. The actions to be undertaken by the paying bank should be very limited in number and should be as mechanical as possible. By this approach, the processing of the letter of credit is not unduly delayed and the bank is not involved in complex value judgements or assessments requiring a high level of expertise in the area.

128. It is suggested that the best solution is to limit the super-service to cases where the buyer has requested an inspection of the goods, and their loading, by an independent inspection agency. Such an independent inspection is considered the best existing safeguard to which a buyer can resort in order to avoid being the victim of a fraud. However, as previously pointed out, it is still possible, and it regularly occurs, that the inspection certificate is either forged entirely for non-existent goods or is altered by the seller to meet his requirements. The proposed super-service would be designed merely to eliminate this remaining risk of forgery by having the bank contact the agency issuing the inspection certificate to confirm that it actually issued it and to verify the information contained on it. This act would be purely mechanical and thus would not involve the bank in any assessment of the credit-worthiness of the seller or any other representation on the part of the bank, beyond the fact that it contacted the named agency and the information received conformed to that contained on the inspection certificate. Consequently, the bank would in no way be making any representations as to the absence of fraud and thus it would not be underwriting any aspect of the success or failure of the transaction. In this light it becomes clear why the criticism of a bank super-service set forth previously in paragraph 124 is not valid. Contrary to what is asserted there, the fee for such a service would be quite low since it involves only a simple mechanical act of contact and comparison of data.

129. The inspection agency, as part of its prior arrangement with the bank, would simply undertake to confirm whether it, or one of its branches, issued a certificate for that consignment and to reiterate the information put on the certificate in order to enable the bank to compare with its copy. In addition, the agency could undertake to notify the confirming bank if it has received, or subsequently receives, other requests for confirmation on the same consignment -



such multiple contacts indicating fraudulent double sales of the same goods. Like the paying bank, the inspection agency would not be making any representations about the absence of fraud, in particular it would not - and could not - be guaranteeing that the certificate in the hands of the bank is the real certificate or that it has not been fraudulently altered. Thus, its own "risk exposure" in agreeing to perform its side of the super-service is limited to the competent performance of very mechanical acts.

130. Although totally mechanical in nature, the sum total of mechanical acts performed by each party as described above has the effect of virtually eliminating the possibility of fraud, except in the case where a double set of documents has been fraudulently produced for a single consignment and such "second" sale is not subjected to the super-service. Obviously, if both sales were subject to the super-service, then the fraud would be exposed when both banks contacted the inspection agency for the same consignment. When one sale is not subject to the super-service, then only one bank will confirm with the inspection agency and there will be no exposure of the fraud.

131. In order to function properly, it would appear necessary for a bank wishing to offer the super-service as a paying bank to enter into a prior arrangement with one or more inspection agencies concerning each party's obligations. A related consideration would be the need to establish direct lines of communication between the bank and the inspection agency concerned. Some inspection agencies have a world-wide network, with their headquarters in Europe. One question would be whether the head office of these inspection agencies or any of their branches would be in a position to verify certificates issued in one of their other branches when contacted by a bank. Preliminary contact with at least one agency with branches worldwide indicates that such a communication is quite feasible. Thus, it is clear that whether a particular bank will be able to offer the proposed super-service for letters of credit will depend very much on its capability to establish a direct link-up with one or more inspection agencies. Similarly, the geographic range of shipments which could be covered by such a super-service would depend on the communication possibilities between the participating agencies and their various branches. Thus, the scope of a particular super-service would in theory range from being applicable only to shipments from one port when inspected by one designated inspection agency to applying to shipments from virtually all ports in the world when inspected by any one of a wide range of designated inspection agencies.

132. It should be noted that because of the more sophisticated communication network already established by developed market economy countries, it is most likely that, in the beginning, only banks situated in such countries would be in a position to offer the proposed super-service. However, because of the nature of the super-service involving action by the paying bank for the benefit of the buyer - wherever he may be situated - developing and socialist countries would be in a position immediately to receive direct benefits from the service as to all their imports from developed countries as long as the bank designated as the paying bank offers the super-service. In this respect, it is important to emphasize that banks in developing countries which receive applications to open up a letter of credit from their local customers, i.e. buyers of goods, would not need any increased facilities or sophistication for their customers to benefit

from the service. All they need to do is to arrange for the letter of credit to be handled by another bank which offers as a paying bank the super-service from the port where the shipment is intended to be loaded for export.

133. As a related matter, it should be added that the buyer's obligation would be similarly limited in scope under the super-service. Firstly, the buyer would need to insist in the contract of sale with the seller that payment be made against documents at a bank offering the service. In this connection, it would be necessary for the buyer to determine from his local bank which banks offer the super-service for the trade concerned, and what documents and other conditions are required by the paying bank as a prerequisite for the service, so that he can then ensure that all the appropriate conditions are incorporated into the contract of sale. However, this prior determination should not be burdensome for even relatively unsophisticated buyers to perform - assuming that enough advance publicity about the super-service is given to make buyers aware of the possibility.

134. In any event, having concluded the contract of sale, the buyer need then only request his own bank to make the letter of credit arrangements with a bank offering the service as paying bank, specifying that it should be subject to the super-service, and actually fulfil whatever conditions are required by the paying bank for the super-service to be performed (such as a requirement that the letter of credit must specify a certificate to be presented covering the inspection of the goods, and their loading, from one of the inspection agencies designated by that paying bank).

135. Special account may need to be taken of certain types of letter of credit arrangements, in establishing the super-service procedure, such as when there are "back-to-back" credits. Nevertheless, it is believed that the over-all procedure is still applicable and the necessary adjustments can be made to take into account special circumstances without undue difficulty.

136. It is also believed that the proposed super-service would be more effective and efficient than the buyer himself instituting such a "check-back" procedure directly with an inspection agency. Firstly, except in the case of large importers on the same trades, such a procedure would need to be set up each time on an ad hoc basis. In this respect, there is some value in having pre-established lines of communication with the inspection agency concerned, with each party fully understanding his respective obligations. Secondly, the confirmation of the validity of the inspection certificate would in such a case be made to the buyer, whereas it is the bank that is paying out on the letter of credit. Consequently, either there will be a risk that the bank will pay on the letter of credit before the buyer has confirmed the validity of the certificate or the bank's right to make payment must be subject to the approval of the buyer - the latter situation giving rise to delays and the usual difficulties of liaison from the buyer in one country and the paying bank in another. Consequently, it is believed that the proposed bank super-service would be a more efficient system.

137. It may be observed that the establishment of the proposed bank super-service is entirely dependent on the initiative of individual banks in co-operation with inspection agencies. It may be queried why, if such a service can be developed by private parties, it has not already been done. In response, it would appear that there has been a general misapprehension about what sort of action must

necessarily be included for the super-service to be effective - it being assumed that banks would have to determine such data as the location and carrying capacity of the vessel concerned, financial reliability of the shipper, etc., and hence there has been a misunderstanding about the complexity of the task and the degree of risk exposure necessarily undertaken by a bank offering a super-service. In this respect, it is important to emphasize that the proposals made here involve merely a set of mechanical acts, for which the risk exposure is merely that resulting from the obligation to perform the mechanical act competently, and thus the corresponding fee for such a service - both as a result of the simplicity of the acts involved and the low level of risk exposure - could be relatively modest.

138. Theoretically, competitive pressures between different banks to obtain the income from processing letters of credit and related services should enable the super-service to be developed in any event - once its commercial potentials become fully understood. Obviously, banks that can offer this service, as well as the participating inspection agencies, will gain new business from buyers (via their requesting banks as agents) seeking to obtain the fraud protection offered by the super-service.

139. However, to facilitate the development of this service it would appear advisable to formulate a model set of provisions which could be used by banks to govern the application of the super-service vis-à-vis both the bank and the inspection agency on the one hand and the bank and the buyer on the other. In any event, the formulation of such provisions is obviously essential before offering a particular super-service in order to establish clearly the functions and obligations being undertaken by each party to the arrangement, whether involving the buyer as to the terms of the letter of credit <sup>61/</sup> or the bank and the inspection agency in detailing the limits of their engagement (as explained in paras. 128-129). In this sense, the provisions would regulate the relationship between the bank and the inspection agency and they would form the basis of the contract between the buyer and the bank just as is done with the UCPDC, though they need not actually form any part of the UCPDC.

140. It is suggested that the advance formulation of the model provisions in an international forum would offer certain advantages of publicity for the potential establishment of such a service and thus provide greater stimulus for it to be actually implemented by interested banks and inspection agencies. Consequently, it is suggested that the IGG may wish to formulate the model provisions and to urge their adoption by interested parties.

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<sup>61/</sup> The provisions would establish the obligations of the buyer, such as the type of documents which must be required by the letter of credit, as well as regulating other aspects of the credit. For example, as a result of requirements in some national laws that impose a duty on the paying bank to pay out on a letter of credit when the documents presented appear valid on their face and meet the terms of the credit, it would probably be advisable for banks offering the super-service to require as a precondition for offering the service that letters of credit expressly authorize them to refuse to pay in the event that the contact with the inspection agency does not validate the certificate.

(e) Potential combination of the proposed bank "super-service" and the central registry of bills of lading

141. The preceding section explained how a bank super-service can be developed as a relatively effective anti-fraud mechanism. Its one weakness is its failure to prevent fraudulent double sales of a single consignment when the second sale is not subject to the super-service. Aside from the fact that the second buyer could be the victim of a fraud, which can be explained as the risk one takes in not using the super-service, of particular concern to the buyer actually using the super-service is its inability to protect even him from being the victim of the fraud. It will not guarantee that he has the real bill of lading and nothing will prevent the second innocent buyer - who in fact may have the real bill of lading - from taking delivery of the goods first.

142. In sub-section (b) of this Section on documentary frauds (paragraphs 92-96), an explanation was given of the anti-fraud impact of the proposed central registry for bills of lading for the tanker trade, which the IGG, it was suggested, might wish to consider for possible wider application if the early experience with the system is successful. Although not effective in actually preventing fraudulent double sales when one sale takes place outside the registry system, the buyer using the Registry system for the entire period of the transport would appear to be protected from the consequences of such double sales. 62/

143. Thus, both the super-service and the central registry proposals have their strengths and weaknesses, the former eliminating the risk of sales of nonexistent or non-conforming goods but not protecting against double sales, the latter protecting against the risk of double sales but - at least to the extent it might be applied in the general cargo trades - not against shipment of concealed rubbish or otherwise non-conforming goods. However, when combined together, that is to say when a buyer of goods insists on using the proposed central registry for handling the bill of lading and insists on the super-service for handling the letter of credit, there should exist a virtually infallible protection against documentary fraud.

(f) Miscellaneous suggestions

144. Various other suggestions have been made by experts in the field of anti-fraud measures in order to help buyers avoid being victimized by maritime fraud. Generally speaking, however, these suggested measures either do not provide an effective protection or they are difficult to apply in practice. For example, it is frequently advised that the buyer must ensure that the letter of credit requires presentation of a full set of original bills of lading (usually three in number) and to ensure that additional documents be required that are not otherwise issued by the seller. Although the first point is designed to avoid presentation by the seller of only one original to the bank while simultaneously negotiating the others with different buyers - and is thus a useful suggestion - it does not provide any protection against the ample risk of a duplicate set of originals being forged and negotiated. As to requiring additional documents in the letter of credit not emanating in the normal course of business from the seller, although necessary in any case, this does not provide much protection against a seller prepared to forge the necessary documents.

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62/ See footnote 36, supra.

145. The arrangement of a revocable credit calling for part shipment to be made in stages has also been suggested. If the initial consignment does not meet the buyer's requirements, then the credit can be cancelled. <sup>63/</sup> However, numerous instances have been reported where fraudulent sellers first establish an image of respectability before committing a large fraud on very unsuspecting victims. In the same vein, it is clear that in the above suggestion it would be the last shipment, or whatever shipment is deemed the largest and most vulnerable, that would be chosen for the fraud. Thus, although the suggestion is useful to diminish the losses if and when a fraud should occur, it does not in fact prevent the occurrence of the fraud.

146. It has often been suggested, in addition, that whenever buyers have any doubt about the reliability of the seller, they should obtain a performance bond from the seller's bank. <sup>64/</sup> Although this is relatively effective safeguard, it is frequently difficult to obtain such undertakings in commercial negotiations.

## 2. Charter party frauds

### (a) Introduction

147. As pointed out in paragraphs 25-29, this type of fraud usually involves deceit and dishonest acts by carriers, <sup>65/</sup> whether in fact being shipowners or charterers, against cargo interests as shippers or consignees of goods. The secretariat has previously pointed out in its report to the Committee on Shipping (TD/B/C.4/244, para. 25) that shippers in general are frequently advised, as they are by the ICC in its Guide to the Prevention of Maritime Fraud that in order to avoid being victims of a maritime fraud, it is necessary "... to make inquiries so as to satisfy themselves as to the standing and integrity of the parties they deal with before entering into any binding commitment". <sup>66/</sup> Specifically as to this type of fraud, they are advised to use well-established shipping companies; when chartered vessels are used, they should insist on chartering only via agents of reputable institutions; and they should attempt to determine whether the carrying vessel is on charter and who the charterers and owners are. Smaller traders, in particular, are advised to use well-known forwarding agents. <sup>67/</sup> However, the ICC admits that on some trade routes it is not always possible to use well-established shipping companies. Furthermore, it admits that "Traders do not know and have no easy means of determining whether a vessel is on charter and who the real owners are". <sup>68/</sup>

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<sup>63/</sup> "A Profile on Maritime Fraud", presentation by the IMB, IUMI Cargo Workshop, 13 September 1982, p. 11.

<sup>64/</sup> Ibid., p. 11.

<sup>65/</sup> The term "carrier" is used here to refer to any person or entity holding himself out as ready and willing to carry the goods of another for a fee.

<sup>66/</sup> Ibid., p.9.

<sup>67/</sup> Ibid., p. 9-10.

<sup>68/</sup> Ibid., p. 8.

148. In particular reference to shipowners and charterers, the ICC Guide to the Prevention of Maritime Fraud presents certain advice before entering into a charter party, which is, in relevant part, as follows:

[T]he best way for vessel owners and charterers to avoid their involvement in incidents of fraud is to make the necessary enquiries so as to satisfy themselves as to the standing and integrity of the parties they are dealing with prior to entering into any binding commitments. The following recommendations are made in this respect:

1. Owners should seek advice on time charterers before agreeing to a charter. BIMCO, the Baltic Exchange and similar organizations can often assist with inquiries. Only reputable shipbrokers should be used.
2. Owners should check on the financial status of a charterer and in certain circumstances should demand that a bank guarantee covering estimated hire be delivered to them on signing the charter-party.
3. Owners should very firmly resist requests from unknown charterers for the inclusion of a clause in the time charterers or their agents the right to sign bills of lading on behalf of the master.
4. Charterers should know the disponent owners or be able to check on their record. 69/

149. Given the fact that, depending on market conditions, it will frequently be difficult to obtain a bank guarantee covering the hire, the primary safeguard for any party, whether shipowner, charterer or shipper using what is believed to be a "liner" service, is adequate investigation. Consequently, an analysis of the information needs of the various parties, or their agents, is perhaps appropriate at this stage.

150. From the perspective of a cargo owner, his general information needs will be divided between information relating to the ship and information relating to the parties connected with the operation of the ship. The relevant information directly relating to the ship would certainly include: its name; technical details concerning its type, size and carrying capacity; its age; its casualty history; etc. In addition, in view of the use of chartered vessels to commit frauds, via the disappearance of the charterer after having collected prepaid freight from other cargo owners, information concerning whether the vessel is on charter is of critical importance. Furthermore, in view of the tendency for ships involved in certain types of maritime frauds, particularly deviation and scuttling frauds, to undergo frequent name, ownership and nationality changes, a complete history of these items would be highly relevant. Also, as a result of the role substandard ships have played in deviating and scuttling frauds, as noted in IMO Assembly resolution A.504 (XII), up-to-date information on the ship's classification survey and safety certificates in force would be useful. In this last respect, it has been observed that counterfeit classification certificates are in wide

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69/ ICC Guide ... op.cit., p. 12.

circulation, 70/ thus direct confirmation with the issuers of such certificates, instead of visual inspection of such certificates, or - except perhaps in the case of relatively recent changes - checking with an information organization, would be necessary to eliminate the risk of deception.

151. As to the information relating to the parties connected with the operation of the ship, a cargo owner, whether entering into a charter party or engaging in a "liner" service, will wish to know whether the person with whom he is dealing is reliable and financially sound so that he will transport the goods to the agreed destination. Of particular concern in this latter context is whether the vessel is on time or voyage charter - if so, it would be necessary to know the reliability of financial standing of the actual shipowner as well. Consequently, the identity of the shipowner is highly important, and the same is true for the charterer and the relevant shipping agents. However, in view of the ability for known perpetrators of frauds to operate behind corporate shields, the identity of the beneficial owners should, ideally, be known. However, in view of the potential complexity of intercorporate relationships, use of trusts for shareholding interests, etc. it is probably not practical to expect full disclosure of such details in all instances, except perhaps for the identity of major shareholders or the parent corporations. Thus, other relevant criteria - in addition to the identity of major shareholders or the parent corporation - may need to be selected to help make an assessment of the potential reliability of the corporation, such as the identity of the corporate directors and, in view of the frequent use of newly created corporations in reported cases of maritime fraud, the date of incorporation. Also, in the case of shipowners, the names of other ships currently or previously owned, and in the case of charterers offering a chartered ship for carriage of goods, the previous chartering history, are all relevant information. In this respect, although a newly created corporation, as well as a corporation with no previous shipowning or chartering history and which is not part of a corporate structure with shipping experience, may not necessarily indicate fraudulent intent, it may nevertheless be good grounds for making further investigation.

152. The shipowner or disponent owner will wish to have information readily available to him to determine the reliability and financial standing of the charterer to ensure that he will be able to meet the obligations incumbent on him in the charter party. For this purpose, the relevant information mentioned in para. 151 as it relates to the concern of the cargo owner is equally relevant here, although in this context the charterer could either himself be the cargo owner or he could be someone wishing to use the vessel to act as a carrier to carry the goods of others.

153. The above mentioned types of relevant information are only an indicative list of suggested relevant data for parties to avoid being victimized by maritime fraud. Part III of this report (paras. 70-73) provided a brief review of certain organizations involved in the collection and dissemination of information. However, in the absence of organized international reporting requirements for information relevant to fraud avoidance type enquiries, the information obtainable from these organizations is not always complete, up to date, or even available. Nor is it possible to obtain all of the potentially relevant information from one source. Compounding this difficulty is that some of the other organizations mentioned in Part III with relevant information limit its dissemination to their members.

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70/ P. Sarlis, "The Phenomenon of shipping frauds. Some observations on recent incidents". Shipbroker Seminar, 1980, p. 73.

154. A good example of the inadequate availability of relevant fraud prevention information can be found in the reporting of charter fixtures. 71/ This type of information is not subject to any organized reporting system, thus despite being a highly important fact to be known, "traders do not know and have no easy means of determining whether a vessel is on charter ...". 72/

155. Furthermore, information concerning controlling interests, or at the very least concerning parent company and directors, is currently inadequate. LSIS provides information only for ships over 1,000 gross tons, thereby leaving uncovered vessels in the 100 to 999 gross ton category otherwise included within the LSIS data base. Although it is understood that the IMB has found relatively little involvement of vessels up to 200 or 300 gross tons in maritime fraud activities, nevertheless such involvement does occur in respect of vessels with 400 gross tons and over. 73/ Even in the over 1,000 gross ton category covered by LSIS, apparently otherwise available "confidential" data in connection with parent company links is excluded. Furthermore, the completeness and accuracy of the information reported will depend on the reporting requirements of the countries of vessel registration and company incorporation. In this respect, to the extent that national ship registries list only the name and address of the registered owners and company registers do not reveal shareholding interests, or the registered owner issued only bearer shares, then it may be impossible or extremely difficult to go behind the registered owner to identify controlling interests. Certain countries, including open registry and tax haven countries, are well known for enabling identities to be disguised behind corporate entities. 74/ As has

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71/ See paras. 75 and 147, supra.

72/ ICC Guide to the Prevention of Maritime Fraud, p. 8.

73/ However, insurance data suggests that the majority of the cases involving non or misdelivery of cargo concerned vessels over 2,500 gross tons. See, "Sample Experience of Current Fraud Cases" by A. Perry, submission to the Shipbroker Seminar, 1979, p. 38.

74/ E.G. as is stated in respect of Liberian law:

"Anonymity is easily preserved since: (i) all or part of the stock issue may be in the form of registered or bearer shares; (ii) after incorporation, any change of officers and directors need not be recorded in a public register; (iii) the Resident Business Agent is not required to file any reports with the Government regarding corporate activities".

Descriptive material on Liberia by Liberian Services Inc. incorporated in Tax Havens Encyclopaedia (Butterworths, London), Issue No. 0 (Liberia). Also, in the case of a corporation formed under the laws of Vanuatu, "It is usually 'exempted', which means it does no business in Vanuatu and is protected by the strict Secrecy Provisions of the Law. This law prescribed a criminal penalty if the confidential information which must be revealed to the Company Registrar upon incorporation is told to others. Companies may be formed locally by Trust Companies or Attorneys. For shipping purposes, companies may be formed ... by telex in a matter of about two days. There are no restrictions on the Nationality of Shareholders, Officers or Directors, Beneficial Ownership of the Company must be declared to the Company Registrar, but local nominees may be used as shareholders." Vanuatu - Vessel Registry and Financial Center, publication by the Office of the Deputy Commissioner of Maritime Affairs (New York, USA).



been said in this respect, "Countries of convenience, where offshore companies are allowed to operate under exempt status, provide a perfect cover for fraudsters". 75/

156. Complicating the task of the information collection and dissemination organizations is the ability for vessels to be registered in certain countries without a deregistration certificate from the previous country of registry, 76/ thereby enabling dual registration of ships. Such dual registration has been cited as facilitating vessel disappearances 77/ and is also discussed in connection with deviation and mortgage frauds. 78/

157. Thus it can be seen that under current conditions, adequate investigation, particularly within the time permitted in normal market transactions and for a cost commensurate with the perceived risks, 79/ can in many circumstances be a difficult and complicated task. It is felt that this task is made even more difficult for interests in developing countries far from the commercial centres, where many of the relevant information organizations are situated. In light of this situation, an analysis of possible remedies is set forth below.

(b) Licensing of carriers

158. In view of the significant role that "fly-by-night" operators play in maritime fraud, whether using time, voyage, or bare-boat chartered vessels, or offering their own vessels out for time or voyage charters, and the absence of easy and effective means to ascertain the reliability of carriers offering their services, particularly in the light of the difficulty of determining whether a vessel is chartered and who the real owners are, the secretariat suggested in its previous report submitted to the Committee on Shipping (TD/B/C.4/244, paras. 27-29) that consideration should be given to creating conditions in which the identification and assessment of the reliability of carriers would be more feasible.

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75/ Fraud and the International Maritime Bureau by E. Ellen, Director of the IMB, presentation to the BIMCO General Meeting, Madrid (Spain), May 1983, BIMCO Bulletin, 111-1983, No. 329, p. 7220 (hereinafter referred to as "BIMCO General Meeting").

76/ E.g. the United Kingdom does not require a deregistration certificate in order for a vessel previously on a foreign registry to be registered in the United Kingdom. Similarly, no statutory provision exists for issuance of such a certificate upon registration.

77/ See Ellen, BIMCO General Meeting, p. 7220; and "The phenomenon of shipping frauds; some observations on recent incidents", presentation by P. Sarlis, Secretary-General, Greek Ministry of Mercantile Marine, to the Shipbroker Seminar, 1980, p. 74.

78/ See para. 184 infra.

79/ Credit investigation agencies can be employed to report on financial reliability, but the data used is primarily based on published information, if any, unless more exclusive investigations are desired.

It pointed out that the work now being done in UNCTAD in elaborating a set of basic principles concerning the conditions upon which vessels should be accepted on national shipping registers should help in this regard. However, in view of the role that charterers play in the occurrence of this type of maritime fraud, it noted that additional measures may be necessary.

159. Consequently, it was suggested in that report that further consideration should be given to the establishment of a register of ocean carriers. <sup>80/</sup> Whether established on an international scale, or nationally with internationally agreed uniform standards, it was suggested that such a register could list individuals or entities, regardless of whether they were charterers or shipowners, who were ready and willing to carry goods by charter or liner service. In order for a carrier to be listed on the register, certain minimum standards of reliability and financial stability could be established. A somewhat similar suggestion has recently been made at the May 1983 General Meeting of BIMCO in Madrid (Spain) where it was stated:

"There should also be a multilateral agreement creating statutory Regulations to require shipowners, operators, managers and any company or individual describing themselves as disponent owners, to be fully licensed for these activities by the country they operate from". <sup>81/</sup>

160. Considerable investigation and thought has been dedicated to considering whether some sort of international licensing system would be effective in combating maritime fraud and practically feasible to implement. Although it would without question be an advantage for anyone having to deal with an ocean carrier (whether in fact a shipowner, disponent owner, etc.) to know that certain minimum standards concerning professional qualifications and financial reliability have been met, nevertheless, it is felt that such a system would not necessarily be effective in combating all the types of maritime fraud envisaged here and could pose certain practical difficulties in its implementation.

161. Certainly, a licensing system could reduce various types of maritime fraud such as deviations, scuttlings, as well as charter party frauds involving misconduct by the shipowner against the cargo owner as previously described in paragraph 29. However, the type of maritime fraud involving a charterer acting as a carrier (i.e. offering the chartered vessel to carry the goods of someone else, whether as disponent owner or as a liner operator), would not necessarily be affected other than to change the form in which it appears. Thus, instead of acting as a carrier, collecting prepaid freight, failing to pay the charter hire and disappearing, a charterer wishing to commit this type of fraud need only load his own goods on the chartered ship, sell them C.I.F., stop paying the charter hire and disappear. Since the charterer loaded his own goods, there was certainly no obligation to be licensed at that stage. At the time of sale, depending on with whom the contract of affreightment is deemed to be concluded, the charterer is either just a seller of goods under a contract of transport with the shipowner, for which no license would be required, or the contract of transport would be with him, thereby meaning that at the conclusion of the sale he is transporting the goods of someone else, i.e. the buyer, and therefore in need of a licence. This

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<sup>80/</sup> See footnote 63 for a definition of this term as used in this report.

<sup>81/</sup> Panel Discussion on "A Clean Shipping Industry - Fact or Fiction?", paper presented by D.E.D. Prentis, President of the Institute of Chartered Shipbrokers, London. BIMCO General Meeting, p. 7213.

situation poses two problems. Firstly, it would appear that such a licensing system would pose certain practical difficulties of implementation in that, depending on who signed (and in what capacity) the bill of lading, sellers of goods could be deemed to be carriers themselves upon conclusion of the sale, thus in effect, requiring a license merely to sell their own goods in transit. It would appear that such a requirement would present an unjustifiable impediment to the conduct of trade. On the other hand, although care in shaping the relevant contracts of transport could avoid the aforementioned problem (which itself highlights the potential complexity of the application of such a system), absence of a need for a license would then enable the perpetrator of the fraud to commit in essence the same crime for which the system was set up (at least in part) to avoid.

162. Another practical difficulty in the implementation of such a system involves a determination of the requirements which need to be met in order to obtain a license. Professional requirements such as years of experience of the carrier's personnel, absence of criminal records, etc. would undoubtedly serve a useful purpose. In addition, identification of the beneficial owners of the carrier would inhibit the current practice of well-known perpetrators of frauds from hiding behind brass-plate companies which have been established to effectuate their frauds. Also, such identification would complicate the current ability of perpetrators of frauds to hide their identity in order to disappear after the crime.

163. However, given the reported cases where seemingly reputable companies - having a moderate but respectable history of operations - suddenly commit a maritime fraud, it would appear that for any licensing system to be truly effective in preventing maritime fraud, it would need to require a performance bond to be posted. However, the potential gain from major maritime frauds is so great that such a bond would have to be several million dollars in size to act as a deterrent. The cost of such a bond, particularly a performance bond, would be so great, at least as to smaller albeit reputable operators with relatively limited assets, that it could well prevent them from continuing in service altogether. It is felt that elimination of such smaller operators, although perhaps eliminating many fraudulent operators as well, would deprive the market of a type of service which is needed for certain types of consignments in many trades, particularly among developing countries. Thus, it is felt that the imposition of a bonding requirement, although necessary for a licensing system to be truly effective, would probably not be in the over-all interests of the international shipping community.

164. For the above reasons, a licensing system may present several difficulties of implementation, as well as effectiveness, which appear to render it an unsatisfactory option for the international community to adopt at this stage in its efforts to combat maritime fraud. However, certain advantages of increased identification of the beneficial owners of shipping companies, charterers, etc., which would be a likely result of such a licensing system, would present a significant improvement over the current situation where investigations are extremely difficult to effectuate concerning who the shipowners are, whether the vessel is on charter and other highly pertinent details. Until such information is readily accessible, the ability of shipowners, shippers and consignees to investigate the reliability of carriers is extremely limited. Thus, consideration should be given to developing mechanisms which provide the benefit of increased identifiability without presenting the same complexities and application difficulties as are inherent in a licensing system.

(c) Improvements in the international collection and dissemination of information

165. In light of the inadequate amount of readily available information concerning shipowners and charterers, which complicates investigations by interested parties, consideration should be given to means to increase the available information. It can be seen from the review in Part II of this report (paras. 70-73) of the organizations concerned with the retrieval and dissemination of information that the increasing use of computers has already led to an increase of information being made available on at least many aspects of shipping operations. Thus, further enquiry in this field should be directed to determining what additional information should be made available, what measures should be taken to increase the reliability of the information now being made available and whether the organization of the current information dissemination system into several competing private organizations is satisfactory or whether a more centralized system is desirable.

166. What is apparent in this regard is that the task of the information collection and dissemination organizations in providing an accurate, timely and complete range of information relevant in connection with anti-fraud enquiries is impeded by the current structure of ship related information reporting requirements. National ship registries in many countries present at best only a formalistic range of information concerning the owner of record and technical details of the ship. Uniform application of the additional information suggested for inclusion in "A set of basic principles concerning the conditions upon which vessels should be accepted on national shipping registers" as contained in the Report of the Intergovernmental Preparatory Group on Conditions for Registration of ships on its second session, 82/ would improve somewhat the situation. However, it is suggested that from the perspective of combating maritime fraud, additional reporting and disclosure requirements are needed, for example concerning charter fixtures, ship agency agreements, parent company relationships as well as other data suggested later in this report in connection with other types of frauds (see paras. 150-151). Although such information need not necessarily be physically incorporated into the national ship register referred to in the above set of basic principles, it should at a minimum be centralized at the national level and presented for each ship registration for ease in collection and analysis. In this connection, what appears necessary in order to assist in preventing maritime fraud is to increase the amount of relevant information available and to centralize it as much as possible as to each ship in order to avoid the necessity of multiple enquiries.

167. Centralization at the national level would assist the undertaking of enquiries as well as the data collection of the various private information agencies. A remaining consideration in this regard is whether the current collection and dissemination system at the international level is satisfactory or whether additional measures need to be taken in order to facilitate further the undertaking of fraud prevention investigations by the parties concerned.

168. Among the various factors to be borne in mind when making such an assessment is the nature of the availability of the information. At the national level, it will be necessary to institute new mandatory reporting requirements for certain types of information determined to be necessary for fraud prevention, including

information mentioned in this section and in later sections of the report. In the absence of reporting requirements, the government agency charged with this responsibility would have to undertake its own investigations, which is a considerably more difficult and time consuming task. Hence, the imposition of active reporting requirements is a generally more preferable alternative and is regularly employed by governments in a wide range of areas, including shipping.

169. At the international level, the current situation - to the extent information is available - is based on a passive availability of information. In other words, the information may exist at the national level, usually in different locations, such as vessel registers, company registers or with individual shipowners or charterers. Individuals or information agencies wishing to obtain the information must actively collect it.

170. An alternative approach would be to institute an active reporting requirement at the international level, i.e. from a centralized information point in each country to a central registry of information. The main advantage of this approach would seem to be increased speed with which information is made available. In this respect, information which is only passively available must be collected and this usually can only be arranged as a practical matter at certain intervals of time. Information for which there is an active reporting requirement could be reported as soon as it is received, thereby rendering it available at the international level more quickly.

171. If it is decided to institute an active reporting requirement at the international level, it is difficult to determine to whom or to what information agency such information should be transmitted. Presumably a centralized organization to act as an international ship information registry would need to be agreed upon and at the moment there are more than one private information agencies providing varied, though interrelated, services. It may not be possible in this context for governments unanimously to select a particular commercial organization to fulfil the international information dissemination role. An alternative is to create an intergovernmental information agency to collate and make available ship-related information relevant to maritime fraud enquiries. However, it is not clear that the current losses from maritime fraud activities would justify the expense of such an endeavour, <sup>83/</sup> unless other benefits could be determined to exist by having an internationally centralized public data bank of ship related information. <sup>84/</sup>

172. A point to bear in mind when making the above assessments is that the IMB's data bank on maritime fraud provides a complementary pool of information to which any fraud prevention investigation should make reference in addition to

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<sup>83/</sup> Nevertheless, some estimates place current losses from maritime fraud at one half billion US dollars. However, this figure could not be used as a direct offset against the cost of establishing such an international organization, since it would not prevent certain types of fraud, such as documentary frauds, and the mere availability of information to facilitate fraud prevention investigations would not by itself entirely eliminate fraudulent activities, rather it could only act to minimize their occurrence.

<sup>84/</sup> Such an official international ship information register had been previously suggested by the secretariat in a report on the conditions for registration of ships (TD/B/AC.34/2, para. 60).

the information referred to above. In this respect, if some sort of centralized information agency is established as an independent organization, hereinafter referred to as the International Ship Information Register (ISIR), there would be certain advantages, from a fraud prevention viewpoint, in establishing a special link-up with the IMB data bank to correlate information. In this respect, seemingly innocuous information - when matched with the information in the IMB files, could well reveal the potential for maritime fraud to occur.

173. Another related point to bear in mind is that in receiving and collating information at the international level, the ability to match up information internationally will inevitably result in information coming to light that reveals the possibility of some sort of misconduct occurring, such as dual registration, mis-statements or omissions which are revealed by information received from other sources, etc. In whatever arrangement is decided upon at the international level, some sort of arrangement should be made to ensure that such relevant information is communicated to the relevant international or national bodies, such as Interpol, the IMB or national governments, which are in a position to take the necessary preventative measures.

174. The above discussion merely provides some considerations to be borne in mind when making a decision on these issues. In summary, it can be said that two basic issues have been presented. The first issue is whether there should be greater reporting requirements in all countries for relevant information to fraud prevention investigations. If this is decided in principle to be necessary, then further study needs to be done by the IGG to pin-point precisely what information is necessary and yet is not centrally available at the national level in each country. The second general issue for consideration by the IGG, which includes several sub-issues, is whether there should be reporting requirements at the international level and, if so, how this information should be centralized.

175. What is clear, however, in this area is the tremendous advantages of computerization. It is unlikely that all the information possibly relevant to maritime fraud investigations could practically be centralized, collated and presented in an organized form at the international level without computers. In this respect further consideration may need to be given to the needs of developing countries in both the adaptation to and acquisition of computers in the field of shipping.

(d) Miscellaneous suggestions

176. Various other suggestions have been made for dealing with this and related types of maritime fraud. The ICC Guide to the Prevention of Maritime Fraud, advises that the master should ensure that the cargo signed for is on board, that the bills of lading are signed only by authorized personnel and are authenticated and that the master should whenever possible exercise his power to sign the bills of lading (admittedly impractical in the established liner trades) <sup>85/</sup> This advice is mainly directed to the risk of bills of lading being signed by the charterer's agent, on behalf of the master, for cargo not in fact loaded.

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<sup>85/</sup> See ICC Guide op. cit. p.12. Additional advice in items 6 and 7 are considered to relate more to documentary and deviation frauds respectively, as treated in this report.

177. The problems arising from charter parties granting the right of charterers or their agents to sign bills of lading on behalf of the master are frequently cited in instances of maritime fraud, whereby bills of lading are issued which do not conform to the mate's receipt or are issued on a freight prepaid basis when the charter party had stipulated only freight payable bills (see para. 27). The difficulty with the above advice, as well as similar advice to the effect that a clause should be inserted in the charter party requiring all bills of lading to be signed by both the master and the charterer, <sup>86/</sup> is that the charterer can still substitute these bills of lading for his own which can be drawn up in contravention to whatever stipulations exist in the charter party. Although, it could be that - depending on the particular circumstances the shipowner, or disponent owner, receives some legal protection from such measures; nevertheless the burden of the fraud may have been merely shifted to the unfortunate buyer of the bill of lading. Thus, from an over-all perspective, such measures do not necessarily eliminate the fraud, they merely shift the consequences.

178. Only a world-wide abolition of charterer-signed bills of lading, which may not be practically feasible, in conjunction with greater identifiability of the various entities involved in offering a transport service could effectively reduce the incidence of this particular type of charter party fraud. Even in this case, there would still be the risk of forged bills of lading being issued.

179. It has also been frequently suggested that three months of charter hire always be paid in advance, or held in escrow, as a means to reduce the occurrence of this type of charter party fraud. <sup>87/</sup> It would seem that only sufficient freight to cover the voyage for which cargo is loaded need to be received in advance, or deposited in escrow, in order to reduce the attractiveness of this type of fraud. However, the ability of shipowners, or disponent owners, to obtain such an arrangement depends very much on market conditions. Only an internationally applied mandatory requirement that such arrangements be made could be truly effective. Nevertheless, such an arrangement might legitimately pose cash flow problems for some charterers - until the prepaid freight has been received, unless bank guarantees can be arranged at reasonable rates. Alternatively, the mandatory abolition of all freight prepaid bills of lading could serve the same purpose of eliminating the attractiveness of certain types of charter party frauds. Without the ability to collect the freight in advance, there would no longer be any advantage for fraudulent charterers to cease paying the charter hire and disappear. By being internationally applied on a mandatory basis, innocent buyers would no longer be victimized since they would be on notice that bills of lading on a freight prepaid basis would be illegal. However, such a suggestion would have significant economic implications, would profoundly restrict flexibility in commercial arrangements, and might not be warranted by the extent of the problem being experienced.

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<sup>86/</sup> E.g., see "A Profile on Maritime Fraud", submission by IMB at the IUMI Cargo Workshop, Sept. 1983, p.11.

<sup>87/</sup> E.g., see ibid., p.11.

180. Given the commercial complexities of this particular field, particularly in relation to charter parties, the usefulness of greater identifiability of the parties, and their interrelationships, through improved availability of information becomes an increasingly attractive anti-fraud measure. The availability of information does not by itself totally eliminate the risk of fraud, but it certainly reduces it by permitting the various parties to be better informed about the vessel concerned and the other parties with which they are dealing.

181. It has also been frequently suggested that parties should only enter into charter party fixtures through the medium of reputable shipbrokers who will investigate the reliability of the principals on whose behalf they are acting. <sup>88/</sup> In this respect, it is frequently cited that charters should be fixed only on the Baltic Exchange. However, given the increasing diversification of the international shipping community, as more and more areas of the world become increasingly involved in the international transport of their goods, it is not realistic to presume that London can remain the centre of shipping transactions. Nevertheless, the utility of reputable agents, whether acting as shipbrokers for charter fixtures or forwarding agents on liner shipments, should not be underestimated. They certainly can play a useful role. However, it is first necessary to determine which ones are professionally qualified and "reputable" and which ones are not. For this purpose, the establishment of agency licensing systems or the use of professional societies becomes necessary internationally. Such recommendations are considered in more detail in section 5 (a) of this part of the report (see paras. 206-209).

182. Additionally, the ability of agents to undertake adequate investigations either of or for their principals is directly dependent on information being available. As shipping has become increasingly internationalized, the system of personal contacts - so frequently relied upon in the London market - becomes less and less effective. In this respect, it should be noted that the "Salem" fraud, in which the vessel deviated to sell cargo and was subsequently scuttled, <sup>89/</sup> involved a charter fixture on the London market through reputable shipbrokers. This factor merely underlines the increasing need to make better provision for improved availability of information at the international level as recommended in this report.

### 3. Deviation frauds

#### (a) Introduction

183. It should be underlined that an important modus operandi for this type of fraud (as well as the related fake "sinkings" for hull insurance purposes) depends on the ability of the vessel to "disappear" after the event. Such disappearances are usually accomplished via one or more name, nominal ownership and nationality changes. To this extent, the ease of establishing new corporate

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<sup>88/</sup> E.g. "Views of a Practising Shipbroker", by D.E.D. Prentis, Shipbroker Seminar, 1979, p.56. See foot-note 46.

<sup>89/</sup> See Shell International Petroleum Co. Ltd. v. Caryl Antony Vaughan Gibbs (The "Salem") [1981] Lloyd's Law Reports, 316; [1982] 1 Lloyd's Rep.369 (C.A.). Lloyd's Law Reports, Part 4 [1983] Vol.1, page 342 (Lord Diplock ....)



identities permitted by many national laws, behind which may be masked common beneficial ownerships, certainly facilitates this process. More importantly, the ease with which vessel national registrations may be changed from country to country with little or no direct contact or control over the ownership and operations of the vessels concerned certainly provides ample scope for effecting quick vessel disappearances. In this respect, at least one analysis of a number of frauds involving non or misdelivery of cargo has revealed that 54 per cent of the cases concerned vessels from three flag of convenience countries. 90/

184. The situation is further aggravated by the fact that certain countries do not require a deletion certificate from the previous country of registration when accepting new vessels on their own registry. Thus, it is frequently the case that vessels have simultaneously more than one certificate of nationality, thereby enabling such vessels to effectuate rapid changes of identity with proper identification papers, merely by painting over their name under one nationality with that of another under another nationality and raising the new flag. 91/

(b) Registration of ships

185. It has been recommended on more than one occasion by international organizations which have considered the problem, that traders should avoid using vessels flying a flag of convenience. 92/ It has also been said in respect of flags of convenience that "In the context of maritime fraud, certain flags of convenience, due to their lax rules on registration and effective control over offences, act as a contributory factor .... Host governments of flag of convenience should be persuaded to exercise more stringent controls over manning, registration and administration of vessels." 93/ However, as has been previously pointed out by the UNCTAD secretariat,

"Owners of open-registry ships are less accountable than owners of other ships, partly because they are often unidentifiable and can change their nominal identities, and partly because even when identified they, their managers and their key shipboard personnel reside outside the jurisdiction of the flag State. The difficulties which open-registry countries encounter in controlling shipping operations under their flags stem directly from the lack of economic linkage, and consequently it is impossible to tackle the question of substandard shipping operations without tackling the question of the economic linkage between a vessel and the flag State." 94/

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90/ See, Perry, "Sample Experience of Occurrence Fraud Cases", Shipbroker Seminar 1979, p.38. See foot-note 46.

91/ Cf. "The phenomenon of Shipping frauds; some observations of recent incidents", presented by P. Sarlis, the Shipbroker Seminar, 1980, p.74. See also, E. Ellen Fraud and the International Maritime Bureau, presented by the BIMCO General Meeting, p. 7220.

92/ E.g., resolution adopted by the First Conference of Transport Ministers, 1-2 May 1982, of the Gulf Cooperation Council and recommendation adopted by the Economic and Social Arab Council, at its thirty-first session, 2-6 June 1982, of the League of Arab States.

93/ "Fraud and the International Maritime Bureau", by E. Ellen, Director, IMB; presentation at the BIMCO General Meeting, pp. 7720-21.

94/ "Open registry fleets", report by the UNCTAD secretariat, TD/B/C.4/244, para. 102.

186. Consequently, the work now going on within UNCTAD on conditions for the registration of ships form an indispensable part of any set of measures to be adopted to combat maritime fraud. It should be noted, in this respect, that resolution 144 (VI), unanimously adopted at UNCTAD VI, meeting in Belgrade from 6 to 30 June 1983, urged: 95/

"the expeditious completion of the work on conditions for the registration of ships, including particularly the establishment of a genuine link between the vessels and flag States, taking into account paragraph 1(b) of the resolution adopted by the Ad hoc Intergovernmental Working Group on the Economic Consequences of the Existence or Lack of a Genuine Link between Vessels and Flag of Registry at its first session and including the need for the flag States to exercise effectively their jurisdiction and control over the ships."

It will be noted from the draft text on identification and accountability of owners and operators drafted by the Intergovernmental Preparatory Group (IPG) on Conditions for Registration of Ships, 96/ that increased information will be made available as a result of this work, thereby rendering it more difficult for fraudulent operators to disappear after committing illegal acts.

187. It should also be noted that the above cited IPG text lists, in a section entitled "Register of Ships", information that should appear on a shipping register, including "Previous registry, if any, and date of deletion or suspension of previous registry". Firstly, although this is not yet an agreed text, it is recommended that it be adopted in order to eliminate the possibility of dual registration of vessels. Secondly, although the quoted text implies the need to submit a certificate of deregistration, in order to establish the required facts it is recommended that such a requirement be expressly included in the principles, as is done for bareboat charters 97/ in order to reduce the risk of misrepresentation.

188. Also in connection with the problem of dual nationality of vessels in the occurrence of maritime fraud, the IMB has suggested for governmental action that:

"An international register be maintained where all changes in vessels' flags and mortgages are recorded. With a total of 80,000 or so vessels in the world, this is a feasible proposition. Each flag State should agree to inform all changes in registrations to a centralized body. This would be an effective countermeasure to the problem of multiple nationalities of vessels." 98/

To the extent reference is being made to an information recording system, the above proposal mirrors the proposals made in Section 2 (c) of this Part of the report, (paras. 165-175) for the establishment of an International Ship Information Register (ISIR). Combined with a well established universal reporting

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95/ Liberia reserved its position on this paragraph.

96/ See the report on its second session, TD/B/935-TD/B/AC.34/8, Annex II.

97/ See Bareboat Charter Section of the text adopted by the IPG at its second session, Ibid., para.2, stating "on production of evidence regarding suspension or deletion of previous registration ...".

98/ "A profile on Maritime Fraud", IUMI Cargo Workshop, 1982, p.12.

system by all governments and the use of an "international ship identification number", which will be considered in subsection (d) of this Section of the report (see paras. 195-197), such dual nationality would immediately be revealed by such a register.

(c) Monitoring ship movements

189. The ICC Guide to the Prevention of Maritime Fraud recommends cargo owners that the master radio his position at certain periods of the voyage and, possibly for valuable cargoes, be required to report to Lloyd's Agents at each port of call, giving his estimated time of arrival at the next port. 99/ However, usually shipowners in deviation frauds report engine trouble as justifiable reasons for delays in arrival, thus additional monitoring of the vessel's actual position is necessary if this type of fraud is to be avoided.

190. The IMB offers a monitoring service of a vessel's voyage. 100/ This is done by requiring the contract of carriage to contain a stipulation obligating the Master to cable his noon position daily to the IMB. The voyage will also be monitored by independent sources at certain points in the voyage. By these measures, it is intended that any deviation will be detected early enough to prevent any unauthorized discharge of cargo.

191. As pointed out in paragraph 71, LSIS offers a shipping movements service covering 30,000 merchant vessels (out of an estimated 74,000 ships over 100 gross tons). In connection with this, a Special Watch Service is available whereby information concerning a particular vessel movement can be communicated to a client as soon as it is received by LSIS. It is understood that such information, which is dependent on reports from agents in ports, is at times over a week old, thereby limiting - though not removing - its utility as a maritime fraud prevention measure.

192. Monitoring of vessel movements is becoming more common, usually in connection with safety and traffic control. In this connection, various regional and national programmes exist. For example, there is the Australian Ship Reporting System in force around Australia, 101/ as well as the Baltic Sea Position Reporting System. 102/ Both systems have received the endorsement of the IMO. Also, it is reported that under the auspices of the National Association of Maritime Exchanges in the United States, by mid-1983 maritime exchanges covering almost all major ports of the United States will be linked together by computers to provide various information relevant to ship movements including vessel arrivals, agents for each ship, type of ship, its last port of call, where it will call next and its sailing time. 103/ Similarly, in Europe there is a centralized port information system being instigated by the European Port Data Processing Association, whereby members of the Association will be able to exchange information on ship arrivals, departures and characteristics. 104/

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99/ See ICC Guide ... op. cit.

100/ This service forms part of a larger package involving credit investigation of the seller and surveying the loading of the goods.

101/ See, Annual Report 1980-81, Department of Transport (Australia) p.104.

102/ See, IMO document MSC XLIV 21, Annex 20.

103/ "National Ship Data System Due in 1983", Journal of Commerce, 23 December 1982. See also "Marine Exchange eyes data network to give information on vessel movements to shippers, agents, charterers and ports", American Shipper, December 1982, pp.78-79.

104/ "European port computer link programmes..." Seatrade, November 1982, pp. 23-24.

193. As to the feasibility of establishing such a ship movement monitoring scheme on a world-wide basis, it has been stated by the Director of the IMB that: "It would be relatively simple, and not terribly expensive, to set up a system constantly monitoring ships' movements via satellite communications and shipboard 'black boxes'". 105/ It is reported that Lloyd's Register of Shipping have plans to install a prototype "black box" in a ship this year; however, this project is primarily designed to report on technical and safety related details and it is not believed to include a ship locating function. 106/ Various satellite-based communication schemes are currently being implemented, such as the INMARSAT system, 107/ which started operations in early 1982, the Sarsat-Cospas system, 108/ which should be operational by late 1984, and the Future Global Maritime Distress and Safety System, which is being developed by IMO, will eventually provide facilities for instant world-wide ship to shore communications and emergency ship position location capabilities in the event of ships being in distress. 109/ Additionally, it is understood that the International Telecommunications Union (ITU) has adopted a system of prefixes for vessel call signs, called Maritime Identification Digits (MIDs), which are allocated to each country and which will facilitate vessel identification and direct communications. 110/

194. On the basis of the above projects, it is anticipated that the expected advance in communications will eventually result in a global ship movement monitoring capability. Were this to be combined with an obligation for ships to report their voyage destinations and estimated times of arrival (ETA) upon leaving port, then it is presumed that vessel deviation frauds would be eliminated. Although the financial investment necessary for such an automatic ship monitoring capability presumably exceeds the benefits to be derived from reducing the occurrence of this type of maritime fraud, nevertheless such a capability, when instituted for other reasons as well - such as safety and traffic controls, could also have beneficial consequences for fraud prevention. In this respect, through the use of computers, information on ship voyage plans, ETAs, as well as data received from automatic ship monitoring schemes could in the future conceivably be another item of information recorded on ISIR as to each ship. Consequently, it is suggested that, although there are limited possibilities for action by the

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105/ "Data Bank May Solve Ship Fraud Problem", Journal of Commerce, 16 February 1982, p.24B.

106/ "Prototype shipboard black box set for trials later this year", Lloyd's List, 9 August 1983, p.7.

107/ INMARSAT stands for the International Maritime Satellite Organization, which has 37 member countries and is located in London.

108/ The Sarsat-Cospas project is being funded mainly by Canada, France, the Soviet Union and the United States. See "Many options still open for development of satellite" Lloyd's List, 2 June 1983.

109/ See, "The Mobile Services Conference (1983) in retrospect", Telecommunication Journal, Vol.50 - VII/1983, p.354.

110/ See resolution No. COM5/1, relating to the allocation of maritime identification digits (MIDs), adopted by the World Administration Radio Conference for the Mobile Services, Geneva, 1983.

IGG in this area in the immediate future, nevertheless, the fraud prevention impact of such ship monitoring schemes should be borne in mind generally by governments in their future work in this area.

(d) Ship identification

195. In its previous report on the subject (Future Work, TD/B/C.4/244), the secretariat suggested that consideration should be given to establishing an international obligation to carry a serial number on all vessels, which could not be changed during the life of the vessel regardless of the change of nationality and which would have to be clearly displayed at all times directly under the vessel's name. It was felt that such a requirement would make it more difficult for a vessel's identity to be disguised.

196. The ease with which vessel names may be changed is well documented. When combined with the likelihood of confusion with similarly named vessels from other national registries, it may be felt that vessel identification by use of names has outlived its usefulness and should now be discarded. Although names could obviously still be used if desired, they should not form the basis of identification. Rather, it would seem preferable to develop an international system of identification based on the above-suggested serial number allocation which would apply to vessels from construction to destruction. Such a system would in fact be similar to the Lloyd's Register identity number system, but it would go beyond it by requiring the visible appearance of the number of the hull of the vessel and it would be subject to government sanctions for non-compliance. In this last respect, and as pointed out in document TD/B/C.4/244, paragraph 30, although it would still be possible to change the serial number fraudulently, such an act could, by intergovernmental agreement, be made an offence punishable in any jurisdiction where the offenders are located.

197. It should also be noted that the proposed ship identification number would be an additional item of information for recording on the proposed ISIR. As the proposed primary means of ship identification, access to the central computer files for each particular vessel would be by reference to its ship identification number. Also, as previously indicated in paragraph 118, it is felt that the use of this number, in conjunction with the ISIR, would increase the likelihood that covert dual registrations would be revealed.

(e) Miscellaneous suggestions

198. In order at least to limit the ease with which cargoes can be legally disposed of in some countries, governments should, where appropriate, tighten national laws concerning the sale of goods by shipowners through court proceedings so as to ensure that fully adequate notice and opportunity to appear have been granted to the cargo owners. Also, governments should ensure that the establishment of free trade zones does not also provide opportunities for illicit activities, in particular the importation, illicit sale and re-exportation of goods. In this respect in relaxing fiscal controls for such areas, particular care should be taken in ensuring that adequate law enforcement and security measures are taken, bearing in mind the tendency for such areas to attract illicit activity. In this respect, the IGG may wish to consider this situation and to express its views.

4. Marine insurance frauds

(a) Applicability of previous suggestions

199. Many of the previous suggestions made in connection with other types of maritime fraud will also have a beneficial impact in eliminating certain types of marine insurance frauds. In particular, scuttling - both real and faked - usually involve over-aged, poorly maintained ships registered in a flag of convenience country and owned by a one ship newly created company with no other visible assets. It is understood that the unpublished report of the Far East Regional Investigation Team (FERIT), which was established by insurance interests - particularly from London - to investigate suspicious sinkings in the Far East, fully documented these characteristics in its investigation of suspect losses in Asia. In this respect, in a list of suspicious sinkings published in 1980, which it is understood included the list compiled by FERIT, at least 80 per cent of the total number of vessels for which the national registration is indicated were registered in recognized flag of convenience countries, primarily Panama. 111/ As to those ships whose age was known at the time of loss, 68 per cent were 20 years or more and 85 per cent were 15 years, or more. 112/

200. The role of sub-standard ships in the commission of maritime fraud has been recognized within IMO when adopting resolution A.504 (XII) on "Barratry, Unlawful Seizure of Ships and their Cargoes and other forms of Maritime fraud", wherein it states,

"The Assembly,

Recognizes that the ratification and effective implementation of IMO's conventions and other appropriate international instruments relating to maritime safety, in particular those dealing with the training and certification of seafarers and the procedures for the control of sub-standard ships adopted with a view to the eventual elimination of such sub-standard conditions, can make a contribution to the prevention and control of maritime fraud, and accordingly invites Governments to give renewed consideration to the ratification of the Convention and instruments and application of the resulting procedures;"

201. Also, the on-going work within UNCTAD on the conditions for registration of ships (see paras. 185-186), should - upon completion and implementation - have a substantial impact on the occurrence of this particular type of maritime fraud.

202. In addition, increased internationally available information on ships, their owners, charterers, corporate history, etc. could facilitate the task of insurers in assessing the risk of scuttling before accepting a risk or before paying a claim. Although insurers in London are believed to have access to substantial information not otherwise available to the public through the United Kingdom Salvage Association and the Confidential Lloyd's Index of Lloyd's Register of Shipping it is believed that the establishment of the proposed ISIR could increase the volume of information available.

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111/ Marine Insurance Bulletin (London), June 1980.

112/ Ibid.

203. Also, the ability for ships to disappear in connection with faked scuttlings would be made more difficult by the elimination of covert dual registrations. Such dual registrations could be eliminated either as a result of the universal adoption by States of a requirement of a deregistration certificate from the previous registry in order to register a ship or as a result of the establishment of a reporting requirement to the proposed ISIR of relevant information concerning ships on its register, including the proposed international ship identification number.

(b) Cargo insurance suggestions

204. In order to minimize the extent of exaggerated or fraudulent cargo insurance claims, insurers are advised to cross-check the accuracy and validity of all supporting documents with the appropriate surveyors and port authorities in cases where there are grounds for suspicion as to certain claims as well as to enforce applicable policy clauses requiring immediate notification of loss or damage. Additionally, insurers should ensure that their surveyors receive adequate guidelines for the preparation of their reports.

205. In the general area of marine insurance cargo loss prevention, IUMI has issued a brochure entitled "Cargo Loss Prevention Recommendations." 113/ Also, two studies, entitled "Loss prevention in fire and marine insurance" (TD/B/C.3/162) and "Cargo loss prevention: suggestions for a domestic policy in developing countries" (TD/B/C.3/162/Supp.1), have been submitted to the UNCTAD Committee on Invisibles and Financing related to Trade 114/ concerning recommended procedures and policy measures to minimize cargo loss claims. Included within the various recommendations is a suggestion for cargo insurers to establish a special agency, in active collaboration with port authorities, to undertake the supervision of cargo loading, unloading, shifting and storage operations at the port. 115/ These suggestions have been recommended by the Committee for adoption by developing countries as appropriate to their local circumstances. 116/

5. Miscellaneous frauds

(a) Licensing of shipping agents

206. It has been suggested on several occasions that in order to remove the various malpractices and frauds attributable to agents who provide intermediary services in connection with the sale, chartering and operation of the ship, such agents should be subject to a system of licensing. In particular, it is understood that in Singapore, the National Shippers' Council is working with the National Shipowners' Association and the Government authorities on the establishment of a national

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113/ Third edition (1974).

114/ At its ninth (2nd part) and tenth (first part) sessions.

115/ See TD/B/C.3/162/Supp.1, para. 58.

116/ See report of the Commission at its tenth session, first part, 13-17 December 1982, TD/B/937 - TD/B/C.3/182, resolution 22(X).

Registry of Shipping Agents to combat the increasing occurrence of fraudulent activities in that country. At the international level it was recently advocated at the 1983 BIMCO General Meeting by the President of the Institute of Chartered Shipbrokers (United Kingdom) that there should be in all cases a system of registration or licensing for brokers, agents and forwarders and compulsory membership in a national or international professional body having recognized uniform standards of conduct, with the possibility of being expelled should these standards be violated. 117/

207. Some countries impose licensing requirements for some types of agent functions, whereas in other countries no such system exists. 118/ Various national and international associations of brokers and agents exist, including the Federation of National Associations of Ship Brokers and Agents (with over 20 national association members), which in many cases set minimum standards for membership. 119/ However, there are no uniform standards applicable worldwide, nor is there a uniform compulsory requirement for membership in a national professional association.

208. One of the first considerations to be dealt with in this area is to define the type of agency operation to be included within any national or international system of registration or compulsory professional association membership. Historically the terminology for the various types of agents, including the general agent, the ship agent, shipbroker, chartering agent, freight forwarder, forwarding agent, etc., has been ill-defined in some countries and thus the terms frequently can include overlapping concepts and functions.

209. Consequently, if it is decided that some sort of licensing and/or compulsory professional membership requirement should be established for such agents, it would first be necessary to determine precisely the type of activities to be included within the system. For this purpose, and for the purpose of assessing the feasibility of establishing an international approach to this question, it is suggested that the IGG could formulate uniform minimum standards concerning necessary financial and professional qualifications, as well as standards of conduct, which could be used as guidelines for national action. These guidelines could then be recommended to all States for adoption. However, assuming internationally uniform minimum standards can be developed, it would appear that at least the means for their implementation could be left open for national decision, thereby providing flexibility in determining whether the standards should be incorporated into a government licensing scheme, an industry wide compulsory membership requirement in a professional association, or some combination of the two.

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117/ Working Session for Broker Members, Panel Discussion on "A clean Industry - Fact or Fiction". Contribution by D. Prentis, BIMCO General Meeting, p. 7215.

118/ See, Ibid.

119/ Also relevant in this context is the establishment of "Multiport Ship Agencies Network" in late 1978, which is a non profit international association of ship agencies, whose members meet certain uniform minimum financial and professional requirements. Although membership is generally limited to one agent per country, which may be considered unduly restrictive, at least the concept of such an organization serves to illustrate one possible means of providing a guide for identifying reliable agents.



(b) International registry of ship mortgages

210. It will be recalled from paragraph 188 that the IMB has suggested that there should be maintained an international register where all changes in ships' flags and mortgages are recorded. Such an international registry of mortgages would provide an easy reference point to potential buyers or mortgagors concerning the existing encumbrances on a ship, even in the event of a change of flag to a new State of registry which does not require a deregistration certificate from the former registry. In the absence of such a deregistration certificate there is no guaranteeing that existing mortgages have been satisfied or even that the mortgagees have been notified of the change. Although it has been recommended that all States should require such certificates, the additional provision of the proposed registry of mortgages would be an additional safeguard and provide a convenient point of reference. In fact, the proposed creation of the ISIR, as an international registry of ship related information would fulfil all the requirements for the IMB proposal. As a practical matter, ship mortgages are almost always subject to registration on the national ship registry in order to preserve their priority rights vis-à-vis other creditors, thus the regular communication of this additional information to the ISIR would be relatively easy to perform. In order to keep track of ship transfers from one flag to another, it is felt that it would be useful to implement the proposed ship identification number (see paragraphs 195-197) in connection with this proposal on recording ship mortgages internationally.

(c) Miscellaneous suggestions for port related frauds

211. Minimization of port related frauds, which often consist of, or are part of larger, documentary and marine insurance frauds, can be achieved through implementation of various measures. In this respect the recommendations on the cargo loss prevention contained in the studies referred to in paragraph 205 on marine insurance frauds are equally applicable in this context.

Also, ameliorating theft and pilferage problems in port areas is dependent in large part upon improvements in port security arrangements. In addition to greater security controls, much can be done in the form of improving the physical arrangements and storage facilities of port areas to minimize opportunities for theft. Customs authorities can also play a role in the limitation of fraudulent activities in their role of controlling the entry and exit of goods from the port area. In addition, various handling and storage procedures as well as port administration, especially as it relates to documentation procedures, can be effective in reducing opportunities for theft, in particular by reducing delays in cargo handling and, consequently, the time the goods spend in the port area. Improvements in packaging can also help to reduce losses from pilferage. Several useful studies have been done in this area, which contain recommendations for implementing the above measures. In addition to the studies mentioned in paragraph 205 on marine insurance fraud, particular reference should be made to ICHCA, which has published a booklet on "Cargo Loss Prevention Recommendations" and has issued a two-part study entitled "Cargo Security in Transport Systems", part one dealing with "Pilferage and cargo security" and part two dealing with "Major theft and cargo security". Countries wishing to improve the security of

port operations should consider contacting ICHCA for more information. Improvements in documentation procedures have been extensively considered by the UNCTAD Special Programme on Trade Facilitation (FALPRO) and the United Nations Economic Commission for Europe, and reference may be made to the recommendations on facilitation measures adopted by the Working Party on Facilitation of International Trade Procedures, in particular, recommendation 12 on measures to facilitate maritime transport document procedures (TRADE/WP.4/INF.61 - TD/B/FAL/INF.61), recommendation 13 on facilitation of identified legal problems in import clearance procedures (TRADE/WP.4/INF.62) and recommendation 18 on facilitation measures related to international trade procedures (ECE/TRADE/141/Rev.1). Also, the UNCTAD Shipping Division could assist in connection with projects on training and implementation of recommended port security measures.

212. Lastly, the use of letters of credit has been considered at the International Maritime Committee (CMI) Colloquium on the Bill of Lading in Venice, on 2 June 1983, wherein it was re-affirmed that clean bills of lading should never be issued against letters of indemnity. The problem of relatively superficial damage not materially affecting the good order and condition of the goods was considered as being best dealt with by getting banks to accept bills of lading with annotations to that effect as "clean" for payment under letters of credit. For this purpose, it was also recommended that an agreement should be reached with the ICC as to the acceptability of such claused bills of lading.

213. It should be noted that article 17 of the United Nations Convention on the Carriage of Goods by Sea of 1978 (Hamburg Rules) stipulates that if the carrier, by omitting a reservation in return for a letter of guarantee, intends to defraud a third party, including a consignee, who acts in reliance on the description of the goods in the bill of lading, then not only is the letter of guarantee invalid, but the carrier loses the benefit of the limitation of liability in the Convention for claims for loss from such third party. In view of the risk that the carrier may be deemed to have intended to defraud the buyer of the goods by failing to insert a reservation on a bill of lading in return for a letter of guarantee, it may be anticipated that the Hamburg Rules will assist in reducing the frequency of the use of letters of guarantee.

## 6. Piracy

214. International law establishes an obligation on States to co-operate in the suppression of piracy and grants States certain rights to seize pirate ships. In particular, the Convention on the Law of the Sea (UNCLOS), provides in article 100:

"All States shall co-operate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State,

and in article 105:

"On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or

aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith."

215. The treatment of piracy by international law has at times been considered to be an insufficient response to the actual problem currently being experienced. Generally the criticisms relate not directly to the powers granted to States but indirectly via the definition of the term, which in turn controls the operation of the extraordinary powers granted to States by article 105. Specifically, the definition has been criticized as being too restrictive in referring only to acts on the high seas (or in a place outside the jurisdiction of any State) and only to acts committed against another vessel. 120/

216. In being restricted only to acts on the high seas, the extraordinary State jurisdiction granted by article 105 will not apply to acts committed within the territorial sea. In view of the expanded scope of the territorial sea to 12 miles (by article 3 of UNCLOS) and the fact that a majority of current piratical acts are committed off coastal areas, the restriction of the term piracy in international law to only the high seas may be viewed as an unfortunate limitation removing a large number of otherwise includable acts. However, the fact that a piratical act occurs within the territorial sea of a State results in the application of that State's national laws. In this respect, no case has been cited where reported acts are not punishable by the applicable law. On the assumption that the attackers remain within the territorial area of the same State, and on the further assumption that instances of insufficient enforcement of the applicable national law results not from lack of willingness but from lack of practical capacity, attention should be turned to what measures could be adopted to assist such States in enforcing their laws in the areas affected. In this context, reference could be made to the eleven nation fund organized by the United Nations High Commissioner for Refugees to supply aid to the Government of Thailand in suppressing piratical attacks in its waters. 121/ Such an international co-operative arrangement could be considered for other affected areas, 122/ bearing

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120/ However, see also "Terrorism and the law of piracy", The Frank Stewart Dethridge Memorial Address, delivered by the Hon. Mr. Justice G.S.M. Green, Chief Justice of Tasmania, to the annual meeting of the Maritime Law Association of Australia and New Zealand.

121/ See, Report into the Incidence of Piracy and Armed Robbery from Merchant Ships, by IMB, to IMO, 6 June 1983, p. 3.

122/ In support thereof, see ibid., p. 21.

in mind the sovereign right of each State to enforce its national laws in the manner it deems appropriate.

217. To the extent that attacks occur within territorial seas, and then the attackers flee to the territorial sea of another State, then it is suggested such a situation requires a regional co-operative arrangement between the affected States, inter alia, to co-ordinate their enforcement policies and, perhaps, ameliorate extradition procedures. Left remaining are cases of acts occurring within territorial seas after which the perpetrators flee to the high seas. However, it may be doubted whether there are very many such instances that cannot be handled by the right of hot pursuit granted to coastal States in article 111 of the UNCLOS. In this respect, the increased information to be received from Governments pursuant to the draft resolution to be submitted to the IMO Assembly (see para. 51) may provide a better understanding whether or not a problem exists in this regard.

218. The other types of criticisms directed to the treatment of piracy in international law concern the limitation of the definition only to acts committed against another vessel, thereby excluding acts by the crew or passengers against other persons or property on the same ship. For example, it has been asserted that there should be

"an agreement among nations in which the traditional and limited interpretation of piracy ... should be widened. It is true ... that the 1958 Geneva Convention does widen this basic definition but we are still left with the constraint that it is not deemed to be piracy if the acts are performed by the crew against persons or property on the same ship. It is true there could still be a number of shipping frauds which would not be caught in the net of [an] even very broad definition of piracy but it seems ... that agreement between the major commercial countries of the world to permit the apprehension and trial of any national in any ship against whom founded allegations of criminal acts against a ship or its cargo have been made, would be a most effective deterrent". 123/

Furthermore, it should be noted that the proposal of Lebanon submitted to the IMO for a convention on barratry, 124/ and unlawful seizure of ships, recommended treating such offences in the same way as piracy and authorizing the boarding of the offending ship. 125/

219. It may be viewed that there are certain objections to such a proposal as a matter of practicality and as a matter of principle. As a matter of practicality, if States are to be granted greater rights to interfere with ships flying the flag of another State - which is the result of the above suggestion, then it should be relatively clear when such acts have been committed so as to avoid unnecessary interference with shipping operations on the high seas. The main thrust of the suggestion to equate certain acts to piracy appears to focus on

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123/ Lord Hacking, The Shipbroker Seminar 1980, p. 51.

124/ Barratry is defined in many legal systems as a wrongful act wilfully committed by the master of crew to prejudice of the owner or charterer (when acting as the owner).

125/ See IMO document C/ES.X/20/2, 2 November 1979, annex, p. 4.

barratry and deviation frauds, <sup>126/</sup> as acts against the cargo on the same vessel. However, due to the restrictive definition of barratry, which precludes the involvement of the shipowner (except perhaps when the acts are directed against the charterer who is acting as the shipowner, such as in the case of a bareboat charter) barratry as such is a relatively rare event.

220. Consequently, deviation frauds appear to be the main concern of suggestions to equate such acts to piracy. However, in the absence of reporting requirements on voyage schedules and an international ship monitoring system, it will be relatively infrequently that it can be determined that a vessel on the high seas is actually committing a deviation fraud. Even if it can be determined that it is no longer on its intended course, there are numerous practical reasons to justify such a deviation. Until steps are taken to dispose of the cargo, it can be argued that the deviation is perhaps at most a violation of the contract of transport but it is not a crime. Thus, only after the fraud has been completed, when the vessel is back out on the high seas, presumably under a new identity, will intervention by vessels of other States be practical. Whether such an expansion of jurisdiction is warranted by the problem of deviation frauds, and whether the probable negative repercussions of increased interference of international shipping are outweighed by the benefits of reducing this type of fraud, is a matter to be assessed by all States. In making this assessment, account should be taken of the degree to which this type of fraud could be eliminated by expanding the jurisdictional rights of all States over such ships and perpetrators of fraud within their territorial jurisdiction, even when the crime has been committed elsewhere (see paragraphs 226-260, infra).

221. As a matter of principle, acts which occur internally to a ship, such as deviation frauds where this act is against the vessel's cargo, are subject to the uniform application of the law of the flag State. This may be viewed as a crucial distinction from piracy, where in all likelihood such acts will involve vessels flying the flags of two different States and therefore meriting the intervention of international law. In return, it could be argued that it makes little difference whether cargo is stolen in an attack on a vessel from another vessel or whether it is stolen by deceit involving the master and crew of only one vessel agreeing to transport it, but deviating and selling it for their own profit. In both cases the cargo is stolen. In both cases the victim and the perpetrator of the act may be of different nationalities. Although established principles of international law may be invoked to demonstrate that these considerations are irrelevant to the general structure of the existing international legal order applicable to ships and that they cannot therefore be the basis for international law to grant extraordinary rights to interfere with such ships on the high seas, it can nevertheless be argued that some sort of increased jurisdictional capabilities should be granted to States to combat a problem for which the current structure of jurisdiction over such acts as deviation frauds is clearly insufficient. However, the problem being raised is jurisdictional and to this extent further analogies to piracy, although useful as an example of an act for which wide jurisdictional powers are granted to States, are not entirely useful. Consequently, it is suggested that if there are acts of maritime fraud for which it is desired to have some sort of greater jurisdictional capabilities, then reference should be made to the following section of this report (section B of Part IV, paragraphs 222-260) dealing with remedial measures, in particular concerning criminal actions.

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<sup>126/</sup> It is believed that the problem of seizure of vessels, to which reference has been made, in fact involves deviation fraud described in paragraph 30.

### C. Remedial measures

222. In addition to the various possible prevention measures which may be taken against the occurrence of maritime fraud and which have been reviewed in the preceding sections, consideration may also wish to be given to possible remedial measures.

223. After a fraud has occurred, one of the most difficult tasks facing any victim is identifying the perpetrator of the fraud who has usually "disappeared". A combination of long distances involved between buyer and seller, limited contact between the perpetrator of the fraud and the victims, the ability to disguise identities behind corporate shields, and the multi-jurisdictional nature of most frauds are among the major factors enabling a large number of perpetrators of fraud to avoid identification. Consequently, the efficacy of remedial actions, which are generally dependent in the first instance on such an identification, may be of somewhat limited value. Nevertheless, it can be viewed that a sufficient number of instances of identification do occur so as to justify improving the efficacy of remedial actions in those instances where they are applicable, particularly in order to act as a deterrent to the commission of other frauds.

#### 1. Civil actions

224. Because of various legal complexities and practical difficulties in undertaking successful international civil actions, most victims of maritime fraud do not seek to recoup their losses through civil actions against perpetrators of such frauds. Even assuming that a victim of a maritime fraud can identify the perpetrator of the fraud, the successful recuperation of his losses will be dependent on a number of other factors, including the ability to bring a civil action in a court with jurisdiction, the ability to obtain a judgment in his favour, for which - depending on the type of fraud - major difficulties of proof, may exist and the ability to enforce the judgment against the perpetrator of the fraud.

225. In addition to whatever legal complications exist, the last factor can often pose substantial practical problems of finding seizable assets on which to enforce the judgment. Most likely the financial proceeds of the fraud will have been "laundered" and, if not placed in a numbered account in a country with favourable bank secrecy laws, the perpetrator of the fraud will at least attempt to hide his relationship to the bulk of his assets. The degree of success with which such laundering and disguising of assets can be performed may be considered sufficiently great to call into question whether further steps in ameliorating the other legal difficulties facing a victim of a fraud in bringing a successful legal action are warranted. It may be for this reason that those suggestions for improvements in remedial fraud refer to improving capabilities in criminal actions and not civil actions. <sup>127/</sup> For this reason, the IGG may not wish to develop this type of remedial action to combat maritime fraud.

#### 2. Criminal actions

##### (a) Introduction

226. Maritime fraud is, by its very nature, international in character. The ICC Guide to Prevention of Maritime Fraud provides examples of relatively simple

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<sup>127/</sup> See paragraph 228, infra.

frauds, including up to five different States. 128/ It has been asserted that the major reason for maritime fraud being the "nearly perfect crime" is its international nature. 129/ In this connection, the large number of jurisdictions in the world pose particular problems in the administration of justice and criminal proceedings in the international context. 130/ As has been said,

"The diversity in today's frauds affects virtually all parties to an international trade transaction, with the involvement of anything between four and ten countries, thus hampering investigation, extradition and prosecution of offenders." 131/

Similarly, as has been pointed out by the Secretary-General of the Greek Ministry of Mercantile Marine,

"...[W]e have been unable to prosecute grave offences committed against Greek citizens and Greek ships because the criminal acts were committed by foreign persons outside Greek territory. This criminal activity, which in terms of financial losses, far exceed the losses involved in all the cases we are presently investigating, remains to my knowledge, not prosecuted and not punished." 132/

227. In view of the difficulties experienced in obtaining jurisdiction over offenders, or having them extradited to a country prepared to prosecute them, the UNCTAD secretariat had previously suggested that it would be necessary to investigate the feasibility and desirability of an international convention establishing greater jurisdictional capabilities of countries affected by designated acts of maritime fraud, including common norms on the basis of which individuals accused of such acts could be extradited. 133/ Current extradition treaties are usually on a bilateral basis. However, given the large number of sovereign States now existing in the world, a bilateral approach may no longer provide a practical approach to dealing with the problem of international crimes. 134/ Consequently, in the context of the multiple number of countries within which a single act of maritime fraud can be committed, it would appear preferable that the problem of jurisdiction and extradition be considered on a multilateral basis.

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128/ See ICC Guide op.cit. pp. 15-16.

129/ G.F.B. Cooper, "Responsibilities of flag states in the prevention of fraud", Shipbroker Seminar, 1980, p. 26.

130/ See, The Shipbroker Seminar, 1980, p. 66.

131/ "Maritime Fraud is now a more difficult nut to crack", by E. Ellen, Lloyd's List (17 September, 1981).

132/ The Shipbroker Seminar, 1980, p. 73.

133/ See document TD/B/C.4/244, para. 34.

134/ E.g., Morocco has extradition treaties with only 14 countries; Senegal has treaties with only 12 countries, and the United Kingdom has treaties with only 45 countries.

228. There have been repeated appeals for the problems of jurisdiction and extradition in maritime fraud to be solved through new international legislation. For example, in originally bringing the problem to IMO, the Government of Lebanon stated,

"We consider that it would be useful to prepare an international convention for the suppression of criminal barratry and the unlawful seizure of ships and their cargoes." 135/

Similarly, the IMB has stated that "possibly, a special extradition treaty could be introduced, which will make the extradition problem in maritime fraud much simpler. 136/ Also, the Secretary General of the Greek Ministry of Mercantile Marine has stated:

"It would be useful to prepare a binding international legal instrument permitting the national authorities of the signatory countries to prosecute and punish persons of every and all nationality, who commit criminal acts against a ship and/or her cargo, independently of where, when and how such act or acts have taken place." 137/

Numerous similar appeals have been made on other occasions. 138/

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135/ IMO document E/ES/X/20/2, Annex p. 3.

136/ IUMI Cargo Workshop, p. 12.

137/ The Shipbroker Seminar, 1980, p. 74.

138/ E.g. "...[C]onsideration should be given to drawing up an international code in which the law concerning fraud and the means by which it can be enforced, could be agreed." Lord Hacking, Shipbroker Seminar 1980, p. 51; "The most ambitious step that we can take and in my view the most necessary, is the introduction and enactment of new international legislation against maritime fraud. This will require an international convention, whose primary purpose would be to completely reform the extradition laws as we know them, and to embrace international crimes as we now recognize them"; R.G.J. Ottaway, "Maritime fraud: governmental action the real answer"; Business and Crime: Cargoes, vol. 1, No. 1, May 1983, p. 6. See also, Federation of Chambers of Commerce, Industry and Agriculture for Arab Gulf Countries, paragraph 60; the Arab Federation of Shipping, paragraph 56; the Gulf Co-operation Council, paragraph 62; and the League of Arab States, paragraph 67.

Suggestions have also been made concerning greater co-operation on criminal matters generally, see the seminar on "International Criminality and Co-operation of States" organized by the International Institute of Law of French-speaking Countries, Cairo (Egypt) 20-27 November 1982, at which the delegation from Gabon proposed the development of an international penal code by the United Nations.



(b) The concepts of jurisdiction and extradition

(i) Jurisdiction

229. Those States with at least an interest in prosecuting the perpetrator of a maritime fraud are likely to be the following:

- State 1. the State having custody of the offender (perpetrator of the fraud)
- State 2. the State of which the offender is a national
- State 3. the State where the offence is committed (or completed)
- State 4. the State where the offence was planned or set in motion
- State 5. the State whose national interest is injured
- State 6. the State or nationality of the person injured
- State 7. the flag State of the vessel which is the instrument of damage
- State 8. the nationality of the owners of the vessel
- State 9. the nationality of the charterers of the vessel
- State 10. the State where the vessel docks with the offender on board immediately after the offence was committed.

230. In a study of the legal systems of the member States of the Council of Europe the conclusions were:

(a) The rules governing jurisdiction in the various member States are based on broadly analogous concepts.

(b) Almost every one of their legislations recognizes the following grounds on which jurisdiction may be determined: the place of the offence, the nationality of the offender and the need to protect the State from offences against its sovereignty or security and universal jurisdiction. Some legislations recognize also the nationality of the victim and the habitual residence of the offender.

(c) Territorial jurisdiction remains the fundamental form of jurisdiction; the concept of territory appears to be gradually widened.

(d) The nationality of the offender is recognized as a ground of jurisdiction by almost all legislations, but in many cases it is of a secondary character being subject to procedural conditions and proceedings may be barred if the case has already been heard elsewhere.

(e) The need to protect the State from offences against its sovereignty or its safety is always recognized as a principal ground of jurisdiction.

(f) Universal jurisdiction is recognized for certain offences only.

(g) The nationality of the victim is not recognized as a ground of jurisdiction by all countries; the procedural conditions to which it is usually subject tend to make it a secondary ground.

(h) Jurisdiction based on the offender's habitual residence is recognized by some States. 139/

231. Referring to the list of possible States with a 'prosecuting interest', (paragraph 229) it is indeed possible to identify certain States which could be accorded jurisdiction which is currently recognized by customary international law. 140/ For example:

- State 1: is catered for by what is known as the 'universality principle', which reflects the concern over offences creating a common danger in numerous States, e.g. piracy;
- State 2: the 'nationality principle' or 'active personality principle', i.e. jurisdiction exercised by the State over its own nationals without regard to the place of the offence;
- Stage 3: the 'territorial principle' or 'ordinary jurisdiction' based upon the generally recognized principle that a State should have jurisdiction over all offences committed or completed within its own territory, including ships flying its flag;
- Stage 5: the 'protective principle', which determines jurisdiction by reference to the national interest injured by the offence;
- Stage 6: the 'passive personality principle' which determines jurisdiction by reference to the nationality of the person injured by the offence.

232. However, among the various grounds for which States may assert jurisdiction, it is the territorial principle of jurisdiction which is the most widely used and recognized. On the other hand, as has been previously pointed out, universal or extraordinary jurisdiction is relatively rare and is confined to a limited range of acts. 141/ Thus, unless State 1 (the State having custody of the offender) is also State 3 (the State where the crime occurred), i.e. that the offender is in custody in the same State as where the crime was committed, or unless State 1 is also the same as one of the other States listed in paragraph 231 above and also uses one of the applicable subsidiary principles of jurisdiction for the type of crime committed, then State 1 will not have jurisdiction to prosecute the offender. Unless an extradition treaty exists between State 1 and some other State asserting jurisdiction, the offender will be free of prosecution. Even in the event that there is an extradition treaty, there are significant difficulties with utilizing extradition procedures, as will be pointed out below (see paras. 233-234).

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139/ General Observations on the Explanatory Report on the European Convention on the Transfer of Proceedings in Criminal Matters, Council of Europe, Strasbourg (France), 1972, para. 13.

140/ The Harvard Research Draft Convention on Jurisdiction with respect to crime, disclose five general principles on which criminal jurisdiction is claimed by States. See American Journal of International Law, vol. 29, Supp. 443 (1935).

141/ See paragraph 230, supra.

(ii) Extradition

233. Extradition is the surrender by one State to another State of an offender, or an alleged offender, in respect of an offence over which the latter State has jurisdiction. <sup>142/</sup> Extradition is usually pursuant to a treaty obligation established between the State having custody of the offender and the requesting State. Such treaties are usually on a bilateral basis. They usually specify the precise grounds for which extradition may be granted. States generally require that before granting extradition in a specific case, it must be determined that the act which is the basis of the extradition request is considered a crime under the law of both the requesting and custody State.

234. There are a number of problems with extradition even where it is available in that it is a relatively expensive and time consuming process, for which many States grant appeal rights to the accused. Also, disputes as to scope of extraditable acts under a treaty are not uncommon. For example, it has been said that there are difficulties in respect of the extradition treaty between the United States and the United Kingdom because of the apparent difficulty of the Department of Justice (United States) and the Director of Public Prosecution (United Kingdom) agreeing on the extent to which federal statutory definitions of fraud translate into common law concepts. <sup>143/</sup> Furthermore, many States exclude their own nationals from the scope of extradition treaties. Thus, unless the State of custody is prepared to assume jurisdiction to prosecute on the grounds of nationality (i.e. under the "nationality" or "active personality" principle), a perpetrator of an international fraud elsewhere can take refuge in his own country and be free of prosecution.

(c) A convention of jurisdiction and extradition for maritime fraud

235. From the foregoing account it will have become clear that jurisdictional capabilities based mainly - but not wholly - on the principle of territorial or ordinary jurisdiction, are not adequate to deal with international maritime fraud. Out of perhaps ten States which may have an interest in prosecuting an offender, perhaps only one State will - by virtue of the territorial principle - have the jurisdictional capability of doing so.

236. Admittedly, where an offence is committed in two or more States, completion of the offence taking place in yet another, all States may have jurisdiction to prosecute for the part of the offence committed within its territory. Such a situation is consistent with the principle of territorial or ordinary jurisdiction. Even in this type of situation, however, it may be that the

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<sup>142/</sup> It has been defined by the Supreme Court of the United States as: "... the surrender by one nation to another of an individual accused or convicted of an offence outside its own territory, and within the territorial jurisdiction of the other, which being competent to try and to punish him, demands the surrender" Terlinden v. Ames, 184 U.S. 270, 289 (1902). See further: G.H. Hackworth, "Digest of International Law", vol. 4, chap. 12.; L.C. Green "Recent Practice in the Law of Extradition" Current Legal Problems vol. 6., 1953, pp. 274-296.

<sup>143/</sup> See "The role of the law and the courts in enforcing national and multinational contracts", by the Hon. Charles S. Haight, the Shipbroker Seminar, 1980, p. 10.

activities taking place in the various States could amount to differing offences. For example, a fraudulent marine insurance claim in State D could have involved along the way a conspiracy to defraud taking place in State A, a fraudulent misrepresentation to insurance brokers in State B, a scuttling on the high seas or within the territory of State C. It may be that State D although having jurisdiction over the offence of making a fraudulent marine insurance claim, will have no jurisdiction over the scuttling of the vessel.

237. Consequently, any convention designed to deal with the problem of maritime fraud must inevitably expand the jurisdictional capabilities of affected States. As part of this jurisdictional aspect of such a convention, it should also list those acts of maritime fraud which are to be covered by the special rules on jurisdiction. Such a list could be restricted to crimes commonly recognized by all States, in which case the list would be subject to certain limitations in scope. <sup>144/</sup> Alternatively, the list could be wider and the convention could declare the list of acts in the convention to be considered crimes in all States becoming party to it, in which case a degree of international uniformity would be achieved. Extradition - despite its limitations - could also be covered by such a convention in order to overcome the bilateral restrictions on its use. In this case, the list of acts to be included, whether limited or broad in scope as described above, will be determinative of the range of acts for which extradition can be achieved. <sup>145/</sup>

238. Consideration should be given to linking extradition obligations to any expanded jurisdiction capabilities, so that States must either prosecute an offender in its custody or extradite him to a requesting State. By such alternative obligations, the risk of offenders finding refuge from both prosecution for lack of jurisdiction (or lack of interest in exercising it) and extradition because of being a national of the State of custody would be eliminated.

239. Although, at first sight, such suggestions for an international convention on maritime fraud might appear extraordinary, clear precedents can be found in existing conventions designed to cover specific types of acts, for example, as in respect of aerial hijacking in the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; the sabotage of aircraft, in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; and offences against diplomats, in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973.

(i) Establishment of expanded jurisdiction

240. The concept of 'universal jurisdiction' is, as the name implies, probably the most comprehensive and all-encompassing principle of obtaining jurisdiction over the offenders. The best known and most ancient example of its application is in the sphere of 'piracy', which attracts universal jurisdiction giving the pirate no safe resting place, whether within any State's territory or on the high seas (see paragraph 214).

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<sup>144/</sup> E.g. "fraud" as such is not recognized in some jurisdiction as a crime. Rather, it is generally considered in such jurisdictions to be method to commit another crime, such as larceny. See IUMI Cargo Workshop, 1982. Moderator's Introduction.

<sup>145/</sup> For example, the second approach described above, in which the list is broad in scope and the convention declares such acts to be crimes in all Contracting States, facilitates extradition by ensuring uniformity between States of the basis for extradition requests. See further, paragraphs 245-247.

241. Thus, as previously discussed in paragraph 218, the principle of jurisdiction applicable to piracy could be applied to specified acts of maritime fraud to provide a universal jurisdiction by all States against the perpetrators of such frauds. If certain types of maritime frauds such as deviation were regarded as offences "equivalent to" piracy and thus subject to jurisdiction according to the "universality principle", then all of the ten States with a prosecuting interest, (listed in paragraph 229) most notably State 1 (the State having custody of the offender) would have a basis for exercising jurisdiction. As pointed out earlier, such a suggestion has been made on more than one recent occasion in connection with combating maritime fraud. <sup>146/</sup> However, in view of the cautionary note in paragraphs 220-221 concerning the exercise of a universal jurisdiction on the high seas over perpetrators of such types of fraud, the Group may wish to consider creating an extraordinary type of jurisdiction in specified circumstances without actually creating a universal jurisdictional capability along the lines applied to piracy. For this purpose, an example can be found in article 4 of the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 (hereinafter referred to as "The Hague Convention"), which provides:

"1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases:

- (a) When the offence is committed on board an aircraft registered in that State;
- (b) When the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
- (c) When the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article." <sup>147/</sup>

242. In particular reference to subparagraphs 1(b), and 2, the Hague Convention provides a State which "fortuitously" finds itself in possession of an offender who is not a national of that State and whose offence was not committed in that State, nor infringing any of the interests of that State, with jurisdiction to prosecute for the offence of hijacking. In this respect, the Hague Convention creates a type of extraordinary jurisdiction and in so doing establishes a situation similar to the law applicable to pirates, except that in the former case

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<sup>146/</sup> See para. 218 above.

<sup>147/</sup> See also article 5 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971 (hereinafter referred to as the "Montreal Convention").

the exercise of jurisdiction is restricted to the territorial limits of the State's jurisdictional powers, whereas in the latter case, jurisdiction can be exercised on the high seas or in any other place outside the jurisdiction of any State. However, "In both cases, the States are acting against a common threat to the international community". 148/

243. What has been done in the field of protecting civil aviation could be done in the field of protecting international trade. The Hague Convention has enlarged the number of States competent to exercise jurisdiction over hijackers, which included the introduction of new bases for the exercise of jurisdiction. Indeed, the problem of hijacking arose, and was dealt with in a similar fashion to the arrival and possible solution to maritime frauds. When hijacking became a frequent offence in the 1960s, it was soon realised that existing international law rules on jurisdiction 149/ were not adequate to cope with hijackers and that extradition arrangements were inadequate. Maritime fraud is as multinational as both piracy and hijacking, and if it is felt that the problem warrants such a response, there are few objections which could be raised in extending jurisdiction over the perpetrators of maritime fraud to at least the number of States which have jurisdiction over hijacking. In fact, when Lebanon raised the problem of criminal barratry and the unlawful seizure of ships and their cargoes in the IMO, it stated:

"We consider that it would be useful to prepare an international convention for the suppression of criminal barratry and the unlawful seizure of ships and their cargoes along the lines of the Convention for the Suppression of Unlawful Seizure of Aircraft concluded at The Hague in 1971. 150/

244. Other bases of jurisdiction could also be incorporated into a convention on maritime fraud, such as the "active personality" and "passive personality" principles as are incorporated into articles 3.1 (b) and (c) of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, 1973 (hereinafter referred to as the "Convention on Protected Persons"). 151/

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148/ See "Aircraft hijacking under The Hague Convention 1970 - a new régime" by S. Shubber, ICLQ, vol. 22, October 1973, p. 709.

149/ See also the Convention on offences and certain other acts committed on board aircraft, signed in Tokyo (Japan), 1963.

150/ IMO document C/ES.X/20/2, annex, page 2, paras. 3.2.7 and 3.2.8.

151/ Article 3 of that Convention provides:

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:

- (a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) when the alleged offender is a national of that State;
- (c) when the crime is committed against an internationally protected person as defined in article 1 who enjoys his

(ii) Specification of maritime fraud acts to be covered by the proposed Convention

245. The reasons why the offence or offences of maritime fraud to be covered by the Convention must be clearly described are as follows: (1) Maritime frauds, being combinations of commercial crimes, fall into a "grey area" and cross the traditional boundaries of numerous existing crimes (viz: deception, theft, fraud) which may be difficult to translate into existing national penal codes; (2) As previously indicated, a State will usually decline to extradite pursuant to the provisions of an extradition treaty containing a list of extraditable offences unless the offence charged is enumerated in the list, and (3) Most extradition treaties are based upon the principle of "double criminality" (i.e.: the act on which the request for extradition is based must be a criminal offence in both countries), and if such a listing could be used as the basis for establishing a common set of defined offences which are implanted into the jurisdiction of all Contracting States, then a certain unity would be created among the various States (the result of which will be a clearer understanding of extraditable acts in extradition proceedings and ensure "double criminality").

246. Existing models can be found in the previously mentioned conventions. Under The Hague Convention 152/ article 1 provides:

"Any person who on board an aircraft flight:

- (a) unlawfully, by force or threat thereof, or by any other form of intimidation seizes, or exercises control of, that aircraft, or attempts to perform any such act, or
- (b) is an accomplice of a person who performs or attempts to perform any such act

commits an offence (hereafter referred to as "the offence")."

This article does not define the crime of "hijacking" but merely enumerates the constituent elements of the offence. The Hague Convention then indicates that "the offence" must be made a part of the law of the Contracting States in order to comply with the establishment of jurisdiction requirement in article 4 153/ (i.e. Contracting States must create the offence of hijacking in their criminal law). Prior to the Convention, few States had a separate substantive offence of hijacking, rather they had to rely on crimes such as assault, etc. already existing in their national systems.

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status as such by virtue of functions which he exercises on behalf of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article."

152/ See also the Montreal Convention, article 1.

153/ See paragraph 241.

247. A slightly different approach is adopted by the Convention on Protected Persons in that instead of listing several components of one offence, it lists several offences which "shall be made by each State Party a crime under its internal law". 154/ It may be considered that such a listing of several offences would be more appropriate for maritime fraud.

(iii) Establishment of extradition facilities on a multilateral basis

248. It has been said that: "International law recognizes no right to extradition apart from treaty." 155/ Extradition treaties are usually bilateral and not multilateral and it has been stated that:

"... extradition is a matter eminently suited for arrangements by means of bilateral treaties between States which, on a basis of effective reciprocity, are able and willing to assist each other in the administration of their criminal justice." 156/

A problem with bilateral treaties between individual States, apart from whether there is a treaty, is that the terms of each treaty will vary in its contents and effect. In this respect there is a lack of uniformity in the practice and procedure of bilateral extradition treaties. Furthermore, bearing in mind the length of time necessary to negotiate and subsequently to ratify a bilateral treaty, the use of a multilateral treaty would provide an expeditious way of dealing with the current problem of bringing the perpetrators of maritime frauds to justice.

249. Multilateral extradition treaties, although not very common, do exist. An early example was one in 1923 affecting the States of Central America, and in 1937 the Convention for the Prevention and Punishment of Terrorism was formulated. By this treaty the parties agreed that acts of terrorism, if they threatened the lives of 'public people', should be read into the various lists of extraditable offences covered by extradition treaties. This Convention, however, has received little support and few ratifications, though it is not known whether this is in any way attributable to the provisions on extradition. Multilateral extradition agreements are more common in connection with the war crimes committed in World War II. It may be, however, that multilateral treaties are better suited to regional agreements such as the Central American Treaty referred to earlier or, for example, the European Convention on Extradition signed in 1957, 157/ and the General Convention on co-operation in judicial matters, signed in Madagascar in 1961 between certain French-speaking African countries. 158/

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154/ See article 2 of that Convention.

155/ G.H. Hackworth: Digest of International Law, vol. 4, chap. 12, p. 2.

156/ G. Schwarzenberger: International Law, vol. 1, 3rd. Edition, chap. 15, p. 256.

157/ This is not the first multilateral treaty between European States. There are treaties which were concluded in the early 19th century. On the history of such treaties see: Paul O'Higgins: "European Convention on Extradition", ICLQ, vol. 9, July 1960, pp. 491 and 492.

158/ This Convention includes provisions on extradition and jurisdiction.



250. The conclusion to be drawn from attempts to regulate extradition by means of multilateral conventions is that they are not always successful. 159/ A Committee of Experts appointed by the League of Nations in 1926 came to the conclusion that there were very few questions suitable for inclusion in a multilateral convention on extradition. 160/

251. There are, however, other means of achieving a more uniform system of practice and procedures in extraditing criminals, rather than formulating a multilateral convention with a mandatory extradition obligation. The Hague Convention on hijacking and the Convention on Protected Persons both contain similar provisions on extradition which could be used as an example for the proposed convention on maritime fraud.

The Hague Convention 161/ provides, in article 8:

"1. The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Contracting States. Contracting States undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offence as an extraditable offence between themselves subject to the conditions provided by the law of the requested States.

4. The offence shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4, paragraph 1."

252. Paragraph 1 is a useful means of ensuring that where extradition facilities already exist between nations, the offence of hijacking will be accorded the status of extraditable crimes. Paragraph 2, however, provides that the State of custody and the requesting State can consider the Hague Convention as the basis for extradition if no extradition treaty exists between the two States. 162/

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159/ See further: Frederick Honig: "Extradition by Multilateral Convention", ICLQ, vol. 5, October 1956, pp. 549-569.

160/ Ibid., page 551. See the Report of the Committee of Experts for the Progressive Codification of International Law, LON Doc. C.51 M 28. 1926.V.

161/ See also article 8 of the Montreal Convention, which has similar wording.

162/ See The Tokyo Convention On Offences and Certain Other Acts Committed on Board Aircraft (1963), where extradition can be granted only if an extradition treaty exists between the two States; see article 16 (2).

It should be noted, however, that the requested State is not bound to regard this Convention as a treaty but merely may do so "at its option". The provision is also subject to the national laws of a State party.

253. The other arrangement under the Hague Convention relate to the few States which do not make extradition conditional on the existence of extradition treaties amongst themselves. Such States have agreed to regard hijacking as an extraditable offence on the basis of this Convention - subject to the law of the requested State.

254. If it is decided that there should be an improvement in extradition facilities for maritime fraud, and if a multilateral extradition arrangement cannot be agreed upon, then the facilities provided for in the examples of the Hague Convention cited above may be worthy of consideration.

(iv) Establishment of an alternative obligation to prosecute or extradite offenders

255. It is one thing to identify the offences, grant jurisdiction over those offences and then provide extradition facilities in respect of the offenders, but it is quite another to ensure that offenders will be prosecuted. For example, an offender is in the custody of State A, which has jurisdiction, State B, also with jurisdiction, requests the offender's extradition. State A decides it does not wish to extradite or prosecute.

256. This not uncommon problem of failure to prosecute or extradite offenders by certain States, despite the capacity to do both, could be solved by providing in the suggested convention on maritime fraud an alternative obligation to do one or the other, as is done in the previously cited Hague Convention 163/ and the Convention on Protected Persons. For example, article 7 of the Hague Convention provides:

"The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State." 164/

257. It can be seen from the above-cited article that the Convention requires the Contracting States to "submit the case to its competent authorities for the purpose of prosecution ..." and the prosecuting authorities are obliged to "take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State". It should also be noted that the Hague and Protected Persons Conventions do not provide for compulsory extradition in all cases, rather they merely incorporate pre-existing extradition arrangements to the case of hijacking. For instance, if under the Hague Convention, hijacking is inserted by article 8 (1) into an existing extradition treaty that, as is common, allows a State to refuse extradition in the case of a "political offence" or where the offender is a national, the exception will apply to hijacking also. Similarly, there is no absolute duty to prosecute in all cases. Instead, Contracting States are provided an option to do so or to extradite the offender. Nevertheless, they must do one or the other under the terms of the Convention.

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163/ See also article 7 of the Montreal Convention for a similar provision.

164/ For the Convention on Protected Persons, see also article 7.

258. The alternative obligation approach, adopted by the Hague and Protected Persons Conventions, provides a reasonable solution to the problem of States refusing to extradite their nationals, which has been cited in connection with maritime fraud, 165/ in that they would then, by the terms of the Conventions, at least be obligated to submit the case to their competent authorities for the purpose of prosecution.

(v) Conclusion

259. Set forth above is a brief description of possible options available to the international community to increase its capacity to combat maritime fraud. Additional useful measures could also be included in a convention of the nature described, in particular concerning provisions to facilitate the exchange of information. As has been stated in this respect, "Communication and the free exchange of information internationally is vital to effective effort against international criminals." 166/ Also in this respect, Lebanon's proposal to IMO for a convention regarding the suppression of barratry and unlawful seizure also recognized that a provision would be required "affording the broadest possible reciprocal judicial assistance between Contracting States in accordance with penal procedures relating to the offence." 167/ Of necessity, there would also be supplementary provisions dealing with plurality of proceedings, applicability of the convention to non-parties, etc.; however, such detailed considerations have been left for further detailed analysis by the IGG if it is decided to proceed with such a project.

260. Lastly, if it is decided that the problem of maritime fraud is sufficiently serious to require urgent action, it is submitted that even a convention on fraud can be developed in sufficient time to provide relief. For example, the preparation of the Hague Convention on hijacking and its coming into force was achieved with the speed which the gravity of the problem merited. Work began on the Convention in 1969, the diplomatic conference for its adoption took place in December 1970 and it came into force in October 1971.

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165/ See, "The Role of the Law and the Courts in enforcing national and multinational contracts", by the Hon. C.S. Haight, the Shipbroker Seminar, 1980, p. 10.

166/ Ellen and Campbell, International Maritime Fraud, p. 79.

167/ IMO document C/ES.X/20/2, 2 November 1979, annex, page 4.

V. GENERAL CONCLUSIONS

261. An attempt has been made in this report to present the various options open to the international shipping community to effect reforms which could reduce the occurrence of maritime fraud and piracy. Most of the suggestions involve some sort of alteration in the existing system of conducting international shipping and trade - some requiring governmental action in the form of altering the applicable law, pursuant to international conventions or otherwise, and others requiring only individual or collective action by private parties. Also, most of the suggestions have already been made elsewhere, often by the IMB, though it is believed that this report represents a more comprehensive analysis of their feasibility.

262. Neither the occurrence of maritime fraud nor piracy are new problems in international shipping. At various points in history, piracy posed a particularly acute problem and, in response, a legal regime became recognized in customary international law to deal with it. On the other hand, it would appear that maritime fraud, with the exception of certain variations in the level of occurrences depending on the business cycle of shipping, has remained within reasonably acceptable levels such that the international shipping and trading communities have not felt sufficiently compelled to adopt structural measures to combat it. However, the dramatic increase of such occurrences in recent years has provided new compelling evidence that certain reforms must be effected in order to control the problem. Similarly, a resurgence of piratical acts has called into question whether previous measures were in fact adequate to deal with piracy.

263. Consequently, the problem of maritime fraud and piracy has been considered in innumerable private fora. It has been raised in IMO and has been the basis for creating a special non-governmental international organization to combat it at the private level. Similarly, it has been the basis for invoking the competence of UNCTAD to investigate possible reforms.

264. It may be that, with increased attention being brought to the problem internationally, and perhaps in line with certain cyclical changes in the occurrence of such acts, the problem of maritime fraud and piracy may temporarily become less severe, only to resurge - in the absence of more fundamental reforms - at a later date. In fact, recent reports suggest such a reduction may now be occurring. <sup>168/</sup> In this respect, it would appear that the establishment of the IMB has had a favourable impact in reducing the number of maritime frauds. However, it is suggested that the IMB, as a non-governmental organization, cannot combat all maritime fraud and piracy alone and that it would be an error to let slip the momentum that has now developed in favour of effecting lasting reforms of international shipping, which would provide long-term protection against such acts beyond this, or the next, upsurge. In this respect, many though not all of the suggestions analysed in this report will require a certain period of time to implement. Short-term variations in the severity of the problems being experienced are accordingly not relevant to assessing their over-all desirability.

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<sup>168/</sup> "International marine fraud : Net closing in on criminals", The Times 13 August 1983.

265. Given the number and diversity of the types of maritime fraud and piracy, as well as the various possibilities for reform mentioned in the report, it may not be feasible for the IGG in a two week session to consider all the suggested reforms and actually to undertake the necessary implementation measures. Consequently, it is recommended that the IGG approach its task in different stages.

266. Aside from an assessment of the magnitude of the problem of maritime fraud and piracy, which has already been done in IMO and elsewhere, what is urgently needed at this stage is a consensus assessment at the intergovernmental level of the economic and commercial aspects of the existing shipping and trading system which permit maritime fraud to be so easily committed and what policy measures need to be adopted - whether at the intergovernmental, governmental or private level - to prevent the occurrence of such acts, including whatever remedial measures need to be taken. Once the general policy measures have been agreed upon, the IGG will then be in a position to establish a programme of work to implement those measures which require its input as well as, where appropriate, to advise on other measures to be implemented by individual governments or private parties. In order to facilitate this task, set forth below is a summary of the various possible reforms mentioned in the report, grouped according to the nature of the action required.

267. The report contains several possible reforms which are either being developed by other entities, or are appropriate for implementation by individual governments or private parties. The IGG may wish to assess their relative desirability and practicability and decide whether or not to recommend their implementation. They are as follows:

(a) A proposal for a central registry for bills of lading, whereby bills of lading would be deposited in a central registry directly after their issuance and the transfer of title would be effected by communication to the Registry by the seller and buyer. At destination, the delivery of the goods would be to the owner of record in the registry. Certain seller-originated documentary frauds would be avoided by independent confirmation by the carrier of the details of the bill of lading and certain buyer-originated documentary frauds would be avoided by dispensing with the risk of late arrival of the documents at the port of discharge and consequent need to deliver the goods without production of the bill of lading (see paragraphs 87-97).

(b) A tentative proposal by the IMB to develop a difficult-to-forge bill of lading subject to controlled circulation, which would enable the identification of the seller in the event of a fraud occurring. It was suggested by the secretariat that certain practical difficulties need to be overcome before such a proposal would be successful (see paragraphs 99-102).

(c) A proposal to develop improved stamping procedures as a validation mechanism of bills of lading in place of the signature of the master. It was suggested by the secretariat that this proposal would probably not prove to be effective (see paragraphs 103-108).

(d) A proposal to obtain advance knowledge of the master's signature on the bill of lading, as a means of validating the bill of lading and a related proposal to develop a register of signatures of people authorized to sign bills of lading world-wide. Neither proposal was considered practicable by the secretariat (see paragraphs 109-111).

(e) Various miscellaneous proposals to avoid documentary frauds involving the use of part deliveries and revocable credits, bank guarantees, etc., all of which were felt by the secretariat to be ineffective or difficult to obtain in practice (see paragraphs 114-146).

(f) Various miscellaneous proposals to avoid charter party frauds, involving greater control by the master over the issuance of bills of lading on his behalf, all of which were felt by the secretariat to be ineffective. Other proposals to collect three months of advance charter hire or the use of bank guarantees were felt to be difficult to obtain in practice (see paragraphs 176-182).

(g) The on-going work within UNCTAD on conditions of registration of ships was felt to be beneficial in reducing primarily deviation frauds and certain types of marine insurance and charter party frauds, by improving the identifiability and accountability of shipowners and operators, as well as mortgage frauds by requiring notification of deletion of the ships from previous national registries (see paragraphs 185-187).

(h) A suggestion that improved monitoring of ship movement would be useful in determining deviation frauds. Although the suggestion was not considered justifiable solely for fraud prevention purposes, various proposals are being developed and implemented for traffic control, safety, and communications purposes which may be adaptable to fraud prevention in the future (see paragraphs 189-194).

(i) Miscellaneous suggestions to avoid illegal sales from deviation frauds, by requiring governments to tighten, where applicable, procedures concerning the sale of goods by shipowners on voyage termination and to improve supervision of free trade zones established on their territories (see paragraph 198).

(j) Various miscellaneous suggestions to avoid cargo insurance and port-related frauds, including pilferage, developed within UNCTAD, ICHCA and other bodies, involving improved handling, storage and document procedures. Also, implementation of the Hamburg Rules was felt to be beneficial in eliminating the fraudulent use of letters of guarantee in conjunction with failing to insert reservations on bills of lading (see paragraphs 204-205 and 211-213).

268. In addition, the report contains certain possibilities for reform which may be felt appropriate for further development within the IGG itself. These include:

(a) A proposal regarding documentary frauds to formulate within the IGG a set of guidelines for banks to use in advising clients on anti-fraud protective measures when applying for a letter of credit for the purchase of goods internationally (see paragraphs 79-86).

(b) A proposal regarding documentary frauds to develop a bank "super-service" for letter of credit transactions, whereby banks would agree to confirm with the issuer of an inspection certificate, covering the goods and their loading, as to the existence of the certificate and the details marked thereon. Such a "super-service" would require contractual agreements between banks and inspection agencies on the one hand, and banks and their clients, on the other. It was proposed to develop model forms for such agreements, which could be done by the IGG (see paragraphs 112-140).

(c) A proposal regarding charter party, deviation, marine insurance and mortgage frauds to improve the availability of ship-related information in order to facilitate private parties in their enquiries about the ship and its operations (see paragraphs 165-175). In order to assess better the needs of the international shipping and trading community in this respect, it was suggested that the IGG analyse the situation in order to specify the precise information needed in connection with fraud prevention enquiries and assess its ready availability, for the purpose of making recommendations on the need for improved reporting requirements at the national level. It was suggested that the IGG could also investigate whether the existing system of collection and dissemination of information at the international level is adequate or whether reporting requirements should be instituted to a proposed international ship information registry (ISIR) for easier access. Other proposals elsewhere in the report concerning reporting requirements as to flag changes (see paragraph 188) and a proposed ship identification number (see paragraphs 195-197) relate to information to be contained in the proposed ISIR.

This proposal for improved information reporting requirements and the possible establishment of the ISIR was recommended in place of the development of a carrier licensing system, which was felt to involve substantial difficulties in implementation (see paragraphs 158-164).

(d) A proposal regarding deviation, mortgage and certain types of marine insurance frauds to replace ship names with an international ship identification number, as the primary means of ship identification. It was envisaged that the number would not change during the life of the vessel, regardless of change in ownership or nationality. This proposed identification number, which would facilitate ship identification, and which could be listed on the proposed ISIR, would require implementation by an international convention, the text of which could be formulated by the IGG (see paragraphs 195-197).

(e) A proposal regarding shipping agency frauds, to formulate within the IGG uniform minimum standards concerning financial and professional qualifications, as well as of standards of conduct, which could be used as guidelines for national use in establishing national licensing schemes or compulsory membership requirements in a professional association, or some combination of the two (see paragraphs 206-209).

(f) A proposal concerning piracy to improve regional co-operation between States when their proximity presented difficulties in jurisdictional competences for the effective enforcement of their laws. It was suggested that the IGG may wish to consider whether to endorse this suggestion and whether steps would be taken by it to initiate action for such co-operation in designated cases where regional co-operation is needed. It was also suggested that the IGG should consider the establishment of an international fund to assist specified countries improve their practical capabilities in preventing piratical acts (see paragraphs 214-217).

(g) A proposal relating to all types of frauds, and certain piratical acts, concerning improved remedial measures. Although the adoption of improved measures for civil actions was not recommended, it was felt that there was good justification for the formulation of an international convention on jurisdiction and extradition for maritime fraud, including piratical acts not falling within the definition of piracy in international law. Such a convention could be modelled along the lines of, inter alia, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague, in 1970. The IGG may wish to consider the desirability of this suggestion and whether the text of such a convention should be formulated by it (see paragraphs 226-260).

269. In summary, paragraph 267 lists ten general proposals and the IGG may wish to decide whether or not to recommend their adoption or implementation as feasible fraud prevention measures. As the actual implementation of such proposals is most appropriate by private parties or individual governments, or is already being considered within other entities, it is felt that these proposals can largely be dealt with by the IGG at its current meeting.

270. Paragraph 268 lists seven general proposals which involve possible action by the IGG to develop further. First, it is recommended that at its current meeting the IGG assess which of these proposals merit further development. Once such a selection has been made, the IGG will be in a better position to assess the amount of further work involved on such proposals and the time available at its current session to undertake such work. In the event of a decision by the IGG to develop more than one proposal, and in view of the great likelihood that the time available at its current session will be insufficient to complete the work, it is recommended that it establish a work programme for its future work, including priorities, details of further studies or draft provisions required from the secretariat, etc.

271. In conclusion, although the frequency with which developing countries are victims of maritime fraud could permit this problem to be characterized as a North-South issue, in fact such a characterization would be misleading. Developing countries are the most frequent victims because they have not yet acquired the same level of experience in shipping and trade as exists elsewhere. Thus, they suffer because they are the easiest to victimize. However, the means by which they become victims derive from loopholes and inadequacies in the existing structure in which international shipping and trade are carried on. Thus, it is a problem which affects all countries from all regions of the world, where all parties are potential victims, and to this extent all would benefit from reforms to the existing system. This report merely attempts to suggest options available to the international community to effect such reforms. The report is submitted to the IGG, where governments, as part of their over-all responsibility for the national economic and social interests of their countries, can consider what sort of co-ordinated international action can best be taken to eliminate maritime fraud and piracy as a major problem.