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Maritime administration in Eritrea : challenges and future prospects

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MARITIME ADMINISTRATION IN ERITREA

Challenges and Future Prospects

By

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The State of Eritrea

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DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation: **MARAD in Eritrea Challenges and Future Prospects**

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Eritrea is one of the oldest maritime nations. It has about 1200 km of seacoast. To administer this long seacoast needs a well-organized and equipped Maritime Administration.

Due to a number of different colonizers, the country has remained without any significant organization that is equipped with the necessary resources to administer the maritime sector of the country.

After Eritrean independence in 1991, the first major step that was taken was the establishment of a government. It was not a simple task to organize a government structure from scratch. Even though this was the case the problems were addressed, and a government was set up. But MARAD, which is an integral part of the public administration, is still in the process of organization and restructuring; it is suffering from the lack of skilled manpower, finance and clear legislation.

As the result of the fast economic development of the country, foreign trade is rapidly growing overtime. Consequently the number of ships visiting Eritrean ports is increasing. In order to provide reliable service, protect the marine environment and safety of life at sea, development of MARAD is one of the top priority issues. But, questions such as, what are the problems that Eritrean MARAD is facing? How to

organize the MARAD? What kind of structure is required? What are the duties and responsibilities of each and every department?,… etc have to be answered.

In order to find answer to such questions, there is a need for research and study. So the author will try to look at the above mentioned issues and other topics such as, a comparison of closed versus open registries, the maritime safety administration which includes jurisdictions in Flag State, Port State and Coastal State and the role of Eritrean MARAD in international and regional maritime organization will be covered and finally will be concluded by giving recommendations.

KEYWORDS: Eritrea, MARAD, Maritime Safety Administration, Ship Registration
Regional Cooperation, RERSGA.

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LIST OF ABBREVIATIONS

BIMCO	Baltic International Maritime Conference
BOD	Board of Directors
COLREG	Convention on the Regulation for preventing Collision at sea
CS	Coastal State
DMT	Department of Maritime Transport
DPMT	Department of Ports and Marine Transport
EEZ	Exclusive Economic Zone
ER.SL	Eritrean Shipping Line
ER.STAS	Eritrean Shipping and Transit Agency Services
ETSS	Eritrean Transport Sector Studies
FOC	Flag Of Convenience
FSC	Flag State Control
GDP	Gross Domestic Product
GDP	Gross Domestic Product
GL	Germanischer Lloyd
GNP	Gross National Product
IGO	Intergovernmental Organization
ILO	International Labor Organization
IMO	International Maritime Organization
IOPP	International Oil Pollution Prevention
MARAD	Maritime Administration
MARPOL	International Convention for the prevention of pollution from ship
MOU	Memorandum of Understanding

MSA   Maritime Safety Administration

MTC   Ministry of Transport and Communication

OCA/PAC   Ocean and Coastal Area Program Activity Center

PMTA   Ports and Maritime Transport Authority

PSC   Port State Control

PSCO   Port State Control Officer

RERSGA   The Red Sea and Gulf of Aden Action Plan

RO-RO   Roll on - Roll off

SAR   Search and Rescue

SBTC   Sector Board of Transport and Communication

SOLAS   International Convention for the Safety of Life at Sea

STCW   International Convention on Standard of Training, Certification and Watch Keeping

TS   Territorial Sea

UNCLOS   United Nations Convention on Law of the Sea

UNCTAD   United Nations Conference on Trade and Development

UNEP   United Nations Environmental Program

WMU   World Maritime University

CHAPTER ONE

1. INTRODUCTION

> The Red Sea had played a significant role in the early
> development of the whole area through the promotion of trade
> and as a result of periodic movements between Africa and the
> Arabian peninsula. It is still today a major shipping lane,
> carrying as it does a large proportion of the world's fossil fuel
> trade. (Afewerki, 1994)

With more than two-thirds of the world's surface covered by water, the seas have
played a vital role in the development of the international community. Throughout
history States have used the oceans, seas and internal waters as a means of protection,
as a source of food, as a means to advance national interests and as the cheapest
means of transport. Some Coastal States have relied upon the oceans as a protective
buffer between them and their enemies, while other States have depended upon free
navigation of the seas to promote fishing and trade with other States.

Economic development has in the past generally gone hand in hand with sea trade for
sound economic reasons, which Adam Smith explains in the following way:

> As by means of water carriage a more extensive market is
> opened to every sort of industry than what land carriage alone
> can afford, so it is upon the sea-coast, and along the banks of
> navigable rivers, that industry of every kind naturally begins to
> subdivide and improve itself, and it is frequently not until a long

time after that those improvements extend themselves to the inland parts of the country. A broad wheeled wagon, attended by two men and drawn by eight horses, in about six weeks' time, carries and brings back between London and Edinburgh nearly 4 ton's weight of goods. In about the same time a ship navigated by six or eight men, and sailing between the ports of London and Leith, frequently carries and brings back 200 ton's weight of goods, ... Since such, therefore, are the advantages of water carriage, it is natural that the first improvements of art and industry should be made where this convenience opens the whole world to a market for the produce of every sort of labour. (Stopford, 1990)

In similar words, Bertrand Russell, in explaining the importance of the transport industry, states:- ***"the world has become one not only for astronomer but for the ordinary citizen."***

The transport sector is a prerequisite for economic growth and social development and has an important link with other sectors of the economy. This sector accounts for an average of 5-10% of Gross National Product in developing countries and usually calls for a larger share of the total annual investment. The volume of the labour force engaged in the transport sector is one of the highest, since railways, ports, airports and road agencies are amongst the largest single employers in these countries.

By understanding that more than four billion tones of goods per year are carried by sea, it makes crystal clear that development of the maritime industry clears the way for the development of the entire economy. As there is a close relationship between the existence of a transport system and prospects for economic development.

The developmental trend of sea borne trade is growing with time, and in order to benefit from this progress there is a need for a well organized and equipped maritime administration. As Prof. P S Vanchiswar clearly mentioned-

> An important factor determining the pace of economic and social development in developing countries is their participation in World Trade. In this connection it is appropriate to quote the following statement of the Head of the "Food and Agriculture Organization
>
> **The future is trade. You can double, triple or quadruple the aid; it will not do. Trade brings in 50 times more than aid.**

However, such participation in World Trade is dependent on a developing country's infrastructure, human capabilities and administrative structure for handling the transport of that trade.

Maritime transport is a highly competitive domain, which is characterized by constant changes, as each participant pursues his own interests in order to gain a competitive edge. Thus, the need for objective monitoring and management of the process of change is paramount.

The level of sea borne trade is growing rapidly. The total annual world sea borne trade increased by almost 37% between 1980 and 1998, and there is also a further growth prediction. In order to effectively deal with this expansion there is a need to develop a maritime regulatory infrastructure flexible enough to accommodate the variety of issues that arise from use of the seas. In addition, an efficient and effective maritime administration and port infrastructure are a pre-condition for the expansion of trade in particular and economic growth in general.

As Prof. PS Vanchiswar stated-

> The objective of a Maritime Administration organization within the framework of a country's overall maritime activities, is to

provide the government with the machinery that would enable it to satisfactorily and efficiently under- take those functions which are embodied within the country's merchant shipping legislation. These functions would include the implementation of the requirements of international maritime and other conventions, and national rules and regulations framed under the authority of the merchant shipping Act.

Thus a Maritime Administration should not be limited to the notion of safety of life at sea and property, but be expanded to include marine environmental protection and other activities for example those related to oceanographic engineering. It also has to carry out its designated regulatory and developmental functions. In addition, it is expected to be the specialized executive arm of the government concerning maritime matters, addressing among other things, the registration of ships, safety of ships, persons and other safety aspects, marine personnel matters, maritime related investigations, Search and Rescue, and the protection of the maritime environment.

The Red Sea has been, and will remain, one of the main sources of life and well being for Eritrea and it's neighboring nations. It is vital for its national development in order for there to be an orderly harnessing of fisheries, maritime transport, marine and eco-tourism, and other marine resources. This ken region makes Eritrea an important maritime nation. Eritrea is also an important nation internationally for the maintenance of maritime safety and the protection of the marine environment in this important and highly sensitive region.

Considering the above mentioned principles, the author will focus the following Chapters on the historical development of maritime transport in general and the organizational development of the Eritrean MARAD in particular. He will look at to the ship registration, maritime safety administration, and the challenges that the Eritrean MARAD is facing at present and the role of MARAD in regional and international organizations. And recommend for its future developments.

AIM OF THE WORK

The main aim of the study is to analyze the present maritime administration of Eritrea and make recommendations for its improvement.

APPROACH OR RESEARCH METHOD

In preparing the dissertation the author has used information based on relevant materials, such as a research conducted by IMO and other organizations into the general maritime administration of Eritrea, and associated activities such as maritime safety and maritime legislation. The author has faced a shortage of direct information on Eritrea , as the MARAD of the nation is still under continuous study and reorganization. Therefore he has drawn on information from other maritime nations. In addition lecture handouts, library materials, international and regional organizations printed materials through the internet and other sources have been utilized. While personal interviews and questionnaires were impossible, the field trips to different countries and seminars have also been used as important sources.

CHAPTER TWO

2. MARITIME DEVELOPMENT IN ERITREA

2.1. HISTORICAL DEVELOPMENT

> Eritrea is one of the oldest maritime nations. Due to its geographical position the Eritrea area has always served as a trade corridor between the Absiynan highlands and the commercial centres of the Red Sea, the Mediterranean and Indian Ocean. From the mid-3rd millennium BC Egyptian trading expeditions regularly visited the Eritrea coast in search of incense, ivory, animal skins, slaves, obsidian, gold and other precious minerals. (Eritrea Transport Sector Study 1997)

Commercial ports developed around the gulf of Zula with the advent of the South Arabian civilization in the Eritrea highlands. During the Axumite period, important trade routes developed from the coast through the central plateau to the political centres of northern Absiyna and flourishing market centres developed in the 5th-7th centuries at the present day sites of Kohaito, Tokombia and Metera along the key route from Adulis, through Akeleguzai, to Axum. Foreign trade continued throughout the medieval period, centred first on the Dahlak Islands, where an Arab commercial centre developed from the 8th-13th centuries, and its mainland environs, including Gerar and Hirgigo.

Eritrea has always been an attractive State for foreigners. Its geographical location caused the country to fall under different foreign powers and it has been colonised by the Turkish, Egyptians, Italians and finally by the Ethiopians. Despite the different

colonizers, modernization of Eritrea began in the late 19th century after the opening of the Suez Canal.

> Italian colonization started for commercial reasons after the opening of Suez Canal (1869), when the Eritrea coast acquired considerable importance for the Europe, East Asia steamship routes. For fifty years (1885-1934) before the invasion of Ethiopia, the Italian colonial route operated a substantial transformation of the economic system of Eritrea through large-scale urbanization, modern transport infrastructures and light industrialization. Soon after conquest of Massawa port the Italians started to build a Decauville track between Massawa port and Archigo bay only for logistic purposes and continued building the new railway line. (IBID)

2.1.1 ERITREA: GEOGRAPHICAL LOCATION

Eritrea is located between latitudes 12 degrees 42'N to 18 degrees 2'N and longitudes 36 degrees 30'E degree 20'E in that part of North East Africa that is commonly known as the Horn of Africa. The country is bounded in the Northeast by the Red Sea; Djibouti to the Southeast; Ethiopia to the South and the Sudan to the North. The total land area is approximately 124,300 sq. kms. It has a coastline extending from Ras Kasar to Ras Dumiera, marine waters and a continental shelf of over 50,000 sq. km, that are studded with over 350 islands which themselves have a total coastline in excess of 1200 km (roughly 1/3 of the western shores of the Red Sea) and two main ports.

Physiographically Eritrea is divided into four distinct regions, namely, the temperate and perennially cool and pleasant central highland plateau, the hot and humid western lowlands, the hot and arid eastern lowlands and the coastal lands.
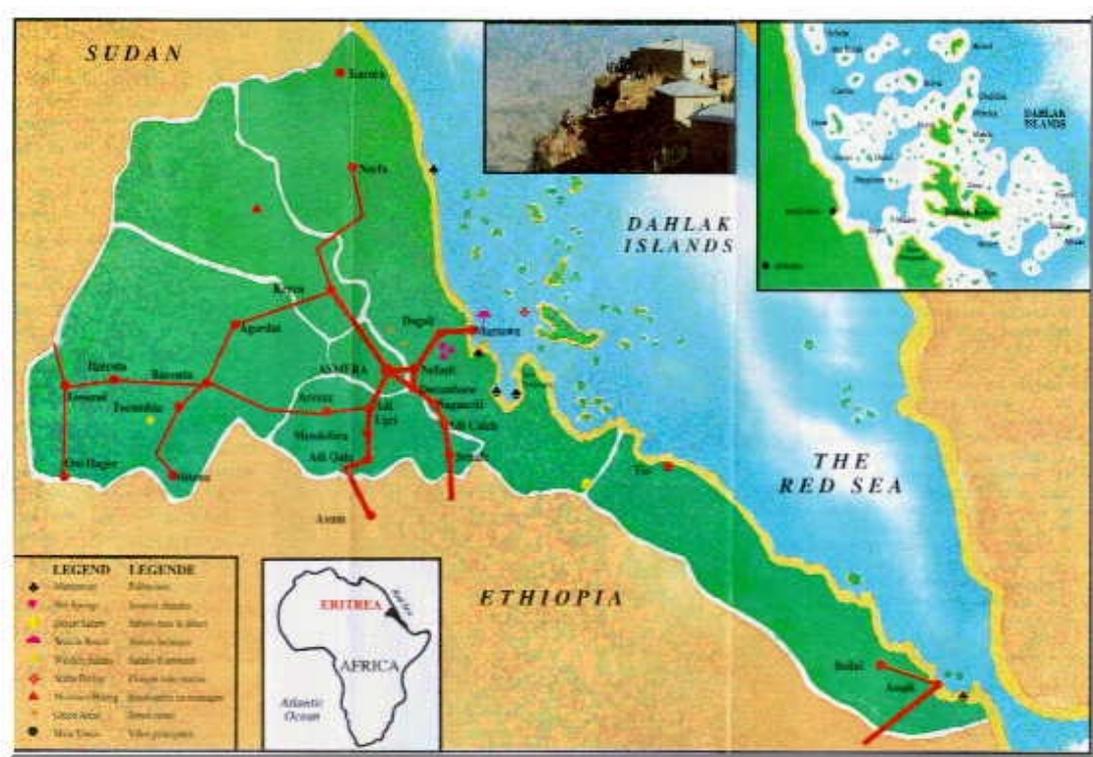
Eritrea is one of only a few countries that are strategically placed at the entrance to and exit from the busiest sea-lane, and most crucial gateway, in global maritime navigation, as well as the resources-full Red Sea coast.

2.1.2 THE RED SEA

The Red Sea is a narrow sea extending southeastward from Suez (at 30^0N) for about 1,450-miles to the strait of Bab El Mandeb ($12^030^{'}$N) separating Northeast Africa and the Arabian Peninsula. Its shore to shore width increases from north to south, reaching up to 225-miles at 16^0N, near the Eritrean town port of Massawa, where it is widest, and from there on southward it narrows again. Its average breadth is 174-miles. The sea, which has a high salt content, many small islands and dangerous coral reefs, forms an important link in the Mediterranean Sea - Suez Canal - Indian Ocean sea lane.

In addition to its maritime transport functionality, the Eritrean Red Sea contains various marine life and fish species, which are of great significance for industrial

fishing. It is also rich in different kinds of shells, which are potential resources for perfume, ornaments (jewelry) and for souvenirs.

2.1.3 MAJOR ERITREAN PORTS

Eritrea has not been able to exploit and develop its Red Sea coast for various different reasons. At present it has only two main ports, Massawa port and Assab port. "Massawa was originally established in approximately 1520. Massawa port, which in the 1950s was one of the leading ports in this area, its transport network and infrastructure destroyed, both through neglect and as a result of the 1990 war." (Tesfay). Presently the port has six general-purpose berths with an overall length of 907 meters and four specialist berths that comprise two for oil, one for cement and one for salt. The port's significance lies in its proximity to the main highlands, where the capital (Asmara) is situated some 115km distance.

The port of Assab is located on the southern part of the Red Sea, 1185 kms away from Asmara. Assab port was constructed as a modern port in 1964. The Ethiopian administration has made some investments in the development of the Assab port as compared to Massawa port. This is no doubt due to its geopolitical and economic interest. The port has generally served as the main entryway for most Ethiopian inland cargo. The port has seven general purpose berths with an overall length of 1025 meters, and four specialized berths, three oil terminals and one salt loading terminal.

2.1.4 DEVELOPMENT OF MARITIME TRANSPORT IN ERITREA

Historical development of maritime transport in Eritrea is associated with its previous colonizers. The country was one of the leading maritime nation in this region.

Even in the early seventies, Eritrea had an extensive, well kept infrastructure. The transportation network of roads included 600km asphalt, 700km all-weather and 4,500 km rural, seasonal feeder roads. The railroad covered 320 km on a route from

Massawa through Asmara, Keren, and Akordat. A cableway system from Asmara to Massawa, installed during the Italian period, was dismantled and sold by the British. Assab and Massawa ports existed before the Italian period. This sector plays a crucial role in efforts to enhance the flow of goods and services, develop export-oriented agriculture and industry product and accelerates the rate of economic growth.

The rate of economic growth is increasing and cargo transported between 1991 and 1996 was 3.06 million tons and 802 vessels per annum respectively with an annual increment of 18%. Specifically if we compare the number of ships and cargo handled in 1994 and 1997 we can see that, in 1994 traffic in both ports amounted to 1150 vessels and 3.287 million tons of cargo, while in 1997 the total number of vessels that visited the two ports were 2695 and the cargo handled was 3.595 million tons. This simple example illustrates graphically the expansion in trade and commerce that has occurred in Eritrea.

The location of the two Eritrean ports makes them well positioned to serve the vast areas in Sudan and other neighboring countries. Regional transport through Eritrean ports is a major component of freight traffic. The Government policy in this regard is to increase the use of the two ports for the transit of goods, and to create in the long-term a transportation hub involving all modes of transport: liner transport: roads and railways infrastructures.

All the above discussion leads to the conclusion that the development of a MARAD side by side with the economic progress of the country is essential, in order to efficiently and competitively handle the domestic and international trade transactions. But the lack of skilled manpower and other resources are becoming the main bottlenecks, even though there is a strong dedication and desire within the government to develop the sector.

The government policy in regard to the maritime sector reads as follows-

- ❑ Enhancing the competitiveness of Eritrean ports in handling regional transit traffic, through improved customs and cargo clearance procedures, improved transit agreements, and increased capacity of multi-modal transport chains;

- ❑ Adopting more commercial management practices. The efficiency of many operations can be increased by contracting new port structures which can be implemented through concessions to private companies.

Based on this policy, the country is at present experiencing fundamental changes. But substantive future participation of the private sector, going hand in hand with the restructuring of the public sector and its administration, has to be viewed as a single major goal, as the State will never be able to finance all the necessary investment alone.

Public administration in Eritrea is a unitary state with three main streams of governmental functions, the legislature, executive, and judicial. The main objectives for the separation of powers had been to detach the government from the day-to-day operational activities and to concentrate on policy matters and overall national plans under the discretion of the respective ministries; as well as to keep lean the numbers of staff in the administration as far as possible.

The MARAD has been established with this idea as a core, and the necessity to be centralized at the national level has been recognized in order to carry out its obligations effectively with only limited manpower.

2.2 BACKGROUND DEVELOPMENT OF MARAD IN ERITREA

The Eritrean MARAD has passed through several different historical processes. But it has not been significantly developed for the last 40 years, since as mentioned, its pace of development has been hindered by the political and economic situation in the country.

In 1991, that is before formal independence was declared in 1993, the Department of Ports and Marine Transport Authority (DPMT) was established with responsibility to formulate policies, draft regulations, and administer the operational activities of the maritime administration, ports, shipping agents, shipping lines and other maritime transport related organizations.   But the maritime administration inherited by (DPMT) from the Ethiopian rule was inadequate, with a completely devastated infrastructure and only a minimal staff.

DPMT has been trying to create an efficient and effective MARAD from the moment that it took responsibility for the administration. It has undergone many changes in the last nine years starting from its name and including all its functions and responsibilities.

DMPT was succeeded by the Ports and Maritime Transport Authority (PMTA) in 1993 after the shipping line was privatized and the day to day operational activities of the ports and shipping agents were left to their respective administrations. PMTA assumed the regulatory and administrative functions only.   Finally from 1995 onwards the Department of Maritime Transport (DMT) was created, which is now one of the four line departments of the Ministry of Transport and Communication.

2.2.1 CURRENT SITUATION

The present organizational structure of the DMT was established in 1995 under the Ministry of Transport and Communications (MTC). In addition to the administration of maritime affairs at national level, it has regulatory, advisory and promotional responsibilities. DMT has four divisions classified into units with duties comprising to the formulation of policies, regulation, standardization and safety of navigation matters. The ports and shipping agents have been made autonomous as a first step towards their privatization. Operational responsibility lies with the Sector Board of Transport and Communication (SBTC), while developmental issues such as long-term investment, and plans such as Navigational Aids along the coast (light houses,

buoys, ...etc.), maintenance of the national waters beyond harbour boundaries (channels, dredging, land reclamation, ... etc.), breakwaters outside harbour limits, Coast Guard and Search and Rescue services, are guided and co-ordinated by the DMT.

In conclusion the development of MARAD in Eritrea was hindered by deliberate action of the previous colonizers. But at present the governments' efforts to develop this sector is a good beginning and there is hope for its further progress.

CHAPTER THREE

3. MAJOR FUNCTIONS AND RESPONSIBILITIES OF THE ERITREAN MARAD

MISSION

"The mission of DMT is to formulate policies, conduct research, develop, administer, regulate and monitor the maritime transport service for the benefit of the nation."

This is the essence of a Maritime Administration that needs to be expanded, empowered with skilled manpower and equipment, and formally legislated. The body charged with the immediate responsibility for this task is DMT.

INTRODUCTION

The objective of a Maritime Administration (MARAD) is to ensure that the infrastructure is capable of carrying out efficiently and effectively the essential functions of MARAD. It is with this aim that the author wishes to focus on this chapter, that the major roles and responsibilities of Eritrean MARAD in formulating maritime policy, economic regulation, and expansion of the maritime industry.

3.1 FUNCTIONS AND RELATED MATTERS OF MARAD

DMT, as a responsible authority for the administration, and development of the Eritrean maritime sector, is empowered to perform all the essential functions and responsibilities that a MARAD would tend to have. That is, the *Administrative, Regulatory, Developmental and Advisory function.*

Administrative Functions

MARAD, as a specialized body of government concerned with the maritime sector, has to perform its administrative functions according to the government's rules and regulations. The main administrative functions of the Eritrean MARAD can be summed up as following:-

♦ Provide navigation support and other related services, and determine and collect fees, rents and other charges payable for it.

♦ License and control seafarers and other persons working on board Eritrean vessels, including pilots.

♦ Organize and co-ordinate maritime Search and Rescue as well as salvage at sea, and introduce modern maritime communications.

♦ Ensure the availability of safe maritime transport services and issue to vessels the relevant certificates concerning safety, prevention of pollution, ... etc.

♦ Conduct and/or co-ordinate hydrographic survey, maintain and disseminate the latest available hydrographic information.

♦ Set up, develop and operate an efficient and reputable register of shipping.

♦ Enforce safety standards by the application of relevant sanctions, fines, detentions, warnings, and reports to Flag States.

♦ Prohibit the placement, and/or remove or cause to be removed, any objects deemed an obstruction to safe navigation of vessels, or ensure the placement of the necessary navigational aids.

♦ Investigate maritime casualties and prepare and issue accident reports; receive and authenticate sea protests.

♦ Declare and delimit the use of coastal and port domains including islands.

Regulatory Functions

The Regulatory Function is concerned with safety and environmental protection aspects, registration of ships, and marine personnel. This can be categorized as follows-

- Initiate, draft and formulate regulatory policy on maritime transport, and supervise the enforcement of laws.

- Draft various legislation and regulations concerning the maritime transport sector.

- Formulate standards and regulations for the maritime transport sector.

- Determine and regulate the conditions under which passengers and cargo may be transported in vessels.

- License and regulate maritime transport service organizations, and issue, to both public and private organizations, directives relating to maritime transport services, supervise their implementation and co-ordinate activities.

- Inspect, determine the standards, and award certificates of qualification related to vessel construction, maintenance and repair centres.

- Conduct research so as to facilitate maritime traffic.

- Exercise regulatory functions in respect of merchant shipping and particularly in respect of safety at sea, the manning of vessels and the prevention of pollution at sea generated from maritime transport and other related maritime industries.

- Survey, inspect, license and regulate all vessels and boats.

- Carry out Flag State, Port State and Coastal State functions in respect of Eritrean registered vessels generally, and foreign registered and other vessels in Eritrean waters, in accordance with domestic laws, international conventions and protocols ratified by Eritrea.

- Regulate the building/repairing, possession, use, sale, and purchase of any Eritrean vessels.

Developmental Functions

The Developmental function of MARAD is related to the formulation of shipping policy. When drafting a shipping policy of a country, there are two important dimensions, the national as well as the international aspects.

This dual policy approach inevitably influences policy contents. It aims primarily at enabling the industry to play its proper role as carrier of international seaborne trade. This role is to be understood not only as neutral but also as a positive one in promoting international trade and economic integration. Consequently, shipping policy should aim at providing a framework that will enable the industry to reach an equilibrium reflecting true cost, thus creating the prerequisite for shipping to be the needs of trade providing efficient, low cost services..

It is within this idea that the Eritrean MARAD's developmental function is organized, and among its major functions are to:-

- ❑ Formulate general guidelines and provide basic information for the development of the maritime transport sector.
- ❑ Conduct research and prepare plans and programs for DMT and establish and enforce development policies and programs for the maritime transport sector.
- ❑ Create an economic framework for the provision of maritime and port services and facilities which promotes and safeguards competition and fair and efficient market conduct, or in the absence of a competitive market, prevents the misuse of monopoly or market power.
- ❑ Promote, provide, and administer training schemes for members of the mercantile marine and the shipping and port industries.

Advisory Function

The advisory function of MARAD is to advise the government in formulating national laws and ratifying international conventions related to maritime affairs. Within this sphere the Eritrean MARAD's advisory function can be summarized as follows-

- ❑ Advise the government on all matters relating to maritime transport, and represent the country in international maritime institutions. And ensures that national maritime legislation is developed in accordance with international standards.
- ❑ Recommend the tariffs to be charged by marine transport service organizations for the services they render.
- ❑ Promote the development of merchant shipping.

To achieve its major roles and functions the department has set up short and long term strategic plans concerning infrastructure and superstructure, institutional build-up, human resource development, maritime safety and environmental protection.

The strategies with respect to infrastructure and superstructure are to upgrade the existing ports, construct new multi-purpose special berths, provide adequate modern storage facilities and mechanical handling equipment, and ensure the availability of safe and adequate maritime transport services along the coast, territorial waters and ports by installing the necessary modern aids to navigation.

The principal institutional build-up strategy is to establish a proper national MARAD that can contribute to the economic and social development of the country by fostering and enhancing the national capability of the economy in the maritime transport sector. Updated and new maritime legislation is an important part of the institutional set up. But overall achievement of the strategies depends on the existence of skilled manpower. Development and promotion of training schemes for the transport sector, by offering a massive and comprehensive training program, is the strategy for overcoming the existing shortage of skilled manpower.

Development has to be sustainable, it must give full attention to the environment through prevention and control measures for future generation. Moreover the strategy must include provision of patrol boats, and the establishment of a National Oil Contingency plan, as well as participation in regional and sub-regional contingency plans.

With regard to maritime safety, the strategy is directed at ensuring safety by introducing standards and exercising other regulatory functions. It is also directed at organizing and promoting the establishment of Maritime Search and Rescue co-ordination centers and subcenters. Another task is to co-ordinate hydrographic survey to maintain the latest available hydrographic information which can be helpful in guaranteeing the safe navigation of vessels in ports and along the coast by removing wrecks and objects hazardous to navigation.

This being the overall roles, functions and strategies of DMT, the Department, as a responsible authority for the administration of the Eritrean ports, is also assigned major functions in *port policy, port investment, regulation in ports, port development, port safety and environmental protection.*

With regard to *port policy,* the responsibility of DMT is the establishment of principles for the licensing of port employers, agents,... etc. As to information and research related to port it is: to collect, group, analyze and disseminate statistical information on port activity for general use, and to sponsor research into port matters as required.

Investment is the most important part of economic development especially in maritime sectors, which needs a huge amount of capital. The role of DMT in *port investment matters* is to approve proposals for port investments that are beyond the competence of the Board of Directors (BoD). The criterion for approval would be

that the proposal was broadly in accordance with the national port plan, which the DMT maintains.

Among its major functions in **port regulation** is: exercises jurisdictional authority over local, national, or international agencies, offshore development, and construction, licensing of facilities, navigation including piloting, towing, lightering, buoying, marine operations administration, marine regulation, enforcement, and control of waterways, including wireless communication with vessels and maritime traffic control; and appointing and supervisory bodies and government agencies assigned to port security.

Maritime safety and environmental protection are becoming the priority issues of the present day world, and the Eritrean location on one of the busiest sea lanes makes it very vulnerable to pollution. DMT is assigned major duties and responsibilities in relation to **port safety** and **environmental protection.** Its functions are linked to the controlling safety and other equipment on board vessels; installation and maintenance of marine and navigation facilities and equipment, safety and environmental control: enforcement of regulations, elimination of hazards to the public and aquatic life,... etc.

In regard to **port development,** DMT is involved in assessment of suitability for the Eritrean ports for the intended ships from the point of view of navigation, pilotage, safety of ships, ship handling and berthing of ships.

The overall economic development of the port and its hinterland is part of a national development plan whose concern and responsibility lies with the highest government authorities, but the department's role in the drafting and implementing of such a plan is crucial. To fulfil the above mentioned roles and functions, the presence of a well formulated and far sighted maritime policy is absolutely key.

3.1.1 PRESENT STRUCTURE OF MARAD

DMT is organized into four Divisions namely:-Development, Standard and Regulations, Registration and Control and Navigational services.

The main functions and tasks of the Development division are as follows

- ❑ Assessment of international development and needs for action
- ❑ Development contents of agreements for port usage and shipping lines
- ❑ Participation in international negotiation and preparation of agreement
- ❑ Developing co-operation with foreign institutions
- ❑ Dealing with international, regional and national legal matters
- ❑ Organizing statistics, surveys, studies (technical, financial, institute and environment).
- ❑ Defining policy, strategic planning, priorities and concept for port development.
- ❑ Undertaking overall market research, especially for port hinterlands and other countries
- ❑ Promoting port users and professional organizations
- ❑ understanding cost and traffic studies, participating in fixing tariffs
- ❑ Co-ordinates with Privatization Agency

The main functions and tasks of Standards and Regulations Division are

- ❑ Development and supervision of technical standards and specifications
- ❑ Development and adjustment of norms, standards and regulations regarding to traffic and port usage, environmental protection, dangerous goods transport, safety and rescue, licensing,
- ❑ Assessment of professional and training standards and qualification levels
- ❑ Defining tasks and standards for harbour police.

The main functions of Registration and Control are -

- ❑ Organizing and supervising registration and licensing of ships, agencies, and crew

The main functions and tasks of Navigational Services Division are

❑ Assuming overall responsibility for the navigational aids along coast, maintenance of national waters beyond harbour limits, breakwaters and Coast Guard and Search and Rescue activities.

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                    ┌─────────────────────┐
                    │ Ministry of Transport│
                    │ and Communications  │
                    └─────────────────────┘
                              ┌──────────────────────────┐
                              │ Sector Board of Transport │
                              │   and Communications     │
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┌────────────┐  ┌────────────┐  ┌────────────┐  ┌────────────┐
│Department of│  │Department of│  │Department of│  │Department of│
│Land Transport│ │Maritime     │  │Civil Aviation│ │Communications│
│            │  │Transport    │  │            │  │            │
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Navigational Services Division — Harbour Master Office Unit — Navigational Aids & Communications Unit — Search & Rescue Unit

Standards & Regulations Division — Pollution & Safety Unit — Ships & Crew Certification & Licensing Unit — Maritime Law Unit

Registration Division — Ships Registry — Agencies Registry Unit — Crew Registration Unit

Development Division — Planning & Development Unit — Policy & Regulations Unit

Ship Agencies (STAS)   Ports

Current structure of DMT

Even though the present structure of DMT is said to be organized in such a way as to fulfil the duties and responsibilities given to it by the ministry, it needs to be more pragmatic and equipped with skilled staff, otherwise the policies will remain on paper only.

3.1.2 FORMULATING MARITIME POLICY

Development of national maritime policy should be considered as an integrated administrative policy involving a wide cross-section of public administration interests. Maritime policy embraces regulatory, financial and fiscal measures to be employed in relation to the country's maritime transport sector. The policy has also to strengthen the monitoring and enforcement mechanisms at local and national levels through international co-ordination and co-operation in the implementation of government objectives.

Even though maritime policy includes many aspects of the maritime sector, such as marine resources management, oil, gas and other mineral resource exploration and/or exploitation, the most important are port and shipping development, maritime safety and protection of the marine environment.

DMT is involved in: the formulation of policies, the conduct of research and development, and the administration, regulation and monitoring in relation to maritime transport sector. In order to achieve the above mentioned policies, DMT has defined major goals and objectives. Among these are, the promotion and maintenance of efficient, economical and regular maritime services, ensuring a high degree of safety in maritime transport, prevention of marine pollution from ships and, in general, seeking ways and means for the promotion and development of all maritime transport services. In addition, the policies and policy recommendations are established by considering the objectives that must be achieved, the international conventions, the national legal system, the leading economic policy (Macro Economic policy), the regional and international corporations in maritime matters,... etc.

The main goals of the policies are directed at:-

- ♦ Encouragement of foreign and domestic investment.
- ♦ Encouragement to the private sector to participate in the promotion of maritime transport services.
- ♦ Entry into arrangements with international and regional organizations.
- ♦ Encouragement to ports to remain as commercial cargo handling entities.
- ♦ Entry into arrangements with recognized international classification societies

Maritime policy has to be integrated with the overall economic and political policies of the government specifically it has to be part of the overall economic policy.

3.1.3 MARINE ECONOMIC REGULATION

Marine Economic regulation, is closely connected with the overall economic policy of a country. Countries prepare their economic policy based on their objective conditions, that is why different countries have different economic policies. This national character makes marine economic regulation different from other types of maritime laws which are mostly driven from international conventions.

The Government of Eritrea is engaged in a continuous effort to set up and strengthen appropriate institutions, and to implement an integrated economic development policy based on the principles of a market economy in which the private sector plays a key role in the economic development of the country. Competitiveness, decentralization and balanced growth are the guiding economic principles. The encouragement of and assistance to, the private sector in assuming this role is therefore top of the Government's agenda. To create an enabling environment the Government has come up with a macro policy, and promulgated a number of laws including a new investment law that encourages the participation of foreign and domestic capital in the development of the Eritrean economy.

Economic policy in the maritime sector is directed at enhancing the competitiveness of Eritrean ports in handling regional transit traffic, through improved custom and

cargo clearance procedures, improved transit agreements, and increased capacity of multi-modal transport chains. To facilitate and apply the economic policy of the maritime sector some measures are being undertaken. The ports, the shipping and transit agency services (STAS), and the ship repair yards have all been given greater autonomy to operate as corporations, while the administration of safety, environmental protection and higher level decisions on investment and policy matters are left to DMT.

The corporatised services are currently overseen by a common five-member Board of Directors composed of the Minister of Transport and Communications as the chair and four appointed members drawn from different private and government institutions. In the case of port administration, however, the existing infrastructure, sea and land accesses, roadways, berthing handling and storage areas and equipment and their rehabilitation, and development and expansion, remain under the management of DMT. The exploitation of the assets, pilot services and stevedoring are left to each port administration to manage commercially.

The role of the government in the maritime sector is of key importance when the State is in an early stage of development. The policy adopted by the government can greatly influence the operational standards as well as future development opportunities of the sector. The Eritrean shipping policy in regard to economic regulation provides for the existence of competition and fair and efficient market conduct, as well as prevention of monopoly control of the market.

3.2 EXPANSION OF MARITIME INDUSTRY

The objective of national economic growth in most developing countries, has been to raise the standard of living of the population by increasing the rate of growth of their economy through diversification. To achieve this objective the maritime industry plays an important role, as transport is the basis for international trade that accelerates economic development. The objectives of the expansion of the maritime

industry must be to focus on adopting and implementing a practicable and co-ordinated maritime industry development program which needs to include: an early replacement of uneconomical vessels; modernization and expansion of the Eritrean merchant fleet; enhancement of domestic capacity for shipbuilding, ship repair; development of trained manpower, and above all encouragement to the private sector to participate in investment. These observations on the role of maritime industry in general lead to specific contributions to the national economy through the balance of payments, promotion of exports, employment aspects, diversification and economic integration.

3.2.1 BALANCE OF PAYMENT EFFECTS

Economic development, trade and maritime transport are closely linked. This is particularly evident with developing countries like Eritrea, because foreign trade constitutes a growing share of the gross domestic product (GDP). In order for Eritrea to participate and expand its trade, it needs an efficient maritime transport and port infrastructure. An efficient maritime service minimizes the net outflow of foreign exchange, hence it has a positive impact on the balance of payments. National fleets could become foreign exchange earners and foreign exchange savers at the same time, by transporting cargo to and from foreign countries. In addition, if port and port services are improved, transshipment calls at Eritrean ports would increase, and this would also help to earn more foreign exchange.

3.2.2 EXPORT PROMOTION

The services provided to developing countries by foreign ships are dependent on the decisions of their foreign ship owners, not on the developing countries' demand. Therefore, they are not helpful to developing countries in opening new trade routes that would promote their exports. In contrast, a national ship can open new areas of trade and expand opportunities for export. This occurred, for example, when the Eritrean Shipping Lines (ER.SL) opened new routes to its neighboring countries to the southeast, which expanded the market for the export of salt.

3.2.3 EMPLOYMENT OPPORTUNITY

Shipping, as a capital-intensive industry, is claimed by some economists as an inappropriate area for investment by developing countries. However, even where shipping services are provided independently, employment effects vary considerably both quantitatively and qualitatively.

Maritime transport, to be operated efficiently, requires the availability of various services directly or indirectly related to each other, such as shipping services, port development, and ship repair and maintenance. Along with this, the need for trained manpower will force the opening of training institutions in maritime and technical fields thereby increasing employment opportunities.

3.2.4 DIVERSIFICATION

The maritime sector has a forward linkage effect on the economy by putting pressure on demand in many economic activities such as banking, insurance, legal practices, communication,... etc. If the ship repair and maintenance enterprise was to continue to grow, demand would be created for steel manufacturing factories, electrical equipment manufacturers,... etc. In addition ship brokers, ship agents, maritime lawyers, ... etc,would develop and further expand the economy, and that would be beneficial to countries such as Eritrea that is at a very low level of diversification.

3.2.5 ECONOMIC INTEGRATION

Transport is a vital pre-requisite for the economic and political integration of nations. The maritime sector can stimulate the integration of the regions' economy. At this time there is no efficient means of transport that links the Eritrean regions to the coastline. Therefore a low cost passenger and freight service would be of high importance. The goal of integration is not limited to the nation only, but extends to integration of the country within the world economy. Another aspect of economic integration is in factor endowment; that is it integrates countries with an abundant skilled labour but a shortage of capital, with countries with abundant capital but a shortage of labour.

CHAPTER FOUR

4. SHIP REGISTRATION IN ERITREA

> *"The high seas being open to all nations, no State may validly*
> *purport to subject any part of them to its sovereignty."*
> *"... the freedom of the open sea...is a freedom of ships which*
> *fly, and are entitled to fly, the flag of a State that is within*
> *comity of nations."(Ready 1994)*

INTRODUCTION

Ship registration is becoming the focal point of attention for both developed and developing countries. With the fast development of open registries the traditional maritime countries have been forced to revise their closed systems. The author, in this Chapter will discuss the two main systems of registries and will recommend the system, which is most relevant for the fast economic development of Eritrea.

A ship without nationality enjoys no protection in international law. That is why ship owners request governments to register their ships and permit them to operate under the State flag. According to some shipping intellectuals, a ship is an extension of the nation whose flag she flies.

Registration of a ship is not something new to our century, it has a long recorded history. "The registration of ships has its origins in the laws of imperial Rome and was widespread in the City States of mediaeval Italy." (IBID)

The existing registers can be broadly classed either as *Flag State Registers* (closed registers), *Open Registers* (Flag of Convenience), or the new trend of *International Registers* (second registers). Nowadays especially with the fast development of an

Open Registry policy by the "new shipping nations", the traditional maritime nations have been forced to revise their old policies and are trying to cope with the present development by introducing the so-called '*second register*'.

All types of registers have their pros and cons, but before dealing with these pros and cons of the registers, it is important to understand the ideas of flag and registration.

4.1 FLAG AND REGISTRATION

Flag in its political meaning is a symbol of the sovereignty of a State. The flying of the national flag is visual evidence, and a symbol, of a ship's nationality. "Flag is also used for the allocation of nationality to a vessel and the assumption of exclusive jurisdiction and control by a State over the vessel."(IBID)

So the right to fly the flag has to be restricted to ships with the nationality of the Flag State. Art 91 of UNCLOS 1982 states that:

1. Every State, shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a *genuine link* between the State and the ship.

Where a State to exercises effective control over the ships flying its flag, Art 5 of the UN Convention of Conditions for Registration of ships 1986 (UNCCROS), outlines the role and duties of the national maritime administration. To this end it requires that the Flag State have a competent and adequate maritime administration, which shall ensure-

♦ that ships flying its flag comply with its laws and regulations concerning the registration of ships and with applicable international rules and standards concerning, in particular, the safety of ships and persons on board and the prevention of pollution of the marine environment;

♦ that ships flying its flag are periodically surveyed to ensure compliance with applicable international rules and standards.

Nationality and other corresponding rights and duties are accorded to a ship by the act of registration. In other word's registration can be regarded as the entering of a matter in to the public records.

Registration is the process that entails entering the vessel in the Registry Book after which a Certificate of Registry is issued. In other words it can be said that it is mainly concerned with acknowledging and protecting the title of the ship owner of the vessel and protecting others right in rem in the ship.

Registration has both public and private law functions. The public law functions of registration can be categorized as the conferment of the right to fly the national flag, the right to naval protection by the flag State, ... etc. It also includes protection of the registered owner, protection of the title and the preservation of priorities between persons holding security interests over the vessel. The private law function of registration deals with adjusting the relations, securing the interests of individuals and settling disputes.

4.2 CLOSED VERSUS OPEN REGISTER

4.2.1 CLOSED REGISTER

Closed registers can be defined as "restricted to national only." The country of registry may impose regulation upon the company organization, employment of staff, auditing of accounts, limitation of liability, profit taxation,... etc. The term: "a registered vessel becomes subject to national laws" is used by closed registry nations meaning that those laws will determine the vessel's liability in relation to taxes and other obligations. Closed registers dictate the regulations in relation to the selection of crew and the terms of employment. They dictate wages and other privileges for their nationals. The summation of all this and other obligations, and the declining rate of freight, negatively affect the economies of the ship owners in a closed register.

4.2.2 OPEN REGISTER

At present shipping companies have to work hard in order to win the fierce competition with the deteriorating freight rates in the international shipping market, either by reducing cost, or increasing quality of service or both. One way to reduce cost is to flag-out from their traditional ship register and find a registry that is conducive to their operations, so that it will be possible to hire crew at lower costs, pay lower taxes, ... etc. Thus ship owners find it attractive to choose a flag that gives them freedom regardless of the country.

Foreign registration of ships and flag changing are nothing new in the history of shipping. For as long as one can recall, ships have been changing their flags for a variety of reasons. But the shifting of flags was mainly motivated by the political and economic situation of the time. The development of the Open Registry concept can be seen from this angle.

Inspite of the fact that different writers have defined the term "open registry" in different ways, the author wishes to use Tolofari's definition, which he finds to be particularly appropriate. According to Tolafari, a State offering Open Registry is-

> A State which has a declared policy of selling its nationality to ship owners for the registration of ships,...as a means of earning national income in the first instance; and not necessarily as a means for effective control and jurisdiction, by offering ship owners conditions of ship registration which they find commercially and economically attractive in comparison with conditions under their own flags for the purpose of obtaining cost and fiscal advantages which make them internationally competitive.

From Tolofari's definition, we understand that any country that declares its register open to any ship and allows it to fly its flag is considered to be an open registry

nation. There are also other identifiable features of open registries, to mention some; access to the registry is simple, taxes on the income from ships are not levied locally or are low. A registry fee and annual fee, based on tonnage, are normally the only charges, manning of ships by non-nationals is freely permitted, ... etc.

It has always been the case that ship owners have sought to fly the flag that was most convenient to them at a particular point in time and changed flag as conditions changed. In the sixteenth and seventeenth centuries English ships were at times put under the French or Spanish flags to allow them unhindered trading in the West Indies, and during the 'prohibition' period in America in the 1920s some ship owners switched to the newly created Panamanian registry. From such moves emerged the idea of 'flag of convenience'(FOC), a term in common use by the 1950s although the alternative 'open registry' is now favored. The FOC State does not necessarily have any interest in imposing its national sovereignty and control over the ships flying its flag but it provides a source of income for countries that may lack other exploitable resources.

Many countries are exercising an open registry system as a means of generating income to cover their budget deficits. As a result the business is becoming more 'cut-throat', and competition between countries of open ship registries has become so fierce that each is trying to under-cut the other so as to remain stronger. For new countries wishing to penetrate the market, they require heavy investment in building a competent MARAD with a well-qualified administrative staff and surveyors, and at the initial stage this costs a lot of money in publicity and advertisements. Along with this, countries must comply with international conventions and regulations. Moreover when a State grants its nationality, so as to effectively exercise its jurisdiction and control in administrative, technical and social matters, it needs a national law. This involves additional cost for adopting, ratifying and implementing legislation, .. etc. Despite such constraints, many developing nations have either

already introduced, or now are trying to introduce, an open registry as a means of generating income and creating jobs for their citizens.

The fierce competition among open registry countries is providing ship owners an increased choice of flag. These choices lead them to develop criteria on which to decide where their ships should be registered. Such criteria mostly revolve around fiscal; labour and trade policy, the title record of the register, corporate requirements, political stability and international relations, technical specifications,... etc. Open registry countries have to adapt themselves to the ever-changing demands of the ship owners.

Despite criticisms of open registry, the number of countries joining the system, from both developed and developing countries, is rapidly increasing. Different reasons can be offered for the ever-growing number of the open registry countries. This includes earnings from ship registration, creation of employment for citizens, transfer of shipping know-how and business opportunities. In general, when countries are dealing with open registries, there are a number of factors that have to be considered, such as; political neutrality, non restriction and discriminatory policy for ships flying their flags, no national impositions on ship building other than the international standards, safeguarding of mortgages for Flag State's ships,... etc.

As enforcement and control are the primary responsibility of the Flag State, the register should not remain a money making organ only, and it should not be allowed to become a safe haven for ship owners who wants hide themselves from strict compliance with the internationally recognized conventions.

As the major Open Registry countries are underdeveloped, and small in terms of geographical size and population, the financial contribution from shipping to their balance of payments is significant. The revenue from the initial registration fees and from the annual fees on tonnage may be substantial. It is an attractive, non depleting

way to generate earnings in hard currency. For a small country like Eritrea with limited economic opportunities, the earnings from an open registry could be quite significant. But it is not only that, as a source of foreign exchange earnings generated by the operation of open registries. Revenue is also generated from associated activities, for example it provides a steady income for many law firms who can earn as much for their service, as the MARAD itself does in fees. In a wider context the business adds another strand to the web of international connections that marks a continental business centre.

Unemployment is a major problem of developing countries. But by introducing a policy of Open Registry, they can generate additional opportunities for work in different areas of the maritime industry and its supplements. This will help them to minimize the rate of unemployment. As some open registries insist that ship owners flying their flag to recruit their nationals, this also creates the establishment and development of training institutes, crew recruitment agencies, and the like.

In general, the advantages of an open registry policy are many. The fees generated by ship registration, the employment opportunities created in the country, the incorporation of ship owning companies, among others, are significant contributors to the overall economic progress of a country. Furthermore involvement in shipping can also give a country a higher international profile which may then generate interest in other activities. But to achieve this international reputation, well-organized maritime network has to be offered by the Flag State.

Other than this there are some disadvantages which shouldn't be underestimated. These include an alleged absence of "genuine link" between the ship and the Flag State; that is to say; the need for establishing a "genuine link" between the ship and the Flag State whose flag it flies is of paramount importance, if the world maritime community is to be able to identify the person or persons responsible for damage to third parties that may arise during normal operation of ships. And it is impossible for

the Flag State to fulfil its international obligations to exercise jurisdiction and control over the vessels flying its flag if there is no genuine link between the State offering the flag and the ship. This genuine link can be exercised by having a control over economic, social and technical matters in the ship. It is important to note that the statement in Article 91 of UNCLOS 1982 that "Each State shall fix the conditions for registration of ships" is a statement of obligation and not a statement of freedom.

What about Eritrea?

The economic policy in Eritrea is clearly stated in the Macro policy as follows:-

> the overriding national development objective is the creation of a modern, technologically advanced and internationally competitive economy within the next two decades. The centrepiece of this strategy is the establishment of an efficient, outward looking, private sector-led, market economy, with the government playing a proactive role to stimulate private economic activities. The economic role of the public sector would be restricted to those areas, which the private sector may tend to avoid because of externalities.

It is a market economy in which the private sector plays a lead role. The enabling environment has been strengthened through a liberal investment code. The Eritrean investment policy as enunciated in Investment Proclamation No.59/1994, is liberal and practical, for it addresses the current investment issues in particular, the tax regime, foreign exchange regulations, labour laws, business licensing, ... etc. It is open to all sectors for private domestic and foreign investment, it allows 100 percent foreign ownership, and investments are guaranteed against nationalization, confiscation, or other non-commercial risks. Many special tax holidays under the code have either been eliminated or simplified and made more transparent, and approval time has been reduced to a very few days. Concerning foreign-exchange

regulation, remittance of profits and repatriation of capital is free and unrestricted. Investors whether local or foreign, can have access to foreign exchange.

In order to attract investors, priority is given to infrastructure development especially in communication, which has made dramatic changes in the last nine years. All the above mentioned factors create conducive conditions for attracting foreign investors. But the ship register, that operates according to Proclamation No./1995- **A Proclamation to Regulate the Registration of Eritrean Ships,** is hampered by the lack of clear guidelines and regulations. According to the proclamation the general responsibility for the registration of Eritrean Ships is placed under the DMT. This department is responsible for all aspects of ship registry.

Article 4 of the proclamation state that;
1. A ship shall not be deemed to be an Eritrean ship unless owned wholly by persons of the following descriptions, namely;
    a) Eritrean subjects
    b) Companies incorporated under, and subject to, the Laws of Eritrea and having their principal seat of business in Eritrea; and/or
    c) Foreigners domiciled in Eritrea and having their principal seat of business in Eritrea.

From the above information we understand that, the registration system is a **closed and limited national register**. Accordingly only those ships owned by Eritreans are registered so far. Concerning other categories of craft, there is a separate system of licensing and registration.

Table 1:- Ships Registered in Eritrea

Ser No	Name	Gross Tonnage	Type	Owners
1	YOHANA	3,922	RoRo-Container	Eritrean Shipping Lines
2	BEILUL	2,025	Tanker	Eritrean Shipping Lines
3	SALAM	1,742	Multipurpose	Eritrean Shipping Lines
4	ANGELOS	558	Multipurpose	Eritrean Shipping Lines
5	DENDEN	6,977	Multipurpose	Eritrean Shipping Lines
6	MEREB GAS	1,403	Gas Carrier	Keren Shipping Lines
7	SARINA	2,286	Multipurpose	ZAFE Shipping Lines
8	ESROM	12,332	Multipurpose	(DMT)
	TOTAL	**31,245**		

Table 2:-**Pleasure Boats and Dhows Registered in Eritrea**

Ser No	Type	Gross Tonnage	Number	Owner
1	Pleasure Boats	113	40	Various
2	Dhows	1,438	36	Various
	Total	**1551**	**76**	

Regarding Bare Boat Charter the proclamation in **Art 28,** states-

1. Subject to the provisions of Art 19 (Entry of Particulars in the Register), the State of Eritrea may register and grant the right to fly its flag to a ship bareboat chartered in by a chatterer in Eritrea for the period of the charter.

3. Where a bareboat chartered -in ship is registered, the Registrar shall ensure that the former Flag State is notified of the deletion of the registration of the bareboat chartered ship.

Even though, with the present structure of the MARAD, and shortage of skilled manpower, it is not yet time to introduce an open registry policy, a study should be conducted as to whether to introduce an open ship registry policy in the long run, similar to other sectors of the economy which are open to both foreigners and nationals. As has been clearly indicated, an open registry policy offers so many advantages, beyond being just a means of foreign exchange earning.

CHAPTER FIVE

5. MARITIME SAFETY ADMINISTRATION IN ERITREA

INTRODUCTION

> The most vital functions of the Maritime Safety
> Administration are those intended to ensure the Safety of Life
> at Sea, the Safety of Navigation and the Protection of the
> Marine Environment. Every maritime nation, whether
> developed or developing, has to have a Maritime Safety
> Administration as an essential part of the MARAD, and it is
> usual and very desirable to have same as a sub-formation
> under the Ministry concerned. (Vanschiswar 1996)

Eritrea is situated on important oceanic routes. The existing scientific evidence
reveals that pollution levels in areas around the Mediterranean are very high. If this
is the case for the Mediterranean, then the Red Sea is at least influenced by the
Mediterranean. The Bab al Mandeb and the waters it connects are among the worlds
busiest sea-lanes for international, regional and national traffic of the countries
bordering them and beyond. From this point of view it is clear that Eritrea too is
vulnerable. Considering the above argument and to overcome its duties and
responsibilities as a Flag, Port and Coastal State, organization of maritime safety
administration, as an important integral part of the MARAD, is essential.

5.1 MARITIME SAFETY ADMINISTRATION

Even though different countries can have different systems of maritime safety
administration, logically there are no fundamental differences, because the main

functions, and the role of all Maritime Safety Administrations is similar, namely to ensure, Safety of life at sea, and protection of the marine environment.

Maritime safety is a specialized arm of the maritime administration, whose main duty is to enforce and implement the rules and regulations concerning maritime safety and protection of the environment. In this connection the primary functions are expected to take the form of, survey, inspections and certification of ships, along with related activities.   Moreover it includes also Registration of ships, Examination and Certification of Seafarers, Manning of ships, Investigation into ship casualties, Search and Rescue and advising the government on all marine technical matters. Other than this it also provides services such as aids to navigation, navigation warnings, safety communications, pilotage, hydrographic mapping and issuance of charts. But in order to provide safety to the maritime transport and protect the marine environment, there are some instrumental International Conventions that have to be ratified and implemented.

So far the Maritime Safety Administration in Eritrea is at its infant stage, but studies are being conducted in regard to its organization. One of the important initiatives is a study conducted with the co-operation IMO. Eritrea has so far ratified the following Conventions;

- ♦ International Maritime Organization, (IMO 1948)
- ♦ Tonnage Measurement of Ships, (Tonnage 1969)
- ♦ Load Lines, (Load Lines 1969)
- ♦ Regulation for Preventing Collisions at Sea, (COLREG 72)
- ♦ Safety of Life at Sea, (SOLAS 1974)
- ♦ Standards of Training and Certification of Watchkeeping, (STCW 1978)

Based on the above mentioned, and other Conventions, the MSA performs various functions such as, periodical survey and/or inspection of ships, inspections pertaining to PSC, approval of plans for new ships to be constructed, co-ordination with the

delegated Classification Societies, maintenance of technical records of national ships, ... etc.

As an important step in the protection of the marine environment in Eritrean ports and territorial waters the following regulations are proposed in the draft of the Legal notice for the Eritrean port regulations-

1) No ship shall spill or dump into the territorial water of Eritrea burnt oil, any other oil, or any mixture with oil contents, or any other pollutant.

2) If any noxious or offensive liquid or any other pollutant is discharged into the territorial water of Eritrea from a place on land the occupier of that place shall be guilty of an offence.

From the above provision we can conclude that while maritime safety is an essential part of MARAD, it is hard to say that, at present in Eritrea, the maritime safety administration is given due attention since the provisions are very sophisticated and inadequate. Far from being organized at the department level, it is only considered as a unit under the Standards and Regulation Division. Another major problem area in the safety administration is that, both the primary and subsidiary legislation are outdated. This creates problems in the implementation of Flag State, Port State and Coastal State jurisdictions.

5.2 FLAG STATE IMPLEMENTATION

No State has jurisdiction on the high seas and this makes it necessary to allocate jurisdiction over ships on the high seas. The State whose flag vessels fly has jurisdiction over such vessels. This principle is accepted as an international law that is called Flag State jurisdiction. Nationality of a ship has been traditionally connected with the jurisdiction of the State that provides a flag to the ship. And the term "Flag State" generally denotes the State whose nationality a ship has.

A major effect of the Flag State's role relates to marine pollution emergencies, for it is the Flag State which is responsible for enacting and enforcing all design and

equipment standards, all safety standards, and all crew certification and training; issuing certificates provided for by International Conventions; setting minimum staffing levels and standards relating to the prevention of collisions and the prevention of pollution; and exercising jurisdiction and control over the ship while it is on the high seas. As is clearly stated in UNCLOS 1982 Art 92

> Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of as real transfer of ownership or change of registry.

The principle of a "genuine link" means that maritime administrations must effectively exercise their jurisdiction in exercising administrative, technical and commercial control over ships flying their flag. In order to achieve this control maritime administrations must ensure that ships flying their flag comply with their national laws and regulations concerning the registration of ships. They must also comply with particular international rules and standards, with regard to safety of ships and persons on board, and the prevention of pollution of the marine environment. In addition to these administrations must ensure that ships flying their flag are periodically surveyed. Moreover the MARAD must take necessary measures to ensure that the owners and operators of a ship on its register are identifiable for the purpose of ensuring their full accountability. As to effectively handle the registration and granting of nationality, a proper and updated national shipping policy must be in place. In other words from the national point of view, registration of ships forms the basis for national shipping policy, economic policy and defense policy. In addition, it serves to establish ownership and allocates responsibility for safety, pollution control and social regulations.

Ship registration is an important part of maritime safety administration. The ship register, keeps the safety records of the ships, including results of all surveys and inspections conducted on them and the facts on accidents at sea involving ships listed under it. Eritrea as a Flag State has a responsibility to register ships flying its flag and accordingly, as has been mentioned before, it has enacted a provisional law for the registration of Eritrean vessels that is provided in proclamation No 77 1995- A proclamation to regulate the registration of Eritrea ships. The proclamation provides for control and registration of Eritrean ships and for the regulation of maritime transport.

Flag State is responsible for setting the standards through IMO, for ensuring compliance, and in different cases, for authorizing particular '*Recognized Organizations*' to inspect and issue certificates on its behalf. An administration uses periodical surveys and renewal of the various certificates, in order to ascertain that ships meet the requirements laid down in the national legislation. On completion of a survey and rectification, it is a prerequisite that the conditions are maintained during the period of validity and that no items covered by the certificate shall be changed without notification of the administration.

Besides the periodic surveys, intermediate surveys and endorsements on the certificates are prescribed. The administration may also impose additional surveys and unscheduled inspections to assure it self that its ships are in compliance with the regulations.

> In the last resort, only governments could ensure that ship owners, managers, classification societies, insurers and everybody else involved in the industry achieve the standards laid down in IMO instruments. For governments are IMO's teeth and IMO has the right to expect them to bite when necessary. (O'Neil 1994)

For nations having a large fleet in overseas trade or engaged in regular trade between foreign nations, and also for countries with a small fleet and a small number of in-house surveyors, it is evident that an administration may find it impractical and far too costly to have all mandatory surveys conducted entirely by its corps of surveyors. According to the provisions of international conventions, the government of a country may entrust the inspections and surveys either to surveyors nominated for the purpose or to organizations recognized by it.

According to the proclamation the general responsibility for the registration of Eritrean ships is placed under DMT. But DMT has no qualified surveyors or inspectors, and so surveys of its flag ships have to be made outside the state. The classification societies that are recognized by the State of Eritrea to conduct FSC, are Germanischer Lloyd and the Hellenic Register of shipping. These delegated classification societies perform the issuance of statutory certificates to Eritrean registered ships. Fishing boats, pleasure boats and dhows are surveyed and inspected by DMT's officers.

The recognized classification societies have extensive resources of staff and technology deployed in a global net of survey offices. Such authorization of statutory work is based on national legislation in which the internationally adopted standards are laid down.

In order to meet this obligation, an administration must establish systems for the supervision of work carried out by an authorized organization. The simplest form of authorization is delegation of parts, or all, of the statutory surveys, and provisional certificates would in such cases be issued by the administration itself, after a thorough examination of the survey reports. The delegation may include all categories of vessels, or the administration may choose to exclude certain types, like passenger ships, mobile offshore units, or similar vessels with a high damage potential. The authorization may for certain categories of ships be extended to allow

the issue of full-term certificates, while the administration might confine its supervision to an audit of the survey documentation. If any irregularities are found, the authorized organization will be instructed to rectify matters.

But delegating some of the administration's functions is not a simple task even though it is permissible under the convention system and it does not relieve an administration of its responsibilities. In particular, its obligation is clearly defined in Regulation 6(c) of the protocol of 1978 relating to the International Convention for the Safety of Life at Sea (SOLAS) 1974, which states-

> In every case, the Administration shall fully guarantee the completeness and efficiency of the inspection and survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.

The problem for the administration lies not in deciding whether to delegate or not but in deciding what to delegate. Traditional maritime societies have a long history of issuing Load Line Certificates on behalf of administrations and, in fact, Regulation 1 of the Load Line Convention, in referring to the general structural strength of the hull, states that: "ships built and maintained in conformity with the requirements of a Classification Society recognized by the administration may be considered to possess adequate strength." In exercising this function and dealing with the structural strength of ships for classification purposes, the major Societies have established resources far more extensive than those available to the maritime administrations of national governments.

By this combination of interacting elements, the administration is able to evaluate the performance of the authorized organizations and concentrate their own limited resources on selected areas or special issues where the effect of available resources may be used to the greatest advantage for safety and the protection of the environment. Successful collaboration on the subject of surveys and control are

contingent upon mutual confidence between the administration and the authorized organizations.

Other than the above mentioned obligations Flag states also have an effective jurisdiction or control over their own ships regarding; safety standards; standards of competency, hours of work and manning; social security measures, ship board conditions of employment and living arrangements according to the International Labour Organization (ILO) 147 Merchant Shipping (Minimum Standards) Convention. Finally the Flag State has responsibilities with regard to casualty investigation as mentioned in UNCLOS 82, Art 94, paragraph 7

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

5.3 PORT STATE CONTROL

Port State Control can act as a last safety net when ship owners, classification societies, insurers or Flag State administrators have in one way or another failed to fulfil their responsibilities. It plays an important role in the elimination of sub-standard ships.

Most of the international conventions on maritime affairs, call for PSC enforcement on ships calling at another State's port. And the territorial jurisdiction gives States the right to exercise control over foreign ships within their ports.

Most specifically, regulation 19 of chapter 1 of the 1974 SOLAS Convention, Art 21 of the 1966 Load Line Convention and Art 5 of MARPOL 73/78 contain the provision to the effect that:

1. every ship is subject to port State control at foreign ports by a duly authorized Port State Control Officer (PSCO) for the purpose of verifying that certificates carried by it are valid;

2. such certificates, if valid, shall be accepted unless there are clear grounds for believing that the conditions of the ship or of its equipment do not correspond substantially with particulars of the certificates; and

3. in such circumstances, the PSC officer shall take steps to ensure that the ship shall not sail until it can proceed to sea without danger to the ship, persons on board or the marine environment.

In order fulfil this responsibility a duly authorized PSCo must exercise control over visiting ships by verifying that the certificates issued are in accordance with the provisions of the relevant conventions. But what does Port State Control mean? How does it operate? These are relevant questions to be answered before dealing with the entire system.

PSC does not set up additional safety requirements but helps to enforce the rules and standards laid down in international agreements on ships regardless of the flags they are flying. It is recognized as being a step in the right direction towards the eradication of substandard ships, when it is carried out according to IMO resolutions and recommendations. Many of IMO's technical conventions contain regulations enabling governments to inspect ships visiting their ports to make sure that they meet IMO standards. To conduct PSC, the crucial point is that, States ratifying IMO Conventions, and thus assuming obligations to carry out PSC, should have efficient maritime Administrations, staffed by well-trained personnel.

Effective port State control is designed to curb substandard shipping. It enhances marine safety and pollution prevention. At the same time it protects national ships that are obliged to conform to the high international standards, from unfair competition from substandard ships which economize by adhering to lower standards. (Guidelines for maritime legislation).

The main elements of an effective but fair PSC inspection are-

❑ The existence of an appropriate Maritime Administration or national Flag State administration.

❑ Adequate primary legislation setting out the umbrella requirements and structure regarding merchant shipping and providing the authorities with authority to make the relevant supporting regulation, i.e. to put in place the necessary legal and regulatory regime.

❑ The provision of standards, that is convention standards.

❑ The development of competent and able surveyors carrying out the inspection, that are qualified as PSCo's.

❑ The existence of an efficient communications and/or Database Centre for the effective implementation of any PSC.

Eritrea as a Port State has an obligation to inspect ships visiting its ports in order to verify their conformity with international conventions and national rules and regulations. Accordingly unscheduled and regular inspection is conducted on ships visiting Eritrean ports, so as to verify their safety and pollution prevention equipment and that manning is adequate, satisfactory and being maintained in conformity with domestic and international standards established by treaty. Implementation of Port State control in Eritrea began in Massawa Port in Mid-1997 with two Port State Control officers (PSCo). These officers at present inspect 10% of the vessels visiting the port of Massawa according to the procedures for PSC resolution A 787 (19). But due to the lack of skilled manpower and other instruments the PSCo's mostly

conduct nautical inspections with more attention on statutory certificates, manning, record books, International Oil Pollution Prevention (IOPP) certificates and general safety inspection only.

On those occasions, where deficient ships are encountered, but it is considered that they will not endanger the safety of life and marine environment, the officers will refrain from detaining them, and allow the ships to proceed to the next port where the required facilities for repair can be found. In such cases the maritime authority in the next port of call will be informed of the deficiencies not rectified and the measures taken. This is because of the limitations in providing proper services. In those cases where there are clear grounds for concluding that the vessel's condition is not in accordance with what is stipulated in the particulars of the certificates to the degree that it is considered unseaworthy, the surveyor will be forced to inform the Flag State for further intervention.

In summary Port State Control in Eritrea is still at a very early stage in its evolution. This is due to different reasons of which some have been mentioned previously. The most important is the absence of national regulations to ensure that the relevant international conventions are part of the national law.

5.4 COASTAL STATE JURISDICTION

> A state's power to control activities of foreign ships in territorial
> waters and adjacent zones is called "Coastal State" Jurisdiction.
> Coastal State jurisdiction encompasses both legislation and
> enforcement of the rules. Thus, legislative and enforcement
> jurisdiction coincide.(IBID)

The 1982 UNCLOS authorizes a Coastal State to establish its Territorial Sea (TS) at 12 Nautical Miles (N.M) from base lines. The TS, its airspace and the bed beneath it are under the Coastal State's sovereignty as an integral part of its territory, but the

area is subject to the important legal qualification that foreign ships, at least merchant ships in time of peace, have the right to innocent passage.

In addition the Convention provides for the establishment of a 200 N.M Exclusive Economic Zone (EEZ). In the EEZ the Coastal State has sovereign rights for exploring and exploiting, conserving and managing the natural resources, living and nonliving, of the waters and the adjacent bed and subsoil, as well as other economic activities such as the production of energy from water. The Coastal State is given jurisdiction to among other roles, to preserve the marine environment.

Besides UNCLOS 82 allows for a Coastal State to establish a Contiguous Zone. A Contiguous Zone is in effect a limited extension to the State's TS. In such a zone a State may exercise the control necessary to prevent infringements of its customs, fiscal, immigration or sanitary regulations within its territory or TS and punish such infringements committed within its territory or TS. Such a zone may only extend 24 N.M from the same base lines as those from which the TS is measured. In this respect the Coastal State is entitled to exercise certain limited and defined activities, mainly administrative and policing functions, necessary to prevent and punish the infringements. In support of all these provisions and others, the 1982 Convention permits Coastal States to adopt laws and regulations applicable to ships on innocent passage concerning such matters as safety to navigation, conservation of living resources, preservation of the environment, and the prevention and control of pollution.

Eritrea has not yet ratified UNCLOS 82. Consequently it's maritime zones such as the Territorial Sea, Contiguous Zone, Exclusive Economic Zone (EEZ) are not yet defined. But according to international customary law it has an obligation to be bound by the convention. Consequently it allows the innocent passage in its TS and only interferes in cases involving a grave and imminent threat to its coastal areas.

As **G**hebreegziabher Andom*,* Stated:-

> In the sea contiguous to the territorial sea, Eritrea is entitled to exercise certain limited and defined activities, mainly administrative and policing functions, necessary to prevent and punish the infringements of, for example, sanitary, customs and immigration regulations. Examination of the discussions that took place in the UN Convention on the Law of the Sea, shows that States which adhered to a narrow territorial sea found it necessary to claim an additional area to protect particular interest such as fisheries and anti-smuggling laws. So, first Eritrea is on the way to development, and secondly, unless an area contiguous to this territorial sea is declared as Eritrea's EEZ, or the contiguous sea is incorporated into its territorial waters, it will be found insufficient to meet the State's growing interest over offshore resources and activities*.*

5.5 MARITIME SEARCH AND RESCUE

When human beings started to use the sea for transport and other purposes, accidents became a common daily phenomenon. Over the centuries many lives were lost, because there was no organized Search and Rescue activities, even though traditionally seafarers co-operated at sea as to save the lives of others in danger.

Search and Rescue (SAR) comprise the search for, and provision of aid to, persons who are, or are feared to be, in need of assistance. The two operations - Search and Rescue - may take many forms, depending on whether they are both required, on their size or complexity of the operation and on the available staff and facilities. It is necessary that the available resources be so organized and co-ordinate that effective

and expeditious Search and/or Rescue organization (SAR Organization) provided with a SAR plan and the means for carrying it into effect.

Unlike some developed countries, a developing country will not normally be able to afford expenditure of millions of dollars on SAR. However, this limitation should not prevent it from ratifying the several international maritime conventions that have attached great importance to the rendering of assistance to persons in distress at sea and to the establishment by Coastal States of adequate and effective arrangements for coast watching and for Search and Rescue services. One of them that entered into force in 1985 directly addresses maritime SAR. The Convention does not specify the level of service required; it deals primarily with organizational matters, co-operation between States and operating procedures. Signatories are required to establish SAR regions by agreement with their neighbours and submit information on their facilities to IMO.

States that are Parties to the International Convention for the Safety of Life at Sea, 1974, or the Convention on the High Seas, 1958, are required to set up SAR organizations. Regulation 15, chapter V, of the International Convention for the Safety of Life at Sea, 1974, (SOLAS 74) reads:

> (a) Each Contracting Government undertakes to ensure that any necessary arrangements are made for coast watching and for the rescue of persons in distress at sea round its coasts. These arrangements should include the establishment, operation and maintenance of such maritime safety facilities as are deemed practical and necessary having regard to the density of the seagoing traffic and the navigational danger and should, so far as possible, afford adequate means of locating and rescuing such persons.

(b) Each Contracting Government undertakes to make available information concerning its existing rescue facilities and the plans for changes therein, if any.

Considering the situation of the country, the maritime safety administration has to ensure that there exists a national SAR plan to respond to maritime distress.

Eritrea should work on the establishment of a Search and Rescue scheme even though the 1979 SAR Convention has not yet been ratified. As in many other national SAR committees our national SAR committee should involve the DMT, the Navy, Civil Aviation, the Air force, Eritrean Airline, and the Ports of Massawa and Assab. SAR legislation is needed to facilitate the SAR organization's duties and responsibilities and to ensure the accessibility, implementation and execution of Search and Rescue operations. In order to overcome its duties and responsibilities efficiently a SAR organization should establish programmes of continuos training and exercising. As to reach a high degree of proficiency, all SAR facilities should periodically take part in co-ordinated SAR operations with neighboring States. Training of personnel for SAR is important for the efficient co-ordination and conduct of SAR operations and organizing volunteers for this matter is something that should be given priority within the framework of the maritime safety administration.

A Search and Rescue Organization and Marine Pollution Contingency Planning are essential response elements in national preparedness and capability to deal with marine emergencies and disasters. Above all a national SAR Manual is required for an effective and efficient reply in case of accident.

In conclusion, maritime safety as an integral part of the overall MARAD of the country, and as a matter of policy, is a priority issue that should be organized within the shortest possible time.

CHAPTER SIX

6. CHALLENGES IN THE DEVELOPMENT OF MARAD IN ERITREA

INTRODUCTION

Even though there is a political commitment and a strong desire and dedication within the government of Eritrea for the development of the maritime sector, lack of legislation, lack of sufficiently qualified and experienced nationals, lack of training facilities, inadequate investment and infrastructure and an out-dated maritime code have greatly hindered the effective functioning of the maritime sector in Eritrea.

The author will discuss in this Chapter the main problem areas, that the Eritrean MARAD is facing and try to pinpoint solutions to overcome these challenges.

6.1 MARITIME LEGISLATION

There is no international legislative body that makes international shipping laws, moreover there is no international court that tries cases against such laws. As maritime legislation provides the legal relationship of all parties involved in maritime transport, it is necessary to regulate nationally the relationship of all parties involved in maritime transport and the system that exists should be based on national legislation. The fundamental concepts in maritime legislation are-

- Ship registration - which conveys nationality to a ship and brings it under the legal system of the country of registration;
- National law - which is the basis for international shipping, as a ship registered in a specific country will be subject to the laws of that country;

- Territorial law - which may come into effect for ships entering another nation's territorial waters.

The need for a country to have modern up-to-date maritime legislation is unquestionable, because it is the body of law adopted to control the maritime activities of that nation. It is also helpful in implementing the basic objectives of a country as a Flag, Port and Coastal State. Therefore special attention must be given when developing an effective maritime administration to ensure that the maritime legislation meets national requirements, as well as international standards.

This being the general fact, if we look at the Eritrean case, as a country that was effectively a colony of one of the poorest and backward nations up to the year 1991, the Ethiopian legal system and laws were applicable to Eritrea. And thus the existing maritime law in Eritrea, apart from certain aspects of the Commercial Code and the Civil Code, was the principal Maritime Code of the 1960 Ethiopian Legislation. It is still serving as the provisional Maritime Code for the country. The legislation has 371 Articles arranged into 9 titles containing 18 Chapters and 11 Sections.

The Code provides for the ownership and registration of ships; duties and liabilities of ship owners; regulation of contracts relating to the use of the ship; maritime collisions, assistance and salvage; participation in general average; insurance; penal and miscellaneous matters. Some of the most important parts of the legislation are being changed, for example the Registration provision was repealed and replaced by Proclamation 77/1995. The code was probably adequate for its time, but has not been kept updated with the various developments in international maritime transport. In any case circumstances have since changed. Although it is comprehensive in some respects, it is quite scanty in others. Some of the language is rather ancient and needs updating, as do some of the ideas therein. For instance it codified the Hague Rules 1924, SOLAS 1960 and Oilpoll 1954 but all these have now been replaced by the Hague-Visby Rules 1968 and the Hamburg Rules 1978, SOLAS 1974 (as amended together with protocols and Annexes) and MARPOL 1973/78 respectively. These

are but a few aspects in which the Code has become almost obsolete. The Code is not fully consolidated to include pollution prevention, abandonment of ships, ship's agents and ports, entry into the territorial sea and other maritime laws.

To bring the Code up to international standards and in order to accommodate Eritrea's national interests, the Code needs to have general updates of language and concepts therein, including enabling provisions for new Conventions; a new statement of policy, expanded and enhanced with more comprehensive and modern definitions, ... etc. But before the drafting stage for the Maritime Code, Eritrea should work out a Comprehensive National Maritime Transport Policy, the spirit of which should be embodied in the Maritime Code and reflected in the structure of the Maritime Administration. This should consist of a statement of objectives and how they should be achieved, including a list of principal functions.

Therefore, a revision to reflect the unique features of the nation and to incorporate the latest international conventions and national objective has become a necessity.

6.2 LACK OF SKILLED MANPOWER

Every maritime administration has the responsibility to formulate maritime policy, draft legislation, implement the formulated policy and legislation, discharge its national and international obligations in conformity with the standards set out in international conventions and promote maritime development, all of which require considerable expertise and resources. In view of this fact, Eritrea has an acute shortage of personnel in all professions: maritime administrators, marine officers, engineers, surveyors, inspectors, pollution and safety experts, technicians, ... etc. This chronic shortage of adequate, qualified and experienced local personnel in the field of maritime transport is the result of the domination of the available maritime posts by Ethiopians during the period of Ethiopian rule.

In view of the chronic shortage of adequate, qualified and experienced local personnel in the field of maritime transport, the maritime policy should ensure the

creation, development, protection and preservation of national maritime skills, through IMO's technical co-operation program, that concentrates on training of senior personnel. Technical assistance should also be sought for the development of national training institutions. Meanwhile, the employment of expatriates who can provide on the job training to the employees and assist in the development of standards, regulations and implementation of procedures should be encouraged.

6.3 LUCK OF MODERN COMMUNICATIONS

Due to the low level of economic development of the country, there is inadequate investment capacity to provide reception facilities, conduct SAR activities, create an efficient maritime communication network, rehabilitate out-dated and mostly demolished aids to navigation, establish repair facilities for nautical and marine equipment workshops as well as replace the poor port facilities.

Though there is an overall lack of infrastructure facilities in the sector, it is particularly serious in relation to communication. Eritrea has not introduced an efficient modern system of communication in the port areas. There is a problem of disseminating information to the shipping world, shipping agencies especially are blamed for not providing the necessary information to ship owners and shippers on time. In addition modern communication technologies such as internet have not yet been introduced. These would give a chance to the maritime sector to learn from information provided by the international shipping community and help solve its communication problems.

6.4 LOW PORT INFRASTRUCTURE DEVELOPMENT

Ports are the points of reference between sea transport and land transport, most of the imports and exports of a country pass through the ports. Therefore, the development of ports has a very significant influence on the smooth economic growth of the economy. Both the ports of Assab and Massawa have a lack of adequate operating facilities to provide efficient services. The operational equipment used is obsolete and is in a state of constant maintenance and repair, thus impeding smooth operations. Furthermore, the ports have no specialized container terminals, even though containerization of cargo transport is becoming increasingly important, and the number of containers loaded and unloaded is increasing in the ports. The number of berths is few, and the draft limits use to small and medium ships only. Further there is a need for expansion of specialized berths that can accommodate big ships.

6.5 ORGANISATIONAL STRUCTURE PROBLEMS

There had been a state of constant change in the overall government structure up to the year 1995. As a part of the government structure, the department of Maritime Transport had passed through several different structural arrangements since its establishment. According to the present structure the department is under the Ministry of Transport and Communications. Although placing the department under this Ministry is a wise decision, not least because it contributes to interdepartmental co-operation, there are a number of structural weaknesses within the department. The maritime safety and environmental protection aspects that include Search and Rescue, Coast Guard, Port and Flag State control, ... etc, are not given due attention. Ship registration that should be an important part of the MARAD is not properly equipped with human and material resources. It is therefore extremely important to continue efforts to devise a Maritime Administration structure that is best suited to the country.

6.6 LACK OF TRAINING FACILITIES

Along with the acute shortage of skilled work-force, Eritrea is facing a serious lack of training facilities in the maritime field. There are no institutions related to training of sea going, technical or managerial personnel as well as those needed to oversee port operations. The only available means to acquire training is to send trainees abroad to traditional maritime countries where they can gain expertise. This is time consuming and involves high cost that cannot be met by the current low level Eritrean economy.

In conclusion Eritrea, as a late comer to the world, has lost many opportunities. This and the extended war of independence have attributed to it being part of one of the least developed nations. This has had a major negative impact on the overall economy and specifically on the maritime sector. These problem areas can not be rectified quickly, but need significant time and resources.

CHAPTER SEVEN

7. ROLE OF MARAD IN INTERNATIONAL AND REGIONAL CO OPERATION

INTRODUCTION

It is difficult if not impossible for a poor nation like Eritrea to cope alone with pollution in its maritime zone. For general marine safety and protection of the environment, international and regional co-operation is essential. Through co-operation, cost can be minimized, information can be easily exchanged, Search and Rescue operation can be simplified,... etc. So international and regional co-operation provides an opportunity to littoral States for a co-ordinated and co-operative action for mutual economic benefit and preservation of their common resources. It is also helpful for the development of shipping activities and for fostering international co-operation in setting up regional maritime links among States. However, to implement such co-operation requires the articulation of mechanisms, institutional capabilities and procurement of resources.

This is in particular true for the Red Sea where Eritrea is located.

> The waters of Red Sea are part of the major Ocean waters,
> either through Suez or Bab-El-Mendeb. This leads to the
> conclusion that pollution cannot be contained or solved
> unilaterally, but the endeavor needs the integrated concern
> and action of all concerned parties. Simply, the co-operation
> in the prevention and control of pollution must be considered
> as an international and regional approach to conservation of
> the marine environment. (Ghebreegziabher 1994)

This Chapter is analysis the above mentioned ideas from an Eritrean perspective and exploring its potential future role in some of the international and regional organizations working for the safety and preservation of the marine environment in the region. This includes , the Indian Ocean MOU on Port State Control, and the Red Sea and Gulf of Aden Regional Co-operation.

7.1 INDIAN OCEAN MEMORANDUM OF UNDERSTANDING

Port State Control (PSC) is a harmonized inspection procedure designed to target substandard ships, with the main objective being their eventual elimination. PSC is not something new to the 21st century. It was actually built into the 1929 Safety of Life at Sea Convention (SOLAS). The objective is to verify that ships that call and utilize the ports and territorial waters of a given Coastal State are safe, seaworthy and do not pose a danger to the marine environment. To effect this control, it has been seen as advantageous to administer the process on a regional basis. The establishment of a regional system gives participants the opportunity to ban substandard ships from their region in a concerted and effective manner without affecting the fair competition between ports.

Historical development of regional PSC is associated principally with the European nations, stemmed from an increased interest in the growing number of substandard foreign flag ships calling at their ports and the consequential damage to the environment. This situation led eight North Sea States to establish an information exchange on foreign ship standards in 1978, called the Hague Memorandum of Understanding.

This was superseded in 1982 when 14 European countries agreed to establish a harmonized system of PSC resulting in the signing of the Paris Memorandum of Understanding on the Port State Control.

Article 197 of the 1982 LOS Convention requires States to cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent

international organizations, in formulating and elaborating international rules, standards, and recommended practices and procedures, consistent with the Convention, for the protection and preservation of the marine environment, taking into account regional characteristics.

The MOU encourages exchange of information. In this way ships that have been inspected by one Port State, and found to be complying with the requirements are not subject to frequent inspections, while ships presenting a hazard, because this have deficiencies that need to be rectified, will be targeted. Such PSC procedures helps member countries to make the best use of resources to improve the efficiency of inspection effort and coverage, and helps them in sharing the costs.

The growth of PSC world-wide has even more exciting implications as more and more statistics and data are gathered and exchanged by the different PSC authorities. This knowledge is not just useful in itself, it also provides the maritime community with the opportunity to better analyze the cause of incidents and causalities and ascertain more accurately than ever before, how they can be prevented from occurring again.

The assembly of IMO in Nov. 1991 adopted, in response to a proposal by the Secretary General Resolution A.682 (17) Regional Co-operation in the Control of Ships and Discharges. This resolution proposed the establishment of PSC regimes in the various regions of the world following the pattern adopted by the Paris MOU. At present there are seven regional Port State Control Agreements in different parts of the world. These are the Paris MOU, the Acuerdo de Vina del Mar (Latin American MOU), the Asian Pacific Region (Tokyo MOU), the Caribbean Region (Caribbean MOU), the Mediterranean Region (Mediterranean MOU), the Indian Ocean Region MOU and the West and Central African Region MOU.

Realizing the need to assist in enhancing safety and protection of the maritime environment in other regions, IMO is now actively involved in the promotion of

similar PSC regimes as a major step forward in other regions of the world. Accordingly a similar initiative is being implemented in the Persian Gulf and a six country's technical and legal expert planning meeting on the development for the protection of the marine environment in this sea area took place in July 1999 in Bahrain. There is also a possibility of establishing a PSC in the Black Sea. The Black Sea Strategy Action Plan, signed by the six countries in the region envisages the development of a regional PSC in that area.

A MOU on PSC in the Indian Ocean Region was signed on June 1998 by the Maritime Authorities of **Australia, Bangladesh, Djibouti, Eritrea, Ethiopia, India, Iran, Kenya, Maldives, Mauritius, Mozambique, Myanmar, Oman, Seychelles, South Africa, Sri Lanka, Sudan, Tanzania, Yemen**. The Indian Ocean MOU is aimed at ensuring effective action by the Port States concerned to prevent the operation of substandard ships, while harmonizing inspections and strengthening co-operation and exchange of information. The Indian Ocean MOU allows for an interim period of two years before it becomes fully functional and implemented.

According to the Agreement reached by member States, each Authority (maritime authority) makes a commitment to establish and maintain an effective system of PSC with a view to ensuring that, without discrimination as to flag, foreign merchant ships visiting the ports of the State comply with standards laid down in the relevant instruments. For the purpose of the MOU "relevant instruments" are the following:-

- ❑ The International Convention on Load Lines, 1966; (LOAD LINE 1966)
- ❑ The International Convention for the Safety of Life at Sea, 1974 (SOLAS 74)
- ❑ The Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974;
- ❑ The International Convention for the Prevention of Pollution from ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78);

- ❑ The International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978 (STCW 78);
- ❑ The Convention on the International Regulations for Preventing Collision at Sea, 1972;(COLREG 1972)
- ❑ The International Convention on Tonnage Measurement of Ships, 1969; (TONNAGE 1969)
- ❑ The Merchant Shipping (Minimum Standard) Convention, 1976 (ILO Convention No.1974).

In addition there are the related Protocols and amendments to these conventions, and related codes of mandatory status as and when they have entered into force.

According to the Agreement, each authority will achieve an annual total inspection rate of at least 10% of the estimated number of individual foreign merchant ships that enter the ports of its State during a period of 12 months. Moreover each Authority will consult, co-operate and exchange information with the other authorities to further the aims of the Memorandum.

While it would undoubtedly be beneficial to join the MOU, Eritrea as a member State, would have to fulfill the above mentioned commitments. In order to do this, it first has to develop a well-organized MARAD, and ratify and codify the relevant instruments used for the purpose of the Memorandum. In addition to this it has to train competent PSCos.

7.2 THE RED SEA AND GULF OF ADEN REGIONAL COOPERATION

Eritrea is ill-equipped to respond to marine environmental pollution arising from accidents and spills, to conduct SAR activities, or to discharge its duties as a Port State; it therefore needs to become a party to related regional agreements. One important mechanism is the regional convention on the conservation of the Red Sea and Gulf of Aden Environment known as The Red Sea and Gulf of Aden Action Plan (RERSGA).

Recognizing the need to develop an integrated management approach to the use of the marine environment and the coastal areas, which would allow the achievement of environmental and development goals in a harmonious manner, the coastal States of the Red Sea and the Gulf of Aden under UNEP's Regional Seas program initiated a regional Convention entitled RERSGA. This Convention is designed to protect the marine environment and coastal areas of the Red Sea and Gulf of Aden for the benefit of present and future generations. Its main objectives are to prevent marine pollution, develop an integrated management approach for the use of the marine environment and coastal areas, to carry out planned research, monitoring and assessment programs on marine pollution, foster co-operation and co-ordination of action on a regional basis with the aim of protecting the marine environment of the Red Sea and the Gulf of Aden.

This Jeddah (Saudi Arabia) based organization was established in 1982 resulting from a Convention signed in 1982 that entered into force in 1985. It includes the governments of Egypt, Jordan, Somalia, Saudi Arabia, Yemen, and Palestine. This co-operation ensures the pooling of resources and skills, harmonizes the activities of all the countries concerned, and is cost effective to implement. According to Art **IX** of the Convention

1. The Contracting Parties shall, individually or jointly, take all necessary measures, including those to ensure that adequate equipment and qualified personnel are readily available, to deal with pollution emergencies in the Sea area, whatever the cause of such emergencies, and to reduce or eliminate damage resulting therefrom.

2. Any Contracting Party, which becomes aware of any pollution emergency in the Sea Area shall, without delay, notify the organization.

3. The Contracting Parties shall co-ordinate their national plans for combating pollution in the marine environment by oil and other harmful substances in a

manner that facilitates full co-operation in dealing with pollution emergencies.

RERSGA has an Inter Governmental Organization relationship with UNEP and UNEP's Oceans and Coastal Area Program Activity Center (OCA/PAC). It could be advantageous for Eritrea to be a member of this convention, because it would enable Eritrea to benefit from collective action in combating pollution and therefore protecting the marine environment. It could also be practical and useful for the proposed Oil Pollution Contingency Plan.

The potential risk of substantial pollution by oil from the shipping traffic in the Red Sea and the Gulf of Aden and the vulnerability of the region to oil pollution calls for Regional Contingency Plans. This necessitates the co-operation of States in the region to provide effective measures to deal with such incidents. These Regional Contingency Plans provide a cost effective and efficient means of combating oil pollution of the marine environment.

In conclusion a country like Eritrea which is at an early stage of development cannot cope with massive oil spills on its own. Regional co-operation facilitates the pooling of resources, manpower, know-how and experience to effectively combat pollution and provide for maritime safety and environmental protection in general.

CHAPTER EIGHT

8. CONCLUSION AND RECOMMENDATIONS

Maritime administration has been recognized as an essential organ of the Public Administration system in order to perform advisory, regulatory, economic and developmental functions related to maritime activities. The Department of Maritime Transport (DMT) under the Ministry of Transport and Communication in Eritrea has been mandated to carry out these activities of the MARAD. Though the Department, as a new institute, has adapted its organization and services to its many-sided realities, comparison of the Department with what exists in other maritime nations, particularly in light of the rapid developments in the shipping industry, as revealed serious weaknesses, while at the same time offering possible areas of improvement. In the previous Chapters, a number of the issues facing Eritrea have been identified and evaluated. In this Chapter the author wishes to conclude and make certain recommendations for further improvement.

It is important to understand the importance of maritime sector development, the roles and functions to be undertaken in connection with maritime affairs and the professional expertise needed to conduct these affairs. Therefore there is a need for a comprehensive policy and a program of legislative amendment.

The main reason for having a Maritime Safety Administration is to have in place a body responsible for the implementation of a county's National Shipping Act. The Eritrean Merchant Shipping Act was adopted from the 1960 Ethiopian Maritime Code with only small amendments. Forty years after its enactment, with virtually no extensive amendment or review, large elements of the legislation are out-dated and not in conformity with current developments in the shipping industry. This code

must be comprehensively up-dated to incorporate the changes in international and national maritime transport. Therefore, a revision to reflect the unique features of the national objectives and to incorporate the latest international conventions has become a necessity, in order to comply with all the IMO Conventions and related safety standards. In addition, significant subsidiary legislation needs to be promulgated to provide for detailed regulations. It is also important to update, integrate, adjust, and unify the present maritime laws, codes and rules so that the Maritime Administration can function effectively.

Eritrea needs ratification of many of the international conventions, especially those related to marine environmental prevention such as MARPOL 73/78, OPRC 90,... etc. But before ratifying the conventions it has to position itself to meet its obligations. This entails the preparation of legislation, the establishment of legal and administrative procedures so as to exercise control, survey and certification, and the provision of infrastructure and facilities.

Eritrea has been colonized by different countries at different times in its history; accordingly the maritime policy of the country has developed more as a tool to respond to colonial policies rather than to meet the country's need for increasing its international trade relations. Eritrea needs more effective, unbiased, dynamic maritime policies, and processes which permit timely decision-making. It has to establish an updated maritime policy, which should have both short and long term goals. As mentioned earlier the short term goals should focus on the privatization of State-owned maritime enterprises, and the development of maritime infrastructure in general. In the longer term the maritime policy should address, inter-alia, the establishment of a free-trade zone that can be used for the creation of employment and economic development, as well as the development of maritime institutions such as maritime colleges for seamen's training.

As a part to the overall economic policy of the nation, the maritime sector also be open for private investment by to both nationals and foreigners. The policy in regard to ship registration must be revised. As many developed and developing nations are benefiting from the open registry system, Eritrea shall give special attention to opening its closed registry system.

Eritrea is poorly equipped to respond to marine environment pollution arising from accidents and spills, or to conduct SAR activities alone. There is a need for the establishment of a national contingency plan, which should be linked to the regional plans. In this respect Eritrea needs to become a party to the Regional Convention on the Conservation of the Red Sea and Gulf of Aden Environment whose main objectives are to prevent marine pollution, to ensure integrated management for harmonized development, and monitoring, and to foster co-operation and co-ordination. This co-operation would ensure the pooling of resources and skills and the harmonizing of the activities of all the countries concerned. It would also be cost effective to implement.

In summary, therefore the author makes the following recommendations with regard to the Eritrean maritime administration:-

♦ That maritime safety administration be developed and strengthened to deal with the functions of pilotage, hydrography, dredging, aids to navigation, pollution prevention, and other maritime safety matters. Ship registration and surveying, and sailors' registration must also be part of this initiative.

♦ That the present SAR capacity be upgraded, in conjunction with other national emergency organs.

♦ That a contingency plan to combat pollution be developed.

♦ That a unit be established which is responsible for investigation into shipping casualties.

♦ That a maritime safety policy be developed as a matter of urgency which addresses:-

    ♦ Implementation of Flag State Control of national ships and Port State control of foreign ships.

    ♦ Conditions for registration.

    ♦ Casualty investigation, salvage and wreck removal.

    ♦ Aids to navigation, pilotage and safe handling of dangerous cargoes in ports.

♦ That ratification of the International Maritime Conventions to be urgently persuade. As Eritrea is not a party to most of the International Maritime Organization Conventions, there would appear to be no chance of universality in its application and enforcement unless the country has set grounds for ratification and implementation.

♦ That the structure of DMT be made flexible enough to accommodate the changing maritime situation.

♦ That necessary steps be taken to carry out Port State Control so as to ensure that the minimum requirements can be met, as set out in the Indian Ocean Memorandum of Understanding on PSC.

♦ That training of personnel in the maritime field be one of the priority areas, as efficiency and productivity in the development of maritime sector depends on skilled manpower.

Eritrea is faced with developing a maritime administration from scratch. It lacks the technology, knowledge and financial expertise needed to meet the international standards of IMO and other conventions as stipulated in related articles and regulations. It needs therefore technical and financial assistance in order to function effectively in the present world, to recover past lost opportunities and to learn from the mistakes of other countries. It is the hope of the Author that this dissertation can

make an important contribution to meeting these important objectives, and so assist in establishing a competent and effective Maritime Administration in Erittrea.

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